AGREEMENT

for the sale and purchase of shares in 
Tesco Stores (Thailand) Limited and Tesco Stores (Malaysia) 
Sdn Bhd

TESCO HOLDINGS LIMITED
TESCO HOLDINGS B.V.
C.P. RETAIL DEVELOPMENT COMPANY LIMITED
CHAROEN POKPHAND HOLDING CO., LTD
CP ALL PUBLIC LIMITED COMPANY
C.P. MERCHANDISING CO., LTD
# CONTENTS

<table>
<thead>
<tr>
<th>Clause</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sale and purchase</td>
<td>3</td>
</tr>
<tr>
<td>2. Price</td>
<td>4</td>
</tr>
<tr>
<td>3. No Leakage Undertaking</td>
<td>5</td>
</tr>
<tr>
<td>4. Pre-Closing Seller undertakings</td>
<td>6</td>
</tr>
<tr>
<td>5. Conditions to Closing</td>
<td>9</td>
</tr>
<tr>
<td>6. Closing</td>
<td>14</td>
</tr>
<tr>
<td>7. No Rights of rescission or termination</td>
<td>17</td>
</tr>
<tr>
<td>8. Sellers’ Warranties</td>
<td>17</td>
</tr>
<tr>
<td>9. Purchaser and Purchaser Guarantors Warranties and undertakings</td>
<td>18</td>
</tr>
<tr>
<td>10. Purchaser Guarantors</td>
<td>19</td>
</tr>
<tr>
<td>11. Conduct of Purchaser Claims</td>
<td>20</td>
</tr>
<tr>
<td>12. Tax</td>
<td>21</td>
</tr>
<tr>
<td>13. Insurance</td>
<td>21</td>
</tr>
<tr>
<td>14. Employment matters</td>
<td>22</td>
</tr>
<tr>
<td>15. Payment of Inter-Company Loan Amounts and Trading Debt</td>
<td>23</td>
</tr>
<tr>
<td>16. Guarantees and other Third Party Assurances</td>
<td>23</td>
</tr>
<tr>
<td>17. Changes of name</td>
<td>23</td>
</tr>
<tr>
<td>18. Information, records and assistance</td>
<td>24</td>
</tr>
<tr>
<td>19. Post-Closing Protective Covenant</td>
<td>26</td>
</tr>
<tr>
<td>20. Non-Solicitation</td>
<td>27</td>
</tr>
<tr>
<td>21. Payments</td>
<td>28</td>
</tr>
<tr>
<td>22. Costs</td>
<td>28</td>
</tr>
<tr>
<td>23. Announcements</td>
<td>29</td>
</tr>
<tr>
<td>24. Confidentiality</td>
<td>29</td>
</tr>
<tr>
<td>25. Assignment</td>
<td>31</td>
</tr>
<tr>
<td>26. Further Assurances</td>
<td>32</td>
</tr>
<tr>
<td>27. Notices</td>
<td>32</td>
</tr>
<tr>
<td>28. Conflict with other Agreements</td>
<td>34</td>
</tr>
<tr>
<td>29. Whole Agreement</td>
<td>34</td>
</tr>
<tr>
<td>30. Set-Off</td>
<td>35</td>
</tr>
<tr>
<td>31. Waivers, Rights and Remedies</td>
<td>35</td>
</tr>
<tr>
<td>32. Counterparts</td>
<td>35</td>
</tr>
<tr>
<td>33. Variations</td>
<td>35</td>
</tr>
<tr>
<td>34. Invalidity</td>
<td>36</td>
</tr>
</tbody>
</table>
35. Third Party Enforcement Rights ........................................................................... 36
36. Governing Law and Arbitration ........................................................................ 36
Schedule 1 Permitted Leakage .................................................................................. 38
Schedule 2 Pre-Closing Conduct ............................................................................. 40
Schedule 3 Closing Arrangements ......................................................................... 44
Schedule 4 Sellers’ Warranties ............................................................................... 49
Schedule 5 Limitations on Liability ....................................................................... 60
Schedule 6 Purchaser Warranties ......................................................................... 66
Schedule 7 Tax ....................................................................................................... 68
Schedule 8 Inter-Company Debt ........................................................................... 88
Schedule 9 Financial Adjustments ....................................................................... 90
Schedule 10 Target Company Information ........................................................... 107
Schedule 11 Definitions and interpretation ......................................................... 115

**Agreed Form Documents referred to in this Agreement**

- Transitional Services Agreement (Clause 4.11)
- Press Announcement (Clause 23)
- Transitional Brand Licences (Schedule 11)

**Exhibits referred to in this Agreement**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Data Room location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit 1</td>
<td>SD Transfer Agreement (Clause 1.7)</td>
<td>4.1.3.1</td>
</tr>
<tr>
<td>Exhibit 2</td>
<td>Permitted Leakage details (Schedule 1)</td>
<td>4.1.3.2</td>
</tr>
<tr>
<td>Exhibit 3</td>
<td>Toucan Business: List of Material Properties (Schedule 4)</td>
<td>4.1.3.4</td>
</tr>
<tr>
<td>Exhibit 4</td>
<td>Macaw Business: List of Material Properties (Schedule 4)</td>
<td></td>
</tr>
<tr>
<td>Exhibit 5</td>
<td>Toucan Business: List of Non-Material Properties (Schedule 4)</td>
<td>4.1.3.5</td>
</tr>
<tr>
<td>Exhibit 6</td>
<td>Macaw Business: List of Non-Material Properties (Schedule 4)</td>
<td>4.1.3.6</td>
</tr>
<tr>
<td>Exhibit 7</td>
<td>Toucan Business: List of Express Store Properties (Schedule 4)</td>
<td>4.1.3.7</td>
</tr>
<tr>
<td>Exhibit 8</td>
<td>Macaw Business: List of Express Store Properties (Schedule 4)</td>
<td>4.1.3.8</td>
</tr>
<tr>
<td>Exhibit 9</td>
<td>Toucan Business: List of Occupational Interests (Schedule 4)</td>
<td>4.1.3.9</td>
</tr>
<tr>
<td>Exhibit 10</td>
<td>Macaw Business: List of Occupational Interests (Schedule 4)</td>
<td>4.1.3.3</td>
</tr>
</tbody>
</table>
AGREEMENT

dated 9 March 2020

PARTIES

1. TESCO HOLDINGS LIMITED, a company incorporated in England and Wales, whose registered office is at Tesco House, Shire Park, Kestrel Way, Welwyn Garden City, United Kingdom, AL7 1GA and whose registered number is 243011 (the Toucan Seller);

2. TESCO HOLDINGS B.V., a company incorporated under the laws of The Netherlands, whose registered office is at Willemsparkweg 150 H, Amsterdam, NL-AW 1071HS, Netherlands (the Macaw Seller);

(each of the Toucan Seller and the Macaw Seller being a Seller and, together, being the Sellers),

3. C.P. RETAIL DEVELOPMENT COMPANY LIMITED, a company incorporated under the laws of Thailand, whose registered office is at 313 C.P. Tower, 14th Floor, Silom Road, Silom Sub-district, Bangrak District, Bangkok, Thailand and whose registered number is 0105563042102 (the Purchaser);

4. CHAROEN POKPHAND HOLDING CO., LTD., a company incorporated under the laws of Thailand, whose registered office is at 313 C.P. Tower, 14th Floor, Silom Road, Silom Sub-district, Bangrak District, Bangkok, Thailand and whose registered number is 0105535105961 (CPH);

5. CP ALL PUBLIC COMPANY LIMITED, a company registered under the laws of Thailand, with registration number 0107542000011 and registered office situated at 313 C.P. Tower, 24th Floor, Silom Road, Silom Sub-district, Bangrak District, Bangkok, Thailand and listed on the Stock Exchange (as defined below) trading as SET: CPALL (CPALL); and

6. C.P. MERCHANDISING CO., LTD., a company incorporated under the laws of Thailand, whose registered office is at 313 C.P. Tower, Silom Road, Silom Sub-district, Bangrak District, Bangkok, Thailand and whose registered number is 0105532018919 (CPM, together with CPALL and CPH, the Purchaser Guarantors),

(each a Party and, together, the Parties).

IT IS AGREED:

Words and expressions used in this Agreement shall be interpreted in accordance with Schedule 11 (Definitions and Interpretation).

1. Sale and purchase

THL Toucan Shares

1.1 The Toucan Seller shall sell, and the Purchaser shall purchase, the THL Toucan Shares on the terms and subject to the conditions set out in this Agreement.
1.2 The THL Toucan Shares shall be sold with effect from Toucan Closing, free from all Third Party Rights, and with all relevant rights then attaching to the THL Toucan Shares including the right to receive all distributions and dividends declared, paid or made on or after Toucan Closing.

1.3 The Parties shall have no obligation to complete the sale and purchase of the THL Toucan Shares unless all of the THL Toucan Shares are purchased simultaneously.

_**Macaw Shares**_

1.4 The Macaw Seller shall sell, and the Purchaser shall purchase, the THBV Macaw Shares on the terms and subject to the conditions set out in this Agreement.

1.5 The Macaw Seller shall procure the sale of, and the Purchaser shall purchase (or procure the purchase of), the SD Macaw Shares on the terms and subject to the conditions set out in this Agreement and the SD Transfer Agreement and in accordance with the terms of the Macaw Target’s Constitutional Documents.

1.6 The THBV Macaw Shares shall be sold with effect from Macaw Closing, free from all Third Party Rights, and with all relevant rights then attaching to the THBV Macaw Shares including the right to receive all distributions and dividends declared, paid or made on or after Macaw Closing.

1.7 The Parties shall have no obligation to complete (or, as applicable, procure) the sale and purchase of the Macaw Shares unless all of the Macaw Shares are purchased simultaneously and unless all of the THL Toucan Shares have already been purchased or are being purchased simultaneously.

_**2. Price**_

2.1 The consideration payable by the Purchaser for the purchase of:

(a) the THL Toucan Shares (the _**Toucan Share Price**_) shall be an amount equal to:

   (i) in respect of the THL Ordinary Shares and the THL C Preference Shares, allocated pro rata to each such share, the sum of:
      
      (A) USD 10,558,604,512; plus
      (B) the Toucan Share Price Adjustment Amount; plus
      (C) the Toucan Adjustment Amount; plus

   (ii) in respect of the THL B Preference Share, THB 10; and

(b) the THBV Macaw Shares (the _**Macaw Share Price**_) shall be an amount equal to:

     (i) in respect of the THBV Ordinary Shares, the sum of:

      (A) USD 0.24; plus
      (B) the Macaw Share Price Adjustment Amount; plus
      (C) the Macaw Adjustment Amount; plus

     (ii) in respect of the THBV Preference Shares, USD 67,545,240.
2.2 The Parties agree that the Adjustment Amounts shall be:

(a) calculated on the basis set out in Part D of Schedule 9 (Financial Adjustments); and

(b) agreed in accordance with Clauses 4.3, 4.4 and 4.5 and Part C of Schedule 9 (Financial Adjustments).

2.3 At Toucan Closing, the Purchaser shall pay to the Toucan Seller the Toucan Share Price in accordance with paragraph 1 of Part B of Schedule 3 (Closing Arrangements).

2.4 At Macaw Closing, the Purchaser shall pay to the Macaw Seller the Macaw Share Price in accordance with paragraph 2 of Part B of Schedule 3 (Closing Arrangements).

2.5 Any payment made in satisfaction of a liability arising under a Seller Obligation or a Purchaser Obligation shall be made on the following basis:

(a) to the extent that it is referable to the Toucan Business, it shall so far as possible adjust the price paid for the THL Toucan Shares; and

(b) to the extent that it is referable to the Macaw Business, it shall as far as possible adjust the price paid for the THBV Macaw Shares.

2.6 If any Leakage between the day immediately after the February 2020 Statutory Accounts Date and the Relevant Closing Date is notified by a Seller to the Purchaser under Clause 3.4 or Clause 5.20 on or prior to Closing the amount referred to in Clause 2.1(a)(i)(A) or Clause 2.1(b)(i)(A), as the case may be, shall be reduced by an amount equal to such Leakage.

2.7 The payment of the reduced Toucan Share Price and/or the reduced Macaw Share Price under Clause 2.6 shall be an absolute discharge of the Purchaser’s obligation to pay the Toucan Share Price and/or the Macaw Share Price to the Seller on Closing pursuant to Clauses 2.3, 2.4 and 6.2(b).

3. No Leakage Undertaking

3.1 The Sellers undertake to the Purchaser that:

(a) with effect on and from the day immediately after the February 2020 Statutory Accounts Date, there has not been and will not be any Leakage in the Locked Box Period; and

(b) no arrangement or agreement has been made, or will in the Locked Box Period be made, that will result in any Leakage in the Locked Box Period or following the Relevant Closing Date.

3.2 Subject to Clause 3.5:

(a) the Toucan Seller undertakes to the Purchaser that if there is a breach of any of the undertakings set out in Clause 3.1 in respect of any Toucan Target Company and the Leakage amount has not been deducted from the Toucan Share Price under Clause 2.6, it shall, following Toucan Closing, pay or procure payment in cash to the Purchaser on demand, a sum equal to the amount of any such Leakage (together with an amount equal to Default Interest on such Leakage from (and including) the date on which the Leakage was identified to have occurred to (but excluding) the date on which the
Purchaser receives full payment of the Leakage amount). Schedule 5 (Limitations on Liability) shall not apply to this Clause; and

(b) the Macaw Seller undertakes to the Purchaser that if there is a breach of any of the undertakings set out in Clause 3.1 in respect of the Macaw Target and the Leakage amount has not been deducted from the Macaw Share Price under Clause 2.6, it shall, following Macaw Closing, pay or procure payment in cash to the Purchaser on demand, a sum equal to the amount of any such Leakage (together with an amount equal to Default Interest on such Leakage from (and including) the date on which the Leakage was identified to have occurred to (but excluding) the date on which the Purchaser receives full payment of the Leakage amount). Schedule 5 (Limitations on Liability) shall not apply to this Clause.

3.3 For the purposes of Clause 3.2, the amount of any Leakage shall be calculated net of any Relief available to a Target Company or the Purchaser as a result of the Leakage or the matter giving rise to it but only to the extent that Relief can be utilised in the financial year in which Closing occurs or any financial year before that to generate a cash Tax saving in respect of those financial years.

3.4 Without prejudice to Clause 5.20, the relevant Seller shall promptly notify the Purchaser both before and after Closing in writing promptly upon becoming aware that any Leakage has occurred between the day immediately after the February 2020 Statutory Accounts Date and Closing together with a good faith estimate of the amount of any such Leakage.

3.5 The Sellers shall not be liable for any Claim pursuant to this Clause 3 unless the relevant Seller receives from the Purchaser, within six months after the Relevant Closing Date, written notice of a breach by them of the undertakings set out in Clause 3.1 containing reasonable details of such breach including the Purchaser’s estimate of the amount of the Claim, in which case, in relation to any relevant breaches so notified, the relevant Seller shall remain liable until any relevant Claims have been satisfied, settled or withdrawn.

3.6 The Parties agree that the expert determination process set out in paragraphs 5 to 8 (inclusive) of Part C of Schedule 9 (Financial Adjustments) shall apply mutatis mutandis to any dispute between the Parties in relation to the amount of any disputed Leakage. In the event of any such dispute, the Toucan Seller or the Macaw Seller (as the case may be) shall comply with its obligations under Clause 3.2 with respect to the undisputed amount of Leakage and the Purchaser shall ensure that the relevant Seller and the relevant Seller’s accountants shall be given reasonable access to the books and records, employees and premises of the relevant Target Companies and permit the Seller and/or the Seller’s accountants to take copies (including electronic copies) (at the cost of the relevant Seller) of the relevant books and records and shall provide all assistance reasonably requested by the Seller, in each case, to facilitate the agreement and determination of any disputed Leakage.

4. Pre-Closing Seller undertakings

4.1 From the date of this Agreement until the Relevant Closing Date, to the extent permissible under applicable law and in order to protect the value of the relevant Target Companies (except as may be approved by the Purchaser in each case, such approval not to be unreasonably withheld or delayed):

(a) the Toucan Seller shall ensure that the business of the Toucan Target Companies is carried on in all material respects in the ordinary course of business as carried out on
or prior to the date of this Agreement and in all material respects in compliance with applicable law and any applicable regulatory licences, consents and authorisations, and shall comply with the obligations set out in Schedule 2 (Pre-Closing Conduct); and

(b) the Macaw Seller shall ensure that the business of the Macaw Target is carried on in all material respects in the ordinary course of business as carried out on or prior to the date of this Agreement and in all material respects in compliance with applicable law and any applicable regulatory licences, consents and authorisations, and shall comply with the obligations set out in Schedule 2 (Pre-Closing Conduct).

4.2 The February 2020 Statutory Accounts shall be delivered (along with the corresponding February 2020 Management Accounts) to the Purchaser promptly after being signed by the management of the Toucan Seller or Macaw Seller (as applicable) and the relevant Target Company’s auditors. The date the:

(a) Toucan February 2020 Statutory Accounts and Toucan February 2020 Management Accounts are delivered to the Purchaser being the Toucan February 2020 Statutory Accounts Delivery Date; and

(b) Macaw February 2020 Statutory Accounts and Macaw February 2020 Management Accounts are delivered to the Purchaser being the Macaw February 2020 Statutory Accounts Delivery Date.

4.3 The Toucan Seller shall, or shall procure that the Toucan Seller’s accountants shall, following the Toucan February 2020 Statutory Accounts being signed by the management of the Toucan Seller and the Toucan Group’s auditors prepare a draft adjustment statement together with a consolidation and reconciliation worksheet between the Toucan Adjustment Statement, the Toucan FY 20 Group Reporting Balance Sheet, and the Toucan February 2020 Statutory Accounts prepared in the form set out in Part I of Schedule 9 (the Toucan Adjustment Statement). The Toucan Adjustment Statement shall set out the Toucan External Debt, the Toucan Cash, the Toucan Inter-Company Loan Payables, the Toucan Inter-Company Loan Receivables, the Toucan Working Capital and the resulting calculation of the Toucan Adjustment Amount.

4.4 The Macaw Seller shall, or shall procure that the Macaw Seller’s accountants shall, following the Macaw February 2020 Statutory Accounts being signed by the management of the Macaw Seller and Macaw Target’s auditors prepare a draft adjustment statement together with a consolidation and reconciliation worksheet between the Macaw Adjustment Statement, the Macaw FY 20 Group Reporting Balance Sheet, and the Macaw February 2020 Statutory Accounts prepared in the form set out in Part I of Schedule 9 (the Macaw Adjustment Statement). The Macaw Adjustment Statement shall set out the Macaw External Debt, the Macaw Cash, the Macaw Inter-Company Loan Payables, the Macaw Inter-Company Loan Receivables, the Macaw Working Capital and the resulting calculation of the Macaw Adjustment Amount.

4.5 The Adjustment Statements shall be delivered to the Purchaser as soon as reasonably practicable and, in any event, within 20 Business Days of the relevant February 2020 Statutory Accounts Delivery Date. The date the:

(a) Toucan Adjustment Statement is delivered to the Purchaser being the Toucan Adjustment Delivery Date; and
(b) Macaw Adjustment Statement is delivered to the Purchaser being the *Macaw Adjustment Delivery Date*.

4.6 The Parties acknowledge and agree that:

(a) no adjustments shall be made to the February 2020 Statutory Accounts;

(b) the Seller Group shall be permitted to publish the February 2020 Statutory Accounts in such manner as it sees fit in its sole discretion and the determination of the Toucan Adjustment Amount and the Macaw Adjustment Amount pursuant to Schedule 9 (*Financial Adjustments*) shall not restrict the ability of the Seller Group to do so in any way; and

(c) for the avoidance of doubt, notwithstanding (a) and (b) above and notwithstanding that any such challenge may be inconsistent with the February 2020 Statutory Accounts, the Purchaser shall only have the right to challenge the Adjustment Statements and calculation of the Adjustment Amounts in accordance with Part C of Schedule 9 (*Financial Adjustments*).

4.7 If a provision of this Agreement obliges the parties to disclose any information to the other which the disclosing party reasonably considers to be competitively sensitive the disclosing party shall only disclose the relevant information to the other party pursuant to appropriate confidentiality arrangements on terms that the disclosing party and the other party may agree, acting reasonably.

4.8 The Toucan Seller shall, prior to Toucan Closing, procure that each of the Toucan Target and Ek-Chai shall transfer (at nominal value) the one share that it holds in the share capital of Tesco Global Employment to a member of the Seller Group. All costs, expenses and taxes in relation to the transfer of such shares in the share capital of Tesco Global Employment shall be borne by the Toucan Seller.

4.9 The Toucan Seller undertakes to the Purchaser that if, in the period from the date of this Agreement until the Toucan Closing Date, Ek-Chai enters into any negotiations in relation to the amendment or variation of any collective bargaining agreement to which it is party, the Toucan Seller shall consult with the Purchaser in relation to such negotiations and keep the Purchaser reasonably informed as to the status and the Toucan Seller’s reasonable opinion of the likely outcome of any such negotiations.

4.10 The Toucan Seller shall procure that the boards of each of the Toucan Target Companies shall, within one Business Day after the Toucan Unconditional Date, serve notice for the purpose of convening a meeting of its shareholders to be held as soon as possible, in accordance with applicable law and the constitutional documents of the relevant Toucan Target Company, but not earlier than the Toucan Closing Date. The agenda item for such meeting shall be to consider the appointment of new directors to be nominated by the Purchaser to the board of the relevant Toucan Target Companies.

4.11 The Purchaser shall comply, and the Sellers shall procure that Tesco Stores Limited, each Toucan Target Company and the Macaw Target shall comply, with clauses 2.1 to 2.4 and 10.2 of the Transitional Services Agreement in each case as if the Transitional Services Agreement had been executed on the date hereof until such time as the Transitional Services Agreement is entered into.
5. Conditions to Closing

Toucan Closing

5.1 Toucan Closing shall be conditional on the following Conditions having been fulfilled or waived in writing in accordance with the terms of this Agreement:

(a) the Tesco Condition; and

(b) the approval of the proposed acquisition of the THL Toucan Shares by the Purchaser of the Trade Competition Commission under the Trade Competition Act B.E. 2560 (if required) (the Toucan Regulatory Condition); and

(c) the Macaw Conditions (other than the Toucan Unconditional Condition) having been fulfilled (the Macaw Unconditional Condition),

together, the Toucan Conditions.

Macaw Closing

5.2 Macaw Closing shall be conditional on the following Conditions having been fulfilled or waived in writing in accordance with the terms of this Agreement:

(a) the Tesco Condition;

(b) the approval of the Ministry of Domestic Trade and Consumers Affairs of Malaysia (MDTCA) of the proposed acquisition of the Macaw Shares by the Purchaser (the MDTCA Condition); and

(c) the Toucan Conditions (other than the Macaw Unconditional Condition) having been fulfilled (the Toucan Unconditional Condition),

together, the Macaw Conditions.

The Toucan Regulatory Condition

5.3 The Purchaser Group shall, at its own cost, use its best endeavours to ensure that the Toucan Regulatory Condition is fulfilled as soon as possible after the date of this Agreement, and in any event, no later than 5:00 p.m. on the Longstop Date. The Purchaser Group shall be responsible for obtaining all consents, approvals or actions of any Governmental Entity which are required to satisfy the Toucan Regulatory Condition. The Purchaser Group shall for this purpose:

(a) provide the Seller Group with draft copies of all submissions, notifications, filings or material communications to the Office of the Trade Competition Commission in relation to the Toucan Regulatory Condition with sufficient time so as to allow the Seller Group a reasonable opportunity to provide comments on such submissions, notifications, filings or material communications before they are submitted or sent and also to have reasonable regard to comments made in a timely manner by the Seller Group on such drafts prior to the submission, and promptly provide the Seller Group with copies of all submissions, notifications, filings or material communications in the form submitted or sent;

(b) promptly notify the Seller Group and provide it with copies (or in the case of non-written communications, reasonable details) of any material communications received
from the Office of the Trade Competition Commission or other person in relation to the subject matter of the Toucan Regulatory Condition;

(c) give notice of any meeting or any material call with any representative(s) of the Office of the Trade Competition Commission in relation to the Toucan Regulatory Condition together with a copy of any available agenda relating thereto to the Seller Group not less than five Business Days prior to such meeting or material call, or if a shorter prior notice is possible but five Business Days’ notice is not, such shorter period of notice;

(d) insofar as permitted by law and the Office of the Trade Competition Commission, invite representatives of the Seller Group (and representatives of the Toucan Target Company as necessary) to attend any meetings or any material telephone calls with any representative(s) of the Office of the Trade Competition Commission in relation to the Toucan Regulatory Condition subject to the Trade Competition Commission not objecting to such attendance; and

(e) regularly review with the Seller Group the progress of any relevant notifications, filings, submissions or material communications with a view to obtaining approval from the Trade Competition Commission at the earliest reasonable opportunity.

5.4 The Purchaser undertakes that until Toucan Closing it will not (and will procure that no member of the Purchaser Group will) undertake or instruct any act the effect of which is reasonably foreseeable that it could prejudice the satisfaction of the Toucan Regulatory Condition in good time or at all.

5.5 The Seller Group undertakes that until Toucan Closing it will not (and will procure that no member of the Seller Group will) undertake or instruct any act the effect of which is reasonably foreseeable that it could prejudice the satisfaction of the Tesco Condition or the Toucan Regulatory Condition in good time or at all.

5.6 Subject to Clause 5.7, the Seller Group shall provide the Purchaser Group and the Office of the Trade Competition Commission with any necessary information and documents reasonably required within reasonable time for the purpose of making any submissions, notifications and filings to the Office of the Trade Competition Commission in order to fulfil the Toucan Regulatory Condition in a timely manner and in any event by the Longstop Date.

5.7 Notwithstanding any other provision of this Agreement, the provision of information by either Party and/or attendance at any meetings will be conducted in a manner reasonably designed to preserve confidential information of third parties, applicable lawyer/client and lawyer work product privilege and to limit the exchange of any competitively sensitive information to outside counsel or pursuant to an appropriately established clean team arrangement.

5.8 The Seller Group shall not make any submission, notification, filing or material communication to the Office of the Trade Competition Commission, whether required or discretionary in order to fulfil the Toucan Regulatory Condition, without obtaining the prior written consent of the Purchaser to the making of it and to its form and content (such consent not to be unreasonably withheld or delayed).

5.9 Subject to Clause 5.7, the Seller Group shall promptly provide Purchaser Group with draft copies of all submissions, notifications, filings or material communications to the Office of the Trade Competition Commission in relation to the Toucan Regulatory Condition with sufficient time so as to allow the Purchaser Group a reasonable opportunity to provide
comments on such submissions, notifications, filings or material communications before they are submitted or sent and also to have reasonable regard to comments made in a timely manner by the Purchaser Group in such drafts prior to the submission, and promptly provide the Purchaser Group with copies of all submissions, notifications, filings or material communications in the form submitted or sent.

The MDTCA Condition

5.10 The Purchaser Group shall, at its own cost, use its best endeavours to ensure that the MDTCA Condition is fulfilled as soon as possible after the date of this Agreement, and in any event, no later than 5:00 pm on the Longstop Date. The Purchaser Group shall for this purpose:

(a) take any and all steps necessary to fulfil the MDTCA Condition as soon as possible and in particular to avoid and eliminate each and every impediment that may be asserted by the MDTCA so as to enable the Macaw Seller and the Purchaser to consummate the sale and purchase of the THBV Macaw Shares and to enable the Purchaser or a person designated by the Purchaser to purchase the SD Macaw Shares envisaged under this Agreement as promptly as practicable, including proposing, negotiating, committing to and effecting all undertakings or conditions required or requested by the MDTCA including any selling down of its shareholdings in Macaw after Macaw Closing and effecting the sale, divestiture or disposition of any Macaw Target’s assets, properties or businesses or Purchaser Group assets, properties or businesses;

(b) provide the Macaw Seller with draft copies of all submissions, notifications, filings or material communications to the MDTCA in relation to the MDTCA Condition with sufficient time so as to allow the Macaw Seller a reasonable opportunity to provide comments on such submissions, notifications, filings or material communications before they are submitted or sent and also to have reasonable regard to comments made in a timely manner by the Macaw Seller on such drafts prior to the submission, and promptly provide the Macaw Seller with copies of all submissions, notifications, filings or material communications in the form submitted or sent;

(c) promptly notify the Macaw Seller and provide it with copies (or in the case of non-written communications, reasonable details) of any material communications received from the MDTCA or other person in relation to the subject matter of the MDTCA Condition;

(d) give notice of any meeting or any material call with any representative(s) of the MDTCA in relation to the MDTCA Condition together with a copy of any agenda relating thereto to the Macaw Seller not less than five Business Days prior to such meeting or material call, or if a shorter prior notice is possible but five Business Days’ notice is not, such shorter period of notice;

(e) insofar as permitted by law and the MDTCA, allow representatives of the Seller Group (and representatives of the Macaw Target as necessary) to attend any meetings or any material telephone calls with any representative(s) of the MDTCA in relation to the MDTCA Condition subject to the MDTCA not objecting to such attendance; and

(f) regularly review with the Macaw Seller the progress of any relevant notifications, filings, submissions or material communications with a view to obtaining approval from the MDTCA at the earliest reasonable opportunity.
5.11 The Seller Group undertakes that until Macaw Closing it will not (and will procure that no member of the Seller Group will) undertake or instruct any act the effect of which is reasonably foreseeable that it could prejudice the satisfaction of the MDTCA Condition in good time or at all.

5.12 The Purchaser undertakes that until Macaw Closing it will not (and will procure that no member of the Purchaser Group will) undertake or instruct any act the effect of which is reasonably foreseeable that it could prejudice the satisfaction of the MDTCA Condition in good time or at all.

5.13 Subject to Clause 5.14, the Seller Group shall promptly provide the Purchaser and the MDTCA with any necessary information and documents reasonably required for the purpose of making any submissions, notifications and filings to the MDTCA in order to fulfil the MDTCA Condition.

5.14 Notwithstanding any other provision of this Agreement, the provision of information by either Party and/or attendance at any meetings will be conducted in a manner reasonably designed to preserve confidential information of third parties, applicable lawyer/client and lawyer work product privilege and to limit the exchange of any competitively sensitive information to outside counsel or pursuant to an appropriately established clean team arrangement.

5.15 The Seller Group shall not make any submission, notification, filing or communication to the MDTCA, whether required or discretionary in order to fulfil the MDTCA Condition, without obtaining the prior written consent of the Purchaser to the making of it and to its form and content (such consent not to be unreasonably withheld or delayed).

5.16 The Seller Group shall promptly provide to the Purchaser copies of all submissions, notifications, filings or material communications received from the MDTCA in relation to the MDTCA Condition.

The Tesco Condition

5.17 The Sellers shall, at their own cost, use best endeavours to ensure that the Tesco Condition (subject always to the fiduciary duties (and any other duty to provide advice or recommendation to the Tesco shareholders) of the Tesco directors) is promptly fulfilled after the date of this Agreement. The Purchaser shall co-operate in good faith with respect to the preparation of the Circular and shall use its best endeavours to provide such information as is reasonably required by Tesco and its advisers in connection with the preparation of the Circular and shall provide such information on a timely basis.

General

5.18 Subject in each case to any applicable legal or regulatory requirements:

(a) the Tesco Condition may only be waived, in whole or in part, by the written agreement of the Parties;

(b) the Toucan Regulatory Condition may only be waived, in whole or part, by the written agreement of each of the Toucan Seller and the Purchaser;

(c) the MDTCA Condition may only be waived, in whole or in part, by the written agreement of each of the Macaw Seller and the Purchaser; and
(d) the Macaw Unconditional Condition may only be waived by written notice from the Toucan Seller to the Purchaser.

5.19 To the extent that any information or documents to be provided to the Purchaser Group under Clause 5.6 or 5.13 include commercially or competitively sensitive information relating to the Seller Group or the Target Group, the Seller Group shall be entitled to provide such information or documents on an external counsel basis or pursuant to an appropriately established clean team arrangement.

Notification to determine payment on Closing

5.20 No later than four Business Days prior to the relevant Closing, the relevant Seller shall notify the Purchaser of the amount of any known Leakage and the amount of the Macaw Share Price Adjustment Amount and the Toucan Share Price Adjustment Amount, specifying in reasonable detail the nature of any Leakage (from and including the day immediately after the February 2020 Statutory Accounts Date until Closing).

Toucan Closing

5.21 The first Business Day in London and Bangkok on or by which the Toucan Conditions have been fulfilled (or waived in accordance with Clause 5.18) is the **Toucan Unconditional Date**.

5.22 Subject to Clause 5.25, if the Toucan Unconditional Date has not occurred on or before 5:00 pm on the Longstop Date, then (other than in respect of the Surviving Provisions and subject to Clause 5.26) all of the provisions of this Agreement shall lapse and cease to have effect. In such event, no Party (nor any of its Affiliates) shall have any claim under the Transaction Documents of any nature whatsoever against any other Party (or any of their Affiliates) to the extent they relate to the Toucan Sale except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions.

Macaw Closing

5.23 The first Business Day in London, Kuala Lumpur and Bangkok on or by which the Macaw Conditions have been fulfilled (or waived in accordance with Clause 5.18) is the **Macaw Unconditional Date**.

5.24 Subject to Clause 5.25, if the Macaw Unconditional Date has not occurred on or before 5:00 pm on the Longstop Date, then (other than in respect of the Surviving Provisions and subject to Clause 5.26) all of the provisions of this Agreement to the extent they relate to the Macaw Sale shall lapse and cease to have effect and, unless the Macaw Unconditional Condition has been waived by the Toucan Seller in accordance with Clause 5.18(d), all of the provisions of this Agreement to the extent they relate to the Toucan Sale shall lapse and cease to have effect. In such event, no Party (nor any of its Affiliates) shall have any claim under the Transaction Documents of any nature whatsoever against any other Party (or any of their Affiliates) to the extent they relate to the Macaw Sale, and, if applicable, the Toucan Sale except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions.

Longstop Date Termination
5.25 The Parties agree that if both the Toucan Unconditional Date and the Macaw Unconditional Date have not occurred by the Longstop Date, then (other than in respect of the Surviving Provisions) all of the provisions of this Agreement shall lapse and cease to have effect. In such event, no Party (nor any of its Affiliates) shall have any claim under the Transaction Documents of any nature whatsoever against any other Party (or any of their Affiliates) except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions.

Interdependent Closings

5.26 The Parties agree that the Toucan Sale and the Macaw Sale are separate sales, and therefore that Toucan Closing and, subject to Clause 5.26(b) below, Macaw Closing are separate of each other, and where:

(a) the Toucan Unconditional Date has occurred in accordance with Clause 5.21, Toucan Closing shall take place in accordance with Clause 6.1, provided that the Macaw Closing Date shall take place at the same time as, the Toucan Closing Date (unless the Macaw Unconditional Condition has been waived by the Toucan Seller in accordance with Clause 5.18(d) in which case Toucan Closing shall take place without regard to the status of Macaw Closing); or

(b) the Macaw Unconditional Date has occurred in accordance with Clause 5.23, Macaw Closing shall take place in accordance with Clause 6.1, provided that the Toucan Closing Date shall have taken place prior to, or shall take place at the same time as, the Macaw Closing Date.

6. Closing

6.1 Subject to Clause 5.25, each Closing shall take place at the offices of the Sellers’ solicitors in Bangkok and Kuala Lumpur, as the case may be, (or such other venue as the Parties to such Closing may agree) on:

(a) in respect of the Toucan Sale, the fifth Business Day after the Toucan Unconditional Date (the **Toucan Closing Date**); and

(b) in respect of the Macaw Sale, the fifth Business Day after the Macaw Unconditional Date (the **Macaw Closing Date**).

6.2 At each Closing, each of the relevant Parties shall deliver or perform (or ensure that there is delivered or performed) all those documents, items and actions respectively listed in relation to that Party or any of its Affiliates (as the case may be) in Schedule 3 (**Closing Arrangements**) unless, in the case of any document, item or action:

(a) the Toucan Seller (in the case of Toucan Closing) or the Macaw Seller (in the case of Macaw Closing); and

(b) the Purchaser,

agree in writing to waive such document, item or action.

Obligations at Toucan Closing

6.3 If the Toucan Seller (on the one hand) or the Purchaser (on the other) fails to comply with any of its material obligations set out in Schedule 3 (**Closing Arrangements**), then the other
Party shall be entitled (in addition to and without prejudice to any other rights and remedies available) by written notice to the Party in default on the date Toucan Closing would otherwise have taken place, to:

(a) subject to the Macaw Closing Date taking place at the same time as the Toucan Closing Date (unless the Macaw Unconditional Condition has been waived by the Toucan Seller in accordance with Clause 5.18(d)), require Toucan Closing to take place so far as practicable having regard to the defaults which have occurred;

(b) notify the Party in default of a new date for Toucan Closing (being not more than 10 Business Days after the original day for Toucan Closing) in which case the provisions of this Clause 6 (other than this Clause 6.3) and Schedule 3 (Closing Arrangements) shall apply to Toucan Closing as so deferred but on the basis that such deferral may only occur once; or

(c) terminate this Agreement (other than the Surviving Provisions).

For the purposes of this Clause 6.3, a material obligation is: (a) in respect of the Toucan Seller, those obligations set out in paragraphs 1(a), 1(b) and 1(g) of Part A of Schedule 3 (Closing Arrangements) and all of Part C of Schedule 3 (Closing Arrangements); and (b) in respect of the Purchaser, those obligations set out in paragraphs 1 of Part B of Schedule 3 (Closing Arrangements) and all of Part C of Schedule 3 (Closing Arrangements).

6.4 If the Toucan Seller (on the one hand) or the Purchaser (on the other) comply with all their material obligations in Schedule 3 (Closing Arrangements), but fail to comply with any obligation in Schedule 3 (Closing Arrangements) that is not a material obligation, then the other Party shall be required to proceed to Toucan Closing and, to the extent that any such obligation is not complied with at Toucan Closing, the defaulting Party shall (without affecting any other rights and remedies available to the other Party) use its best endeavours to ensure that such obligation is fulfilled as soon as practicable following Toucan Closing.

6.5 If the Toucan Seller or the Purchaser exercises their rights pursuant to Clause 6.3(c), all obligations of the Parties under this Agreement shall terminate (except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions).

6.6 If in accordance with Clause 6.3(b), Toucan Closing is deferred and at such deferred Toucan Closing a Party fails to comply with its material obligations in respect of Toucan Closing in Schedule 3 (Closing Arrangements) the non-defaulting Party shall have the right to terminate this Agreement (except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions).

Obligations at Macaw Closing

6.7 If the Macaw Seller (on the one hand) or the Purchaser (on the other) fails to comply with any of its material obligations set out in Schedule 3 (Closing Arrangements), then the other Party shall be entitled (in addition to and without prejudice to any other rights and remedies available) by written notice to the Party in default on the date Macaw Closing would otherwise have taken place, to:

(a) subject to the Toucan Closing Date having taken place prior to or at the same time as the Macaw Closing Date, require Macaw Closing to take place so far as practicable having regard to the defaults which have occurred;
(b) notify the Party in default of a new date for Macaw Closing (being not more than 10 Business Days after the original day for Macaw Closing), subject to the Toucan Closing Date having taken place prior to or at the same time as the deferred Macaw Closing Date, in which case the provisions of this Clause 6 (other than this Clause 6.7) and Schedule 3 (Closing Arrangements) shall apply to Macaw Closing as so deferred but on the basis that such deferral may only occur once; or

(c) terminate this Agreement (other than the Surviving Provisions) to the extent the Agreement relates to the Macaw Sale.

For the purposes of this Clause 6.7, a **material obligation** is: (a) in respect of the Macaw Seller, those obligations set out in paragraphs 2(a), 2(b) and 2(h) of Part A of Schedule 3 (Closing Arrangements) and all of Part C of Schedule 3 (Closing Arrangements); and (b) in respect of the Purchaser, those obligations set out in paragraphs 2 of Part B of Schedule 3 (Closing Arrangements) and all of Part C of Schedule 3 (Closing Arrangements).

6.8 If the Macaw Seller (on the one hand) or the Purchaser (on the other) complies with all its material obligations in Schedule 3 (Closing Arrangements), but fails to comply with any obligation in Schedule 3 (Closing Arrangements) that is not a material obligation, then the other Party shall be required to proceed to Macaw Closing and, to the extent that any such obligation is not complied with at Macaw Closing, the defaulting Party shall (without affecting any other rights and remedies available to the other Party) use its best endeavours to ensure that such obligation is fulfilled as soon as practicable following Macaw Closing.

6.9 If the Macaw Seller or the Purchaser exercises their rights pursuant to Clause 6.7(c) in respect of Macaw Closing, all obligations of the Parties under this Agreement relating to the Macaw Sale shall terminate (except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions).

6.10 If in accordance with Clause 6.7(b), Macaw Closing is deferred and at such deferred Macaw Closing a Party fails to comply with its material obligations in respect of Macaw Closing in Schedule 3 (Closing Arrangements) the non-defaulting Party shall have the right to terminate this Agreement to the extent the Agreement relates to the Macaw Sale (except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions).

**Material Default Termination**

6.11 The Parties agree that if the right to terminate this Agreement is exercised (in each case, by any Party) under both:

(a) Clauses 6.3(c) or 6.6; and

(b) Clauses 6.7(c) or 6.10,

then (other than in respect of the Surviving Provisions) all of the provisions of this Agreement shall lapse and cease to have effect. In such event, no Party (nor any of its Affiliates) shall have any claim under the Transaction Documents of any nature whatsoever against any other Party (or any of their Affiliates) except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions.
7. **No Rights of rescission or termination**

Other than in accordance with Clauses 5.22, 5.24, 5.25, 6.3(c), 6.6, 6.7(c), or 6.10 no Party shall be entitled to rescind or terminate this Agreement (in whole or part) in any circumstances whatsoever (whether before or after a Closing). This shall not exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

8. **Sellers’ Warranties**

8.1 The Toucan Seller warrants to the Purchaser:

(a) as at the date of this Agreement in the terms of the Warranties (other than the Toucan February 2020 Accounts Warranties); and

(b) as at the Toucan February 2020 Statutory Accounts Delivery Date, in terms of the Toucan February 2020 Accounts Warranties,

in each case, in respect of itself, the Toucan Target Companies and the Toucan Business only, and each of the Warranties given by the Toucan Seller pursuant to this Clause 8.1 shall be construed as relating to itself, the Toucan Target Companies or the Toucan Business only.

8.2 The Macaw Seller warrants to the Purchaser:

(a) as at the date of this Agreement in the terms of the Warranties (other than the Macaw February 2020 Accounts Warranties); and

(b) as at the Macaw February 2020 Statutory Accounts Delivery Date in terms of the Macaw February 2020 Accounts Warranties,

in each case, in respect of itself, the Macaw Target and the Macaw Business only, and each of the Warranties given by the Macaw Seller pursuant to this Clause 8.2 shall be construed as relating to itself, the Macaw Target or the Macaw Business only.

8.3 For the avoidance of doubt, the Purchaser acknowledges and agrees that neither the Toucan Seller nor the Macaw Seller provides any Warranty under this Agreement in respect of:

(i) the other Seller; or (ii) in the case of the Toucan Seller, the Macaw Target or the Macaw Business and, in the case of the Macaw Seller, the Toucan Target Companies or the Toucan Business.

8.4 Subject always to Clauses 8.1, 8.2 and 8.3, the Fundamental Warranties shall be deemed to be repeated by the Toucan Seller and by the Macaw Seller at the Relevant Closing Date, by reference to the facts and circumstances then existing as if references in the Fundamental Warranties to the date of this Agreement were references to the Relevant Closing Date.

8.5 The Warranties are given subject to the limitations set out in Schedule 5 (Limitations on Liability) and, insofar as they are expressed to apply to the Tax Warranties, the limitations set out in the Tax Covenant. None of the limitations in Schedule 5 (Limitations on Liability) or in the Tax Covenant shall apply to any Claim arising from fraud or fraudulent misrepresentation by the Toucan Seller or the Macaw Seller or any of the directors or officers of the Toucan Seller or the Macaw Seller.

8.6 Each of the Warranties shall be construed separately and independently.
8.7 The Purchaser acknowledges and agrees that, except as provided under the Warranties, no other statement, promise or forecast made by or on behalf of the Sellers or any member of the Seller Group or any of the Target Companies may form the basis of any Claim by the Purchaser or any other member of the Purchaser Group under or in connection with this Agreement or any Transaction Document. In particular, the Sellers do not make any representation or warranty as to the accuracy of any forecasts, estimates, projections, statements of intent or opinion provided to the Purchaser or its Representatives on or before the date of this Agreement (including any documents in the Data Room and the content of each of the VDD Reports).

8.8 Except in the case of and as against any individual or entity who has acted fraudulently, the Purchaser agrees and undertakes with the Sellers (the Sellers contracting for themselves and on behalf of each individual or entity referred to in this Clause 8.8) that neither it nor any other member of the Purchaser Group has any rights against, and will waive and shall not make any claim against, any employee, director, officer, adviser, representative or agent of: (a) any of the Target Companies; or (b) any member of the Seller Group on whom the Purchaser may have relied before agreeing to any term of this Agreement or any other Transaction Document or before entering into this Agreement or any other Transaction Document.

8.9 Except in the case of and as against any individual or entity who has acted fraudulently, each of the Sellers agrees and undertakes with the Purchaser that neither it nor any other member of the Seller Group has any rights against, and will waive any rights, remedies or claims which it may have in respect of any misrepresentation, inaccuracy or omission in or from any information or advice supplied or given by, any Target Company or their respective employees, directors, officers, advisers, representatives or agents and shall not make any claim against, any employee, director, officer, adviser, representative or agent of any of the Target Companies in connection with assisting the Sellers in the giving of any Warranty or the preparation of this Agreement or any other Transaction Document.

9. Purchaser and Purchaser Guarantors Warranties and undertakings

9.1 The Purchaser warrants to each of the Sellers as at the date of this Agreement in the terms of the warranties set out in Schedule 6 (Purchaser Warranties).

9.2 Each of the Purchaser Guarantors warrants to each of the Sellers as at the date of this Agreement in the terms of the warranties set out in paragraphs 1 to 4 (inclusive) of Schedule 6 (Purchaser Warranties) as if references therein to the Purchaser instead refer to the relevant Purchaser Guarantor.

9.3 The Purchaser shall satisfy (and the Purchaser Guarantors shall procure are so satisfied) on a timely basis all conditions precedent to drawdown under the Purchaser Financing Agreements by no later than immediately prior to the Relevant Closing Date. The Purchaser and each Purchaser Guarantor shall act in accordance with the provisions of the Purchaser Finance Documents to which it is a party (as applicable) and shall take all steps necessary or desirable in accordance with the Purchaser Finance Documents to which it is a party to ensure that sufficient funds are available to the Purchaser in respect of its payment obligations for each Closing.

9.4 Each Purchaser Guarantor and the Purchaser undertake to take all steps to ensure that any intra-group funding arrangements required to on-lend or down-stream proceeds of the Purchaser Financing Agreements to the Purchaser have occurred on or prior to the Relevant Closing Date.
9.5 The Purchaser and the Purchaser Guarantors shall each use all reasonable endeavours to ensure that any outstanding “Know-Your-Customer” or other client identification checks that are not satisfied in relation to Purchaser Financing Agreements as at the date hereof are so satisfied as soon as practicable.

9.6 If the Toucan Conditions have not been fulfilled by the date falling 8 months after the date of this Agreement then the Purchaser and the Purchaser Guarantors shall each use their best endeavours to promptly procure that any necessary amendments are made to the Purchaser Financing Agreements in order that the final date of the Availability Period and Certain Funds Period (as defined in each Purchaser Financing Agreement as applicable) is a date that is at least 5 Business Days after the Longstop Date.

9.7 The Purchaser shall not (and where applicable each Purchaser Guarantor shall not) (A) agree to or permit any amendment, supplement or other modification of, or waive any of its rights under, any of the Purchaser Financing Agreements without the Sellers’ prior written consent (such consent not to be unreasonably withheld or delayed), except to correct typographical errors, to reflect administrative details, and mechanical, administrative or consequential changes required by potential lenders, and/or changes required as a result of or in connection with final transaction structure in relation to the Proposed Transaction or as reasonably requested by the Purchaser in order to accommodate the Proposed Transaction, or (B) consent to the assignment, transfer or equivalent transaction under the Purchaser Financing Agreements to additional lenders, hedge counter-parties, agents or arrangers or to reallocate commitments or assign or reassign titles or roles to, or between or among, any party thereto. Notwithstanding the foregoing, any amendment, supplement, modification or waiver which is not adverse to the interests of any Seller and does not prevent, impede or delay the consummation of the Proposed Transaction or of the transactions under the Purchaser Financing Agreements shall not be prohibited under this clause.

10. Purchaser Guarantors

10.1 In consideration of the Sellers entering into this Agreement, subject to Clause 10.4, each of the Purchaser Guarantors unconditionally and irrevocably guarantees to the Sellers (and to each member of the Seller Group) as a continuing obligation that the Purchaser will comply properly and punctually with its obligations under this Agreement and each Transaction Document. Regardless of any intermediate payment or discharge in whole or in part, such liability of each of the Purchaser Guarantors in this Clause shall continue in full force and effect until the end of the Guarantee Period. For the purpose of this Clause 10, Guarantee Period means the period beginning on the date of this Agreement and ending on the date falling 5 years from the later of: (i) the Toucan Closing Date and (ii) the Macaw Closing Date.

10.2 Each of the Purchaser Guarantors’ liability under Clause 10.1 shall not be discharged or impaired by:

(a) any amendment, variation or assignment of this Agreement or any Transaction Document or any waiver of its or their terms;

(b) any release of, or granting of time or other indulgence to, the Purchaser or any third party;

(c) any winding up, dissolution, reconstruction, legal limitation, incapacity or lack of corporate power or authority or other circumstance affecting the Purchaser (or any act taken by the Sellers in relation to any such event); or
(d) any other act, event, neglect or omission (whether or not known to the Purchaser, the Sellers or the Purchaser Guarantors) which would or might (but for this clause) operate to impair or discharge the Purchaser Guarantors’ liability or afford the Purchaser Guarantors or the Purchaser any legal or equitable defence.

10.3 In consideration of the Sellers entering into this Agreement, subject to Clause 10.4, as a separate, additional continuing and primary obligation, each of the Purchaser Guarantors undertakes to indemnify the Sellers (and each member of the Seller Group) and the Target Companies against any costs or losses suffered or incurred by any of them as a result of the Purchaser’s failure to comply properly and punctually with its obligations under this Agreement or any Transaction Document.

10.4 Liabilities in respect of any claim under this Clause 10 of each of the Purchaser Guarantors shall be on a several basis and shall be limited to such Purchaser Guarantor’s proportionate share of such claim as set out below:

(a) with respect to CPH, 40 per cent. of any claim under this Clause 10;
(b) with respect to CP ALL, 40 per cent. of any claim under this Clause 10; and
(c) with respect to CPM, 20 per cent. of any claim under this Clause 10,

10.5 The aggregate amount of the liability of the Purchaser Guarantors under this Clause 10 shall not exceed an amount equal to:

(a) with respect to CPH, USD 4,250,459,901;
(b) with respect to CP ALL, USD 4,250,459,901; and
(c) with respect to CPM, USD 2,125,229,951.

11. Conduct of Purchaser Claims

11.1 If the Purchaser becomes aware of any claim or potential claim, or of any other matter or circumstance that might result in a claim, by a third party (a Third Party Claim) that might result in a Non-Tax Claim being made by the Purchaser, the Purchaser shall, without prejudice to the rights of the insurers of the Purchaser Group:

(a) promptly give notice of the Third Party Claim to the Sellers and (subject to the Purchaser or the relevant member of the Purchaser Group being indemnified by the Sellers against all reasonable out-of-pocket costs and expenses incurred in respect of that Third Party Claim) ensure that the Sellers and their representatives are given all reasonable information and facilities to investigate it;

(b) not (and ensure that each member of the Purchaser Group shall not) admit liability or make any agreement or compromise in relation to the Third Party Claim without the prior written approval of the Sellers, such consent not to be unreasonably withheld or delayed; and

(c) (subject to the Purchaser or the relevant member of the Purchaser Group being indemnified by the Sellers against all reasonable out-of-pocket costs and expenses incurred in respect of that Third Party Claim) ensure that it and each member of the Purchaser Group shall:
(i) take such action as the Sellers may reasonably request to avoid, resist, dispute, appeal, compromise or defend the Third Party Claim, provided that such action is not likely to be in the reasonable opinion of the Purchaser materially adverse to any Target Company;

(ii) allow the Sellers (if they elect to do so) to take over the conduct of all proceedings and/or negotiations arising in connection with the Third Party Claim, provided that (A) the Sellers shall not take any action likely to be in the reasonable opinion of the Purchaser materially adverse to any Target Company; (B) the Sellers shall not (and shall ensure that each member of the Seller Group shall not) admit liability or make any agreement or compromise in relation to the Third Party Claim without the prior written approval of the Purchaser, such consent not to be unreasonably withheld or delayed and (C) the Sellers shall provide such information as the Purchaser may reasonably require in connection with the preparation for and conduct of any proceedings and/or negotiations relating to the Third Party Claim and shall have due regard for any comments made by the Purchaser in relation to the handling of the Third Party Claim; and

(iii) provide such information and assistance as the Sellers may reasonably require in connection with the preparation for and conduct of any proceedings and/or negotiations relating to the Third Party Claim, provided that (A) the Parties shall take reasonable steps to ensure that the provision of such information shall not prejudice legal privilege and (B) the Sellers shall not be entitled to access information which relates to the assessment or handling by the Purchaser of a claim or potential claim against any Seller under this Agreement.

11.2 The failure of the Purchaser to comply fully with its obligations under this Clause 11 shall not release either of the Sellers from its obligations with regard to the relevant Non-Tax Claim but shall, insofar as the lack of compliance has caused any Loss to, or increased the Costs of, the Sellers, reduce the amount of any successful Claim by the Purchaser to the extent of the Loss or the increase in Costs.

12. Tax

12.1 The provisions of Schedule 7 (Tax) shall apply in relation to Taxation.

12.2 Schedule 7 (Tax) (apart from the Tax Covenant) shall come into effect on the date of this Agreement. The Tax Covenant shall come into effect: (i) in respect of the Toucan Sale, at Toucan Closing; and (ii) in respect of the Macaw Sale, at Macaw Closing.

13. Insurance

13.1 From the date of this Agreement until (and including) the Relevant Closing Date members of the Seller Group shall, and shall procure that the Toucan Target Companies shall and the Macaw Target shall:

(a) continue in force all policies of insurance maintained by them in respect of the Target Companies and their businesses on substantially the same terms and with a similar level of cover to that prevailing at the date of this Agreement; and
(b) notify to the insurers of the Target Group insurance policies and/or the Seller Group insurance policies all insurance claims in relation to the Target Group of which the relevant members of the Seller Group become aware (a) promptly and (b) in accordance with the requirements of the relevant insurance policy and thereafter not do or omit to do anything that might prejudice any such claim.

13.2 With respect to any claim made before the Relevant Closing Date by or on behalf of any Target Company under any Seller Group’s insurance policy, if and to the extent that:

(a) the Target Group or the Purchaser Group has not been indemnified prior to the Relevant Closing Date in respect of any Loss in respect of which the claim was made; or

(b) any Loss in respect of which the claim was made has not been taken into account in (i) the February 2020 Statutory Accounts or (ii) the Adjustment Statements,

the Seller shall use reasonable endeavours after the Relevant Closing Date to recover all monies due from insurers and shall pay any monies received (after taking into account any deductible under the Seller Group’s insurance policies and less any Taxation suffered on the proceeds and any reasonable out of pocket expenses suffered or incurred by the Seller or any member of the Seller Group in connection with the claim) to the relevant Target Company as soon as practicable after receipt.

13.3 Upon the Relevant Closing Date, all insurance cover arranged in relation to:

(a) the Toucan Business; and

(b) the Macaw Business,

in each case, by the Seller Group (whether under policies maintained with third party insurers or other members of the Seller Group) shall cease (other than in relation to claims made or insured events taking place before the Relevant Closing Date) and no member of the Purchaser Group shall make any new claim under any such policies in relation to insured events arising after the Relevant Closing Date. The Sellers shall be entitled to make arrangements with their insurers to reflect this Clause.

14. Employment matters

Tesco Executive Share Plans

14.1 The Toucan Seller and the Macaw Seller agree to procure that any Employee who holds awards under any Tesco Executive Share Plan as at the Relevant Closing Date will be treated in accordance with the rules of such plan. The costs of any awards under such plan that are outstanding on the Relevant Closing Date or that are or become vested on or after the Relevant Closing Date as a result of a Closing will be for the account of and (except to the extent payable or paid by another member of the Seller Group or by the Employee who holds the award) shall be paid by the Toucan Seller or the Macaw Seller (as applicable). The Parties acknowledge that, at the cost of the Toucan Seller and/or the Macaw Seller, certain awards made to Employees under any Tesco Executive Share Plan may continue to be capable of vesting following Closing on their normal timetable.

14.2 The Sellers shall indemnify the Purchaser in respect of any Losses incurred by any member of the Purchaser Group on or after 1 March 2020:
(a) in relation to any claims by or on behalf of any Employee arising out of or in connection with the Tesco Executive Share Plan or their eligibility for any awards thereunder; and
(b) in relation to any amounts payable to any affected Employees or any other liability arising as a result of the cessation of the Tesco Executive Share Plan or of its application to the Target Group, including any irrecoverable tax arising from the reversal of the relevant provisions relating to the Tesco Executive Share Plan recorded in the February 2020 Statutory Accounts.

Retention Bonus

14.3 The Toucan Seller and Macaw Seller undertake to procure that the applicable Target Company shall pay, on the payment date prior to and on Closing as set out in the Retention Bonus Letters, all amounts due under the Retention Bonus Letters to the eligible Employees.

15. Payment of Inter-Company Loan Amounts and Trading Debt

The provisions of Schedule 8 (Inter-Company Debt) shall apply in respect of the payment of Inter-Company Loan Amounts and Inter-Company Trading Debt.

16. Guarantees and other Third Party Assurances

16.1 The Purchaser shall use its reasonable endeavours to ensure that, as soon as reasonably practicable after becoming aware of any Third Party Assurance in respect of any obligations of any Target Company (but at the earliest at the Relevant Closing Date), each member of the Seller Group is released in full from such Third Party Assurance. Pending release of any Third Party Assurance referred to in this Clause 16.1, the Purchaser shall, or shall procure that a member of the Purchaser’s Group shall, indemnify the Sellers and each of their respective Affiliates against any and all Costs arising after Closing under or by reason of that Third Party Assurance.

16.2 The Sellers shall, from the date of this Agreement, use their reasonable endeavours to identify to the Purchaser any Third Party Assurance in respect of any obligation of any member of the Target Group and procure that, as soon as reasonably practicable after becoming aware of any such Third Party Assurance (but at the earliest at the Relevant Closing Date), the applicable Target Company is released in full from such Target’s Third Party Assurance. Pending release of any Target Third Party Assurance referred to in this Clause 16.2, the Toucan Seller (in the case of the Toucan Target Companies) and the Macaw Seller (in the case of the Macaw Target) shall indemnify the Purchaser and each of its Affiliates against any and all Costs arising after Closing under or by reason of that Target’s Third Party Assurance.

17. Changes of name

17.1 The Purchaser shall ensure that:
(a) as soon as reasonably practicable after a Closing and in any event within 30 days after the Relevant Closing Date, the name of any Toucan Target Company (following Toucan Closing) that consists of or includes any of the Restricted Names is changed to a name which does not include any Restricted Names or any name which, in the reasonable opinion of the relevant Seller, is substantially the same or confusingly similar;
as soon as reasonably practicable after a Closing and in any event within 75 days after the Relevant Closing Date, the name of the Macaw Target (following Macaw Closing) that consists of or includes any of the Restricted Names is changed to a name which does not include any Restricted Names or any name which, in the reasonable opinion of the relevant Seller, is substantially the same or confusingly similar;

(c) the Toucan Target Companies and Toucan Joint Ventures (following Toucan Closing) and the Macaw Target (following Macaw Closing) shall, unless expressly permitted under the terms of the Toucan Transitional Brand Licence or the Macaw Transitional Brand Licence (as applicable) and subject to the Toucan Target Companies having the right to change the name of the Toucan Joint Ventures (provided that, where the Toucan Target Companies do not have the right to change the name of the Toucan Joint Ventures, the Purchaser shall use its reasonable efforts to), cease to use, licence or display (A) any name, mark, logo, domain name, get-up or trade dress held or at any time used by any member of the Seller Group or anything that is derived from or that, in the reasonable opinion of the relevant Seller, is substantially similar to any of them; and (B) any name, mark, logo, domain name, get-up or trade dress that contains a brand, or any aspect of a brand or of any get-up or trade dress, held or at any time used by a member of the Seller Group or anything that is derived from or that, in the reasonable opinion of the relevant Seller, is substantially similar to any such brand or aspect; and

(d) as soon as reasonably practicable after a Closing and in any event within 30 days after the Relevant Closing Date, the Toucan Target Companies (following Toucan Closing) and the Macaw Target (following Macaw Closing) shall not hold themselves out as being part of, or otherwise connected or associated with, the Seller Group.

17.2 For the purposes of this Clause 17, Restricted Names means any name comprising or containing “Tesco”.

18. Information, records and assistance

18.1 Between the date of this Agreement and Closing and subject to the provisions of applicable law and Clauses 4.11 and 4.7, the Sellers shall, and shall procure that the Target Group shall, if reasonably requested by the Purchaser, allow the Purchaser reasonable access to information concerning the Target Group for the purposes of planning transition of the ownership of the Target Group to the Purchaser and implementing the transactions contemplated by the Transaction Documents (including any remedies sought in connection with the Toucan Regulatory Condition or the MDTCA Condition).

18.2 Subject to Clause 24, for two years (or, in respect of Tax, five years) following the Relevant Closing Date:

(a) the Purchaser shall ensure that each member of the Purchaser Group shall provide (at the cost of the relevant Seller) and subject to Clause 18.5:

(i) the relevant Seller and the relevant Seller’s advisers with reasonable access during Working Hours to (and the right to take copies of, including electronic copies) the books, accounts, customer lists and all other records held by it (or on its behalf) after the Relevant Closing Date to the extent that they relate to the relevant Target Companies or the business carried on by such Target Companies and to the period up to that Closing but only to the extent necessary for accounting, regulatory or Tax purposes (the Purchaser Records); and
the relevant Seller and the relevant Seller’s advisers with reasonable access to the books and records, employees and premises of the relevant Target Companies and permit the relevant Seller and/or the relevant Seller’s advisers to take copies (including electronic copies) of the relevant books and records and shall provide all assistance reasonably requested by the Seller (including: (A) providing such information as is reasonably requested by the relevant Seller or the relevant Seller’s advisers in relation to assessing and/or analysing any matters related to any Claim or potential Claim; and (B) procuring that any required or requested consent is provided by any member of the Purchaser Group for the purposes of the relevant Seller or the relevant Seller’s advisers having reasonable access to the books, records and employees of the Target Group’s accountants and auditors), in each case, to facilitate the resolution or determination of any Claim or potential Claim; and

(b) the relevant Seller shall ensure that each member of the Seller Group shall provide the Purchaser (at the Purchaser’s cost) with reasonable access during Working Hours to (and the right to take copies of) the books, accounts, customer lists and all other records held by it (or on its behalf) after the Relevant Closing Date to the extent that they relate to the relevant Target Companies or the business carried on by such Target Companies but only to the extent necessary for accounting, regulatory or Tax purposes (the Seller Records).

18.3 For five years following the Relevant Closing Date:

(a) the Purchaser shall ensure that no member of the Purchaser Group shall dispose of, or destroy any of, the Purchaser Records without first giving the relevant Seller at least two months’ written notice of its intention to do so and giving the relevant Seller a reasonable opportunity to remove and retain any of them (at the relevant Seller’s expense); and

(b) each Seller shall ensure that no member of the Seller Group shall dispose of or destroy any of the Seller Records relating, in the case of the Toucan Seller, to the Toucan Target Companies and in the case of the Macaw Seller to the Macaw Target without first giving the Purchaser at least two months’ written notice of its intention to do so and giving the Purchaser a reasonable opportunity to remove and retain any of them (at the Purchaser’s expense).

18.4 Following the Relevant Closing Date:

(a) notwithstanding the obligations of Clause 11, the Purchaser shall ensure that each member of the Purchaser Group (at the relevant Seller’s expense) give such assistance to any member of the Seller Group as that Seller may reasonably request in relation to any third party proceedings by or against any member of the Seller Group so far as they relate to the Toucan Target Companies (in the case of the Toucan Seller), the Macaw Target (in the case of the Macaw Seller) or the business carried on by the Toucan Target Companies (in the case of the Toucan Seller) or the Macaw Target (in the case of the Macaw Seller), including proceedings relating to employees’ claims or Taxation;

(b) each Seller shall promptly give to the Purchaser all written notices, correspondence, information or enquiries received by it in relation to the Toucan Target Companies (in the case of the Toucan Seller) and the Macaw Target (in the case of the Macaw Seller); and
the Purchaser shall promptly give to the Toucan Seller all written notices, correspondence, information or enquiries received by any member of the Purchaser Group in relation to any business of the Seller Group not comprised within the Toucan Target Companies and shall promptly give to the Macaw Seller all written notices, correspondence, information or enquiries received by any member of the Purchaser Group in relation to any business of the Seller Group not comprised within the Macaw Target.

18.5 The Parties shall take reasonable steps to ensure that the provision of any information under this Clause 18 shall not prejudice legal privilege. Notwithstanding any other provision of this Clause 18, the Purchaser shall not be required to provide to the Sellers any information which relates to the assessment or handling by the Purchaser of a claim or potential claim against any Seller under this Agreement.

19. Post-Closing Protective Covenant

19.1 The Toucan Seller undertakes to the Purchaser (for itself and for the benefit of the Toucan Target Companies) that it shall ensure that neither it nor any member of the Seller Group shall carry on or be engaged in or economically interested in any Competing Business in the Protected Territory for a period of five years after the Toucan Closing Date.

19.2 The Macaw Seller undertakes to the Purchaser (for itself and for the benefit of the Macaw Target) that it shall ensure that neither it nor any member of the Seller Group shall carry on or be engaged in or be economically interested in any Competing Business in the Protected Territory for a period of five years after the Macaw Closing Date.

19.3 For the purposes of Clauses 19.1 and 19.2:

(a) **Competing Business** means a business that directly competes with any Principal Business, provided that carrying on or being engaged in any Permitted Business shall not be regarded as a Competing Business;

(b) **Protected Territory** means:
   (i) for the purposes of Clause 19.1, Thailand; and
   (ii) for the purposes of Clause 19.2, Malaysia;

(c) **Principal Business** means the business of grocery retailing through hypermarkets, supermarkets or convenience stores (or through online channels); and

(d) **Permitted Business** means:
   (i) any international sourcing or group food sourcing activities in the Protected Territory or elsewhere;
   (ii) passive online sales of goods through a multi-channel website, provided that the multi-channel website has been set up to sell goods to customers in a jurisdiction(s) other than the Protected Territory and does not specifically target customers in any Protected Territory; and
   (iii) global customer data analytics as carried on at the date of this Agreement by dunnhumby Limited or Dunnhumby (Thailand) Limited or their respective subsidiaries.
19.4 Nothing in this Clause 19 shall prevent the Toucan Seller or the Macaw Seller or any of their respective Affiliates from:

(a) owning securities, shares or similar interests in any company or partnership that do not exceed 10 per cent. in nominal value of the securities, shares or similar interests of that company or partnership or otherwise grant (directly or indirectly) management functions or any material influence in that company or partnership beyond that of other holders of similar securities, provided that the Toucan Seller or the Macaw Seller or any of their respective Affiliates (i) shall not appoint any person to a board position in any such company or partnership and (ii) shall not own any securities, shares or similar interests in TCC Corporation Company Limited or any of its subsidiaries;

(b) acquiring and subsequently carrying on or being engaged in any one or more companies and/or businesses (taken together, the Acquired Business) where at the time of the acquisition the activities of the Acquired Business include a Competing Business (the Acquired Competing Business), if the turnover attributed to the Acquired Competing Business in its last financial year before the acquisition is less than 15 per cent. of the turnover of the Acquired Business as a whole and remains at below that level; and/or

(c) performing its obligations under the Transaction Documents and/or under any other agreement which it may enter into with a member of the Purchaser Group.

19.5 The Parties consider that the restrictions contained in this Clause 19 are no greater than is reasonable and necessary for the protection of their legitimate commercial interests. If any such restriction shall be held to be void but would be valid if deleted in part or reduced in application, then such restriction shall apply with such deletion or modification as may be necessary to make it valid and enforceable.

20. Non-Solicitation

20.1 Subject to Clause 20.2, from the date of this Agreement to the first anniversary of the Relevant Closing Date (or, if earlier, the termination of this Agreement in respect of the Toucan Sale and/or Macaw Sale as applicable):

(a) the Toucan Seller shall not, and shall ensure that no other member of the Seller Group shall, in each case directly or indirectly, solicit, endeavour to entice away, employ, or offer to employ any Key Manager; and

(b) the Macaw Seller shall not, and shall ensure that no other member of the Seller Group shall, in each case directly or indirectly, solicit, endeavour to entice away, employ, or offer to employ any Key Manager.

20.2 The provisions of Clause 20.1 shall not apply with respect to any recruitment or employment offer made to any person who contacts the Seller Group in response to a bona fide employment advertisement that is not directed at one or more employees of any of the Target Companies.

20.3 The Parties consider that the restrictions contained in this Clause 20 are no greater than is reasonable and necessary for the protection of their legitimate commercial interests. If any such restriction shall be held to be void but would be valid if deleted in part or reduced in application, then such restriction shall apply with such deletion or modification as may be necessary to make it valid and enforceable.
21. Payments

21.1 Any payment to be made pursuant to this Agreement by the Purchaser (or any member of the Purchaser Group) to a Seller shall be made to the relevant Seller’s Bank Account and shall be in USD. Each Seller agrees to pay each member of the Seller Group that part of each payment to which it is entitled. For the avoidance of doubt, all amounts payable by the Purchaser to:

(a) the Toucan Seller in respect of the THL Toucan Shares shall be made to the Toucan Bank Account; and

(b) the Macaw Seller in respect of the THBV Macaw Shares shall be made to the Macaw Bank Account.

21.2 Any payment to be made pursuant to this Agreement by a Seller (or any member of the Seller Group) shall be made to the Purchaser’s Bank Account and shall be in USD. The Purchaser agrees to pay each member of the Purchaser Group that part of each payment to which it is entitled.

21.3 Payments under Clauses 21.1 and 21.2 shall be in immediately available funds by electronic transfer on the due date for payment. Receipt of the amount due shall be an effective discharge of the relevant payment obligation.

21.4 If any sum due for payment in accordance with this Agreement is not paid on the due date for payment, the person in default shall pay Default Interest on that sum from but excluding the due date to and including the date of actual payment calculated on a daily basis, provided that this shall not apply to any monetary award made under arbitral proceedings pursuant to this Agreement and, instead, an interest rate of 3 per cent. per annum (on a simple and not compound basis) shall apply to any such awards from but excluding the date of such award to and including the date of actual payment calculated on a daily basis.

22. Costs

22.1 Subject to Clauses 22.2 and 22.3 and except as otherwise provided in this Agreement (or any other Transaction Document), each Party shall each be responsible for its own Costs (including those of its Affiliates) incurred in connection with the Proposed Transaction.

22.2 The Toucan Seller shall bear all Thai stamp duty arising in respect of the Toucan Sale, including, in each case, any related interest or penalties. The Toucan Seller shall indemnify the Purchaser against any costs or losses suffered or incurred by them in connection with Tax for which the Toucan Seller is responsible under this Clause 22.2.

22.3 The Purchaser shall bear all acquisition taxes, deemed acquisition taxes, securities transaction taxes, stamp duty, notarisation fees or other documentary transfer or transaction duties and any other transfer taxes (excluding: (i) Thai stamp duty arising in respect of the Toucan Sale, including any related interest or penalties; and (ii) for the avoidance of doubt, taxes on a Seller’s capital gain arising from the Proposed Transaction), including, in each case, any related interest or penalties arising as a result of this Agreement or any of the other Transaction Documents. The Purchaser shall indemnify the Sellers against any costs or losses suffered or incurred by them in connection with Tax for which the Purchaser is responsible under this Clause 22.3.
23. Announcements

23.1 Except as otherwise agreed between the Sellers and the Purchaser, none of the Parties shall, and shall procure that none of their respective Affiliates shall, make any announcement or issue any communication to shareholders in connection with the existence or subject matter of this Agreement (or any other Transaction Document) without the prior written approval of the other Parties (such approval not to be unreasonably withheld or delayed).

23.2 The restriction in Clause 23.1 shall not apply to:

(a) the press announcement issued by Tesco and the Purchaser on the date of this Agreement in the Agreed Form;

(b) the publication of the Circular or the Purchaser Circular;

(c) the extent that the announcement or communication to shareholders is required by law, by any stock exchange or any regulatory or other supervisory body or authority of competent jurisdiction, whether or not the requirement has the force of law (including communications in relation to the holding of the general meeting of Tesco required to pass the Tesco Resolution and the announcement of the results thereof); and

(d) any customer or employee communications made by any member of the Seller Group or by any member of the Purchaser Group to the extent that such communications only include publicly available information.

23.3 If the exception set out in Clause 23.2(c) applies, the party making the announcement or issuing the communication to shareholders shall use its reasonable endeavours (to the extent permitted by law) to consult with the other party in advance as to its form, content and timing.

24. Confidentiality

24.1 For the purposes of this Clause 24:

(a) Confidential Information means:

(i) (in relation to the obligations of the Purchaser) any information directly or indirectly received or held by or on behalf of the Purchaser (or any of its Representatives) relating to any Seller and its Affiliates from time to time including, prior to the Relevant Closing Date, any of the relevant Target Companies or the Toucan Business and/or the Macaw Business (as applicable); or

(ii) (in relation to the obligations of the Sellers) any information directly or indirectly received or held by or on behalf of:

(A) the Toucan Seller (or any of its Representatives) relating to the Purchaser Group including, following the Toucan Closing Date, any of the Toucan Target Companies or the Toucan Business; and

(B) the Macaw Seller (or any of its Representatives) relating to the Purchaser Group including, following the Macaw Closing Date, the Macaw Target or the Macaw Business; and
(iii) the contents and existence of this Agreement and the other Transaction Documents, and any information relating to the negotiations leading to this Agreement and the other Transaction Documents,
and includes written information and information transferred or obtained orally, visually, electronically or by any other means and any information which the Party has determined from information it has received including any forecasts or predictions; and

(b) **Representatives** means, in relation to a Party, its respective Affiliates and the directors, officers, employees, agents, advisers, accountants, auditors and consultants of that Party and/or of its respective Affiliates.

24.2 Each Party shall (and shall ensure that each of its Representatives shall) maintain Confidential Information in confidence and not disclose Confidential Information to any person except:

(a) as this Clause 24 permits; or

(b) as each other Party approves in writing.

24.3 Subject to Clause 24.4, Clause 24.2 shall not prevent disclosure or use of any information by a Party or any of its Representatives to the extent that:

(a) the disclosure or use is required in order to comply with law or by any stock exchange or any regulatory, governmental or antitrust body (including any Tax Authority) having applicable jurisdiction (provided that the disclosing party shall, to the extent permissible by law and regulation, first inform the other Party of its intention to disclose such information and take into account the reasonable comments of the other Party);

(b) the disclosure is to a Tax Authority in circumstances where such disclosure is reasonably necessary for the management of the tax affairs of any Party or in accordance with paragraph 3 of Part C of Schedule 7 (Tax) or the use is reasonably necessary in relation to the tax affairs of any Party;

(c) the disclosure or use is of Confidential Information which was lawfully in the possession of that Party or any of its Representatives (in either case as evidenced by written records) without any obligation of secrecy prior to its being received or held, provided that this sub-paragraph (c) shall not apply to the Seller Group in relation to information in its possession concerning to the Toucan Target Companies, the Toucan Business, the Macaw Target or the Macaw Business;

(d) the disclosure or use is of Confidential Information which has previously become publicly available other than through that Party’s (or any of its Representatives’) fault or breach of this Agreement or any other Transaction Document;

(e) the disclosure or use is required for the purpose of any arbitral or judicial proceedings arising out of this Agreement (or any other Transaction Document);

(f) the disclosure is required to be made to rating agencies or lending banks (and related financing parties in respect of such financing including lenders, hedge counterparties, relevant arrangers, agents, security trustees, parties to any subsequent refinancing in form of equity, bonds and loan financing) of the Purchaser, provided such parties are under a duty of confidentiality on substantially the same terms as this Clause 24;
such disclosure is required to be made (or is made in a form consistent with past practice) in any future annual reports and accounts or interim accounts of any member of the Seller Group or any member of the Purchaser Group, or any of their respective subsidiaries and joint ventures; or

in the case of the Sellers only, such disclosure is made to any existing lender to, or any rating agency engaged by or on behalf of, any member of the Seller Group, any of its Affiliates or any Target Company, and/or to such lender’s or rating agency’s employees, directors, officers, advisers or agents provided, in each case, that such information is disclosed on a confidential basis.

24.4 Each Party undertakes that it (and its Affiliates) shall only disclose Confidential Information to Representatives if it is reasonably required for purposes connected with this Agreement or its business or for the management of the tax affairs of any Party and only if the Representatives are informed of the confidential nature of the Confidential Information.

24.5 Subject to Clause 24.6, if this Agreement terminates, the Purchaser shall as soon as practicable on request by any of the Sellers:

(a) return to the Sellers all written documents and other materials relating to any member of the Seller Group, any Target Company or the Transaction Documents (including any Confidential Information) which the Sellers (or its Representatives) have provided to the Purchaser (or its Representatives) without keeping any copies thereof other than as part of the Purchaser’s normal records of board meetings or its board papers and provided that the Purchaser’s professional advisors may retain copies of Confidential Information and of the Transaction Documents in accordance with their normal record keeping procedure and, in such case, subject to Clause 24.2;

(b) subject as provided in sub-paragraph (a) and subject to sub-paragraph (c) in the case of Confidential Information held on any computer, server, mobile or other device, destroy all information or other documents derived from such Confidential Information; and

(c) so far as it is reasonably practicable to do so, expunge such Confidential Information from any computer, server and mobile or other device or archive such Confidential Information with access restricted to the legal, compliance and risk functions.

24.6 If this Agreement is only terminated in so far as it relates to the Macaw Sale pursuant to Clauses 5.24, 6.7(c) or 6.10, then the Purchaser shall take the actions set out in Clause 24.5 as if references therein to “the Sellers” were references to the “Macaw Seller” and references to a “Target Company” were references to the “Macaw Target”.

25. Assignment

25.1 Except as provided in this Clause 25 or unless the Sellers and the Purchaser specifically agree in writing, no person shall assign, transfer, hold on trust, charge or otherwise deal with or encumber all or any of its rights under this Agreement or any other Transaction Document nor grant, declare, create or dispose of any right or interest in any of them. Any purported assignment in contravention of this Clause 25 shall be void.

25.2 The Purchaser may assign its rights under this Agreement to any bank(s) and/or financial institution(s) (and related finance parties in respect of such financing, subsequent refinancing or any type of debt including permanent bonds) lending money or making other banking facilities available to the Purchaser (or any member of the Purchaser Group) for the
acquisition of the Shares as the case may be but so that, notwithstanding any such assignment, each of the Sellers may, unless it receives written notice of enforcement of any relevant security interest, deal with the Purchaser in connection with all matters arising under this Agreement.

25.3 If an assignment is made in accordance with this Clause 25, the liabilities of the members of the Seller Group to the Purchaser Group under this Agreement shall be no greater than such liabilities would have been if the assignment had not occurred.

25.4 The Parties acknowledge that this Agreement is a contract entered into for the purposes of, or in connection with, the acquisition, disposal or transfer of an ownership interest in a firm (as defined in s 1173(1) of the Companies Act 2006). Regulation 2 of The Business Contract Terms (Assignment of Receivables) Regulations 2018 does not apply to any term of this Agreement.

26. Further Assurances

26.1 Each of the Sellers, the Purchaser and the Purchaser Guarantors, for a period of 24 months from the Relevant Closing Date, shall, and shall use reasonable endeavours to procure that any necessary third party shall, from time to time execute, or procure the execution of, such documents and perform such acts and things as may be required by law or be necessary to implement and give effect to the Transaction Documents.

26.2 Pending registration by the Purchaser of the Macaw Power of Attorney granted by the Macaw Seller with Registry of the High Court of Malaysia, the Macaw Seller shall exercise all voting and other rights in relation to the THBV Macaw Shares in accordance with the Purchaser’s or its designated person’s instructions, subject to the terms of the Macaw Power of Attorney. The Purchaser shall bear all costs and taxes (including stamping and registration fees) payable in connection with the Malaysian Power of Attorney.

26.3 Each of the Parties shall ensure that its Affiliates comply with all obligations under the Transaction Documents that are expressed to apply to any such Affiliates.

27. Notices

27.1 Any notice in connection with this Agreement shall be in writing in English and delivered by hand, email, registered post or courier using an internationally recognised courier company. A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by email, provided that receipt shall be deemed not to have occurred if the sender receives an automated message that the e-mail has not been delivered to the recipient and, provided that, where delivery (or, in the case of email, transmission) occurs outside Working Hours, notice shall be deemed to have been received at the start of Working Hours on the next following Business Day in London.

27.2 The addresses and email addresses of the Parties for the purpose of Clause 27.1 are:

<table>
<thead>
<tr>
<th>The Toucan Seller</th>
<th>Address:</th>
<th>Email:</th>
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<tbody>
<tr>
<td></td>
<td>Tesco House</td>
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<td>Kestrel Way</td>
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<td></td>
<td>Welwyn Garden City</td>
<td></td>
</tr>
</tbody>
</table>
United Kingdom
AL7 1GA

For the attention of: General Counsel
adrian.morris@tesco.com

With a copy (which shall not constitute notice) to: claire.wills@freshfields.com

The Macaw Seller
Address:
Tesco House
Shire Park
Kestrel Way
Welwyn Garden City
United Kingdom
AL7 1GA

For the attention of: General Counsel
adrian.morris@tesco.com

With a copy (which shall not constitute notice) to: claire.wills@freshfields.com

Purchaser
Address:
313 C.P. Tower, 14th Floor,
Silom Road, Silom Sub-district,
Bangrak District, Bangkok,
Thailand

For the attention of: Mr.Kriengchai Boonpoapichart
kriengchai@cpall.co.th
Chief Financial Officer

With a copy (which shall not constitute notice) to: Mrs.Kobboon Srichai
kobboon@cpf.co.th
Mr.Akasan Sinchalong
akasan.sin@cp.co.th

CPH
Address:
313 C.P. Tower, 14th Floor,
Silom Road, Silom Sub-district,
Bangrak District, Bangkok,
Thailand

For the attention of: Ms.Narumol Tanedsounthron
narumol@cpf.co.th

With a copy (which shall not constitute notice) to: Mr.Akasan Sinchalong
akasan.sin@cp.co.th
28. Conflict with other Agreements

If there is any conflict between the terms of this Agreement and any other agreement, this Agreement shall prevail (as between the Parties to this Agreement and as between any of their Affiliates) unless:

(a) such other agreement expressly states that it overrides this Agreement in the relevant respect; and

(b) the Parties are either also parties to that other agreement or otherwise expressly agree in writing that such other agreement shall override this Agreement in that respect.

29. Whole Agreement

This Agreement and the other Transaction Documents together set out the whole agreement between the Parties in respect of the sale and purchase of the Shares and supersede any prior agreement, arrangement or understanding (whether oral or written) relating to the Proposed Transaction. It is agreed that:
(a) no Party has relied on or shall have any claim or remedy in respect of any statement, representation, warranty or undertaking made by or on behalf of the other Party (or any of its Representatives) in relation to the Proposed Transaction which is not expressly set out in this Agreement or any other Transaction Document;

(b) any terms or conditions implied by law in any jurisdiction in relation to the Proposed Transaction are excluded to the fullest extent permitted by law or, if incapable of exclusion, any right or remedies in relation to them are irrevocably waived;

(c) the only right or remedy of a Party in relation to any provision of this Agreement or any other Transaction Document shall be for breach of this Agreement or the relevant Transaction Document; and

(d) except for any liability in respect of a breach of this Agreement or any other Transaction Document, no Party (or any of its Representatives) shall owe any duty of care or have any liability in tort or otherwise to the other Parties (or their respective Representatives) in relation to the Proposed Transaction,

provided that this Clause 29 shall not exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation. Each Party agrees to the terms of this Clause 29 on its own behalf and as agent for each of its Representatives.

30. Set-Off

Each Party waives and relinquishes any right of set-off or counterclaim, deduction or retention which it might otherwise have out of any payments which it may be obliged to make (or procure to be made) to any other party pursuant to this Agreement or otherwise.

31. Waivers, Rights and Remedies

Except as expressly provided in this Agreement, no failure or delay by any Party in exercising any right or remedy relating to this Agreement or any of the other Transaction Documents shall affect or operate as a waiver or variation of that right or remedy or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.

32. Counterparts

This Agreement may be executed in any number of counterparts and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by email (PDF) attachment shall be an effective mode of delivery and such counterpart shall be deemed to be an original.

33. Variations

Any amendment of this Agreement (or of any other Transaction Document) shall only be valid, effective and binding upon all Parties hereto (including any that have not only explicitly agreed to it) if it is in writing and duly executed by or on behalf of all of the parties to it.
34. **Invalidity**

Each of the provisions of this Agreement and the other Transaction Documents is severable. If any such provision is held to be or becomes invalid or unenforceable in any respect under the laws of any jurisdiction, it shall have no effect in that respect and the Parties shall use all reasonable endeavours to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

35. **Third Party Enforcement Rights**

35.1 The individuals, entities and Representatives referred to or specified in Clauses 8.7, 8.8, 8.10, 19 and 29 shall each have the right to enforce the relevant terms of those respective clauses by reason of the Contracts (Rights of Third Parties) Act 1999. This right is subject to:
   (a) the rights of the Parties to amend or vary this Agreement without the consent of any such persons; and
   (b) the other terms and conditions of this Agreement.

35.2 Except as provided in Clause 35.1, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

36. **Governing Law and Arbitration**

36.1 For the purposes of this Clause 36, Other Party means any party to the Transitional Services Agreement, the Transitional Brand Licences and the Disclosure Letter (together with this Agreement, the Relevant Transaction Documents), who is not a party to this Agreement, and Other Parties shall be construed accordingly.

36.2 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law.

36.3 Subject to Clause 3.6 and Part C of Schedule 9 (Financial Adjustments), any dispute, controversy or claim arising out of or in connection with any of the Relevant Transaction Documents (including this Agreement), including any dispute regarding the existence, validity or termination thereof, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (the LCIA) from time to time in force (the LCIA Rules) and the LCIA Rules are deemed to be incorporated by reference into this Clause. Any relief granted by an emergency arbitrator shall be in the form of an award.

36.4 The number of arbitrators shall be three. The seat of arbitration shall be London, England. The language to be used in the arbitration shall be English.

36.5 If there are two parties to the arbitration, each party shall each be entitled to nominate one arbitrator, the third arbitrator being appointed by the two-party-nominated arbitrators. If there are more than two parties to the arbitration, article 8 of the LCIA Rules shall apply.

36.6 The parties agree that:

(a) for the purposes of Article 22.1(viii) of the LCIA Rules, until the arbitral tribunal has been appointed by the LCIA, each party and/or each Other Party may be joined as an additional party to an arbitration under any Relevant Transaction Document(s). A joined party may make a counterclaim or cross-claim against any party to the arbitration;

(b) for the purposes of Article 22.1(ix) of the LCIA Rules, any arbitrations between any of the parties and/or Other Parties under any Relevant Transaction Document(s) may be
consolidated into any other existing arbitration under any Relevant Transaction Document(s), provided that no arbitral tribunal has yet been formed by the LCIA Court for such other arbitration(s) or, if already formed, that such tribunal(s) is or are composed of the same arbitrators (a Consolidated Arbitration); and

(c) the arbitral tribunal constituted in the first commenced arbitration (the First Tribunal) shall have the power to determine (subject to the approval of the LCIA Court) whether the arbitrations shall be consolidated. Following the making of an order for consolidation, the First Tribunal’s appointment shall continue in relation to the Consolidated Arbitration unless (i) the parties to the separate arbitrations are different; and (ii) any party that is not a party to the first arbitration objects in writing to the First Tribunal’s appointment continuing. Upon receipt by the First Tribunal of any such written objection, the appointment of the First Tribunal shall terminate and the tribunal for the Consolidated Arbitration shall be appointed by the LCIA Court. Such termination is without prejudice to the validity of any acts done or orders made prior to the termination.

In both cases, a joinder or consolidation will be permitted only upon an appropriate order being made by the arbitral tribunal and approval given by the LCIA Court.

36.7 A party to or Other Party joined to an arbitration under a Relevant Transaction Document or to a Consolidated Arbitration undertakes to recognise and accept any findings of fact and of law of the arbitral tribunal and shall be barred from disputing such facts or findings of law in any subsequent arbitration.
Schedule 1
Permitted Leakage

For the purposes of this Agreement, *Permitted Leakage* means:

(a) any payments made between any Target Company and any member of the Seller Group which increase or decrease any Inter-Company Loan Amount or Inter-Company Trading Debt by an amount equal to the amount of such payments;

(b) accrual or payment of interest on an Inter-Company Loan Amount or on an Inter-Company Trading Debt as set out in Part A of Exhibit 2, in each case, at a rate not higher than the rate charged in the 12 months prior to the date of this Agreement;

(c) any matter undertaken by or on behalf of any Target Company at the written request or with the written agreement of the Purchaser and on the express basis that such amount shall be agreed to be Permitted Leakage;

(d) any payment made or agreed to be made by or on behalf of any Target Company pursuant to the terms of, or to comply with, this Agreement or any other Transaction Document;

(e) any payments made or agreed to be made to the Seller Group or Sime Darby AP in respect of amounts accrued, provided or otherwise included within the February 2020 Statutory Accounts or Adjustment Statements;

(f) any transfer or any payment made or agreed to be made in respect of the transfer of certain Intellectual Property Rights from a Target Company to the Seller Group pursuant to the terms of the IP Assignment Deed(s);

(g) any payment made or agreed to be made by or on behalf of any Target Company in respect of costs reasonably and properly incurred by the Seller Group on behalf of such Target Company in the ordinary course of business and recharged to a Target Company, which shall include the items set out in Part B of Exhibit 2, in each case only to the extent made in conformity with the Seller Group’s transfer pricing policies and consistent with past practice in the 12 months prior to the date of this Agreement;

(h) any payment made or agreed to be made by or on behalf of any Target Company in respect of trading with any member of the Seller Group or Sime Darby AP in the ordinary course of trading, which shall include the following (further details of which are provided in Part C of Exhibit 2):

(i) any payments relating to international sourcing of grocery and general merchandise (including any related payments in respect of margin and commission costs);

(ii) any payments to be made pursuant to the commercial services arrangements between the Target Group and dunnhumby Limited and its Affiliates, such contracts disclosed as items 5.1.2.1.4, 5.4.1.1.5.4.2.1.2.1.5 and 5.4.2.1.2.1.6 in the Thailand folder of the Data Room and as items 5.4.2.3.19 and 5.4.2.3.20 in the Malaysia folder of the Data Room;

(iii) any payments for services provided by Tesco Business Services and/or any other member of the Seller Group, including for property, technology, product and customer support;
(iv) any payments for planning or technical design services in relation to properties; and

(v) transfer of goods for export to non-core markets under Seller Group contracts, in each case only to the extent made in conformity with the Seller Group’s transfer pricing policies and consistent with past practice in the 12 months prior to the date of this Agreement;

(i) any payment made or agreed to be made in respect of costs reasonably and properly incurred by the Target Company on behalf of a member of the Seller Group in the ordinary course of business and recharged to the Seller Group, which shall include the following (further details of which are provided in Part B of Exhibit 2):

(i) all payments of remuneration and expenses made to or for the benefit of any member of the Target Group or any of its connected persons as employees or directors of any member of the Seller Group in the ordinary course of trading, in accordance with the relevant employee’s terms of employment/ letters of appointment; and

(ii) all fees, costs and expenses relating to IT Systems,

in each case only to the extent made in conformity with the Seller Group’s transfer pricing policies and consistent with past practice in the 12 months prior to the date of this Agreement,

(j) any payment made by the Target Group in respect of the Retention Bonuses of no more than the aggregate amount set out in the document disclosed at 11.7.2 in the Thailand folder in the Data Room;

(k) audit fees in respect of the affairs of the Target Companies for the year ended 29 February 2020, including fees for the audit of the February 2020 Statutory Accounts;

(l) the transfer of shares in Tesco Global Employment Co. Ltd; and

(m) any transactions the Purchaser has agreed in writing that any member of the Seller Group may undertake.
Schedule 2
Pre-Closing Conduct

1. From the date of this Agreement until the Relevant Closing Date, and subject to paragraphs 2 of this Schedule 2 (Pre-Closing Conduct), subject to all applicable legal and regulatory requirements, to protect the value of the Target Group, the Toucan Seller shall in respect of the Toucan Target Companies, and the Macaw Seller shall in respect of the Macaw Target, ensure that:

(a) all transactions between any Target Company and any member of the Seller Group take place substantially in a manner and on terms substantially consistent with previous practice in the 12 months before the date of this Agreement and in conformity with the Seller Group’s transfer pricing policies;

(b) no Target Company allots or issues or agrees to allot or issue any share capital, or grants any option over or right to subscribe for any share capital, in each case except from one Target Company to another Target Company;

(c) other than in relation to Properties, no Target Company creates any Third Party Right over the Shares or the shares or assets of any Target Company other than a Permitted Encumbrance;

(d) in relation to the Properties:

(i) no Target Company creates any Third Party Right (excluding any rights granted to occupiers, adjacent or adjoining property owners or statutory undertakers in the ordinary course of business) over the assets of any Target Company; and

(ii) no Target Company disposes of (or enters into any agreement to dispose of) any interest in any Material Property or any interest in any Non-Material Property or Express Store Property, in each case, that has an individual value exceeding THB 50,000,000 or an aggregate value in respect of the Material Properties and Non-Material Properties exceeding THB 500,000,000; and

(iii) no Target Company acquires (or enters into any agreement to acquire) any interest in any property or any interest in any property, in each case, other than in accordance with the Business Plan.

(e) no Target Company makes changes (other than those required by law) to the terms and conditions of employment (including pension fund commitments, remuneration and other benefits) in circumstances which are likely to increase in aggregate the total staff costs of the Target Companies by more than 10 per cent. per annum greater than the amount in the preceding financial year;

(f) no Target Company enters into, exercises an option in relation to, any agreement or incurs any commitment or makes, any capital expenditure which is more than 5 per cent. per annum greater than the amount stated in the Business Plan for the relevant financial year;
(g) no Target Company declares or pays any dividend or other distribution (whether in cash, stock or in kind) other than from one Target Company to another Target Company or reduces its paid-up share capital;

(h) no Key Manager is given notice of termination of employment or is dismissed other than for cause;

(i) no Target Company offers to engage any new Key Manager (on the basis of full-time employment or consultancy) other than to replace a departing Key Manager on the same or similar terms;

(j) no member of the Seller Group or any Target Company agrees to or permits (except with the Purchaser’s written consent) the institution or settlement of any litigation where it could result in a payment to or by a Target Company of THB 30,000,000 or more except for collection of trading debts in the ordinary course of business;

(k) no Target Company enters into, or exercises an option in relation to, or amend in any material respect any agreement or incur any commitment which is not capable of being terminated without compensation at any time with twelve months’ notice or less which is not in the ordinary and usual course of business;

(l) no Target Company enters into any guarantee, indemnity or other agreement to secure any obligation of a third party;

(m) no member of the Seller Group or any Target Company passes any shareholders’ resolution to alter any Target Company’s Constitutional Documents or capital structure (save as contemplated by this Agreement or in connection with the consummation of the Proposed Transaction);

(n) (except as required by applicable law or by changes in the applicable accounting standards) no Target Company changes its auditors or accounting reference date or accounting policies;

(o) no member of the Seller Group or any Target Company makes any substantial change to the nature, management or organisation of the Target Group’s business or discontinue or cease to operate all or a material part of the Target Group’s business;

(p) each Target Company maintains and/or renews any material licences, authorisations, permissions, registrations, consents, approvals or waivers required under applicable law for the Target Group to carry on its business in all material respects;

(q) no Target Company acquires any shares in any undertaking;

(r) no Target Company ceases to be in possession or control of its statutory books and records (being the share registers and minute books and accounting records required to be maintained by each Target Company under applicable law);

(s) other than in relation to Properties, no Target Company (outside the ordinary course of business) disposes of, or agrees to dispose of, any material asset included in the Last Accounts or acquired since the balance sheet date of such accounts;
(t) other than in relation to Properties, no Target Company ceases to be in possession and/or control of its material assets (save when they are in possession of a third party in the ordinary course of business);

(u) no Target Company amends in any material way the standard terms and conditions of employment of any category of Employee;

(v) no Target Company introduces or materially amends any share incentive scheme, profit sharing, bonus or other incentive scheme applicable to Employees; and

(w) no Target Company introduces any non-statutory pension arrangements, severance pay or provident scheme.

2. Neither Clause 4.1 nor the obligations in paragraph 1 of this Schedule 2 (Pre-Closing Conduct) shall apply to any act or omission:

(a) approved in writing by the Purchaser, such approval not to be unreasonably withheld or delayed;

(b) which is consistent with (i) the Business Plan; or (ii) any arrangement, policy or practice fairly and specifically disclosed in the Disclosure Letter;

(c) required or expressly permitted by (or which is necessary to implement) the terms of any Transaction Document;

(d) pursuant to the terms of the IP Assignment Deed(s) (or to the entry into of the IP Assignment Deed(s));

(e) in connection with the entry into: (i) the power purchase agreement in substantially the form disclosed at item 5.4.2.1.2 in the Malaysia folder in the Data Room; (ii) the contracts with DHL for the operation of and transport from the Suratthani distribution centre in substantially the form disclosed at items 5.5.2.3 and 5.4.2.4 in the Thailand folder in the Data Room;

(f) reasonably required to amend, with effect from the Toucan Closing or the Macaw Closing as applicable, the commercial services arrangements between any Target Company and dunnhumby Limited and any of its Affiliates to reflect the fact that the Target Companies will cease to be Affiliates of the Seller following the Toucan Closing or the Macaw Closing as applicable;

(g) any action reasonably undertaken by any Target Company or member of the Seller’s Group in the case of an emergency or disaster or other serious incident or circumstance with the intention of minimising any adverse effect on the relevant Target Company. The Purchaser will be notified as soon as reasonably practicable of any such emergency, disaster, serious incident or circumstance and of any action taken or proposed to be taken and the relevant Seller will provide to the Purchaser such information as is legally permissible as the Purchaser may reasonably request and shall use reasonable endeavours to consult with the Purchaser in respect of any such action;

(h) necessary, in the reasonable opinion of the relevant Seller, in order to comply with any requirement of applicable law or regulation (including any rules or requirements of any Governmental Entity);
(i) in connection with the renewal or renegotiation for no longer than 12 months of any existing contract with any supplier, commercial customer or distributor who has business dealings with any Target Company as at the date of this Agreement, in such case in the ordinary course of business; or

(j) in connection with the development of the South Pattaya Property owned by Ek-Chai and the adjacent land owned by the CPN JVCo, provided Ek-Chai shall not legally commit to a greater funding obligation than is required to be provided by it for phase one of the Potential Scheme (as defined in the “CPN JV Update paper” at 1.1.4.4.2 in the Thailand folder of the Data Room) which shall not exceed THB 1,825,000,000 without the prior written consent of the Purchaser.
Schedule 3
Closing Arrangements

Part A : Sellers Obligations

1. At the Toucan Closing Date, the Toucan Seller shall deliver or ensure that there is delivered to the Purchaser (or made available to the Purchaser’s reasonable satisfaction) or procure the following actions:

(a) a duplicate copy of the share transfer instrument in respect of the THL Toucan Shares duly executed by the Toucan Seller and witnessed and in compliance with the applicable law;

(b) a certified copy of the share register book of the Toucan Target showing the Purchaser as the holder of the THL Toucan Shares;

(c) the original share certificates relating to the THL Toucan Shares, marked cancelled by the Toucan Target;

(d) the original new share certificates representing the THL Toucan Shares issued by the Toucan Target under the name of the Purchaser;

(e) copies (certified by a duly appointed officer as true and correct) of resolutions of the board of directors of the Toucan Seller authorising the execution of and the performance by the Toucan Seller of its obligations under this Agreement and each of the other Transaction Documents to be executed by it;

(f) a copy (certified by a duly appointed officer as true and correct) of resolutions of the board of directors of the Toucan Target approving the Proposed Transaction;

(g) a copy of the Agreed Form Transaction Documents in paragraph 1(a) of Part D of Schedule 3 (Closing Arrangements) duly executed by the Toucan Seller (or such other applicable member of the Seller Group, other than the Macaw Seller) and where applicable, the Toucan Target; and

(h) the corporate seal, cheque books, statutory and other books of the Toucan Target and Ek-Chai and all financial and accounting and other books and records of the Toucan Target and Ek-Chai provided always that each of these items shall be deemed to be delivered if it has been confirmed as being in the possession of each of the Toucan Target and Ek-Chai by its respective representative on the Toucan Closing Date.

2. At the Macaw Closing Date, the Macaw Seller shall deliver or ensure that there is delivered to the Purchaser (or made available to the Purchaser’s reasonable satisfaction):

(a) the original share certificates relating to the THBV Macaw Shares;

(b) the unstamped instruments of transfer in respect of the THBV Macaw Shares duly executed by the Macaw Seller as transferor in favour of the Purchaser as transferee;
(c) an executed Macaw Power of Attorney granted by the Macaw Seller and an executed Sime Darby AP Power of Attorney granted by Sime Darby AP;

(d) copies (certified by a duly appointed officer as true and correct) of resolutions of the board of directors of the Macaw Seller authorising the execution of and the performance by the Macaw Seller of its obligations under this Agreement and each of the other Transaction Documents to be executed by it;

(e) a copy (certified by a duly appointed officer as true and correct) of resolutions of the board of directors of the Macaw Target approving:

(i) the transfer of the THBV Macaw Shares from the Macaw Seller to and in the name of the Purchaser;

(ii) the registration of the Purchaser as the holder of the THBV Macaw Shares in the register of members of the Macaw Target;

(iii) the cancellation of the existing share certificates issued in the name of the Macaw Seller in respect of the THBV Macaw Shares and the issuance of new share certificate(s) in respect of the THBV Macaw Shares in the name of the Purchaser;

(iv) the affixation of the common seal of the Macaw Target on the new share certificate(s) to be issued in the name of the Purchaser in respect of the THBV Macaw Shares;

(v) the making of such other entries in the registers and other corporate records of the Macaw Target, and the making of such notifications to the Companies Commission of Malaysia as required, arising from the transactions contemplated under this Agreement;

(vi) the execution and performance by the Macaw Target of its obligations under the Transaction Documents to be executed by it;

(vii) the appointment of up to five persons nominated by the Purchaser as replacement directors for the directors of the Macaw Target appointed by the Macaw Seller with effect from Macaw Closing; and

(viii) the transfer of the SD Macaw Shares from Sime Darby AP to the Purchaser and its designated person(s), (ii) the registration of the Purchaser and its designated person(s) as the holder of SD Macaw Shares in the register of members of the Macaw Target; (iii) the cancellation of the existing share certificates issued in the name of Sime Darby AP in respect of SD Macaw Shares and the issuance of new share certificate(s) in respect of SD Macaw Shares in the name of the Purchaser and its designated person(s), and (iv) the affixation of the common seal of the Macaw Target on the new share certificate(s) to be issued in the name of the Purchaser and its designated person(s) in respect of SD Macaw Shares;

(f) the certificates of incorporation, corporate seal, cheque books, statutory and other books of the Macaw Target and all financial and accounting and other books and records of the Macaw Target provided always that each of these
items shall be deemed to be delivered if it has been confirmed as being in the possession of the Macaw Target by a representative of the Macaw Target on the Macaw Closing Date;

(g) a copy of the SD Transfer Agreement duly executed by each of the Macaw Seller and Sime Darby AP;

(h) a copy of the Agreed Form Transaction Documents in paragraph 1(b) of Part D of Schedule 3 (Closing Arrangements) duly executed by the Macaw Seller (or such other applicable member of the Seller Group, other than the Toucan Seller) and where applicable, the Macaw Target.

**Part B : Purchaser Obligations**

1. At the Toucan Closing Date, the Purchaser shall:

   (a) deliver (or ensure that there is delivered to the Toucan Seller) a copy of a resolution (certified by a duly appointed officer as true and correct) of the board of directors of the Purchaser (or, if required by the law of its jurisdiction or Constitutional Documents of its shareholders) authorising the execution of and the performance by the Purchaser of its obligations under this Agreement and each of the other Transaction Documents to be executed by it;

   (b) deliver (or ensure that there is delivered to the Toucan Seller) a copy of a resolution (certified by a duly appointed officer as true and correct) of the board and/or supervisory board (as necessary to provide valid authorisation) of directors of the Purchaser Guarantors (or, if required by the law of its jurisdiction or Constitutional Documents, of its shareholders) authorising the execution of and the performance by each Purchaser Guarantor of its obligations under this Agreement and any of the other Transaction Documents to be executed by it;

   (c) a copy of the Agreed Form Transaction Documents in paragraph 1(a) of Part D of Schedule 3 (Closing Arrangements) duly executed by the Purchaser (or such other applicable member of the Purchaser Group); and

   (d) pay the Toucan Share Price to the Toucan Seller.

2. At the Macaw Closing Date, the Purchaser shall:

   (a) deliver (or ensure that there is delivered to the Macaw Seller) a copy of a resolution (certified by a duly appointed officer as true and correct) of the board of directors of the Purchaser (or, if required by the law of its jurisdiction or Constitutional Documents of its shareholders) authorising the execution of and the performance by the Purchaser of its obligations under this Agreement and each of the other Transaction Documents to be executed by it;

   (b) deliver (or ensure that there is delivered to the Macaw Seller) a copy of a resolution (certified by a duly appointed officer as true and correct) of the board and/or supervisory board (as necessary to provide valid authorisation) of directors of the Purchaser Guarantors (or, if required by the law of its jurisdiction or Constitutional Documents, of its shareholders) authorising the execution of and the performance by each Purchaser Guarantor of its
obligations under this Agreement and any of the other Transaction Documents to be executed by it;

(c) a copy of the Agreed Form Transaction Documents in paragraph 1(b) of Part D of Schedule 3 (Closing Arrangements) duly executed by the Purchaser (or such other applicable member of the Purchaser Group);

(d) a copy of the SD Transfer Agreement duly executed by the Purchaser; and

(e) pay the Macaw Share Price to the Macaw Seller.

Part C : Inter-Company Debt and Third Party Assurances

At the Relevant Closing Date, the Seller(s) and the Purchaser shall carry out their respective obligations under Clauses 15 and 16 and Schedule 8 (Inter-Company Debt) in relation to Inter-Company Loan Amounts.

Part D : General

1. The Sellers and the Purchaser shall execute and deliver to each other (or procure that their relevant Affiliates shall execute and deliver) the following other documents in the Agreed Form required by this Agreement to be executed on or before the Relevant Closing Date:

(a) in respect of the Toucan Sale:
   (i) the Transitional Services Agreement;
   (ii) the Toucan Intra-Group Termination Deed; and
   (iii) the Toucan Transitional Brand Licence.

(b) in respect of the Macaw Sale:
   (i) the Macaw Intra-Group Termination Deed;
   (ii) the Macaw Transitional Brand Licence.

2. If any document listed in this Schedule 3 (Closing Arrangements) is required to be notarised and/or apostilled, the Parties shall execute such document and have it notarised and/or apostilled, as applicable, at a location notified by the Sellers to the Purchaser at least two Business Days before the Relevant Closing Date where a notary with the required qualification will be present.

3. All documents and items delivered at a Closing pursuant to this Schedule 3 (Closing Arrangements) shall be held by the recipient to the order of the person delivering the same until such time as such Closing shall be deemed to have taken place. Simultaneously with:

(a) delivery of all documents and all items required to be delivered at Closing (or waiver of the delivery of it by the person entitled to receive the relevant document or item); and
(b) receipt of an electronic funds transfer to the Toucan Bank Account and/or the Macaw Bank Account (as applicable) in immediately available funds of the Toucan Share Price or the Macaw Share Price (as applicable),

the documents and items delivered in accordance with this Schedule 3 (Closing Arrangements) shall cease to be held to the order of the person delivering them and Closing shall be deemed to have taken place.
Schedule 4
Sellers’ Warranties

Each statement set out below in this Schedule 4 (Sellers’ Warranties) is made subject to and on the terms of Clause 8 and Schedule 5 (Limitations on Liability).

Part A: General/Commercial

1. The Seller Group and the Shares

1.1 Authorisations, valid obligations, filings and consents.

(a) Each Seller has obtained all corporate authorisations and (other than to the extent relevant to the Conditions) all other governmental, statutory, regulatory or other consents, licences or authorisations required to empower it to enter into and perform its obligations under this Agreement where failure to obtain them would adversely affect to a material extent its ability to enter into or perform its obligations under this Agreement.

(b) Entry into and performance by each member of the Seller Group of this Agreement and/or any other Transaction Document to which it is a party will not: (i) breach any provision of its Constitutional Documents; or (ii) (subject to fulfilment of the Conditions) result in a breach of any laws or regulations in its jurisdiction of incorporation or of any order, decree or judgment of any court or any governmental or regulatory authority, where (in either case) the breach would materially and adversely affect its ability to enter into or perform its obligations under this Agreement.

(c) This Agreement and the other Transaction Documents will, when executed, constitute valid and binding obligations of each relevant member of the Seller Group.

1.2 The Shares and the Target Companies.

(a) Each Target Company is validly incorporated, in existence and duly registered under the laws of its jurisdiction of incorporation. Each of the Target Companies has full power under its Constitutional Documents to conduct its business as conducted at the date of this Agreement.

(b) The Toucan Shares constitute the whole of the issued share capital of the Toucan Target. All of the Toucan Shares are, or are deemed to be, fully paid. The Toucan Seller is or will at Closing be: (i) the sole legal and beneficial owner of the THL Toucan Shares free from all Third Party Rights; and (ii) entitled to transfer the THL Toucan Shares on the terms of this Agreement.

(c) The Macaw Shares constitute the whole of the issued share capital of the Macaw Target. All of the Macaw Shares are, or are deemed to be, fully paid. The Macaw Seller is or will at Closing be: (i) the sole legal and beneficial owner of the THBV Macaw Shares free from all Third Party Rights; and (ii) entitled to transfer the THBV Macaw Shares on the terms of this Agreement.
(d) No person (other than a Target Company) has the right (exercisable now or in the future and whether contingent or not) to call for the issue of any share or loan capital in any Target Company.

(e) The information on the Target Companies and the Toucan Joint Ventures set out in Schedule 10 (Target Company Information) is accurate in all material respects.

1.3 Other interests. No Target Company owns any shares in any undertaking (other than another Target Company and, in the case of the Toucan Target Companies, the Toucan Joint Ventures).

1.4 Constitutional documents. The constitutional documents (including memorandum and articles of association and other like documents of any Target Company) in the Data Room are true, complete and accurate copies of the constitutional documents of each Target Company and, so far as the Sellers are aware, there have not been and are not any breaches by any Target Company of its constitutional documents.

1.5 Books and records. The statutory books (being the share register book and minute books) and accounting records required to be maintained by each Target Company under applicable law:

(a) are properly kept and up-to-date and contain an accurate and complete record of the matters which are required to be dealt with in those books; and

(b) are maintained in accordance with applicable laws,

in each case in all material respects. No notice to the contrary or that any of them should be materially rectified has been received by any Target Company before the date of this Agreement and is outstanding.

1.6 Possession of books. All books and records referred to in paragraph 1.5 are in the possession (or under the control) of each Target Company.

1.7 Minority Toucan Shares. The Seller Group has no arrangements or understandings (contractual or non-contractual) with the holders of the Minority Toucan Shares in respect of the Minority Toucan Shares.

2. Financial Matters

2.1 The Toucan Last Accounts. The Toucan Last Accounts present fairly, in all material respects, the financial position of the Toucan Target Companies to which they relate as at the Last Accounts Date and the financial performance and cash flows (where applicable) of such Toucan Target Companies for the year then ended in accordance with Thai Financial Reporting Standards for Non-Publicly Accountable Entities.

2.2 The Macaw Last Accounts. The Macaw Last Accounts give a true and fair view of the financial position of the Macaw Target as at the Last Accounts Date, and of its financial performance and its cash flows for the year then ended in accordance with Malaysian Financial Reporting Standards, International Financial Reporting Standards and the requirements of the Companies Act, 2016 in Malaysia.

2.3 The Toucan February 2020 Statutory Accounts. The Toucan February 2020 Statutory Accounts present fairly, in all material respects, the financial position of the Toucan
Target Companies to which they relate as at the February 2020 Statutory Accounts Date and the financial performance and cash flows (where applicable) of such Toucan Target Companies for the year then ended in accordance with Thai Financial Reporting Standards for Non-Publicly Accountable Entities.

2.4 Basis for Toucan February 2020 Statutory Accounts. Subject to any differences or inconsistencies set out in the Toucan February 2020 Statutory Accounts (including (i) the disclosure notes and (ii) the first time application of IFRS 16), the Toucan February 2020 Statutory Accounts have been prepared in all material respects on a basis consistent with the accounting policies as applied in the Toucan Last Accounts.

2.5 The Macaw February 2020 Statutory Accounts. The Macaw February 2020 Statutory Accounts give a true and fair view of the financial position of the Macaw Target as at the February 2020 Statutory Accounts Date, and of its financial performance and its cash flows for the year then ended in accordance with Malaysian Financial Reporting Standards, International Financial Reporting Standards and the requirements of the Companies Act, 2016 in Malaysia.

2.6 Basis for Macaw February 2020 Statutory Accounts. Subject to any differences or inconsistencies set out in the Macaw February 2020 Statutory Accounts (including (i) the disclosure notes and (ii) the first time application of IFRS 16), the Macaw February 2020 Statutory Accounts have been prepared in all material respects on a basis consistent with the accounting policies as applied in the Macaw Last Accounts.

2.7 Toucan FY 19 Group Reporting Balance Sheet. Having regard to the purpose for which it was originally prepared, the Toucan FY 19 Group Reporting Balance Sheet does not materially overstate the value of the assets nor materially understate the liabilities of the Toucan Target Companies as at the FY 19 Reporting Date.

2.8 Macaw FY 19 Group Reporting Balance Sheet. Having regard to the purpose for which it was originally prepared, the Macaw FY 19 Group Reporting Balance Sheet does not materially overstate the value of the assets nor materially understate the liabilities of the Macaw Target as at the FY 19 Reporting Date.

2.9 Toucan Management Accounts. Having regard to the purpose for which they were originally prepared, the Toucan Management Accounts for the Management Accounts Period:

(a) have, in all material respects, been prepared in accordance with the accounting policies and practices used in preparing the Toucan Last Accounts applied on a consistent basis;

(b) are not materially misleading in respect of the Management Accounts Period;

(c) do not materially over-state the value of the assets or materially under-state the liabilities of the Toucan Target Companies as at the Management Accounts Date; and

(d) do not materially over-state the profits or materially under-state the losses of the Toucan Target Companies in respect of the Management Accounts Period.
2.10 **Macaw Management Accounts.** Having regard to the purpose for which they were originally prepared, the Macaw Management Accounts for the Management Accounts Period:

(a) have, in all material respects, been prepared in accordance with the accounting policies and practices used in preparing the Macaw Last Accounts applied on a consistent basis;

(b) are not materially misleading in respect of the Management Accounts Period;

(c) do not materially over-state the value of the assets or materially under-state the liabilities of the Macaw Target as at the Management Accounts Date; and

(d) do not materially over-state the profits or materially under-state the losses of the Macaw Target in respect of the Management Accounts Period.

2.11 **Toucan February 2020 Management Accounts.** So far as the Sellers are aware, the Toucan February 2020 Management Accounts have been prepared in all material respects in a manner consistent with the Toucan Management Accounts, save for the inclusion of any adjustments arising from the year-end audit process.

2.12 **Macaw February 2020 Management Accounts.** So far as the Sellers are aware, the Macaw February 2020 Management Accounts have been prepared in all material respects in a manner consistent with the Macaw Management Accounts, save for the inclusion of any adjustments arising from the year-end audit process.

2.13 **Position since Last Accounts Date.** Since the Last Accounts Date:

(a) the Target Companies have carried on their business, in all material respects, in the ordinary course of business and in the same manner (including as to nature and scope) as in the 12 months preceding the Last Accounts Date;

(b) there has been no material change to the Target Group’s business, operations, financial or trading position and, so far as the Sellers are aware (and other than as a result of general market conditions), no event, fact or matter has occurred which is likely to give rise to any such change; and

(c) no account receivables in excess of THB 30,000,000 have been written-off by any Target Company as uncollectible, except write offs in the ordinary course of business consistent with practice and the experience of the Target Group in the 12 months preceding the Last Accounts Date.

3. **Financial Debt**

3.1 **Financial facilities.** No Target Company owes any Financial Debt to any person outside the Seller Group other than Financial Debt owing pursuant to agreements or instruments details of which are set out in the Data Room.

3.2 **Guarantee.** There is no outstanding guarantee, indemnity, or other security (other than a lien arising by operation of law in the ordinary course of business) given by any Target Company or for the benefit of any Target Company.
4. Regulatory Matters

4.1 Licences. All regulatory licences, consents and authorisations material to the businesses of the Target Companies have been obtained, are in force and, so far as the Sellers are aware, are being and have in the 12 months before the date of this Agreement been complied with in all material respects.

4.2 Notices. No Target Company has received any written notice from a Governmental Entity in the 12 months before the date of this Agreement alleging that any Target Company does not have, or has acted in material breach of, any material regulatory licence, permission, authorisation or consent required for carrying on its business effectively in the places and in the manner in which it is carried on at the date of this Agreement in accordance with all applicable laws and regulations.

4.3 Compliance. So far as the Sellers are aware, each Target Company is conducting, and in the 12 months before the date of this Agreement, has conducted, the business of the Target Group in material compliance with applicable laws and regulations of Governmental Entities and there has been no material default by any Target Company under any applicable laws, regulations or order, decree or judgment of any court or any Governmental Entity in the jurisdiction in which it is incorporated which applies to the Target Company (where such default has had or is likely to have a material cost (excluding, for these purposes, a loss of profit) to the Target Companies).

4.4 Foreign Exchange Control. In the 12 months prior to the date of this Agreement, no loan has been given or made available by any member of the Seller Group to the Macaw Target other than the Macaw Inter-Company Loan Payables details of which are set out in the Data Room. All loans which have been given or made available by any member of the Seller Group to the Macaw Target have been given or made available, and the repayment of such loan by the Macaw Target has been made, in compliance with applicable laws, including the Malaysian Financial Services Act 2013 and the Foreign Exchange Administration Rules promulgated thereunder.

4.5 Anti-Bribery and Compliance. So far as the Sellers are aware, no Target Company has, at any time in the two years before the date of this Agreement engaged in any activity in material violation of applicable Anti-Bribery Law.

5. The Business Assets

For the purposes of this paragraph 5, a material asset does not include any of the Properties, the Owned IP or any other Intellectual Property Rights.

5.1 Ownership. Each Target Company owns or is entitled to use all the material assets necessary to carry on its business in all material respects as currently carried on. No Target Company has (outside the ordinary course of business) disposed of, or agreed to dispose of, any material asset of its business included in the Last Accounts or acquired since the balance sheet date of such accounts.

5.2 Possession. The material assets of the businesses of the Target Companies that are capable of possession and/or control are in their possession or under their control (save when they are in possession of a third party in the ordinary course of business).
5.3 Third Party Rights. There is no Third Party Rights (other than a lien arising by operation of law in the ordinary course of business) on, over or affecting the whole or any part of the undertaking or any material assets of any Target Company and there is no agreement or commitment to give or create any and no claim has been made by any person to be entitled to any such Third Party Right.

6. Insurance

6.1 Insurance. The Data Room contains a summary of the material insurance maintained by or covering each Target Company. No claim in excess of THB 30,000,000 has been made by, or in relation to, a Target Company under any such policy of insurance in the last 12 months.

6.2 Insurance Claims. There is no material claim by any member of the Seller Group or any Target Company pending under any of the insurances policies maintained by or for the Target Group as to which coverage has been denied or disputed by the carriers of such insurance (other than for general reservations of rights) and carriers of such insurance have not disputed, or given notice that they intend to dispute, the validity of any of the insurance policies or deny any material claim by any member of the Seller Group or Target Company under any of the insurance policies.

7. Contractual Matters

7.1 Material contracts. No Target Company is a party to any agreement:

(a) under the terms of which, as a direct result of the entry into and performance of the Transaction Documents:

   (i) any other party will be entitled to be relieved of any obligation that is material or become entitled to exercise any material right (including any termination or pre-emption right or other option); or

   (ii) any Target Company will be in material default,

where such relief, exercise or default (either singly or taken together) is likely to have a material adverse effect on the Target Group as a whole;

(b) which is with any member of the Seller Group and is not an ordinary course trading arrangement and on an arm’s length basis; or

(c) which is a joint venture, consortium or partnership.

7.2 Defaults. No Target Company has received written notice in the 12 months before the date of this Agreement that it is in material default under any contract to which it is a party, the absence or termination of which would be material to the business of any Target Company as a whole or where the potential liability of the Target Company for such default could exceed THB 30,000,000. For this purpose, any proceedings for collection against a Target Company of debts arising in the ordinary course of business are excluded.

8. Litigation

8.1 Current Proceedings. No Target Company is involved as a party (whether as claimant or defendant or other party) in any legal action, proceeding, suit, litigation, arbitration,
prosecution, investigation, enquiry, mediation, arbitration or contentious administrative proceedings with a claim value of more than THB 25,000,000.

8.2 **Threatened Proceedings.** So far as the Sellers are aware, no such claim, legal action, proceedings, suit, litigation, prosecution, investigation, enquiry, mediation or arbitration have been threatened in writing against a Target Company in the last 12 months. For this purpose, any proceedings for collection by or against a Target Company of debts arising in the ordinary course of business are excluded.

9. **Insolvency etc.**

9.1 **Insolvency.** No Target Company is insolvent under the laws of its jurisdiction of incorporation or unable to pay its debts, including its future and prospective debts or otherwise.

9.2 **Liquidation or winding up.** No Target Company is in liquidation and no order has been made or effective resolution passed for the liquidation or winding up of any Target Company.

9.3 **Administration etc.** No administrator, receiver or statutory manager has been appointed in relation to the whole or part of the assets and undertaking of any Target Company.

9.4 **Creditors.** So far as the Seller is aware, no creditor of any Target Company has enforced any security over any assets of any Target Company.

**Part B : IP/IT and Data Protection**

1. **Owned IP and licences.** The Intellectual Property Rights listed in section 1.1 (Registered to Ek-Chai) of Schedule 4 (Trade marks/Service Marks) of the Toucan Legal VDD Report and item 7.1.4 (website asset catalogue) in the Thailand folder in the Data Room and the section of Schedule 8 (Trademarks Registered with MyIPO) of the Macaw Legal VDD Report headed “Additional Marks (Not Listed In The Trademarks List Provided By TSM)” and section 8.4 (Domain names) of the Macaw Legal VDD Report in the Malaysia folder in the Data Room, in each case excluding any Excluded IP, are a complete and accurate list of the registered Owned IP in all material respects. The Owned IP is not subject to any Third Party Right (other than for the avoidance of doubt a licence entered into in the ordinary course of business or disclosed in the Data Room). All of the IP Licences which are material to the business of any Target Company are disclosed in the Data Room.

2. **No infringement.** Neither of the Sellers nor any Target Company has, in the 12 months before the date of this Agreement, received a written notice alleging that the operations or products or services of a Target Company materially infringe or misuse the Intellectual Property Rights of a third party. No Target Company is engaged in any outstanding formal dispute under which it is alleged that the operations or products or services of any Target Company materially infringe the Intellectual Property Rights of a third party. So far as the Sellers are aware, the Owned IP is not being materially infringed or used without authorisation by any third party and neither of the Sellers nor any Target Company has sent a written notice alleging that a third party is, or may be, infringing or misusing the Owned IP.
3. **Information technology.** Copies or details of all material IT Contracts have been disclosed in the Data Room. No Target Company has, in the 12 months before the date of this Agreement, received written notice from a third party alleging that a Target Company is materially in default under any IT Contract. The IT Systems have not, in the 12 months before the date of this Agreement, failed to any material extent.

4. **Data protection.** No Target Company has, in the 12 months before the date of this Agreement, received a written notice from any Governmental Entity alleging that a Target Company has not complied with applicable data protection laws.

5. **Data protection compliance.** So far as the Sellers are aware, the Target Group is in material compliance with all applicable data protection laws.

6. **Unauthorised access.** The Target Group has taken commercially reasonable steps to protect the types of data and information owned by or in the possession of any Target Company against loss and unauthorised access, use, modification, disclosure or other misuse and, so far as the Sellers are aware, there has been no material security breach affecting any IT System or material unauthorised access, use, modification, disclosure or other misuse of such data or information in the 12 months preceding the date of this Agreement.

7. **IT System.** Except for the IT Systems to be provided pursuant to the Transitional Services Agreement, the Target Group owns or has the right to use all material IT Systems which it currently uses.

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**Part C : Real Estate**

1. **General**
   
   (a) As at the Relevant Date, the Properties comprise all the material land and buildings owned, leased, controlled, occupied or used, wholly or partially, by the Target Companies.

   (b) So far as the Sellers are aware, no Target Company has material liabilities (actual or contingent) in relation to any property other than the Properties which exceeds THB 30,000,000 in aggregate in relation to such property.

2. **Material Properties.**
   
   (a) A Toucan Target Company has legal title, possessory interest or right of use to each of the Toucan Material Properties and that Toucan Target Company’s legal interest is, where required by law, registered at the relevant land registry.

   (b) The Macaw Target has:

   (i) legal and beneficial ownership to each of the Macaw Material Properties which it owns; and

   (ii) a legal right to occupy each of the Macaw Material Properties which is leased or tenanted,
and the Macaw Target’s legal interest is, where required by law, registered at the relevant land office or land registry.

(c) Each Material Property benefits from legal rights of access by the relevant Target Company for the purpose of its existing business as carried on at or from such Material Property as at the date of this Agreement.

(d) The Material Properties are not subject to the payment of any outgoings other than the usual property taxes, common area charges, road maintenance charges, utility charges and Taxes and:

(i) in the case of leased or tenanted Material Properties for Macaw: rent, assessment and service charge; and

(ii) in the case of the leasehold Material Properties and the mixed freehold and leasehold Material Properties for Toucan: rent, insurance rent and service charge.

(e) No Target Company has granted any Third Party Right over or affecting any of the Material Properties excluding any rights granted to occupiers, adjacent or adjoining property owners or statutory undertakers in the ordinary course of business.

(f) No Material Property is the subject of a subsisting contract for sale.

(g) So far as the Sellers are aware, no Target Company or tenant or licensee of a Material Property is in breach of any covenant, restriction, condition or obligation (whether statutory or otherwise) affecting any Material Property.

(h) In relation to the Macaw Business, all CCCs for the Material Properties (for the original building and alterations to the building involving structural changes, if any) or where, the alterations to the building involving structural changes is still ongoing or completed but pending issuance of the CCC the necessary and material permits for such structural alterations, have been obtained, and as far as the Sellers are aware, there has been no material breach of conditions attaching to any such permit.

(i) In relation to the Toucan Business, all construction and modification permits and certificates of building construction for the store buildings and main infrastructures of the Material Properties have been obtained, and as far as the Sellers are aware, there has been no material breach of conditions attaching to any such permit.


(a) So far as the Sellers are aware, a Target Company has the right to occupy each of the Non-Material Properties and Express Store Properties.

(b) No Target Company has granted any Third Party Right over or affecting any of the Non-Material Properties and Express Store Properties excluding any rights granted to occupiers, adjacent or adjoining property owners or statutory undertakers in the ordinary course of business.
(c) So far as the Sellers are aware, neither the Sellers nor any Target Company has received written notice of any material and subsisting breach of any covenant, restriction, condition or obligation (whether statutory or otherwise) in relation to any Non-Material Properties or Express Store Properties.

(d) As at 31 January 2020, there is no rent, service charge or other outgoings in respect of any Non-Material Property or Express Store Property overdue to be paid by a Target Company exceeding 5 per cent of the aggregate rents, service charge or other outgoings payable by the Target Companies in respect of all Non-Material Properties and Express Store Properties.

4. Occupational Tenants.

(a) The lists of Occupational Leases at Exhibits 9 and 10 are materially accurate in respect of:

(i) the Properties which are subject to Occupational Leases;

(ii) current rent paid by the Occupational Tenants listed in Exhibits 9 and 10; and

(iii) the expiry date of the Occupational Leases listed in Exhibits 9 and 10, as at the Relevant Date.

(b) As at 31 January 2020, the outstanding rent arrears for rent in respect of all Occupational Tenants:

(i) for the Toucan Business in aggregate, did not exceed THB 600,000,000; and

(ii) for the Macaw Business in aggregate, did not exceed THB 375,000,000.

Part D: Employment

1. Data Room Contents. The Data Room contains complete and accurate:

(a) copies of the standard terms and conditions of employment applicable to Employees who are work levels 2, 3 or 4 under the Seller Group employment management structure;

(b) details of all share incentive schemes, profit sharing, bonus or other incentive schemes applicable to Employees; and

(c) details of all agreements which each Target Company has entered into with any trade union, works council or similar body representing Employees.

2. Key Managers. No Key Manager has given notice which has not yet expired terminating his or her employment.

3. Remuneration. No Target Company is obliged to, or has made any provision to, increase or vary the salary, bonus, or other remuneration of any Employee or Employees which could increase the Target Companies’ total costs in respect of
Employees by more than 10 per cent. per annum of the amount in the preceding financial year.

4. **Collective dismissals.** Other than as disclosed in the Data Room, within the period of 12 months before the date of this Agreement, the Target Companies have not initiated or completed the implementation of any collective dismissals.

5. **Tesco Executive Share Plan.** The Target Companies do not have any contractual obligations to provide any Employee with benefits under the Tesco Executive Share Plan.

6. **Industrial Dispute.** No Target Company is involved in, and in the past 12 months has not been involved in, any strike or industrial or trade dispute or any dispute or negotiation regarding a claim of material importance with any recognised labour union or other recognised body representing Employees or former employees of any Target Company and so far as the Sellers are aware there are no circumstances which make any such strike or dispute likely to arise.

7. **Labour union.** The Macaw Target has not recognised or entered into any collective bargaining agreement with any trade union or other body representing any Employees.

8. **Collective Bargaining Agreements.** There are no subsisting agreements concluded by or in respect of any Target Company for collective bargaining with any labour union, works council, staff committee or any similar representative body in respect of any Employee (except as disclosed in the Data Room).

**Part E : Retirement Benefits**

1. Other than any statutory pension arrangement, severance pay or provident scheme, there is no arrangement in respect of the Employees that any Target Company is or may become liable to contribute to, under which benefits are payable on retirement.

**Part G : Product Liability**

1. So far as the Sellers are aware, in the 12 months preceding the date of this Agreement, there have not been any material product recalls issued by any Target Company or by agents acting on its behalf relating to any product designed or manufactured by it.
Schedule 5
Limitations on Liability

1. Relevant Seller. Claims are only to be brought against the relevant Seller. The Toucan Seller shall not be liable for any Claim if and to the extent that it relates to the Macaw Business and the Macaw Seller shall not be liable for any Claim if and to the extent that it relates to the Toucan Business.

2. Time Limits. The Sellers shall not be liable for any Claim unless:

(a) in the case of a Fundamental Warranty Claim, a Seller receives from the Purchaser, prior to the fifth anniversary of the Relevant Closing Date, written notice of such Claim. Such notice shall contain (to the extent reasonably practicable) reasonably specific details of the Claim including: (i) reasonable identification and evidence of the circumstances giving rise to and being the basis of such Claim; and (ii) the Purchaser’s calculation of the amount of the Claim;

(b) in the case of a Non-Tax Claim (other than a Share Plan Claim, Protective Covenant Claim or a Fundamental Warranty Claim), a Seller receives from the Purchaser, prior to 18 months after the Relevant Closing Date, written notice of such Claim. Such notice shall contain (to the extent reasonably practicable) reasonably specific details of the Claim including: (i) reasonable identification and evidence of the circumstances giving rise to and being the basis of such Claim; and (ii) the Purchaser’s calculation of the amount of the Claim;

(c) in the case of a Share Plan Claim, a Seller receives from the Purchaser, prior to 36 months after the Relevant Closing Date, written notice of Share Plan Claim. Such notice shall contain (to the extent reasonably practicable) reasonably specific details of the Share Plan Claim including: (i) reasonable identification and evidence of the circumstances giving rise to and being the basis of such Share Plan Claim; and (ii) the Purchaser’s calculation of the amount of the Share Plan Claim;

(d) in the case of a Protective Covenant Claim, a Seller receives from the Purchaser, prior to 60 months after the Relevant Closing Date, written notice of such Protective Covenant Claim. Such notice shall contain (to the extent reasonably practicable) reasonably specific details of the Protective Covenant Claim including: (i) reasonable identification and evidence of the circumstances giving rise to and being the basis of such Protective Covenant Claim; and (ii) the Purchaser’s calculation of the amount of the Protective Covenant Claim; or

(e) in the case of a Tax Claim, a Seller receives from the Purchaser, prior to the fifth anniversary of the Relevant Closing Date, written notice of such Tax Claim. Such notice shall contain (to the extent reasonably practicable) reasonably specific details of the Claim including: (i) reasonable identification and evidence of and the circumstances giving rise to and being the basis of such Claim; and (ii) the Purchaser’s calculation of the amount of the Claim, provided, for the avoidance of doubt, this shall not exclude any Seller’s liabilities for a Claim under the Tax Covenant if such Seller receives from the Purchaser a written notice pursuant to this paragraph 2(e) but the relevant...
liability referred to in such written notice becomes Actual Toucan Tax Liability or Actual Macaw Tax Liability, as the case may be, after the period set out in paragraph 2(e), provided, in each case, a Claim can only ever relate to the fact, matter or circumstance (or similar or directly related fact, matter or circumstance) identified and evidenced in the written notice served in accordance with paragraph 2 of this Schedule 5 (Limitations on Liability).

3. Thresholds for Toucan Warranty Claims. The Toucan Seller shall not be liable for any single Warranty Claim:
   (a) unless the amount of the liability pursuant to that single Claim exceeds THB 120,000,000. For this purpose, a series of related Claims or Claims based on similar facts or circumstances shall be deemed to be a single Claim; and
   (b) unless the aggregate amount of the liability of the Toucan Seller for all such Claims not excluded by sub paragraph 3(a) above exceeds THB 3,000,000,000, and in which case the Purchaser shall be entitled to claim for the entire aggregate amount and not the excess only.

4. Thresholds for Macaw Warranty Claims. The Macaw Seller shall not be liable for any single Warranty Claim:
   (a) unless the amount of the liability pursuant to that single Claim exceeds the equivalent of THB 20,000,000. For this purpose, a series of related Claims or Claims based on similar facts or circumstances shall be deemed to be a single Claim; and
   (b) unless the aggregate amount of the liability of the Macaw Seller for all such Claims not excluded by sub paragraph 4(a) above exceeds the equivalent of THB 200,000,000, and in which case the Purchaser shall be entitled to claim for the entire aggregate amount and not the excess only.

5. Threshold for Claims under the Tax Covenant. The Sellers shall not be liable for any Claim under the Tax Covenant unless the aggregate liability of the Sellers for all such Claims exceeds THB 40,000,000, in which case the Purchaser shall be entitled to claim for the entire aggregate amount and not the excess only.

6. Maximum liability for Warranty Claims. Subject always to paragraph 7 of this Schedule 5 (Limitations on Liability), the aggregate amount of the liability of:
   (a) the Toucan Seller for all Warranty Claims (other than any Fundamental Warranty Claim) and Tax Claims shall not exceed 30 per cent. of the Toucan Share Price; and
   (b) the Macaw Seller for all Warranty Claims (other than any Fundamental Warranty Claim) and Tax Claims shall not exceed 30 per cent. of the Macaw Share Price.

7. Maximum limit for all claims. The aggregate amount of the liability of the:
   (a) the Toucan Seller for all claims under this Agreement shall not exceed 100 per cent. of the Toucan Share Price; and
(b) the Macaw Seller for all claims under this Agreement shall not exceed 100 per cent. of the Macaw Share Price.

8. **Claim to be withdrawn unless legal proceedings commenced.** Any Claim other than a Claim under the Tax Covenant shall (if it has not been previously satisfied, settled or withdrawn) be deemed to have been withdrawn six months after the notice is given pursuant to paragraph 1 of this Schedule 5 (*Limitations on Liability*), (or, in the case of Claims referred to in paragraph 11, six months after the relevant liability becomes an actual liability) unless legal proceedings in respect of it have been commenced by being both issued and served. No new Claim may be made in respect of the facts, matters, events or circumstances giving rise to any such withdrawn Claim.

9. **Claims only to be brought under relevant Warranties.** The Purchaser acknowledges and agrees that the only Warranties given in relation to:

   (a) Intellectual Property Rights, information technology, data protection laws, guidelines and industry standards or any related claims, liabilities or other matters (*IPR and Data Protection Matters*) are set out in Part B and paragraphs 4.1, 4.2, 4.3 and 8 of Part A of Schedule 4 (*Sellers’ Warranties*) and no other Warranty is given in relation to IPR and Data Protection Matters;

   (b) real estate, planning, zoning and environmental matters or any related claims, liabilities or other matters (*Real Estate Matters*) are those set out in paragraphs 4.1, 4.2, 4.3 and 8 of Part A and Part C of Schedule 4 (*Sellers’ Warranties*) and no other Warranty is given in relation to Real Estate Matters;

   (c) the employment of any past or present employee of any Target Company or any member of the Seller Group or any related claims, liabilities or other matters, including matters relating to retirement benefits and pensions (*Employee Matters*) are set out in paragraphs 4.1, 4.2, 4.3 and 8 of Part A and paragraph 5 of Part B and Part D and Part E of Schedule 4 (*Sellers’ Warranties*) and no other Warranty is given in relation to Employee Matters; and

   (d) taxation or any related claims, liabilities or other matters (*Tax Matters*) are the Tax Warranties and no other warranty is given in relation to Tax Matters.

10. **Matters disclosed.** The Sellers shall not be liable for any Warranty Claim if and to the extent that the fact, matter, event or circumstance giving rise to such Claim is fairly disclosed by this Agreement, any other Transaction Document, the Disclosure Letter, the VDD Reports or any document disclosed in the Data Room.

    For the purpose of this paragraph, “fairly disclosed” shall mean fairly disclosed in a manner and detail so as to enable a reasonable purchaser which has taken professional advice to make a reasonably informed assessment of the matter concerned.

11. **Matters provided for or taken into account in the February 2020 Statutory Accounts.** The Sellers shall not be liable for any Warranty Claim if and to the extent that the fact, matter, event or circumstance giving rise to such Claim:

    (a) is disclosed, provided for or reserved for in the Last Accounts or the February 2020 Statutory Accounts; or
(b) is provided for or otherwise taken into account in the Adjustment Statements or in otherwise calculating the Adjustment Amounts in accordance with Schedule 9 (Financial Adjustments).

12. Contingent liabilities. If any Claim is based upon a liability which is contingent only, the Sellers shall not be liable unless and until such contingent liability becomes an actual liability (but the Purchaser has the right under paragraph 1 of this Schedule 5 (Limitations on Liability) to give notice of that Claim before such time).

13. No liability for Claims arising from acts or omissions of Purchaser. The Sellers shall not be liable for any Warranty Claim which is a Non-Tax Claim to the extent that it would not have arisen but for, or has been increased or not reduced as a result of, any voluntary act, omission or transaction carried out:

(a) after the Relevant Closing Date, by the Purchaser or any member of the Purchaser Group (or its respective directors, employees or agents or successors in title or any of its Affiliates) other than (i) in the ordinary course of business of a Target Company as at the Relevant Closing Date; or (ii) pursuant to a binding commitment entered into before the Relevant Closing Date; or (iii) in order to comply with applicable law; or

(b) before the Relevant Closing Date, by any member of the Seller Group or any Target Company acting in order to avoid a breach of Schedule 2 (Pre-Closing Conduct) or at the direction or request or with the approval in writing of the Purchaser or any member of the Purchaser Group.

14. Purchaser’s duty to mitigate. The Purchaser shall procure that all reasonable steps are taken to avoid or mitigate any loss or damage which it may suffer in consequence of any breach by the Sellers of the terms of this Agreement other than a Claim under the Tax Covenant.

15. Insured Claims. The Sellers shall not be liable in respect of any Claim to the extent that the amount of such Claim is covered by a policy of insurance and such Claim is confirmed by the relevant insurers or carriers in writing to be covered and will, when filed, be paid in full.

16. Recovery from third party after payment from Sellers. Where a Seller has made a payment to the Purchaser in relation to any Non-Tax Claim and the Purchaser or any member of the Purchaser Group is entitled to recover (whether by insurance, payment, discount, credit, Relief or otherwise) from a third party a sum which indemnifies or compensates the Purchaser or any member of the Purchaser Group (in whole or in part) in respect of the liability or loss which is the subject of a Non-Tax Claim, the Purchaser or relevant member of the Purchaser Group shall: (a) promptly notify the relevant Seller of the fact and provide such information as the Seller may reasonably require; (b) at the cost of the Sellers, take all reasonable steps or proceedings as the relevant Seller may require to enforce such right; and (c) pay to the relevant Seller as soon as practicable after receipt an amount equal to the amount recovered from the third party (net of Taxation and less any reasonable Costs of recovery).

17. Net financial benefit. The Sellers shall not be liable to satisfy any Non-Tax Claim to the extent of any corresponding and quantifiable saving by, or net quantifiable financial benefit to, the Purchaser or any member of the Purchaser Group arising from the
matter(s) giving rise to such Claim, including the amount (if any) by which any Tax for which the Purchaser or any member of the Purchaser Group would otherwise have been accountable or liable to be assessed is actually reduced or extinguished as a result of the matter(s) giving rise to the Claim.

18. **No liability for changes in legislation, Tax rules or accounting policy.** The Sellers shall not be liable for any Claim if and to the extent it is attributable to, or the amount of such Claim is increased as a result of, any: (a) legislation not in force at the date of this Agreement; (b) change of law (or any change in interpretation on the basis of case law), regulation, directive, requirement or administrative practice after the date of this Agreement; (c) change in the rates of taxation in force at the date of this Agreement or any imposition of any taxation or any withdrawal of Relief in each case not in effect at the date of this Agreement; or (d) changes in accounting policy, basis or practice of the Purchaser or any of the Target Companies introduced or having effect after the date of this Agreement. It is agreed that in respect of any Claim arising as a result of a breach by the Sellers of the undertakings set out in Clause 4.1 and Schedule 2 the relevant date for the purposes of this paragraph 18 shall be the date of Closing (rather than the date of this Agreement).

19. **No double recovery.** The Purchaser shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity more than once in respect of any one liability, loss, cost, shortfall, damage, deficiency, breach or other set of circumstances which gives rise to more than one Claim.

20. **Consequential loss.** Neither the Purchaser nor any member of the Purchaser Group shall be entitled to claim for any punitive or special loss or for any indirect or consequential loss.

21. **Purchaser’s knowledge.** The Sellers shall not be liable for any Warranty Claim if and to the extent that the Purchaser or any of its Representatives involved in negotiating the acquisition of the Target Group is aware at the date of this Agreement of the fact, matter, event or circumstance which is the subject matter of the Claim.

The above paragraph shall not apply if the Purchaser or the relevant Representative, could not reasonably be expected to conclude that the facts, matters or circumstances giving rise to the Warranty Claim would be likely to constitute a breach of any Warranty.

22. **Provision of information.** If, at any time after the date of this Agreement, the Sellers want to insure against their liabilities in respect of Claims, the Purchaser (at the cost of relevant Seller) shall provide such information as a prospective insurer may reasonably require before effecting the insurance.

23. **Waiver of right of set-off.** The Purchaser waives and relinquishes any right of set-off or counterclaim, deduction or retention which the Purchaser might otherwise have in respect of any Claim against or out of any payments which the Purchaser may be obliged to make (or procure to be made) to either of the Sellers pursuant to this Agreement or otherwise.

24. **Sellers to have opportunity to remedy breaches.** If a breach of the Warranties is capable of remedy, the Purchaser shall only be entitled to compensation if it gives the relevant Seller written notice of the breach and the breach is not remedied within 30 days after
the date on which such notice is served on the relevant Seller. Without prejudice to its
duty to mitigate any loss, the Purchaser shall (or shall procure that any relevant member
of the Purchaser Group shall) provide, at the cost of the relevant Seller, all reasonable
assistance to the relevant Seller to remedy any such breach.
Schedule 6
Purchaser Warranties

1. The Purchaser is validly incorporated, in existence and duly registered under the laws of its jurisdiction and has full power to conduct its business as conducted at the date of this Agreement.

2. The Purchaser has obtained all corporate authorisations and (other than to the extent relevant to the Conditions) all other governmental, statutory, regulatory or other consents, licences and authorisations required to empower it to enter into and perform its obligations under this Agreement and/or any Transaction Document where failure to obtain them would materially and adversely affect its ability to enter into and perform its obligations under this Agreement and/or any Transaction Document.

3. Entry into and performance by each member of the Purchaser Group of this Agreement and/or any other Transaction Document to which it is a party will not: (a) breach any provision of its Constitutional Documents; (b) breach the terms of any agreement; or (c) (subject, where applicable, to fulfilment of the Conditions) result in a breach of any laws or regulations in its jurisdiction of incorporation or of any order, decree or judgment of any court or any governmental or regulatory authority, where any such breach would adversely affect to a material extent its ability to enter into or perform its obligations under this Agreement and/or any other Transaction Document to which it is a party.

4. Neither the Purchaser nor any member of the Purchaser Group which is a party to any Transaction Document is insolvent or bankrupt under the laws of its jurisdiction of incorporation, unable to pay its debts as they fall due or has proposed or is liable to any arrangement (whether by court process or otherwise) under which its creditors (or any group of them) would receive less than the amounts due to them. There are no proceedings in relation to any compromise or arrangement with creditors or any winding up, bankruptcy or insolvency proceedings concerning the Purchaser or any member of the Purchaser Group which is a party to any Transaction Document and no events have occurred which would justify such proceedings. No steps have been taken to enforce any security over any assets of the Purchaser or any of its Affiliates and no event has occurred to give the right to enforce such security.

5. So far as the Purchaser is aware, neither the Purchaser nor any member of the Purchaser Group is subject to any order, judgment, direction, investigation or other proceedings which will, or are likely to, prevent or delay the fulfilment of any of the Conditions or materially affect its ability to complete the Proposed Transaction.

6. The Purchaser has sufficient available cash and loan facilities under the Purchaser Financing Agreements which will provide in immediately available funds the necessary cash resources to:

   (a) pay at Toucan Closing, the Toucan Share Price;

   (b) pay at Macaw Closing, the Macaw Share Price; and

   (c) at each of Toucan Closing and Macaw Closing, meet its other obligations under this Agreement at the relevant Closing.
7. The Purchaser has made available to the Sellers accurate and complete copies of the Purchaser Financing Agreements and none of them has been amended or modified except for such written amendments or modifications that have been provided to the Sellers prior to or on the date of this Agreement (save for administrative details completed, and mechanical, administrative or consequential changes) and no agreements exist outside the Purchaser Financing Agreements which could impair, or contain additional conditionality to, drawdown under the Purchaser Financing Agreements.

8. No event of default under any of the Purchaser Financing Agreements has occurred nor is the Purchaser aware of any event or circumstance which could reasonably be expected to constitute such an event of default which would enable the relevant lenders to refuse to provide funds under the Purchaser Financing Agreements.

9. The financing commitments contained in the Purchaser Financing Agreements have not been withdrawn or rescinded in any respect.

10. No event has occurred or circumstance exists which, with or without notice, lapse of time or both, would or would reasonably be expected to constitute an event of default or material breach on the part of the Purchaser or any other parties to the Purchaser Financing Agreements under their terms.

11. The Purchaser has no reason to believe that any of the conditions precedent contemplated in the Purchaser Financing Agreements will not be satisfied or that the debt financing under the Purchaser Financing Agreements will not be made available to the Purchaser on or prior to Closing.

12. The Purchaser Financing Agreements: (i) constitute legal, valid and binding obligations of the Purchaser and/or each of the obligors party to the Purchaser Financing Agreements; and (ii) are enforceable in accordance with their terms against the Purchaser and/or each of the obligors party to the Purchaser Financing Agreements, except as enforceability may be limited by applicable bankruptcy laws, other similar applicable laws affecting creditors’ rights and general principles of equity affecting the availability of specific performance and other equitable remedies (regardless of whether enforcement is sought in a proceeding at law or in equity).
Schedule 7
Tax

Part A: Tax Warranties

1. Returns

Each Target Company has within the Relevant Period made all material returns and supplied all other material information, computations and notices required to be supplied to all relevant Tax Authorities within the requisite time limits and all such returns were submitted on a proper basis and all such information, computations, notices and returns remain, so far as the Sellers are aware, up-to-date.

2. Disputes, investigations and audits

No Target Company is involved in any material current dispute with any Tax Authority or is or has in the Relevant Period been the subject of any audit, investigation or non-routine visit by any Tax Authority that could result in the assessment of a material amount of Tax and no Target Company has received written notice from a Tax Authority of any penalty, surcharge, fine or interest (in each case of a material amount) in respect of Tax in the Relevant Period.

3. The Last Accounts

All liabilities of each Target Company for Tax measured by reference to income, profits or gains earned, accrued or received on or before the relevant Last Accounts Date or arising in respect of an Event occurring on or before the relevant Last Accounts Date are presented fairly in all material respects or (as appropriate) disclosed in the relevant Last Accounts to the extent required in accordance with applicable accounting policies.

4. Rulings

Within the Relevant Period, no Target Company has requested a ruling or clearance (which does not include, for the avoidance of doubt, any voluntary disclosure to a Tax Authority) from any Tax Authority.

5. Special arrangements

No Tax Authority has operated or agreed to operate any special arrangement (being an arrangement which is not based on relevant legislation or any published practice) in relation to any Target Company’s affairs.

6. Withholdings

Within the Relevant Period each Target Company has duly and punctually made all deductions and retentions of or on account of Tax as it was or is obliged or entitled to make and all such payments of or on account of Tax as should have been made to any Tax Authority in respect of such deductions or retentions.

7. Residence

Each Target Company is and has at all times in the Relevant Period been resident in its country of incorporation for Tax purposes and, so far as the Sellers are aware, is not and has not at any time in the Relevant Period been treated as resident in any other jurisdiction for any Tax purpose (including any double taxation arrangement).
8. Permanent establishment

8.1 No Target Company is subject to Tax in any jurisdiction other than its place of incorporation by virtue of having a permanent establishment or other place of business in that jurisdiction.

8.2 No Target Company constitutes a permanent establishment of any other person, business or enterprise for any Tax purpose.

9. Stamp Duty

9.1 All documents or instruments in the possession or under the control of a Target Company or to the production of which a Target Company are entitled which is necessary to establish the title, interest or benefit of such Target Company to any material asset or in any material transaction for which stamp duty or similar duty or transfer Tax must be paid in order to establish such title, interest or benefit, have been properly stamped and adjudicated or have had such Tax duly paid on them; all such duty or Tax payable upon any transfer of shares in any Target Company before the Closing Date has been duly paid.

10. Related Parties Transactions

10.1 So far as the Sellers are aware, each Target Company has prepared and retained documents and other evidence demonstrating that the terms of or the provisions made by means of or imposed by all Related Arrangements to which the Target Company is or has been a party are such as would have been made between independent enterprises (and in which case the nature, form and content of such documents and other evidence complies with all relevant legislative provisions and Tax Authority’s guidance). For the purposes of this warranty, Related Arrangements shall mean transactions, agreements and arrangements to which the relevant Target Company is or has been a party where if the terms of or the provisions made by the relevant transactions, agreements and arrangements were not such as would have been made between independent enterprises, that fact could materially impact the expected Tax treatment of any of the Target Companies for any period after the Closing Date.

11. Tax Avoidance

11.1 So far as the Sellers are aware, within the Relevant Period, no Target Company has entered into or has been a party to any scheme, arrangement, transaction or series of transactions designed partly or wholly or containing steps or stages designed partly or wholly for the purpose of avoiding or evading Tax, in circumstances which would permit a Tax Authority to counteract any perceived Tax advantage obtained by the Target Company by virtue of that scheme, arrangement, transaction or series of transactions.

12. Voluntary Disclosure

12.1 The disclosures made by Macaw Target to the Tax Authority pursuant to the Special Voluntary Disclosure Programme were done in good faith and in a complete manner.
Part B : Tax Covenant

1. Covenant to pay

1.1 The Toucan Seller hereby covenants with the Purchaser to pay to the Purchaser an amount equivalent to:

(a) any Actual Toucan Tax Liability arising in respect of, by reference to or in consequence of:

(i) any income, profits or gains earned, accrued or received on or before the Toucan Closing; or

(ii) any Event which occurred on or before the Toucan Closing; and

(b) any Deemed Tax Liability to the extent that it relates to a Toucan Target Company; and

(c) in each case, as a result of any Event which occurred on or before the Toucan Closing, (i) any Taxes imposed on or incurred by Ek-Chai caused by or resulting from the unreconciled income between corporate income tax (PND 50) and monthly value added tax returns (PP 30), (ii) any Taxes imposed on or incurred by Ek-Chai in connection with shrinkage or shortage of the inventories (iii) any Taxes imposed on or incurred by Ek-Chai in connection with inventory and fixed asset destruction (iv) any Taxes of a Toucan Target Company on deemed income or disallowed expenses on the transactions entered into with related parties and (v) any Taxes imposed on or incurred by Ek-Chai caused by or resulting from the unreconciled employee expenses between the employee expense recorded in the books of account and the employee income declared in the annual payroll withholding tax return (PND 1 and PND 1 Kor).

1.2 The Macaw Seller hereby covenants with the Purchaser to pay to the Purchaser an amount equivalent to:

(a) any Actual Macaw Tax Liability arising in respect of, by reference to or in consequence of:

(i) any income, profits or gains earned, accrued or received on or before the Macaw Closing; or

(ii) any Event which occurred on or before the Macaw Closing; and

(b) any Deemed Tax Liability to the extent that it relates to the Macaw Target.

1.3 For the avoidance of doubt paragraphs 1.1 and 1.2 shall not apply to any Tax Liability arising in respect of, by reference to or in consequence of any income, profits or gains earned, accrued or received after the Toucan Closing Date or Macaw Closing Date, as applicable, (whether or not as a result of an Event which occurred on or before the Toucan Closing Date or Macaw Closing Date, as applicable), or any Event occurring after the relevant Toucan Closing Date or Macaw Closing Date, as applicable.
2. Costs and Expenses

The covenants contained in paragraph 1 shall extend to all reasonable costs and expenses properly incurred by the Purchaser in connection with a successful claim made under paragraph 1, or in satisfying or settling any Tax Liability in accordance with paragraph 4 in respect of which a successful claim is made under paragraph 1.

3. Exclusions

3.1 The covenants contained in paragraphs 1.1 and 1.2 shall not cover any Tax Liability to the extent that:

(a) provision or reserve in respect of that Tax Liability has been made in the Adjustment Statements, or the Tax Liability was taken into account in the preparation of the Adjustment Statements; or

(b) the Tax Liability was paid or discharged on or before the February 2020 Statutory Accounts Date, or such payment or discharge was taken into account in the preparation of the February 2020 Statutory Accounts and such payment or discharge has in fact occurred; or

(c) the Tax Liability arises in respect of, by reference to or in consequence of:

(i) any income, profits or gains earned, accrued or received in respect of the period between the February 2020 Statutory Accounts Date and the relevant Closing either: (aa) in the ordinary course of business of the Target Company to which the Tax Liability relates, or (bb) to the extent that the Target Company concerned retains the benefit of such income, profit or gain at the relevant Closing, or (cc) to the extent that such income, profit or gain has been expended in the ordinary course of business of the Target Company; or

(ii) any Event occurring between the February 2020 Statutory Accounts Date and the relevant Closing in the ordinary course of business of the Target Company to which the Tax Liability relates; or

(d) the Tax Liability arises as a result of any change in rates of Tax or of any change in law (or a change in interpretation on the basis of case law), regulation, order, rule, ruling, guideline, directive or requirement or any similar update, or the published practice of any Tax Authority or Governmental Entity, occurring after the date of this Agreement; or

(e) the Tax Liability would not have arisen but for, or has been increased or not reduced as a result of, any voluntary act, omission or transaction carried out or effected by any member of the Seller Group, any Target Company, any person connected with any of them acting at the direction or request or with the approval of the Purchaser or any member of the Purchaser Group at any time prior to the relevant Closing; or

(f) the Tax Liability would not have arisen but for a transaction, action or omission carried out or effected by any of the Purchaser, a Target Company, or any other person connected with any of them (or in each case its respective directors,
employees or agents), at any time after the relevant Closing, except that this exclusion shall not apply where any such transaction, action or omission:

(i) is carried out or effected by the Target Company concerned pursuant to a legally binding commitment created on or before the relevant Closing; or

(ii) is carried out at the written request of a Seller; or

(iii) is carried out or effected by the Target Company concerned in the ordinary course of business of that Target Company as carried on at Closing, provided that for this purpose the following shall be deemed not to be in the ordinary course of business if they otherwise would be (with the effect that the exclusion contained in this paragraph 3.1(f) shall apply):

(A) any disposal (or deemed disposal for any Tax purpose) of assets other than trading stock by any Target Company;

(B) any distribution of assets or other transaction not at arm’s length;

(C) any change in the use of an asset by any Target Company;

(D) anything which has the result of requiring disposal value to be brought into account, which results in a withdrawal of capital allowances or other allowances or tax benefits previously claimed or which crystallises a balancing charge; or

(iv) is carried out to comply with applicable law (including tax laws), or published guideline issued by any Tax Authority or Governmental Entity; or

(g) the Tax Liability comprises interest or penalties arising by virtue of an underpayment of Tax prior to the relevant Closing, insofar as such underpayment would not have been an underpayment but for a bona fide estimate made prior to the Relevant Closing of the amount of income, profits or gains to be earned, accrued or received after the Relevant Closing proving to be incorrect, or but for any other Event or Events occurring after the relevant Closing; or

(h) the Tax Liability arises solely, and would not otherwise have arisen, as a result of a change after the Relevant Closing in the length of any Accounting Period of any Target Company, or (other than a change which is necessary as determined by the auditor of the relevant Target Company in order to comply with the law or generally accepted accounting principles applicable to that Target Company at the relevant Closing) a change after the Relevant Closing in any accounting policy or Tax reporting practice of any Target Company (other than a change to which paragraph 3.1(f)(iv) applies); or

(i) such Tax Liability arises as a result of any Target Company failing to submit the returns and computations required to be made by them or not submitting such returns and computations within the appropriate time limits or submitting
such returns and computations otherwise than on a proper basis, in each case after the Relevant Closing and otherwise than as a result of any default or failure of a Seller in carrying out, or in failing to carry out, a Seller’s obligations under paragraph 10; or

(j) the Tax Liability arises as a result of the failure of the Purchaser to comply with any of its obligations contained in paragraph 4 or 9; or

(k) any Relief (other than a Purchaser’s Relief) is available, or is for no consideration made available by a Seller, to any of the Target Companies to set against or otherwise reduce or eliminate the Tax Liability; or

(l) the Tax Liability would not have arisen but for:

(i) the making of a claim, election, surrender or disclaimer, the giving of a notice or consent, or the doing of any other thing under the provisions of any enactment or regulation relating to Tax, in each case after the relevant Closing and by the Purchaser, any Target Company or any person connected with any of them and otherwise than as legally required or at the direction of the Sellers pursuant to paragraph 9; or

(ii) the failure or omission on the part of any Target Company after the relevant Closing (otherwise than at the direction of the Sellers pursuant to paragraph 9) to make any such valid claim, election, surrender or disclaimer, or to give any such notice or consent or to do any other such thing, either as the Sellers may require in respect of periods or matters for which the Sellers have conduct under paragraph 9 or, in circumstances where the making, giving or doing of which was taken into account in the preparation of the Adjustment Statements; or

(m) the Tax Liability is a liability to Tax comprising interest, penalties, charges or costs in so far as attributable to the unreasonable delay or default of the Purchaser or any Target Company after the relevant Closing; or

(n) the Tax Liability arises as a result of the sale of an asset or as a result of any other Event (including the expiry of a time period) which causes the crystallisation of a profit or gain by the Purchaser or any Target Company, or any other person connected with any of them, at any time after the relevant Closing; or

(o) the Tax Liability arises directly in respect of or in consequence of Leakage (in which case, for the avoidance of doubt, Clause 3 (No Leakage Undertaking) shall apply).

3.2 The Sellers shall have no liability to the Purchaser under any part of this Agreement in respect of any non-availability, inability to use, or loss or restriction of any Relief (failure of Relief) where such failure of Relief does not give rise to a Tax Liability to which paragraph 1 applies.

3.3 The provisions of paragraph 3.1 shall also operate to limit or reduce the liability of the Sellers in respect of claims under the Tax Warranties.
3.4 The provisions of Schedule 5 (Limitations on Liability) to this Agreement shall, to the extent provided for in that Schedule, also apply to limit or reduce the liability of the Sellers under this Part B of this Schedule 7 (Tax) (as well as under the Tax Warranties).

4. Notification of Claims and Conduct of Disputes

4.1 If the Purchaser or any of the Target Companies become aware of any Tax Demand or other matter which could result in a liability for a Seller under Part A or Part B of this Schedule 7 (Tax), the Purchaser shall give notice to the relevant Seller of that Tax Demand or matter (including reasonably sufficient details of such Tax Demand or matter, the due date for any payment and the time limits for any appeal, and so far as practicable the amount involved) as soon as reasonably possible (and in any event by the date which is 10 Business Days after the Purchaser or the Target Company concerned becomes aware of such Tax Demand or matter or, if the applicable time limits or other circumstances would require action prior to such date, the date which is after the date the Purchaser or the Target Company concerned becomes aware and at least one day before the date on which action will be required).

4.2 The Purchaser shall take (or procure that the Target Company concerned shall take) such action as the relevant Seller may reasonably request to avoid, dispute, resist, appeal, compromise or defend any Tax Demand (whether notified by the Purchaser, or being a Tax Demand of which a relevant Seller was already aware), and any adjudication in respect thereof. The relevant Seller shall have the right (if they wish) to control and take over the conduct of any proceedings taken in connection with such action (in which event the relevant Seller shall procure that: (a) the Purchaser receives copies of all written correspondence with any Tax Authority insofar as it is relevant to the Tax Demand; and (b) no Tax Return is submitted to any Tax Authority which is not, so far as the Sellers are aware, true and accurate in all material respects, and not misleading). The relevant Seller shall in any event be kept fully informed by the Purchaser of any actual or proposed developments (including any meetings) and shall be provided with copies of all material correspondence and documentation relating to such Tax Demand, matter or action, and such other information, assistance and access to records and personnel as it reasonably requires.

4.3 The relevant Seller shall reimburse to the Purchaser its reasonable out-of-pocket costs and expenses incurred in connection with any such action or proceedings as are referred to in paragraph 4.2.

4.4 The Purchaser shall procure that no Tax Demand, action or issue in respect of which a Seller could be required to make a payment under this Schedule 7 (Tax) is settled, agreed or otherwise compromised without that Seller’s prior written consent, such consent not to be unreasonably withheld. The Purchaser shall, and shall procure that each Target Company and any of their respective advisers shall, not submit any correspondence or return or send any other document to any Tax Authority where the Purchaser or any such person is aware or could reasonably be expected to be aware that the effect of submitting such correspondence or return or sending such document would or could be to put such Tax Authority on notice of any matter which could give rise to, or could increase, a claim under this Schedule 7 (Tax), without first affording the relevant Seller a reasonable opportunity to comment thereon and incorporating the relevant Seller’s reasonable comments (and the Purchaser shall notify the relevant Seller at least ten Business Days prior to the submission or sending of the relevant
document if the Purchaser considers that any of the Sellers’ comments are not reasonable).

5. **Due date of payment and interest**

5.1 Subject to paragraph 5.2, the relevant Seller shall pay to the Purchaser any amount payable under this Part B of this Schedule 7 (Tax) on or before the date which is the later of the date 10 Business Days after demand is made therefor by the Purchaser and two Business Days before the first date on which the Tax in question becomes recoverable by the Tax Authority demanding the same, provided that:

(a) if the date on which the Tax can be recovered is deferred following application to the relevant Tax Authority or by direction of the tribunal or courts, the date for payment by the relevant Seller shall be two Business Days before such later date when the amount of Tax is finally and conclusively determined (and for this purpose, an amount of Tax shall be deemed to be finally determined when, in respect of such amount, a formal and binding written agreement is made with the relevant Tax Authority, or a decision of a court or tribunal is pronounced given or any binding agreement or determination is made, from which either no appeal lies or in respect of which no appeal is made within the prescribed time limit); and

(b) if a payment or payments to the relevant Tax Authority prior to the date otherwise specified by this paragraph would avoid or minimise interest or penalties, the relevant Seller may at its option pay the whole or part of the amount due to the Purchaser on an earlier date or dates, and the Purchaser shall procure that the Tax in question (or the appropriate part of it) is promptly paid to the relevant Tax Authority.

The relevant Seller may, with the Purchaser’s consent, not to be unreasonably withheld or delayed, make a direct payment in respect of the Tax Liability in question to the relevant Tax Authority (including through use of certificates of tax deposit or the equivalent) and that Seller’s liability to the Purchaser shall be treated as reduced or eliminated accordingly.

5.2 Where a claim under this Part B of this Schedule 7 (Tax) relates to the use, set off or loss of a Purchaser’s Relief other than a repayment of Tax, credit or other amount payable by a Tax Authority, the relevant Seller shall pay to the Purchaser the amount due under this Part B of this Schedule 7 (Tax) in respect thereof on the later of the date which is two Business Days before the first date on which Tax becomes recoverable by the Tax Authority demanding the same, being Tax which would not have been payable but for such use, set off or loss, and ten Business Days after demand is made therefor by the Purchaser, such demand to be accompanied by a copy of a certificate from the auditors of the Purchaser or the Target Company concerned (obtained or procured to be obtained by and at the expense of the Purchaser) that the relevant Seller has a liability of a stated amount in respect of such claim and that Tax has, or will on a specified date, become recoverable as aforesaid, and by reasonably sufficient evidence of such use, set off or loss and of such Tax Liability.

5.3 Where a claim under this Part B of this Schedule 7 (Tax) relates to the use, set off or loss of a repayment of Tax, credit or other amount payable by a Tax Authority, the relevant Seller shall pay to the Purchaser the amount due under this Part B of this Schedule 7 (Tax) in respect thereof on the later of the date which is the date when such
payment would have been due from the Tax Authority were it not for such use, setting off or loss, and ten Business Days after demand is made therefor by the Purchaser.

5.4 Any sum not paid by or on behalf of the relevant Seller on the due date for payment specified in paragraph 5.1 or 5.2 shall bear Default Interest (which shall accrue from day to day after as well as before any judgment for the same) from, but excluding, the due date to, and including, the date of actual payment calculated on a daily basis, provided that such interest shall not accrue to the extent that the relevant Seller’s liability under paragraph 1 or paragraph 2 extends to interest or penalties arising after the due date. Any interest due under this paragraph shall be paid on the demand of the Purchaser on or following the date of payment of such sum.

6. **Overprovisions and Savings**

6.1 The Sellers may require the auditors for the time being of any relevant Target Company to certify, at the Sellers’ request and expense, the existence and amount of any Overprovision or Saving and the Purchaser shall provide, or procure that each Target Company provides, any information or assistance required for the purpose of production by the auditors of a certificate to that effect.

6.2 Subject to paragraph 6.4:

(a) any Overprovision or Saving shall first be set against any payment then due from either Seller under this Agreement; and

(b) to the extent there is an excess, a payment shall promptly be made to the Sellers equal to the aggregate of any payment or payments previously made by either Seller under this Agreement (and not previously refunded under this Agreement) up to the amount of the excess (any remaining excess being carried forward to offset any further payment that may become due from either Seller under this Agreement).

6.3 Either the Sellers or the Purchaser may, at its expense, require any certificate produced in accordance with paragraph 6.1 to be reviewed by the auditors for the time being of any relevant Target Company in the event that there are relevant circumstances or facts of which it was not aware, and which were not taken into account, at the time when such certificate was produced, and to certify whether the certificate remains correct or whether it should be amended.

6.4 If following a request under paragraph 6.1 the certificate is amended, the revised amount of Overprovision or Saving shall be substituted for the purposes of paragraph 6.2, and any adjusting payment that is required shall be made forthwith.

6.5 For the purposes of this paragraph, any Overprovision or Saving shall be determined without regard to any Tax Refund to which paragraph 7 applies or any payment or Relief to which paragraph 8 applies.

7. **Tax Refunds**

7.1 The Purchaser shall promptly notify the Sellers of any right to receive or actual receipt of any amount by way of repayment of Tax or interest or fees on overpaid Tax or repayment supplement, being an amount to which any Target Company is or becomes entitled or receives in respect of an Event occurring or period (or part period) falling
on or prior to the relevant Closing Date where or to the extent that such amount: (i) was not included in an Adjustment Statement as an asset, (ii) does not arise from the use of a Purchaser’s Relief and (iii) is not a payment or Relief to which paragraph 8 applies (a Tax Refund). The Purchaser shall take (or shall procure that the Target Company concerned takes) such action as the Sellers may reasonably request to obtain such Tax Refund (keeping the Sellers fully informed of the progress of any action taken and providing it with copies of all relevant correspondence and documentation).

7.2 Any Tax Refund actually obtained after the February 2020 Statutory Accounts Date, whether by repayment or set off (less any reasonable costs of obtaining it and less any Tax actually suffered thereon) shall be dealt with as follows:

(a) the amount of the Tax Refund shall be set against any payment then due from either Seller under this Schedule 7 (Tax); and

(b) to the extent that there is an excess, a payment shall promptly be made to the Sellers equal to the amount of such excess.

7.3 Paragraph 8.4 shall apply in respect of any sum payable to the Sellers under this paragraph 7 which is not paid within five Business Days of the relevant Tax Refund being obtained by the Target Company concerned (the due date) as it applies to any sum not paid by the Purchaser on the due date of payment specified in paragraph 8.2.

8. Recovery from Third Parties/Tax Savings following a claim

8.1 If any payment is made by either Seller under this Schedule 7 (Tax) in respect of a Tax Liability or other matter and the Purchaser or any Target Company (or any person connected with any of them) either receives, or is entitled or may be entitled either immediately or at some future date to recover or obtain, from any person (other than the Purchaser or any Target Company or any such connected person) a payment or Relief which would not have arisen but for the Tax Liability or other matter in question or the circumstances giving rise thereto (including without limitation in circumstances where a Tax Liability arises because a deduction or other Relief assumed to be available in preparing the Adjustment Statements is in fact available only in a subsequent period or periods), then:

(a) the Purchaser shall notify the Sellers of that fact as soon as possible and if so required by the Sellers shall take (or shall procure that the Target Company or other person concerned shall take) at the cost of the Sellers such action as the Sellers may reasonably request to enforce such recovery or to obtain such payment or Relief (keeping the Sellers fully informed of the progress of any action taken and providing it with copies of all relevant correspondence and documentation); and

(b) if the Purchaser, the Target Company or other person concerned receives or obtains such a payment or Relief, the Purchaser shall pay to the relevant Seller the amount received or the amount that the Purchaser, the Target Company or other person concerned saves by virtue of the payment or the Relief (less any reasonable costs of recovering or obtaining such payment or Relief and any Tax actually suffered thereon) (the Benefit) to the extent (subject to the circumstances below) that the amount of the Benefit does not exceed the aggregate payments previously made by the Sellers under this Schedule 7 (Tax)
(and not previously refunded under this Schedule 7 (Tax)), and except where any amount so saved would otherwise have given rise to a claim under this Schedule 7 (Tax) (in which event no such claim shall be made save that where the Benefit represents a refund of amounts paid in respect of Tax in the course of any Tax proceedings if the amount received by the Purchaser or the Target Company or other person concerned includes an amount in respect of interest such amount shall also be payable to the relevant Seller). Any amount of the Benefit not so paid to a Seller shall be carried forward and set off against any future claims under this Schedule 7 (Tax).

8.2 Any payment required to be made by the Purchaser pursuant to paragraph 8.1 shall be made:

(a) in a case where the Purchaser, the Target Company or other person concerned receives a payment, within five Business Days of the receipt thereof; and

(b) in a case where the Purchaser, the Target Company or other person concerned obtains a Relief, on or before the date on which Tax would have become recoverable by the appropriate Tax Authority but for the use of such Relief.

8.3 The Purchaser shall procure that any such Relief as is referred to in paragraph 8.2(b) is used in priority to any other Relief, and in the absence of evidence to the contrary it shall be deemed to be so used. The Sellers shall be entitled to require that the Target Company’s or other person’s auditors shall certify the amount and date of use of such Relief for the purposes of this paragraph 8.

8.4 Any sum not paid by the Purchaser on the due date of payment specified in paragraph 8.2 shall bear Default Interest (which shall accrue from day to day after as well as before any judgment for the same) from, but excluding, the due date to, and including, the date of actual payment calculated on a daily basis. Such interest shall be paid on the demand of the Sellers.

9. Management of Tax Affairs

9.1 Interpretation. In this paragraph 9 and in paragraph 10:

**Pre-Closing Tax Affairs** means the Tax affairs of the Target Companies relating to any Accounting Period ending before the relevant Closing and any Straddle Period;

**Straddle Period** means any Accounting Period commencing prior to the relevant Closing and ending after the relevant Closing;

**Tax Documents** means any Tax Returns, claims and other documents relating to Pre-Closing Tax Affairs; and

**Time Limit** means the latest date on which a Tax Document can be executed or delivered to a relevant Tax Authority either without incurring interest or a penalty, or in order to ensure that such Tax Document is effective.

**Obligations of the Purchaser**

9.2 Subject to paragraph 4 and subject to the following sub paragraphs of this paragraph 9, the Purchaser or its duly authorised agents shall have sole conduct of all Tax affairs of each of the Target Companies and shall be entitled to deal with such Tax affairs in any
way in which it, in its absolute discretion, considers fit provided that the Purchaser shall ensure that all such Tax affairs relating to periods prior to the relevant Closing are dealt with in an expeditious manner.

9.3 The Purchaser shall procure that:

(a) the Tax Returns of each Target Company relating to Pre-Closing Tax Affairs not prepared prior to the relevant Closing shall be prepared on a basis which is consistent with the manner in which those Tax Returns were prepared for all Accounting Periods ending prior to the relevant Closing, except such changes in the preparation basis are required to comply with the applicable law (including tax laws) or published guidelines issued by any Tax Authority or Governmental Entity;

(b) the Sellers are kept fully informed of the progress of all material matters relating to the Pre-Closing Tax Affairs;

(c) the Sellers promptly receive copies of all material written correspondence with any Tax Authority insofar as it is relevant to the Pre-Closing Tax Affairs;

(d) no Tax Document is submitted to any Tax Authority which is not, so far as the Purchaser is aware, complete, true and accurate in all material respects, and not misleading;

(e) the Target Companies provide to the Sellers all Tax Returns for Corporate Income Tax purposes relating to Pre-Closing Tax Affairs no later than 45 Business Days before the date on which such Tax Returns are required to be filed with the appropriate Tax Authority without incurring interest or penalties (save in respect of half year corporate income tax returns in Thailand where they shall be provided no later than 20 Business Days before such date) and that the Target Companies shall take the Sellers’ reasonable comments into account before such Tax Returns are submitted to the appropriate Tax Authority; and

(f) the Sellers and their duly authorised agents are afforded at their cost such access (including the taking of copies) to the books, accounts and records of the Target Companies and such other assistance as it or they reasonably require to enable the Sellers and any member of the Retained Group to exercise its rights under this Schedule (Tax) or to comply with its own Tax obligations or facilitate the management or settlement of its own Tax affairs.

9.4 The Sellers shall provide such assistance as the Purchaser shall reasonably request in preparing all Tax Returns relating to the Pre-Closing Tax Affairs.

9.5 The Purchaser shall not change the accounting reference date of any Target Company in respect of any period ending on or before the relevant Closing or the Straddle Period.

9.6 Notwithstanding the provisions of this paragraph 9, the Purchaser shall not, and shall procure that none of the Target Companies shall, without the written consent not to be unreasonably withheld or delayed of the Sellers, take any action under the provisions of any enactment or regulation relating to Tax if the Purchaser is aware or ought reasonably to have been aware that such action would adversely affect or be reasonably likely to adversely affect the liability of either Seller under this Schedule (Tax) or the
Tax position of any members of the Retained Group, except taking any action reasonably necessary in order to comply with the Tax laws or published guidelines issued by the Tax Authority or Governmental Entity.

10. Transfer Pricing

10.1 In this paragraph 10.1:

**Balancing Payment** means a payment made by a person to whom a Compensating Adjustment is available to a person who has suffered the Transfer Pricing Adjustment to which the Compensating Adjustment relates;

**Compensating Adjustment** means any Relief available to a person as a consequence of a Transfer Pricing Adjustment made in respect of another person;

**Transfer Pricing Adjustment** means the computation of profits or losses for Tax purposes in relation to any transaction or series of transactions on a basis which substitutes arm’s length terms for the actual terms agreed.

10.2 If and to the extent that the Sellers become liable to make a payment under paragraph 1 in respect of a Tax Liability which arises as a result of a Transfer Pricing Adjustment:

(a) paragraph 8 shall apply (for the avoidance of doubt) in relation to any Compensating Adjustment that may be available to any Target Company and the Sellers shall be entitled to set off amounts due under paragraphs 5 and 8 in relation to such matters, rather than being required first to make a payment in respect of the Tax Liability in question, to the extent that a payment is obtained or Tax is saved in respect of the same period as the period in respect of which the Transfer Pricing Adjustment applies;

(b) if and to the extent that any member of the Retained Group is or may be entitled to claim a Compensating Adjustment, the Sellers may procure that such Retained Group member makes a Balancing Payment to the Target Company in question, and such payment shall (to the extent of the amount paid) be deemed to satisfy the liability of the Sellers under paragraphs 1 and 5.

10.3 The Purchaser and Seller agree that:

(a) in respect of any Transfer Pricing Adjustment applying to any Target Company which could result in a Compensating Adjustment being available to any member of the Retained Group; and

(b) in respect of any Transfer Pricing Adjustment applying to any member of the Retained Group which could result in a Compensating Adjustment being available to any Target Company;

they each shall take, and shall procure that there are taken, (at the other party’s cost) such steps (including claims, elections, consents, the provision of information or otherwise) as the other party may reasonably request to claim the benefit of the Compensating Adjustment, and shall keep the other party fully informed of the progress of such steps (including providing it with copies of all relevant correspondence and documentation).
10.4 If and to the extent that a member of the Retained Group has or may have an increased liability to Tax as a result of a Transfer Pricing Adjustment in respect of which any Target Company is able to claim a Compensating Adjustment, then:

(a) the Purchaser shall, if the Sellers so request, procure that the Target Company in question claims the Compensating Adjustment; and

(b) if the Target Company (or any person connected with it) receives or obtains a payment or Relief which comprises or would not have arisen but for such Compensating Adjustment, the Purchaser shall pay to the Sellers the amount received or the amount that the person concerned saves by virtue of the payment or Relief (less any reasonable costs of recovering or obtaining such payment or Relief not already reimbursed and any Tax actually suffered thereon), except where any amount so saved would otherwise have given rise to a claim under this Schedule (Tax) (in which event no such claim shall be made).

10.5 Paragraphs 8.2, 8.3 and 8.4 shall apply in relation to paragraph 10.4 as they apply in relation to paragraph 8.1.

10.6 Paragraph 10.4 shall not apply to the extent that the Target Company in question makes a Balancing Payment to the member of the Retained Group in question in the amount (including any interest) that would otherwise be due to the Sellers under paragraph 10.4.

Part C : Withholdings, gross-up and VAT

1. Withholdings and gross-up

Withholdings

1.1 Subject to paragraphs 3 and 4 of this Part C of this Schedule (Tax), all sums payable under this Agreement or for breach of any of the Warranties shall be paid free and clear of all deductions or withholdings whatsoever save only as provided in this Agreement or as required by law.

Gross-up

1.2 If any deduction or withholding is required by law from any payment in respect of a Seller Obligation or a Purchaser Obligation then, except in relation to interest, the payer shall pay the payee such additional amount as will, after such deduction or withholding has been made, leave the payee with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

1.3 If any sum paid in respect of a Seller Obligation or a Purchaser Obligation is required by law to be brought into charge to Tax by the Purchaser or Seller respectively then, except in relation to interest, the payer shall pay such additional amount as shall be required to ensure that the total amount paid, less the Tax chargeable on such amount, is equal to the amount that would otherwise be payable.

1.4 To the extent that any deduction, withholding or Tax in respect of which an additional amount has been paid under paragraphs 1.2 or 1.3 of this Part C of this Schedule (Tax) results in the payee obtaining a Relief (all reasonable endeavours having been used to
obtain such Relief), the payee shall pay to the payer, within ten Business Days of obtaining the benefit of the Relief, an amount equal to the lesser of the value of the Relief obtained and the additional sum paid under paragraphs 1.2 or 1.3 of this Part C of this Schedule (Tax).

1.5 Paragraphs 1.2 or 1.3 of this Part C of this Schedule (Tax) shall not apply to the extent that the deduction, withholding or Tax would not have arisen but for:

(a) the payee not being tax resident in, or having some connection with a territory outside:

(i) where the payee is the Purchaser, Thailand;

(ii) where the payee is the Toucan Seller, the United Kingdom;

(iii) where the payee is the Macaw Seller, the Netherlands;

(b) a change in law after the date of this Agreement; or

(c) an assignment by the payee of any of its rights under this Agreement.

2. VAT

2.1 Any sum payable by the Purchaser to a Seller under or pursuant to this Agreement is exclusive of any applicable VAT. If any supply is treated as made for VAT purposes by a Seller under or pursuant to this Agreement and a Seller or an Affiliate of a Seller is required to account for VAT in respect of that supply, the Purchaser shall, subject to the receipt of a valid VAT invoice, pay to that Seller (in addition to, and at the same time as, any other consideration for that supply) an amount equal to such VAT.

2.2 If any party (the Paying Party) is required by this Agreement to reimburse another party (the Payee Party) for any Cost, the Paying Party shall also reimburse the Payee Party for any VAT incurred by the Payee Party (or any of its Affiliates) in respect of that Cost, except to the extent that the Payee Party (or its Affiliate) is entitled to Relief in respect of that VAT.

3. Macaw Withholding

3.1 The Purchaser shall not withhold more than an amount in USD equal, using the Macaw WHT Exchange Rate two Business Days prior to the date of Macaw Closing, to the Macaw WHT Payment from the payment, in accordance with Clause 2.4 and paragraph 2 of Part B of Schedule 3 (Closing Arrangements), of the Macaw Share Price payable at Macaw Closing.

3.2 The Purchaser shall pay the Macaw WHT Payment (as the Retention Sum), to the MIRB within 60 days after the Macaw WHT Disposal Date or, where an extension for payment has been granted by the MIRB, by such later date (the Macaw WHT Deadline) and shall promptly provide the Macaw Seller with a certified copy of the payment receipt from the MIRB in respect of the Macaw WHT Payment.

3.3 The Macaw Seller and Purchaser shall each file its respective RPGT return, together with the relevant supporting documents, to the MIRB on or before the Macaw WHT Deadline. The Purchaser shall provide in its RPGT filing that the purchase consideration for the THBV Macaw Shares is equal to the Macaw Share Price and that
the amount withheld from payment of the Macaw Share Price is the Macaw WHT Payment (and, if applicable, any Additional Macaw WHT Payment). The Purchaser shall provide a draft of its RPGT filing to the Macaw Seller 25 Business Days before the Macaw WHT Deadline and amend such filing for any reasonable comments of the Macaw Seller provided 5 Business Days before the Macaw WHT Deadline.

3.4 If Closing occurs and the Macaw WHT Payment (and, if applicable, any Additional Macaw WHT Payment) exceeds the amount of RPGT the Macaw Seller (acting reasonably) considers chargeable on the Macaw Sale, the Purchaser shall at the cost of the Macaw Seller offer reasonable assistance and co-operation to the Macaw Seller in relation to obtaining a refund of such overpayment, including providing access to information and personnel as requested by the Macaw Seller, and making any such filings or requests as may reasonably be required by the Macaw Seller.

3.5 If Closing does not occur and the Purchaser has made a payment under paragraph 3.2 of this Part C of this Schedule (Tax), the Macaw Seller shall offer reasonable assistance and co-operation to the Purchaser in relation to obtaining a refund of such amount, including providing access to information and personnel as requested by the Purchaser, negotiating and signing a revocation letter in suitable form for this purpose in relation to this Agreement and providing certified copies of the Macaw Seller’s RPGT filing.

3.6 The Purchaser will not make any filing or take any action which is inconsistent with the principle that the amount to be withheld from the Macaw Share Price in accordance with the laws of Macaw (being the Retention Sum) is no greater than the Macaw WHT Payment (and, if applicable, any Additional Macaw WHT Payment) and will not take any action which might reasonably be expected to adversely affect the Macaw Seller’s RPGT liability in respect of the Proposed Transaction.

3.7 If the Purchaser is required to make a payment to the Macaw Seller under paragraph 4 of Part D of Schedule 9 (Financial Adjustments), the Purchaser shall (i) not withhold from such payment more than an amount in USD equal, using the Macaw WHT Exchange Rate two Business Days prior to the date of such payment, to the Additional Macaw WHT Payment and (ii) shall pay the Additional Macaw WHT Payment to the MIRB within 60 days after the Macaw WHT Disposal Date or as soon as is reasonably practicable if the payment under paragraph 4 of Part D of Schedule 9 (Financial Adjustments) is made more than 60 days after the Macaw WHT Disposal Date.

3.8 In this paragraph 3:

*Additional Macaw WHT Payment* means the MYR amount calculated by converting the USD amount equal to 7% of the payment by the Purchaser to the Macaw Seller under paragraph 4 of Part D of Schedule 9 (Financial Adjustments) into MYR using the Macaw Central Bank official rate on the Macaw WHT Disposal Date, provided that, if the CKHT3 form is provided by the Macaw Seller to the Purchaser in respect of the Macaw Sale, the Additional Macaw WHT Payment shall be zero;

*Macaw WHT Deadline* has the meaning given in paragraph 3.2 of this Part C of this Schedule 7 (Tax);

*Macaw WHT Disposal Date* means the date the MDTCA Condition is fulfilled;

*Macaw WHT Exchange Rate* means the spot rate of exchange (the closing mid-point) for MYR into USD on such date as published in the London edition of the Financial
Times first published thereafter or, where no such rate is published in respect of that currency for such date, at the rate quoted by Barclays Bank plc as at the close of business in London on such date;

**Macaw WHT Payment** means that MYR amount calculated by converting the USD amount equal to 7% of the Macaw Share Price (assuming for the purpose of this definition only that the Macaw Adjustment Amount is zero) into MYR using the Macaw Central Bank official rate on the Macaw WHT Disposal Date, provided that, if the CKHT 3 form is provided by the Macaw Seller to the Purchaser in respect of the Macaw Sale, the Macaw WHT Payment shall be zero;

**MIRB** means the Inland Revenue Board of Malaysia;

**MYR** means the lawful currency from time to time of Malaysia; and

**Retention Sum** means the retention sum within the meaning of Section 21B of the Real Property Gains Tax Act 1976 (Act 169) in respect of the sale of the THBV Macaw Shares.

4. **Toucan Withholding**

4.1 The Purchaser shall not withhold any amount from the payment, in accordance with Clause 2.3 and paragraph 1 of Part B of Schedule 3 (*Closing Arrangements*), of the Toucan Share Price.

### Part D Definitions and interpretation

1. **Definitions**

1.1 In this Schedule 7 (*Tax*) the following definitions shall have the following meanings:

- **Accounting Period** means any period by reference to which any income, profits or gains, or any other amounts relevant for the purposes of Tax, are measured or determined;

- **Actual Macaw Tax Liability** means a liability of the Macaw Target to make or suffer an actual payment of Tax;

- **Actual Toucan Tax Liability** means a liability of any Toucan Target Company to make or suffer an actual payment of Tax;

- **Corporate Income Tax** means corporate income tax and local income tax borne by any company or other juridical entity in respect of income, profits or gains;

- **Deemed Tax Liability** means:

  (a) the use or set off of any Purchaser’s Relief in circumstances where, but for such use or set off, any Toucan Target Company would have had an Actual Toucan Tax Liability in respect of which the Purchaser would have been able to make a claim against a Seller under Part B of this Schedule 7 (*Tax*) or the Macaw Target would have had an Actual Macaw Tax Liability in respect of which the Purchaser would have been able to make a claim against a Seller under Part B of this Schedule 7 (*Tax*) (in each case, the amount of the Tax Liability for these purposes being deemed to be equal to the lesser of: (i) the amount of the Tax that is actually saved by the use or set off of the Purchaser’s Relief; (ii) the
amount of Tax which is actually payable by the Purchaser Group that would not have been payable but for that use or set off; or (iii) where the Purchaser’s Relief was included in the relevant Adjustment Statement as an asset, the value of that asset in the relevant Adjustment Statement); provided that for the purposes of Part B of this Schedule 7 (Tax) it shall be assumed that Reliefs other than any Purchaser’s Relief are, to the extent allowed by law, used in priority to any Purchaser’s Relief, and if it cannot be determined whether a Purchaser’s Relief or another Relief is so used, it shall be assumed that another Relief is used in priority to any Purchaser’s Relief; or

(b) the loss of any Relief falling within paragraph (iv) of the definition of Purchaser’s Relief (in this case, the amount of the Tax Liability for these purposes being deemed to be equal to the lesser of: (i) the amount of Tax which but for such loss would have been saved by virtue of the Relief so lost; (ii) where the Purchaser’s Relief that is the subject of the loss is a repayment of Tax, credit or other amount payable by a Tax Authority, the Tax Liability shall be the amount that would have been obtained but for that loss; or (iii) the value of the relevant Purchaser’s Relief in the relevant Adjustment Statement);

Event means any act, transaction or omission;

Overprovision means, applying the accounting policies, principles and practices adopted in relation to the preparation of the Adjustment Statements (and ignoring the effect of any change in law (or a change in interpretation on the basis of case law), regulation, directive or requirement, or the practice of any Tax Authority made after the date of this Agreement or action taken by the Purchaser or any Target Company after the relevant Closing, or any Relief arising to the Toucan Target Companies or Macaw Target (as applicable) after the relevant Closing), the amount by which any contingency or provision in the relevant Adjustment Statement relating to Tax, other than deferred tax, is overstated;

Purchaser’s Group means the Purchaser and any other company or companies which either are or become after Closing, or have within the six years ending at Closing been, treated as members of the same group as, or otherwise connected or associated in any way with, the Purchaser for any Tax purpose;

Purchaser’s Relief means:

(a) any Relief arising to any Target Company to the extent that it: (i) arises in respect of an Event occurring or period (or part period) commencing after the Toucan Closing or Macaw Closing (as applicable); (ii) arises in respect of losses occurring in the ordinary course of business of the Target Company in the period (or part period) commencing after the February 2020 Statutory Accounts Date but ending on or before Toucan Closing or Macaw Closing (as applicable); (iii) arises in respect of an Event occurring in the ordinary course of business of the Target Company after the February 2020 Statutory Accounts Date but on or before Toucan Closing or Macaw Closing (as applicable); or (iv) was included in the relevant Adjustment Statement as an asset; or

(b) any Relief arising to any member of the Purchaser’s Group (other than any Target Company);

Relevant Period means the three year period prior to the date of this Agreement;
**Relief** includes, unless the context otherwise requires, any allowance, credit, deduction, exemption or set off in respect of any Tax or relevant to the computation of any income, profits or gains for the purposes of any Tax, or any right to or actual repayment of or saving of Tax (including any repayment supplement, fee or interest in respect of Tax) or any credit or other amount payable or paid by a Tax Authority and any reference to the use or set off of Relief shall be construed accordingly;

**Retained Group** means the Sellers and any other company or companies (other than any Target Company) which either are or become after the relevant Closing, or have within the six years ending at the relevant Closing been, treated as members of the same group as, or otherwise connected or associated in any way with either Seller or any other member of the Seller Group for any Tax purpose;

**RPGT** means Real Property Gains Tax under the Real Property Gains Tax Act 1976 (Act 169) & Orders;

**Saving** means an amount of Tax which is not Tax in respect of which a claim could otherwise have been made under paragraph 1 of Part B of this Schedule 7 (Tax) and which is saved by a Target Company or another member of the Purchaser’s Group as a result of the use or set off of a Relief which is not a Purchaser’s Relief and which arises to a Target Company in respect of an event occurring or period falling on or before the relevant Closing, provided that no such saving shall be treated as having been made unless Tax would have been payable by a member of the Purchaser’s Group in the absence of the Relief in question;

**Tax or Taxation** means (a) taxes on income, profits and gains, and (b) all other taxes, levies, duties, imposts, charges and withholdings in the nature of taxation, including any excise, property, real property gains, value added, sales, service, transfer, franchise and payroll taxes, monthly tax deductions, specific business tax (*Potongan Jadual Bercukai*), import and customs duties, stamp duty and any national insurance or social security contributions, together with all penalties, charges, fees and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them (save insofar as attributable to the delay or default after the relevant Closing of any Target Company or the Purchaser);

**Tax Authority** means any taxing or other authority competent to impose any tax liability or assess or collect any tax;

**Tax Demand** means:

(a) the issue of any notice, demand, assessment, letter or other document by or on behalf of any Tax Authority or the taking of any other action by or on behalf of any Tax Authority (including the imposition, or any document referring to the possible imposition, of any withholding of or on account of Tax); or

(b) the preparation or submission of any notice, return, assessment, letter or other document by the Purchaser, any Target Company, or any other person, from which it appears that a Tax Liability may be incurred by or may be imposed on any Target Company, being a Tax Liability which could give rise to a liability for a Seller under Part A or Part B of this Schedule 7 (Tax) (whether alone or in conjunction with other Claims);

**Tax Liability** means an Actual Macaw Tax Liability, Actual Toucan Tax Liability or a Deemed Tax Liability; and
**Tax Return** means any return required to be made to any Tax Authority of income, profits or gains or of any other amounts or information relevant for the purposes of Tax, including any related accounts, computations and attachments.

2. **Interpretation**

2.1 General. In this Schedule 7 (Tax):

(a) persons shall be treated as connected if they are Affiliates;

(b) references to claims, liabilities or payments under this Schedule 7 (Tax) shall include, for the avoidance of doubt, claims, liabilities and payments in respect of a breach of any of the Tax Warranties; and

(c) references to the relevant Closing shall mean in respect of Toucan Target Companies, the Toucan Closing and in respect of the Macaw Target, the Macaw Closing.

2.2 Part B: deemed end of Accounting Period. In Part B of this Schedule 7 (Tax):

(a) for the purposes of determining whether:

(i) a Tax Liability or Relief has arisen, or

(ii) any Target Company is or becomes entitled to a right to repayment or receives an actual repayment of Tax

in either case, in respect of a period ended on or before a particular date or in respect of a period commencing after a particular date, an Accounting Period of the Target Company concerned shall be deemed to have ended on the particular date; and

(b) for the purposes of determining whether:

(i) any income, profits or gains have been earned, accrued or received, or

(ii) an Event has occurred

in either case, on or before a particular date or after a particular date, an Accounting Period of the Target Company concerned shall be deemed to have ended on the particular date.

2.3 Part B: paragraph references. References in Part B of this Schedule 7 (Tax) to paragraphs are, unless otherwise stated, references to paragraphs in Part B.
Schedule 8
Inter-Company Debt

Inter-Company Trading Debt

1. In relation to Inter-Company Trading Debt:
   (a) the Purchaser shall procure that:
       (i) any Toucan Inter-Company Trading Debt which is owed by any Toucan Target Company is paid to the relevant member of the Seller Group within 30 days after the Toucan Closing Date (or within such other period agreed by the Toucan Seller and the Purchaser); and
       (ii) any Macaw Inter-Company Trading Debt which is owed by the Macaw Target is paid to the relevant member of the Seller Group within 30 days after the Macaw Closing Date (or within such other period agreed by the Macaw Seller and the Purchaser);
   (b) the Toucan Seller shall procure that any Toucan Inter-Company Trading Debt which is owed by any member of the Seller Group is paid to the relevant Toucan Target Company within 30 days after the Toucan Closing Date (or within such other period agreed by the Toucan Seller and the Purchaser); and
   (c) the Macaw Seller shall procure that any Macaw Inter-Company Trading Debt which is owed by any member of the Seller Group is paid to the Macaw Target within 30 days after the Macaw Closing Date (or within such other period agreed by the Macaw Seller and the Purchaser).

Payment at Closing of Inter-Company Loan Amounts

2. Not less than three (3) Business Days before the Relevant Closing Date, the relevant Seller shall notify the Purchaser of the Inter-Company Loan Payables and the Inter-Company Loan Receivables, as at the Relevant Closing Date, in each case specifying the relevant debtor, creditor and currency in respect of each Inter-Company Loan Payable and Inter-Company Loan Receivable.

3. In relation to Inter-Company Loan Amounts:
   (a) the Purchaser shall procure that, at Toucan Closing, each Toucan Target Company pays to the Toucan Seller (for itself or, as the case may be, as agent for the members of the Seller Group to which the relevant Toucan Inter-Company Loan Payables are owed) an amount in the applicable currency equal to each of the Toucan Inter-Company Loan Payables (if any) of that Toucan Target Company which is owed to any member of the Seller Group;
   (b) the Purchaser shall procure that, at Macaw Closing, the Macaw Target pays to the members of the Seller Group to which the relevant Macaw Inter-Company Loan Payables are owed an amount in the applicable currency equal to each of the Macaw Inter-Company Loan Payables (if any) of the Macaw Target which is owed to any member of the Seller Group;
   (c) the Toucan Seller shall procure that, at Toucan Closing, each relevant member of the Seller Group (being a debtor in respect of Toucan Inter-Company Loan
Receivables) shall pay to the Toucan Target Company to which the relevant Toucan Inter-Company Loan Receivables are owed an amount in the applicable currency equal to the amount owing under the Toucan Inter-Company Loan Receivables to the relevant Toucan Target Company; and

(d) the Macaw Seller shall at Macaw Closing (for itself or, as the case may be, as agent for each relevant member of the Seller Group) pay to the Macaw Target an amount in the applicable currency equal to the Macaw Inter-Company Loan Receivables (if any) of the Macaw Target which is owed by any member of the Seller Group,

in each case as notified in accordance with paragraph 2 of this Schedule 8 (Inter-Company Debt) and the relevant Inter-Company Loan Amount shall be treated as discharged to the extent of that payment.

4. Any payment of an Inter-Company Loan Amount pursuant to paragraph 3 of this Schedule 8 (Inter-Company Debt) shall be deemed to be a payment first, to the extent possible, of all interest accrued on the relevant Inter-Company Loan Amount and thereafter of the relevant principal amount.

Adjusting payment following determination of the Adjustment Amount

5. In the event paragraph 9 of Part C of Schedule 9 (Financial Adjustments) applies, if any Adjustment Amount includes any adjustment to any Inter-Company Loan Amount when compared to the amount paid on the Relevant Closing Date in respect of such Inter-Company Loan Amount in accordance with paragraph 3 of this Schedule, then, within five Business Days after the relevant Adjustment Amount is agreed or determined in accordance with the provision of Schedule 9, the Relevant Seller or the Purchaser, as the case may be, shall procure that the relevant entities in their respective groups make such payments as are necessary to ensure that the Inter-company Loan Amount (as so adjusted) are fully repaid.

Settlement

6. For the avoidance of doubt, any payment made pursuant to this Schedule 8 shall be in the currency of the relevant Inter-Company Trading Debt or Inter-Company Loan Amounts.
Schedule 9
Financial Adjustments

Part A Preliminary

1. In preparing the Adjustment Statements:
   (a) the items and amounts to be included in the calculation of External Debt, Cash, Inter-Company Loan Amounts and Working Capital for the purposes of the Adjustment Statements shall be identified by applying the relevant definition of this Agreement (subject, where applicable, to the provisions of Part A and Part B of this Schedule 9 (Financial Adjustments));

   (b) in applying each such definition and the provisions of Part A and Part B of this Schedule 9 (Financial Adjustments) and determining which items and amounts are to be included in each Adjustment Statement, if and to the extent that the treatment or characterisation of the relevant item or amount or type or category of item or amount:

      (i) is dealt with in the specific accounting treatments set out in Part B of this Schedule (Financial Adjustments) (the Specific Accounting Treatments), the relevant Specific Accounting Treatment(s) shall apply;

      (ii) is not dealt with in the Specific Accounting Treatments but is dealt with in the accounting principles, policies, treatments, practices and categorisations (including in relation to the exercise of accounting discretion and judgement) that were used in the preparation of the FY 19 Group Reporting Balance Sheets (the Accounting Principles), the applicable Accounting Principle(s) shall apply; and

      (iii) is not dealt with in either the Specific Accounting Treatments or the Accounting Principles, IFRS as at 28 February 2019 shall apply.

Part B Specific Accounting Treatments

1. The Adjustment Statements shall be prepared for the Toucan Target Companies (on a consolidated basis) or the Macaw Target as at the close of business on the February 2020 Statutory Accounts Date on a going concern basis. Amounts owed between Toucan Target Companies shall be reconciled and eliminated. The accounts of Tesco Global Employment Co., Ltd. shall be excluded from the Adjustment Statement. Items shall be categorised on a consistent basis with the categorisation of items set out in Part H of this Schedule. The Adjustment Statements shall be in the form set out in Parts F and G of this Schedule.

2. The Adjustment Statements shall exclude the effect of change of control of the Target Group and shall not take account of the intentions or actions of the Purchaser after the Relevant Closing Date.

3. The provisions of this Schedule 9 (Financial Adjustments) shall be interpreted so as to avoid double counting of any item to be included in each of the Adjustment Statements.
4. The Adjustment Statements shall take into account ‘adjusting events’ as defined in IAS 10 ‘Events after the Reporting Period’ up to the relevant date of delivery of the draft Adjustment Statement to the Purchaser in accordance with Clause 4.5 (the Cut-Off Time).

5. Items classified as current assets in the FY 19 Group Reporting Balance Sheets shall not be reclassified to fixed assets in the Adjustment Statements.

6. The Adjustment Statements shall exclude liabilities for the following items:
   (a) contingent liabilities;
   (b) capital commitments;
   (c) onerous contracts;
   (d) litigation provisions;
   (e) environmental provisions;
   (f) dilapidations and asset retirement obligations;
   (g) pension and post retirement obligations;
   (h) liabilities relating to employee stock options;
   (i) bank guarantees; and
   (j) amounts to be borne by the Seller Group.

7. The Adjustment Statements shall exclude any amount in respect of deferred tax (whether as a liability or an asset). For the avoidance of doubt, this exclusion shall not affect any amounts recognised in respect of VAT in Working Capital.

8. IFRS 16 shall be applied in respect of leases in the Adjustment Statement.
   (a) For leases that existed at 28 February 2019 and have not subsequently been amended or lapsed: the assumptions used in the calculation of the IFRS 16 lease assets and liabilities for Tesco group reporting purposes for the year ended 28 February 2019 shall be applied for the preparation of the Adjustment Statements, rolled forward to the February 2020 Statutory Accounts Date.
   (b) For new leases entered into after 28 February 2019 or leases that have been extended or amended after 28 February 2019: the same assumptions and methodologies applied in the calculation of the IFRS 16 lease assets and liabilities for similar leases for Tesco group reporting purposes for the year ended 28 February 2019, shall be applied for the preparation of the Adjustment Statements, rolled forward to the February 2020 Statutory Accounts Date.

9. No additional inventory counts shall be performed at or around the February 2020 Statutory Accounts Date specifically for the purposes of the Adjustment Statement (other than those required by the auditors for year-end audit reporting purposes).

10. External Debt shall include a liability for the Retention Bonus payable by Toucan Target or Macaw Target (as applicable) at or prior to Closing plus associated employer taxes, and net of any associated tax relief.
11. Assets and liabilities of the Toucan Joint Ventures (including the investment in TLGF) shall be excluded from the Adjustment Statements.

12. External Debt shall include a liability for preference shares issued by the Toucan Group or the Macaw Target (as applicable, excluding the THL C Preference Shares) as at the February 2020 Statutory Accounts Date. The liability for the Macaw preference shares to be included in External Debt shall be MYR 282,339,190. The liability for the Toucan preference shares to be included in the External Debt shall be THB 7,400,000.

13. The Adjustment Statements shall exclude liabilities covered by an indemnity from the relevant Seller, other than ordinary course corporate tax creditors in respect of the tax period ended on the February 2020 Statutory Accounts Date (net of ordinary course corporate tax debtors).

14. Toucan property taxes shall be recognised in line with accounting advice received during FY19/20. As a result, payments made in March and April in a calendar year shall be treated as prepayments for the remaining property tax period, and not as payments made in arrears for the previous property tax period.

Part C Adjustment Statements

1. The Adjustment Statements shall show amounts in the local currency of the Toucan Business or the Macaw Business (as applicable) and shall be in the form set out in Part F of this Schedule 9 (Financial Adjustments).

2. The Purchaser shall notify the relevant Seller in writing (an Adjustment Statement Notice) within 20 Business Days after receipt of the Adjustment Statement whether or not it accepts that draft Adjustment Statement for the purposes of this Agreement. If the Purchaser does not accept the Adjustment Statement, an Adjustment Statement Notice shall set out in detail the Purchaser’s reasons for such non-acceptance and specify the adjustments (including monetary amount) which, in the Purchaser’s opinion, should be made to the draft Adjustment Statement in order for it to comply with the requirements of this Agreement. Except for the matters specifically set out in the Adjustment Statement Notice, the Purchaser shall be deemed to have agreed the draft Adjustment Statement in full.

3. If the Purchaser serves an Adjustment Statement Notice in accordance with paragraph 2, stating in that Adjustment Statement Notice that the Purchaser does not accept the Adjustment Statement, the relevant Seller and the Purchaser shall use all reasonable efforts to meet and discuss the objections of the Purchaser and to agree the adjustments (if any) required to be made to the draft Adjustment Statement, in each case within 10 Business Days after receipt by the relevant Seller of the Adjustment Statement Notice.

4. If the Purchaser is satisfied with the draft Adjustment Statement (either as originally submitted or after adjustments agreed between the relevant Seller and the Purchaser pursuant to paragraph 3) or if the Purchaser fails to give a valid Adjustment Statement Notice within the 20 Business Day period referred to in paragraph 2, then the draft Adjustment Statement (incorporating any agreed adjustments) shall constitute the Toucan Adjustment Statement or the Macaw Adjustment Statement (as applicable) for the purposes of this Agreement.
5. If the relevant Seller and the Purchaser do not reach agreement within 10 Business Days after receipt by the relevant Seller of the Adjustment Statement Notice, then the matters in dispute may be referred (on the application of either the relevant Seller or the Purchaser) for determination by such independent firm of chartered accountants of international standing in the UK and with capacity in Thailand and Malaysia as the relevant Seller and the Purchaser shall agree or, failing agreement within 5 days of the relevant Seller and the Purchaser becoming aware of such independent firm being unable or unwilling to act, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales (the Firm). The Firm shall be requested to make its decision within 30 days (or such later date as the relevant Seller, the Purchaser and the Firm agree in writing) of confirmation and acknowledgement by the Firm of its appointment. The following provisions shall apply once the Firm has been appointed:

(a) the relevant Seller and Purchaser shall each prepare a written statement within 20 days after the Firm’s appointment on the matters in dispute which (together with the relevant supporting documents) shall be submitted to the Firm for determination and copied at the same time to the other;

(b) following delivery of their respective submissions, the Purchaser and the relevant Seller shall each have the opportunity to comment once only on the other’s submission by written comment delivered to the Firm not later than 20 Business Days after receipt of the other’s submission and, thereafter, neither the relevant Seller nor the Purchaser shall be entitled to make further statements or submissions except insofar as the Firm so requests (in which case it shall, on each occasion, give the other Party (unless otherwise directed) 10 Business Days to respond to any statements or submission so made);

(c) in giving its determination, the Firm shall state what adjustments (if any) are necessary, solely for the purposes of this Agreement, to the relevant draft Adjustment Statement in respect of the matters in dispute in order to comply with the requirements of this Agreement and to determine finally the relevant Adjustment Statement;

(d) the Firm shall act as an expert (and not as an arbitrator) in making its determination which shall, in the absence of manifest error, be final and binding on the Parties and, without prejudice to any other rights which they may respectively have under this Agreement, the Parties expressly waive, to the extent permitted by law, any rights of recourse they may otherwise have to challenge it.

6. The relevant Seller and the Purchaser shall each be responsible for its own costs in connection with the preparation, review and agreement or determination of the Adjustment Statement. The fees and expenses of the Firm shall be borne equally between the relevant Seller and the Purchaser or in such other proportions as the Firm shall determine.

7. Subject to Clause 4.7 of this Agreement, to enable the Purchaser to exercise its rights under this Schedule 9 (Financial Adjustments), the Sellers shall provide to the Purchaser and its accountants reasonable access to the books and records, employees and premises of the relevant Target Companies for the period from the Toucan
Adjustment Delivery Date or Macaw Adjustment Delivery Date (as applicable) to the date that the relevant draft Adjustment Statement is agreed or determined.

8. When an Adjustment Statement has been agreed or determined in accordance with the preceding paragraphs, then the amounts shown in the relevant Adjustment Statement as the Working Capital, External Debt, Cash and Inter-Company Loan Amounts for each Target Company shall be final and binding for the purposes of this Agreement. The Adjustment Statements shall be prepared in THB (in respect of the Toucan Target Companies) and MYR (in respect of the Macaw Target). The Adjustment Amount calculated in Schedule 9 Part D shall be initially calculated in THB or MYR (as applicable) and shall be translated into USD at the Exchange Rate.

9. The Parties agree that if:

(a) the Toucan Adjustment Amount has not been agreed or determined in accordance with this Part C of Schedule 9 (Financial Adjustments) by the Toucan Unconditional Date, the Toucan Adjustment Amount shall be deemed to be nil for the purposes of calculating the Toucan Share Price payable by the Purchaser at Toucan Closing; and

(b) the Macaw Adjustment Amount has not been agreed or determined in accordance with this Part C of Schedule 9 (Financial Adjustments) by the Macaw Unconditional Date, the Macaw Adjustment Amount shall be deemed to be nil for the purposes of calculating the Macaw Share Price payable by the Purchaser at Macaw Closing,

provided, in each case, the Toucan Adjustment Amount and/or the Macaw Adjustment Amount (as applicable) shall continue to be agreed or determined in accordance with this Part C of Schedule 9 (Financial Adjustments) following the Relevant Closing and a payment shall be made (if required) in accordance with paragraph 3 or 4 of Part D of Schedule 9 (Financial Adjustments) (as applicable).

10. In the event paragraph 9 of this Part C of Schedule 9 (Financial Adjustments) applies, the Purchaser shall:

(a) ensure that the relevant Seller and its accountants shall be given reasonable access to the books and records, employees and premises of the relevant Target Companies for the period from the Relevant Closing Date to the date that the relevant draft Adjustment Statement is agreed or determined; and

(b) permit the relevant Seller and/or its accountants to take copies (including electronic copies) at the cost of the relevant Seller of the relevant books and records and shall provide all assistance reasonably requested by the relevant Seller to facilitate the agreement and determination of the relevant Adjustment Statement.

Part D Adjustment Amounts

Toucan Adjustment Amount

1. The Toucan Adjustment Amount shall be an amount equal to:
(a) the amount of the difference between the Toucan External Debt and the Forecasted Toucan External Debt, and, if the Toucan External Debt is greater than the Forecasted Toucan External Debt, such amount shall be expressed as a negative number (or, if the Toucan External Debt is less than the Forecasted Toucan External Debt, such amount shall be expressed as a positive number); plus

(b) the amount of the difference between the Toucan Cash and the Forecasted Toucan Cash, and, if the Toucan Cash is greater than the Forecasted Toucan Cash, such amount shall be expressed as a positive number (or, if the Toucan Cash is less than the Forecasted Toucan Cash, such amount shall be expressed as a negative number); plus

(c) the sum of:

(i) where any Toucan Inter-Company Loan Payable is less than the applicable Forecasted Toucan Inter-Company Loan Payable, the aggregate amount of all such differences; and

(ii) where any Toucan Inter-Company Loan Receivable is greater than the applicable Forecasted Toucan Inter-Company Loan Receivable, the aggregate amount of all such differences,

such aggregate amount shall be expressed as a positive number; plus

(d) the sum of:

(i) where any Toucan Inter-Company Loan Payable is greater than the applicable Forecasted Toucan Inter-Company Loan Payable, the aggregate amount of all such differences; and

(ii) where any Toucan Inter-Company Loan Receivable is less than the applicable Forecasted Toucan Inter-Company Loan Receivable, the aggregate amount of all such differences,

such aggregate amount shall be expressed as a negative number; plus

(e) the amount of the difference between the Toucan Working Capital and the Forecasted Toucan Working Capital, and, if the Toucan Working Capital is greater than the Forecasted Toucan Working Capital, such amount shall be expressed as a positive number (or, if the Toucan Working Capital is less than the Forecasted Toucan Working Capital, such amount shall be expressed as a negative number).

**Macaw Adjustment Amount**

2. The Macaw Adjustment Amount shall be an amount equal to:

(a) the amount of the difference between the Macaw External Debt and the Forecasted Macaw External Debt, and, if the Macaw External Debt is greater than the Forecasted Macaw External Debt, such amount shall be expressed as a negative number (or, if the Macaw External Debt is less than the Forecasted Macaw External Debt, such amount shall be expressed as a positive number); plus
(b) the amount of the difference between the Macaw Cash and the Forecasted Macaw Cash, and, if the Macaw Cash is greater than the Forecasted Macaw Cash, such amount shall be expressed as a positive number (or, if the Macaw Cash is less than the Forecasted Macaw Cash, such amount shall be expressed as a negative number); plus

(c) the sum of:

(i) where any Macaw Inter-Company Loan Payable is less than the applicable Forecasted Macaw Inter-Company Loan Payable, the aggregate amount of all such differences; and

(ii) where any Macaw Inter-Company Loan Receivable is greater than the applicable Forecasted Macaw Inter-Company Loan Receivable, the aggregate amount of all such differences,

such aggregate amount shall be expressed as a positive number; plus

(d) the sum of:

(i) where any Macaw Inter-Company Loan Payable is greater than the applicable Forecasted Macaw Inter-Company Loan Payable, the aggregate amount of all such differences; and

(ii) where any Macaw Inter-Company Loan Receivable is less than the applicable Forecasted Macaw Inter-Company Loan Receivable, the aggregate amount of all such differences,

such aggregate amount shall be expressed as a negative number; plus

(e) the amount of the difference between the Macaw Working Capital and the Forecasted Macaw Working Capital, and, if the Macaw Working Capital is greater than the Forecasted Macaw Working Capital, such amount shall be expressed as a positive number (or, if the Macaw Working Capital is less than the Forecasted Macaw Working Capital, such amount shall be expressed as a negative number).

Post-Closing Adjustment

Toucan Sale

3. In the event paragraph 9 of Part C of Schedule 9 (Financial Adjustments) applies to the Toucan Sale, following agreement or determination of the Toucan Adjustment Amount in accordance with Part C of Schedule 9 (Financial Adjustments), the amount of the Toucan Adjustment Amount shall be paid by:

(a) the Toucan Seller to the Purchaser if the Toucan Adjustment Amount is a negative number; or

(b) the Purchaser to the Toucan Seller if the Toucan Adjustment Amount is a positive number.

Macaw Sale
4. In the event paragraph 9 of Part C of Schedule 9 (Financial Adjustments) applies to the Macaw Sale, following agreement or determination of the Macaw Adjustment Amount in accordance with Part C of Schedule 9 (Financial Adjustments), the amount of the Macaw Adjustment Amount shall be paid by:

   (a) the Macaw Seller to the Purchaser if the Macaw Adjustment Amount is a negative number; or

   (b) the Purchaser to the Macaw Seller if the Macaw Adjustment Amount is a positive number.

5. Any amount payable pursuant to paragraphs 3 or 4 of this Part D shall be increased by an amount equivalent to interest on such amount at 3 per cent. per annum for the period from (but excluding) the Relevant Closing Date to (and including) the due date for payment of such amount, calculated on a daily basis.

6. Any Party with any payment obligation under paragraph 3 or 4 of this Part D of Schedule 9 (Financial Adjustments) shall make the applicable payment within 5 Business Days after the date on which the amount is agreed or so determined. Any such payment shall be made in accordance with the provisions of Clause 21.1 or 21.2 of this Agreement, as the case may be.
## Part E  Forecasted amounts

### Toucan Forecasted amounts

<table>
<thead>
<tr>
<th>THB' m</th>
<th>Feb 20 forecast</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forecasted Toucan Cash</td>
<td>12,126</td>
</tr>
<tr>
<td>Forecasted Toucan Inter-Company Loan Receivables</td>
<td>27,001</td>
</tr>
<tr>
<td>Forecasted Toucan External Debt</td>
<td>(25,748)</td>
</tr>
<tr>
<td>Forecasted Toucan Inter-Company Loan Payables</td>
<td>(350)</td>
</tr>
<tr>
<td>Forecasted Toucan Working Capital</td>
<td>(16,703)</td>
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### Macaw Forecasted amounts

<table>
<thead>
<tr>
<th>MYR' m</th>
<th>Feb 20 forecast</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forecasted Macaw Cash</td>
<td>270.1</td>
</tr>
<tr>
<td>Forecasted Macaw Inter-Company Loan Receivables</td>
<td>4.3</td>
</tr>
<tr>
<td>Forecasted Macaw External Debt</td>
<td>(871.8)</td>
</tr>
<tr>
<td>Forecasted Macaw Inter-Company Loan Payables</td>
<td>(2,285.0)</td>
</tr>
<tr>
<td>Forecasted Macaw Working Capital</td>
<td>(604.3)</td>
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</tbody>
</table>
## Part F Adjustment statement format

**Toucan**

<table>
<thead>
<tr>
<th>THB’m</th>
<th>Forecast</th>
<th>Actual</th>
<th>Movement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Headline Price</strong></td>
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<td>315,891</td>
<td>-</td>
</tr>
<tr>
<td>Plus: Toucan Cash</td>
<td>12,126</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Plus: Toucan Inter-Company Loan Receivables</td>
<td>27,001</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Less: Toucan External Debt</td>
<td>(25,748)</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Less: Toucan Inter-Company Loan Payables</td>
<td>(350)</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Plus: Toucan Working Capital</td>
<td>(16,703)</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Less: Toucan Target Working Capital (Note 1)</td>
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<tr>
<td><strong>Equity price at the February 2020 Statutory Accounts Date</strong></td>
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<tr>
<td>Forecast cash profits to 31 August 2020</td>
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<td>-</td>
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<tr>
<td><strong>Equity price at 31 August 2020</strong></td>
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<tr>
<td><strong>Translated to USD at the Exchange Rate (USD’m)</strong></td>
<td>10,559</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

Note 1: Toucan Target Working Capital is negative THB 17,658m but is shown as a positive amount as it is being deducted from Toucan Working Capital.

* For informational purposes only, the pre-IFRS 16 headline price is THB 295,000,000,000. Each Party agrees that: (i) this pre-IFRS 16 headline price shall not be used (in any respect) for the calculation or determination of any amounts under the terms of this Agreement; and (ii) it shall have no right whatsoever to make any claim against another Party (or any of its Affiliates) on the basis of, or with reference to, this pre-IFRS 16 headline price.

** For the avoidance of doubt, the Value of the TLGF investment has been reflected in the Headline Price.
### Macaw*

* For informational purposes only, the pre-IFRS 16 headline price is THB 20,000,000,000. Each Party agrees that: (i) this pre-IFRS 16 headline price shall not be used (in any respect) for the calculation or determination of any amounts under the terms of this Agreement; and (ii) it shall have no right whatsoever to make any claim against another Party (or any of its Affiliates) on the basis of, or with reference to, this pre-IFRS 16 headline price.

<table>
<thead>
<tr>
<th>MYR'm</th>
<th>Forecast 100%</th>
<th>Actual 100%</th>
<th>Movement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
<td>B</td>
<td>B - A</td>
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<tr>
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<tr>
<td>Plus: Macaw Cash</td>
<td>270.1</td>
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<td>[ ]</td>
</tr>
<tr>
<td>Plus: Macaw Inter-Company Loan Receivables</td>
<td>4.3</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Less: Macaw External Debt</td>
<td>(871.8)</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Less: Macaw Inter-Company Loan Payables</td>
<td>(2,285.0)</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Plus: Macaw Working Capital</td>
<td>(604.3)</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Less: Macaw Target Working Capital (Note 1)</td>
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<td>535.2</td>
<td>-</td>
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<td><strong>Equity price at the February 2020 Statutory Accounts Date</strong></td>
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<td>[ ]</td>
</tr>
<tr>
<td>Forecast cash profits to 31 August 2020</td>
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<td>-</td>
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<td><strong>Equity price at 31 August 2020</strong></td>
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</tr>
<tr>
<td>Translated to USD at the Exchange Rate (USD'm)</td>
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<td>[ ]</td>
</tr>
</tbody>
</table>

Note 1: Macaw Target Working Capital is negative RM 535.2m but is shown as a positive amount as it is being deducted from Macaw Working Capital.
Part G Cash, External Debt, Inter-Company Loan Amounts and Working Capital line items

**Toucan Reference Balance Sheet**

<table>
<thead>
<tr>
<th>Asset Category</th>
<th>NWC</th>
<th>Cash</th>
<th>External Debt</th>
<th>Receivables</th>
<th>Payables</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goodwill &amp; other intangible assets</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
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<tr>
<td>Property, plant and equipment &amp; IP</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
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<tr>
<td>Investments</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Non current assets held for sale</td>
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<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
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<tr>
<td>Net trading inventory</td>
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<td></td>
<td></td>
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<td>Net trade receivables</td>
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<td></td>
<td>x</td>
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<td>x</td>
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<td>Prepayments and accrued income</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Other receivables</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
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| Other Items                                         | x   | x    |               |             | x        |       | x     |
| Preference shares                                   | x   | x    |               |             | x        |       | x     |
| Exclude Cash - TGE C                                 | x   | x    |               |             | x        |       | x     |
| Retention bonuses                                   | x   | x    |               |             | x        |       | x     |
| **Total**                                           | x   | x    |               |             | x        |       | x     |
### Macaw Reference Balance Sheet

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**Net Assets**

- Preference shares
- Retained earnings

**Total**

- x
- x
- x
- x
- x
- x
- x
Part H: Illustrative Calculation as at 29 December 2019

Note: Amounts are included for illustrative purposes only. Actual amounts to be prepared as at 29 February 2020 in accordance with the hierarchy of accounting policies set out in Part A of Schedule 9 (Financial Adjustments).

**Toucan**

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<td>106.9</td>
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### Macaw (100%)

#### Macaw Balance Sheet as at Dec19

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<td>(571.8)</td>
<td>230.9</td>
<td>(823.4)</td>
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</table>

#### Preference shares

| | 
|-----------------|-----------------|-----------------|
| Preference shares | (202.3) | (202.3) | (202.3) |

#### Retained Earnings

| | 
|-----------------|-----------------|-----------------|
| Retained Earnings | (3.0) | (3.0) | (3.0) |

#### Total

| | 
|-----------------|-----------------|-----------------|
| Total | (22.9) | (571.8) | 230.9 | (909.9) | 4.3 | (2,291.8) | 3,512.5 | (22.9) |
## Part I: Consolidation and reconciliation worksheet of Adjustment Statement

**Toucan**

Balance sheet consolidation and reconciliation between audited FS and management accounts

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<th>c</th>
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<td>Right of use on leases</td>
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Macaw

Balance sheet consolidation and reconciliation between audited FS and management accounts

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Schedule 10  
Target Company Information  

Part A Details of the Target Companies  

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<th>The Toucan Target</th>
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<td>(a) Type of Company:</td>
<td>Private limited liability company</td>
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<tr>
<td>(b) Date of Incorporation:</td>
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<tr>
<td>(c) Registered Number:</td>
<td>0105541029677</td>
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<tr>
<td>(d) Registered Office:</td>
<td>629/1 Nawamint Road, Nuan Chan, Bung Kum, Bangkok 10240</td>
</tr>
</tbody>
</table>
| (e) Directors: | (i) Mr. Sompong Rungnirattisai  
(ii) Miss Anusara Chokvanitphong  
(iii) Mr. Sunthorn Arunanondchai |
| (f) Authorised Director: | Any one director signing with company’s seal affixed. |
| (g) Statutory Auditor: | Deloitte Touche Tohmatsu Jaiyos Co., Ltd |
| (h) Issued Share Capital: | THB 12,301,000, divided into 1,230,100 shares |
| (i) Registered Shareholders: | (i) Mr. Sunthorn Arunanondchai holding 739,998 preference shares (group B);  
(ii) Tesco Holding Limited holding 490,101 shares, consisting of:  
(a) 100 ordinary shares (group A);  
(b) 1 preference share (group B); and  
(c) 490,000 preference shares (group C);  
(iii) Mr. Sompong Rungnirattisai holding one preference share (group B) |

<table>
<thead>
<tr>
<th>The Macaw Target</th>
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</thead>
<tbody>
<tr>
<td>(a) Type of Company:</td>
<td>Private company limited by shares</td>
</tr>
<tr>
<td>(b) Date of Incorporation:</td>
<td>24 July 2000</td>
</tr>
<tr>
<td>(c) Registered Number:</td>
<td>521419-K</td>
</tr>
</tbody>
</table>
| (d) Registered Office: | 12<sup>th</sup> Floor, Menara Symphony  
No. 5, Jalan Prof. Khoo Kay Kim, Seksyen 13,  
46200 Petaling Jaya Selangor |
(e) Directors: (1) Paul Fraser Daley Ritchie; (2) Sushmita Jeni Paul; (3) Alison Jane Horner; (4) Azliza Baizura Binti Azmel; (5) Datuk Leong Yew Hong; (6) Mustamir Bin Mohamad; (7) Yong Yvonne; and (8) Tang Ming Hui Grace.

(f) Statutory Auditor: Deloitte PLT

(g) Issued Share Capital: RM656,000,000.00

(h) Registered Shareholders: (1) Sime Darby AP holding 16,800,000 ordinary shares (A shares); and

(2) the Macaw Seller holding 39,200,000 ordinary shares (B shares) and 60,000,000 non-convertible non-cumulative irredeemable preference shares.
### Part B Details of the Toucan Subsidiaries

**Toucan Target Companies**

<table>
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<th>Ek-Chai Distribution System Co., Ltd.</th>
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<tbody>
<tr>
<td>(a) Type of Company: Private limited liability company</td>
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<tr>
<td>(b) Date of Incorporation: 13 August 1993</td>
</tr>
<tr>
<td>(c) Registered Number: 0105536092641</td>
</tr>
<tr>
<td>(d) Registered Office: 629/1 Nawamint Road, Nuan Chan, Bung Kum, Bangkok 10240</td>
</tr>
<tr>
<td>(e) Directors:</td>
</tr>
<tr>
<td>(i) Mr. Sompong Rungnirattisai</td>
</tr>
<tr>
<td>(ii) Mr. Sunthorn Arunanondchai</td>
</tr>
<tr>
<td>(iii) Miss Anusara Chokvanitphong</td>
</tr>
<tr>
<td>(iv) Miss Salinla Seehaphan</td>
</tr>
<tr>
<td>(v) Mrs. Aurakanda Attavipach</td>
</tr>
<tr>
<td>(f) Authorised Directors: Any two directors jointly sign with company’s seal affixed</td>
</tr>
<tr>
<td>(g) Statutory Auditor: Deloitte Touche Tohmatsu Jaiyos Co., Ltd.</td>
</tr>
<tr>
<td>(h) Issued Share Capital: THB 5,137,500,050, divided into 513,750,005 shares</td>
</tr>
<tr>
<td>(i) Registered Shareholders:</td>
</tr>
<tr>
<td>(i) The Toucan Target, holding 513,750,000 ordinary shares</td>
</tr>
<tr>
<td>(ii) Mr. Sompong Rungnirattisai, holding 1 ordinary share</td>
</tr>
<tr>
<td>(iii) Mr. Sunthorn Arunanondchai, holding 4 ordinary shares</td>
</tr>
<tr>
<td><strong>Tesco Mobile (Toucan) Company Limited</strong></td>
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<tr>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>(a) Type of Company:</td>
</tr>
<tr>
<td>(b) Date of Incorporation:</td>
</tr>
<tr>
<td>(c) Registered Number:</td>
</tr>
<tr>
<td>(d) Registered Office:</td>
</tr>
</tbody>
</table>
| (e) Directors: | (i) Mr. Sompong Rungnirattisai  
(ii) Miss Anusara Chokwvanichphong |
| (f) Authorised Directors: | Any two directors jointly sign with company’s seal affixed |
| (g) Statutory Auditor: | Deloitte Touche Tohmatsu Jaiyos Co., Ltd. |
| (h) Issued Share Capital: | THB 5,000,000, divided into 50,000 shares |
| (i) Registered Shareholders: | (i) Ek-Chai, holding 49,998 ordinary shares  
(ii) Mr. Sompong Rungnirattisai, holding 1 ordinary share  
(iii) The Toucan Target, holding 1 ordinary share |
### Part C Details of the Toucan Joint Ventures

**Tesco Lotus Money Services Limited (“AYCAP JVCo”)**

<p>| | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Type of Company: Private limited liability company</td>
</tr>
<tr>
<td>(b)</td>
<td>Date of Incorporation: 25 June 2001</td>
</tr>
<tr>
<td>(c)</td>
<td>Registered Number: 0105544058872</td>
</tr>
<tr>
<td>(d)</td>
<td>Registered Office: 550 Krungsri Ploenchit Tower, Phloenchit Road, Lumpini, Pathum Wan, Bangkok 10330</td>
</tr>
<tr>
<td>(f)</td>
<td>Representative Director: Mr. Gareth Jonathan Sharpe, Mr. Donald Andrew Macleod, Mr. Nicolas James Smart or Miss Worrawan Pianlikitwong jointly sign with Mr. Thakorn Piyapan, Miss Preeyanuch Sayasawee, Miss Pat-hathai Kuljan or Mr. Sudargo Harsono, together with company’ seal being affixed.</td>
</tr>
<tr>
<td>(g)</td>
<td>Auditor: Miss Sawitree Ongsirimongkol</td>
</tr>
<tr>
<td>(h)</td>
<td>Issued Share Capital: THB 2,080,000,000 (20,800,000 shares with a par value of THB 100 per share)</td>
</tr>
<tr>
<td>(i)</td>
<td>Registered Shareholders: 1. Ayudhya Capital Services Company Limited (“AYCAP”), holding 10,399,996 shares 2. Toucan, holding 10,400,000 shares 3. Mr. Rohit Khanna, holding 2 shares 4. Mr. Sudargo Harsono, holding 2 shares</td>
</tr>
</tbody>
</table>
Retail Properties Company Limited (“CP JVCo”)

(a) Type of Company: Private limited liability company

(b) Date of Incorporation: 28 June 2001

(c) Registered Number: 0105544060281

(d) Registered Office: 313 C.P. Tower 1st Floor, Silom Road, Silom, Bang Rak, Bangkok 10500

(e) Directors:
1. Mr. Somkiat Ruentongdee
2. Miss Jarin Kiatfuengfoo
3. Mr. Salya Mulasart
4. Mr. Kontee Tirawipas
5. Mr. Ittichai Banasanprasit
6. Miss Phawinee Chaiwattana
7. Miss Anusara Chokvanictphong
8. Mr. Miroslav Friml

(f) Representative Director: Mr. Somkiat Ruentongdee, Miss Jarin Kiatfuengfoo, Mr. Salva Mulasart, or Mr. Kontee Tirawipas jointly sign with Mr. Ittichai Banasanprasit, Miss Phawinee Chaiwattana, Miss Anusara Chokvanictphong or Mr. Miroslav Friml, together with company’s seal being affixed.

(g) Auditor: Miss Sawitree Ongsirimongkol

(h) Issued Share Capital: THB 210,000,000 (2,100,000 shares with a par value of THB 100 per share)

(i) Registered Shareholders:
1. Toucan, holding 1,050,000 shares
2. Charoen Pokphand Group Company Limited (“CP”), holding 567,000 shares
3. Mr. Sunthorn Arunanondchai, holding 105,000 shares
4. Mr. Dhanin Chearavanont, holding 99,750 shares
5. S and Enterprise Company Limited, holding 52,500 shares
6. Tipamas Company Limited, holding 52,500 shares
7. Mr. Jaran Chiaravanont, holding 36,750 shares
8. Mr. Montri Jiavanont, holding 36,750 shares
9. Sumetjiaravanon Company Limited, holding 36,750 shares
10. Mr. Phongthep Chiaravanont, holding 13,125 shares
11. Mr. Chingchai Lohawatanakul, holding 10,500 shares
12. Mr. Min Tieanworn, holding 10,500 shares
13. Mr. Prasoet Poongkumarn, holding 10,500 shares
14. Mr. Thirayut Phitya-Isarakul, holding 10,500 shares
15. Mr. Thanakorn Seriburi, holding 7,875 shares

**Synergistic Property Development Company Limited (“CPN JVCo”)**

(a) Type of Company: Private limited liability company
(b) Date of Incorporation: 5 September 2017
(c) Registered Number: 0105560149194
(d) Registered Office: 999/9 31st Floor, Rama I Road, Pathum Wan, Pathum Wan, Bangkok 10330
(e) Directors: 1. Mr. Miroslav Friml
2. Miss Anusara Chokwvanichtphong
3. Mr. Ittichai Banasanprasit
4. Miss Wallaya Chirathivat

5. Miss Naparat Sriwanvit

6. Mr. Chanavat Uahwatanasakul

(f) Representative Director: Mr. Miroslav Friml, Miss Anusara Chokvanitchphong, or Mr. Ittichai Banasanprasit jointly sign with Miss Wallaya Chirathivat, Miss Naparat Sriwanvit, or Mr. Chanavat Uahwatanasakul together with company’s seal being affixed.

(g) Auditor: Miss Wannaporn Jongpeeradechanont

(h) Issued Share Capital: THB 465,000,000 (4,650,000 shares with a par value of THB 100 per share)

(i) Registered Shareholders:

1. Central Pattana Public Company Limited (“CPN”), holding 2,324,999 shares

2. Toucan, holding 2,324,999 shares

3. Miss Anusara Chokvanitphong, holding 1 share

4. Mr. Chanavat Uahwatanasakul, holding 1 share

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**Tesco Lotus Retail Growth Freehold and Leasehold Property Fund (“TLGF”)**

(a) Number of units held by Ek-Chai: 584,321,250

(b) Registered capital held by Ek-Chai: 25 per cent. at 31 July 2019
Schedule 11
Definitions and interpretation

1. Definitions. In this Agreement, the following words and expressions shall have the following meanings:

**Accounting Principles** has the meaning given in Part A of Schedule 9 (Financial Adjustments);

**Acquired Business** has the meaning given to it in Clause 19.4(b);

**Acquired Competing Business** has the meaning given to it in Clause 19.4(b);

**Actual Macaw Tax Liability** and **Actual Toucan Tax Liability** have the meanings given in Part D of Schedule 7 (Tax);

**Adjustment Amounts** means the Toucan Adjustment Amount and the Macaw Adjustment Amount, each being an Adjustment Amount;

**Adjustment Statement Notice** has the meaning given in Schedule 9 (Financial Adjustments);

**Adjustment Statements** means the Toucan Adjustment Statement and the Macaw Adjustment Statement, each being an Adjustment Statement;

**Affiliate** means:

(a) in the case of a person which is a body corporate, any subsidiary undertaking or parent undertaking of that person and any subsidiary undertaking of any such parent undertaking or any entity which manages and/or advises or is managed and/or advised by any such entity, in each case from time to time;

(b) in the case of a person which is a limited partnership, the partners of the person or their nominees or a nominee or trustee for the person, or any investors in a fund which holds interests, directly or indirectly, in the limited partnership or any entity which manages and/or advises any such entity; and

(c) any Affiliate of any person in paragraphs (a) and (b) above;

**Agreed Form** means, in relation to a document, the form of that document which has been initialled on the date of this Agreement for the purpose of identification by or on behalf of the Sellers and the Purchaser (in each case with such amendments as may be agreed in writing by or on behalf of the Sellers and the Purchaser);

**Agreement** means this agreement;

**Anti-Bribery Law** means the UK Bribery Act 2010 and equivalent laws and regulations in Thailand and Malaysia;

**Business Plan** means the pages of the documents disclosed in the Data Room referenced in the “Business Plan” disclosed as item 4.1.4.1 in the Process Documents folder in the Data Room;

**Business** means the business of the Target Companies as carried on at the date of this Agreement;

**Business Day** means a day other than a Saturday or Sunday or public holiday in England and Wales or Thailand and Malaysia on which banks are open in London, Bangkok and Kuala Lumpur for general commercial business;
**Cash** means, in relation to the Toucan Group, Toucan Cash and, in relation to the Macaw Target, Macaw Cash;

**CCC** means the Certificate of Completion and Compliance in respect of a building to be given or granted under the Malaysian Street, Drainage and Building Act, 1974 and any by-laws made thereunder;

**Circular** means a circular (and, if relevant, any supplementary circular) in relation to the Proposed Transaction, including, among other things, the Tesco Resolutions, to be circulated to Tesco shareholders;

**Claim** means any claim for breach of the Warranties, any claim under the Tax Covenant, and any other claim under or for breach of this Agreement;

**Closing** means Toucan Closing and/or Macaw Closing (as applicable);

**Competing Business** has the meaning given in Clause 19.3(a);

**Conditions** means the Toucan Conditions and the Macaw Conditions, and **Condition** means any of them;

**Confidential Information** has the meaning given in to it Clause 24.1(a);

**Consolidated Arbitration** has the meaning given to it in Clause 36.6;

**Constitutional Documents** means with respect to an entity its memorandum and articles of association, by-laws or equivalent constitutional documents;

**Costs** means losses, damages, costs (including reasonable legal costs) and expenses (including Taxation), in each case of any nature whatsoever;

**CPN JVCo** means Synergistic Property Development Company Limited, further details of which are set out in Part C of Schedule 10 (Target Company Information);

**Cut-Off Time** has the meaning given to it in paragraph 4 of Part B of Schedule 9 (Financial Adjustments);

**Data Room** means the virtual “Aviary 2019” data room, hosted by Merrill DatasiteOne, comprising the documents and other information relating to the Target Companies made available by the Sellers the contents of which as at 6:15 pm GMT on 8 March 2020 are set out in the data room index in the Agreed Form attached to the Disclosure Letter (including for the avoidance of doubt, the VDD Reports and the Q&A document) and contained on a USB flash drive which shall be provided by the Sellers to the Purchaser within three Business Days of the date of this Agreement, and references to documents with prefix VDR Toucan or VDR Macaw mean, respectively, locations in the “Toucan” and “Macaw” folders of the Data Room;

**Default Interest** means interest at 7 per cent. per annum;

**Disclosure Letter** means the disclosure letter from the Sellers to the Purchaser executed and delivered immediately before the signing of this Agreement;

**Effective Time** means close of business on the February 2020 Statutory Accounts Date;

**Ek-Chai** means Ek-Chai Distribution System Co., Ltd., further details of which are set out in Part B of Schedule 10 (Target Company Information);
Employees means the employees of the Target Companies at the date of this Agreement;

Estimated Closing Date means 31 August 2020;

Exchange Rate means, with respect to:

(a) THB / USD, the spot rate of exchange of 32.00;

(b) MYR / USD, first the MYR shall be exchanged into THB at the spot rate of exchange of 7.6555 THB/MYR, and subsequently exchanged into USD at the exchange rate at (a) above; and

(c) a particular currency for a particular day (not set out in (a) or (b) above), the spot rate of exchange (the closing mid-point) for that currency into USD on such date as published in the London edition of the Financial Times first published thereafter or, where no such rate is published in respect of that currency for such date, at the rate quoted by Barclays Bank plc as at the close of business in London on such date;

Excluded IP means:

(d) any Intellectual Property Rights that have at any time been used by a member of the Seller Group, and any Intellectual Property Rights that are derived or adapted from or substantially similar to any Intellectual Property Rights that have at any time been used by a member of the Seller Group; and

(e) any Intellectual Property Rights in relation to trade marks and trade mark applications, service marks, logos, trade names, get-up and trade dress, domain names and social media handles, brand-related goodwill and any other registered and unregistered rights in relation to brands, that in each case contain the word, TESCO, the word CLUBCARD, the ‘chevron’ logo (in any colour(s), and including a single chevron), the words EVERY LITTLE HELPS, any current or former font for TESCO and any current or former font for EVERY LITTLE HELPS, any of the words “express”, “extra” and “metro” in any such font(s) or any other proprietary font, and/or any other brand, mark, logo, name, get-up or trade dress, or any aspect of any brand, mark, logo, name, get-up or trade dress, that has in each case at any time been used by a member of the Seller Group (including the “F&F”, “Fred & Flo”, “Cherokee”, “Assign”, “Finest™”, “Go Cook”, “Technika”, “Fox & Ivy”, “Carousel” and “Exclusively at Tesco” brands) or that is derived from (including by translation or transliteration) or substantially similar to any brand, mark, logo, name, get-up or trade dress, or any aspect of any brand, mark, logo, name, get-up or trade dress that has at any time been used by a member of the Seller Group but in each case excluding the word LOTUS on its own and the Transferring Trade Mark (as defined in the Transitional Brand Licences);

Express Store Properties means the properties listed in Exhibit 7 for the Toucan Business and the properties listed in Exhibit 8 for the Macaw Business;

External Debt means, in relation to the Toucan Group, the Toucan External Debt and, in relation to the Macaw Target, the Macaw External Debt;
**February 2020 Managements Accounts** means the Toucan February 2020 Management Accounts and/or the Macaw 2020 Management Accounts (as applicable);

**February 2020 Statutory Accounts** means each of the Toucan February 2020 Statutory Accounts and the Macaw February 2020 Statutory Accounts;

**February 2020 Statutory Accounts Date** means 29 February 2020;

**February 2020 Statutory Accounts Delivery Date** means each of the Toucan February 2020 Statutory Accounts Delivery Date and/or the Macaw February 2020 Statutory Accounts Delivery Date (as applicable);

**Financial Debt** means borrowings and indebtedness in the nature of borrowings (including by way of acceptance credits, discounting or similar facilities, loan stocks, bonds, debentures, notes, overdrafts or any other similar arrangements the purpose of which is to raise money) owed to any banking, financial, acceptance credit, lending or other similar institution or organisation;

**Firm** has the meaning given in Part C of Schedule 9 (Financial Adjustments);

**First Tribunal** has the meaning given to it in Clause 36.6;

**Forecasted Macaw Cash** means the forecast of what the Macaw Cash will be at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);

**Forecasted Macaw External Debt** means the forecast of what the External Debt attributable to the Macaw Target will be as at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);

**Forecasted Macaw Inter-Company Loan Payables** means the forecasts of what the Macaw Inter-Company Loan Payables will be at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);

**Forecasted Macaw Inter-Company Loan Receivables** means the forecasts of what the Macaw Inter-Company Loan Receivables will be at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);

**Forecasted Macaw Working Capital** means the estimate of what the Macaw Working Capital will be at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);

**Forecasted Toucan Cash** means the forecast of what the Toucan Cash will be at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);

**Forecasted Toucan External Debt** means the forecast of what the External Debt attributable to the Toucan Group will be as at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);

**Forecasted Toucan Inter-Company Loan Payables** means the forecast of what the Toucan Inter-Company Loan Payables will be at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);

**Forecasted Toucan Inter-Company Loan Receivables** means the forecast of what the Toucan Inter-Company Loan Receivables will be at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);
**Forecasted Toucan Working Capital** means the estimate of what the Toucan Working Capital will be at the Effective Time as set out in Part E of Schedule 9 (Financial Adjustments);

**Fundamental Warranties** means the warranties set out in paragraphs 1.1 to 1.3 and 9 of Part A of Schedule 4 (Sellers’ Warranties);

**Fundamental Warranty Claim** means any Claim against a Seller for breach of a Fundamental Warranty;

**FY 19 Group Reporting Balance Sheets** means the Toucan FY 19 Group Reporting Balance Sheet and/or the Macaw FY 19 Group Reporting Balance Sheet (as applicable);

**FY 20 Group Reporting Balance Sheet** means the Toucan FY 20 Group Reporting Balance Sheet and/or the Macaw FY 20 Group Reporting Balance Sheet (as applicable);

**FY 19 Reporting Date** means 28 February 2019;

**FY 20 Reporting Date** means 29 February 2020;

**Governmental Entity** means any supra-national, national, state, municipal or local government (including any subdivision, court, administrative agency or commission or other authority thereof) or any quasi-governmental or private body exercising any regulatory, importing or other governmental or quasi-governmental authority, including the European Union and any Tax Authority;

**IFRS** means the International Financial Reporting Standards as issued by the International Accounting Standards Board and as adopted by the European Union applicable to all companies reporting under the International Financial Reporting Standards;

**Intellectual Property Rights** means:

(a) patents, utility models and rights in inventions;

(b) rights in each of know-how, confidential information and trade secrets;

(c) trade marks, service marks, rights in logos, trade names, rights in each of get-up and trade dress and domain names and URLs;

(d) copyright, moral rights, database rights, rights in designs, and semiconductor topography rights;

(e) any other intellectual property rights; and

(f) all rights or forms of protection, subsisting now or in the future, having equivalent or similar effect to the rights referred to in paragraphs (a) to (e) above,

in each case: (i) anywhere in the world; (ii) whether unregistered or registered (including all applications, rights to apply and rights to claim priority); and (iii) including all divisionals, continuations, continuations-in-part, reissues, extensions, re-examinations and renewals, and references in this Agreement to registered Intellectual Property Rights include Intellectual Property Rights for which an application for registration has been made;

**Inter-Company Loan Amounts** means any Inter-Company Loan Payables and any Inter-Company Loan Receivables;
**Inter-Company Loan Payables** means Toucan Inter-Company Loan Payables and Macaw Inter-Company Loan Payables (or any of them);

**Inter-Company Loan Receivables** means Toucan Inter-Company Loan Receivables and Macaw Inter-Company Loan Receivables (or any of them);

**Inter-Company Trading Debt** means Toucan Inter-Company Trading Debt and Macaw Inter-Company Trading Debt (or any of them);

**IP Assignment Deed(s)** means the IP assignment deed(s) under which the Target Group will transfer to member(s) of the Seller Group ownership and control of the Excluded IP owned by any of the Target Companies, containing any provisions reasonably required to give full effect to that transfer, the form of which is to be agreed between the Sellers and the Purchaser (each acting reasonably);

**IP Licence** means any contract with a third party entered into by any Target Company under which Intellectual Property Rights are licensed;

**IT Contract** means any third party contract entered into by any Target Company under which an IT System is licensed, leased, supplied, maintained or supported;

**IT Systems** means the material computer systems, information and communications equipment and technologies, software and hardware owned or used by the Target Companies;

**Key Managers** means those Employees who are work level 4 or 5 under the Seller Group employment management structure (excluding for the avoidance of doubt any expatriate employees who are providing services to Target Companies);

**Last Accounts** means each of the Toucan Last Accounts and the Macaw Last Accounts;

**Last Accounts Date** means

(a) in relation to the Toucan Last Accounts, 28 February 2019; and

(b) in relation to Macaw Last Accounts, 28 February 2019;

**LCIA** means the London Court of International Arbitration;

**Leakage** means in each case to, or on behalf of, or for the benefit of a Seller or any member of the Seller Group or Sime Darby AP:

(a) any dividend or distribution (whether in cash or in kind) declared, paid or made or any return of capital (whether by reduction of capital or redemption or purchase of shares or otherwise) from any Target Company;

(b) any advisor’s fees, costs and expenses relating to the Proposed Transaction or the sale and purchase of the SD Macaw Shares paid or incurred by any Target Company;

(c) any liabilities assumed or incurred (including under any guarantee, indemnity or other security) by or on behalf of any Target Company;

(d) waiver or release a liability by any Target Company;

(e) other than pursuant to agreements or arrangements negotiated in the ordinary course and on an arm’s length basis for at least fair market value:
(i) any payment of interest or principal in respect of any Financial Debt owed by any Target Company;

(ii) any payments made or any transfer or surrender of assets by or on behalf of any Target Company;

(iii) any payment, management charge, bonus or fee of any nature levied against any Target Company (save for under any intra-group arrangement in existence at the date of this Agreement which were disclosed to the Purchaser in the Data Room including the Retention Bonuses);

(iv) any payment made in respect of costs recharged to any Target Company;

(v) any payment made by any Target Company in respect of trading with any member of the Seller Group; and

(vi) any payment made in relation to the Tesco Executive Share Plan or their eligibility to any awards thereunder;

(f) any payment of any bonus relating to the Proposed Transaction;

(g) any agreement to do or give effect to any of the matters referred to in paragraphs (a) to (f) above; and

(h) any Tax becoming payable by any Target Company as a consequence of any of the matters referred to in (a) to (g) above, but does not include any VAT which is recoverable as input tax by any Target Company in relation to the foregoing or any Tax in relation to Permitted Leakage;

**Locked Box Period** means the period from the day immediately after the February 2020 Statutory Accounts Date up to and including the Relevant Closing Date;

**Longstop Date** means 12 months from the date of this Agreement or such later date as the parties may agree in writing;

**Loss** means any loss, claim, liability, debt, judgment, damage, interests, costs, fines, penalties or expenses, in each case of any nature whatsoever (including reasonable legal and other professional fees), suffered or incurred by the Purchaser and/or a Target Company;

**Macaw Adjustment Amount** means the amount calculated in accordance with Part D of Schedule 9 (Financial Adjustments);

**Macaw Adjustment Delivery Date** has the meaning given to it in Clause 4.5(b);

**Macaw Adjustment Statement** has the meaning given to it in Clause 4.4;

**Macaw Bank Account** means the Macaw Seller’s bank as notified in writing by the Macaw Seller to the Purchaser within 5 Business Days of the Macaw Unconditional Date;

**Macaw Business** means the business of the Macaw Target;

**Macaw Cash** means, in relation to the Macaw Target, the aggregate of its cash (whether in hand or credited to any account with any banking, financial, acceptance credit, lending or other
similar institution or organisation) and its cash equivalents, including all interest accrued thereon, together with any items classified as ‘Cash’ in Part G of Schedule 9 (*Financial Adjustments*), calculated in accordance with the accounting policies and procedures set out in Part A of Schedule 9 (*Financial Adjustments*) as at the Effective Time, but excluding any Macaw Inter-Company Loan Receivables and all amounts included in the calculation of the Macaw Working Capital;

*Macaw Closing* means completion of the sale and purchase of the THBV Macaw Shares and related obligations in respect of the Macaw Target in accordance with the provisions of this Agreement;

*Macaw Closing Date* means the Relevant Closing Date for the Macaw Sale, as calculated in accordance with Clause 6.1(a);

*Macaw External Debt* means, in relation to the Macaw Target, the aggregate of the Financial Debt owed (together with any accrued interest) to any third party (which in each case is not a member of the Seller Group, and is not an amount or item included in the calculation of the Working Capital), together with any other items classified as ‘External Debt’ in Part G of Schedule 9 (*Financial Adjustments*), calculated in accordance with the accounting policies and procedures set out in Part A of Schedule 9 (*Financial Adjustments*) as at the Effective Time;

*Macaw February 2020 Accounts Warranties* means the warranties set out in paragraphs 2.5, 2.6 and 2.12 of Part A of Schedule 4 (*Sellers’ Warranties*);

*Macaw February 2020 Management Accounts* means the unaudited profit and loss account for the full-year period ending on 29 February 2020 and the unaudited balance sheet at the 29 February 2020 provided to the Purchaser in accordance with Clause 4.2, such balance sheet being the Macaw FY 20 Group Reporting Balance Sheet;

*Macaw February 2020 Statutory Accounts* means the audited financial statements of the Macaw Target for the financial year ended on the February 2020 Statutory Accounts Date and which comprises a balance sheet, statement of cashflows, profit and loss account, statement of changes in equity and notes to the financial statements as provided to the Purchaser in accordance with Clause 4.5(b);

*Macaw February 2020 Statutory Accounts Delivery Date* has the meaning given to it in Clause 4.2(b);

*Macaw FY 19 Group Reporting Balance Sheet* means a balance sheet in respect of the Macaw Target in the Agreed Form as at the FY 19 Reporting Date and disclosed as item 4.2.6 in the Malaysia folder in the Data Room;

*Macaw FY 20 Group Reporting Balance Sheet* means a balance sheet in respect of the Macaw Target as at the FY 20 Reporting Date provided to the Purchaser in accordance with Clause 4.2(b);

*Macaw Inter-Company Loan Payables* means any amounts owed as at the Relevant Time by the Macaw Target to any member of the Seller Group (which are not Macaw Inter-Company Trading Debt) together with accrued interest, if any, as at the Relevant Time on the terms of the applicable debt;

*Macaw Inter-Company Loan Receivables* means any amounts owed as at the Relevant Time to Macaw Target by any member of the Seller Group (which are not Macaw Inter-Company
Trading Debt), together with accrued interest, if any, as at the Relevant Time on the terms of the applicable debt;

**Macaw Inter-Company Trading Debt** means all amounts owed, outstanding or accrued in the ordinary course of trading, including any VAT arising on such amounts, as between any member of the Seller Group and the Macaw Target as at the Relevant Time in respect of inter-company trading activity and the provision of services, facilities and benefits between them, and:

(a) includes, where applicable, amounts owed in respect of salaries or other employee benefits (including payroll Tax thereon but excluding any bonuses and related Taxes), insurance (including health and motor insurance), IT support, treasury services, and IT licence fees, or any other central management services provided between them up to the Relevant Time; but

(b) excludes amounts classified as ‘Inter-Company Loan Receivables’ and ‘Inter-Company Loan Payables’ in Part G of Schedule 9 (Financial Adjustments) and amounts due in respect of matters which would in the ordinary course of business of the Macaw Target remain outstanding or otherwise have the characteristics of an intra-group loan and also excludes any amounts in respect of Tax);

**Macaw Intra-Group Termination Deed** means the intra-group deed entered into between certain members of the Seller Group and the Macaw Target under which certain arrangements between the Seller Group and the Macaw Target and the Toucan Target Companies are terminated with effect from the Macaw Closing Date;

**Macaw Last Accounts** means the audited financial statements of the Macaw Target for the financial year ended on the Last Accounts Date and which comprises a balance sheet, statement of cashflows, profit and loss account, statement of changes in equity notes to the financial statements as item 4.1.1.1 in the Malaysia folder in the Data Room;

**Macaw Legal VDD Report** means the reports described in limb (b) of the definition of VDD Reports;

**Macaw Management Accounts** means the unaudited profit and loss account for the Management Accounts Period and the unaudited balance sheet at the Management Accounts Date disclosed as items 4.3.1 in the Malaysia folder in the Data Room;

**Macaw Material Properties** means those properties identified in Exhibit 4;

**Macaw Power of Attorney** means a power of attorney to be in a form agreed between the Macaw Seller and the Purchaser granted by the Macaw Seller in favour of the Purchaser to allow the Purchaser to exercise the rights of the holder of the THBV Macaw Shares to address the delayed transfer of legal title;

**Macaw Sale** means the sale and purchase of the THBV Macaw Shares in accordance with the provisions of this Agreement;

**Macaw Share Price** has the meaning given to it in Clause 2.1(b);

**Macaw Share Price Adjustment Amount** means an amount equal to:
(a) if the Macaw Closing Date occurs after the Estimated Closing Date, an amount, expressed as a positive number, equal to USD 7,237 multiplied by the actual number of days lapsed during the period from but excluding the Estimated Closing Date to and including the Macaw Closing Date, which reflects the forecasted cash profit generation of the Macaw Business during such period;

(b) if the Macaw Closing Date occurs prior to the Estimated Closing Date, an amount, expressed as a negative number, equal to USD 7,237 multiplied by the actual number of days lapsed during the period from but excluding the Macaw Closing Date to and including the Estimated Closing Date, which reflects the forecasted cash profit generation of the Macaw Business during such period; or

(c) if the Macaw Closing Date occurs on the Estimated Closing Date, nil;

Macaw Shares means the THBV Macaw Shares and the SD Macaw Shares;

Macaw Target means Tesco Stores (Malaysia) Sdn Bhd, further details of which are set out in Part A of Schedule 10 (Target Company Information);

Macaw Transitional Brand Licence means the transitional brand license agreement in the Agreed Form to be entered into at Closing by the Macaw Target and Tesco Stores Limited;

Macaw Unconditional Condition has the meaning given in Clause 5.1(c);

Macaw Unconditional Date has the meaning given in Clause 5.23;

Macaw Working Capital means the net working capital of the Macaw Target as at the Effective Time comprising each of the line items classified as ‘NWC’ set out in Part G of Schedule 9 (Financial Adjustments) calculated in accordance with the accounting policies and procedures set out in Part A of Schedule 9 (Financial Adjustments) as at the Effective Time, and no others;

Management Accounts Date means 26 January 2020;

Management Accounts Period means the cumulative period commencing on 1 March 2019 and ending on the Management Accounts Date;

material asset has the meaning given in paragraph 5 of Part A of Schedule 4 (Sellers’ Warranties);

material obligation has the meaning given in Clause 6.3 or 6.7 (as applicable);

Material Properties means the properties listed in Exhibit 3 for the Toucan Business and Exhibit 4 for the Macaw Business;

MDTCA has the meaning given in Clause 5.2(b);

MDTCA Condition has the meaning given in Clause 5.2(b);

Minority Toucan Shares means, together: (i) the 739,998 preference shares held by Mr. Sunthorn Arunanondchais in the share capital of the Toucan Target; and (ii) the one preference share held by Mr. Sompong Rungnirattisai in the share capital of the Toucan Target;

Non-Material Properties means the properties listed in Exhibit 5 for the Toucan Business and Exhibit 6 for the Macaw Business;
**Non-Tax Claim** means a Claim other than a Tax Claim;

**Occupational Lease** means a lease of part of a Property to a third party, which:

(a) in respect of the Toucan Business, was granted for a term of more than one year as listed in Exhibit 9; and

(b) in respect of the Macaw Business, was granted for a fixed term as listed in Exhibit 10;

**Occupational Tenant** means the party having the benefit of an occupational lease of premises within mall space where a Target Company operates a hypermarket or mall and in respect of which a Target Company is the immediate landlord;

**Other Party** has the meaning given in Clause 36.1;

**Owned IP** means all Intellectual Property Rights owned by the Target Companies, whether registered, pending registration or unregistered, other than the Excluded IP;

**parent company** means any company that in relation to another company (its **subsidiary**):

(a) holds a majority of the voting rights in the subsidiary;

(b) is a member of the subsidiary and has the right to appoint or remove a majority of its board of directors;

(c) is a member of the subsidiary and controls a majority of the voting rights in it under an agreement with the other members; or

(d) has the right to exercise a dominant influence over the subsidiary under the subsidiary’s articles or a contract authorised by them,

in each case whether directly or indirectly through one or more companies or other entities;

**Permitted Business** has the meaning given to it in Clause 19.3(d);

**Permitted Encumbrance** means security interests arising in the ordinary course of business or by operation of law including security interests for Taxation and other governmental charges;

**Permitted Leakage** has the meaning given to it in Schedule 1 (**Permitted Leakage**);

**Principal Business** has the meaning given to it in Clause 19.3(b);

**Properties** means the Material Properties, the Non-Material Properties and the Express Store Properties;

**Proposed Transaction** means the transaction contemplated by the Transaction Documents;

**Protected Territory** has the meaning given in Clause 19.3(b);

**Protective Covenant Claim** means a Claim pursuant to Clause 19;

**Purchaser Circular** means a circular (and, if relevant, any supplementary circular) in relation to the Proposed Transaction to be circulated to the shareholders of each of CP All and Charoen Pokphand Foods Public Company Limited;
**Purchaser Financing Agreements** means (i) a THB11,110,000,000 and USD3,648,974,000 term facilities agreement between, amongst others, certain lenders and the Purchaser as borrower; (ii) a THB8,890,000,000 and USD2,919,116,000 term facilities agreement between, amongst others, certain lenders and CP All as borrower; and (iii) USD3,700,000,000 margin loan facilities agreement between, amongst others, certain lenders and Oriental Power Developments Limited as borrower; and (iv) a commitment letter in respect of a USD800,000,000 margin loan facilities agreement and such facilities agreement itself between certain lenders and CP Merchandising Co., Ltd (the **CPM Commitment Letter** and **CPM Margin Loan**) (together with, in each case, a letter from the lenders (or their agent) under each such agreements confirming satisfaction of the conditions precedent to such financing);

**Purchaser Group** means the Purchaser and its Affiliates from time to time, which from the Toucan Closing Date shall include the Toucan Target Companies and from the Macaw Closing Date shall include the Macaw Target;

**Purchaser Obligation** means any representation, covenant, warranty or undertaking to indemnify given by the Purchaser to the Sellers under this Agreement;

**Purchaser Records** has the meaning given to it in Clause 18.2(a);

**Purchaser’s Bank Account** means the Purchaser’s bank account as notified in writing to the Sellers from time to time;

**Relevant Closing Date** means:

(a) in respect of the Toucan Sale (and, where applicable, the Toucan Target Companies, employees of the Toucan Target Companies and any other matters relating to the Toucan Sale), the Toucan Closing Date; and

(b) in respect of the Macaw Sale (and, where applicable, the Macaw Target, employees of the Macaw Target and any other matters relating to the Macaw Sale), the Macaw Closing Date;

**Relevant Date** means 31 August 2019;

**Relevant Transaction Document** has the meaning given in Clause 36.1;

**Relevant Time** means:

(a) for the purposes of Schedule 8 (**Inter-Company Debt**), Closing; and

(b) for all other purposes, the Effective Time;

**Relief** has the meaning given in Part D of Schedule 7 (**Tax**);

**Representatives** has the meaning given in Clause 24.1(b);

**Retained Group** has the meaning given in Part D of Schedule 7 (**Tax**);

**Retention Bonuses** means the amounts payable by the applicable Target Companies pursuant to the terms of the Retention Bonus Letters;

**Retention Bonus Letters** means the letters sent to eligible Employees setting out the terms of the retention bonus to be paid to any such eligible Employee, an example of such letters is set out at item 11.4.5 in the Thailand folder in the Data Room;
**Restricted Names** has the meaning given in Clause 17.2;

**SD Macaw Shares** means the 16,800,000 ordinary shares (B shares) held by Sime Darby AP in the Macaw Target;

**SD Transfer Agreement** means the transfer agreement between the Macaw Seller, the Purchaser and Sime Darby AP relating to the sale and purchase of the SD Macaw Shares to the Purchaser, in substantially the form as set out in Exhibit 1;

**Seller Group** means the Sellers and their Affiliates from time to time but excludes the Target Companies;

**Seller Obligation** means any representation, covenant, warranty or undertaking to indemnify given by either of the Sellers to the Purchaser under this Agreement (including the Tax Covenant and the undertaking in Clause 3);

**Seller Records** has the meaning given to it in Clause 18.2(b);

**Sellers’ Bank Account** means the Toucan Bank Account or the Macaw Bank Account;

**Sellers** means the Toucan Seller and the Macaw Seller and **Seller** means any of them;

**Share Plan Claim** means a Claim pursuant to Clause 14.2;

**Shares** means the THL Toucan Shares and the THBV Macaw Shares (or any of them);

**Sime Darby AP** means Sime Darby Allied Products Berhad (company number 72119-P), with its registered office at Level 9, Menara Sime Darby, Oasis Corporate Park, Jalan PJU 1A/2, Ara Damansara, 47301, Petaling Jaya, Selangor, Malaysia;

**Sime Darby AP Power of Attorney** means a power of attorney to be in a form agreed between the Macaw Seller and the Purchaser granted by Sime Darby AP in favour of the Purchaser to allow the Purchaser to exercise the rights of the holder of the SD Macaw Shares to address the delayed transfer of legal title;

**South Pattaya Property** means the land owned by Ek-Chai under the land title deed nos. 4467, 6436, 18190, 81844, 98107, 186774 and 186776, and the buildings and constructions thereon;

**Specific Accounting Treatments** has the meaning given in Part A of Schedule 9 (Financial Adjustments);

**subsidiary** and **subsidiaries** means any company in relation to which another company is its parent company;

**Surviving Provisions** means Clauses 22, 23, 24, 25, 27, 28, 29, 31, 34, 35, 36, Schedule 5 (Limitations on Liability) and Schedule 11 (Definitions and Interpretation);

**Target Group** means the Toucan Target Companies and the Macaw Target, and **Target Company** means any of them;

**Tax** and **Taxation** have the meanings given in Part D of Schedule 7 (Tax);

**Tax Authority** has the meaning given in Part D of Schedule 7 (Tax);

**Tax Claim** means a claim for a breach of any of the Tax Warranties or a claim under the Tax Covenant;
**Tax Covenant** means the covenants relating to Tax set out in paragraph 1 of Part B of Schedule 7 (Tax);

**Tax Demand** and **Tax Liability** have the meanings given in Part D of Schedule 7 (Tax);

**Tax Matters** has the meaning given in Schedule 5 (Limitations on Liability);

**Tax Refund** has the meaning given in Schedule 7 (Tax);

**Tax Return** has the meaning given in Part D of Schedule 7 (Tax);

**Tax Warranties** means the warranties set out in Part A of Schedule 7 (Tax) and the warranty set out in paragraphs 2.3 and 2.5 of Part A of Schedule 4 (Sellers’ Warranties);

**Tesco** means Tesco PLC, a public limited company incorporated in England and Wales, whose registered office is at Tesco House, Shire Park, Kestrel Way, Welwyn Garden City, AL7 1GA and whose registered number is 00445790;

**Tesco Condition** means the approval of the shareholders of Tesco of the Proposed Transaction through the passing of the Tesco Resolution;

**Tesco Executive Share Plan** means any share incentive plan in existence as at the Closing Date in which any Employee participates as at the Closing Date and which provides for the grant of award in respect of Tesco shares;

**Tesco Global Employment** means Tesco Global Employment Co., Ltd.;

**Tesco Resolution** means the ordinary resolution of Tesco to be proposed to Tesco shareholders in connection with the Proposed Transaction in accordance with Listing Rule 10.5.1 (for these purposes, **Listing Rules** means the Listing Rules of the UK Listing Authority as published by the UK Financial Conduct Authority);

**Thailand** means the Kingdom of Thailand;

**THBV Macaw Shares** means the THBV Ordinary Shares and the THBV Preference Shares;

**THBV Ordinary Shares** means the 39,200,000 ordinary shares (A shares) in the share capital of the Macaw Target held by the Macaw Seller;

**THBV Preference Shares** means the 60,000,000 preference shares in the share capital of the Macaw Target held by the Macaw Seller;

**Third Party Assurances** means all guarantees, indemnities, counter indemnities and letters of comfort of any nature given:

(a) to a third party by a Target Company in respect of any obligation of a member of the Seller Group; and/or (as the context may require); or

(b) to a third party by a member of the Seller Group in respect of any obligation of a Target Company;

**Third Party Claim** has the meaning given in Clause 11;

**Third Party Right** means any interest or equity of any person (including any right to acquire, option or right of pre-emption or conversion) or claim, any mortgage, encumbrance, charge,
pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement, or any agreement to create any of the above;

**THL B Preference Shares** means the 1 group B preference share in the share capital of Toucan Target held by the Toucan Seller;

**THL C Preference Shares** means the 490,000 group C preference shares in the share capital of Toucan Target held by the Toucan Seller;

**THL Ordinary Shares** means the 100 ordinary shares in the share capital of Toucan Target held by the Toucan Seller;

**THL Toucan Shares** means the THL Ordinary Shares, the THL B Preference Shares and the THL C Preference Shares;

**TLGF** means Tesco Lotus Retail Growth Freehold and Leasehold Property Fund, further details of which are set out in Part C of Schedule 10 *(Target Company Information)*;

**Toucan Adjustment Amount** means the amount calculated in accordance with Part D of Schedule 9 *(Financial Adjustments)*;

**Toucan Adjustment Delivery Date** has the meaning given to it in Clause 4.5(a);

**Toucan Adjustment Statement** has the meaning given to it in Clause 4.3;

**Toucan Bank Account** means the Toucan Seller’s bank account as notified in writing by the Toucan Seller to the Purchaser within 5 Business Days of the Toucan Unconditional Date;

**Toucan Business** means the business of the Toucan Target Companies;

**Toucan Cash** means, in relation to the Toucan Group, the aggregate of its cash (whether in hand or credited to any account with any banking, financial, acceptance credit, lending or other similar institution or organisation) and its cash equivalents, including all interest accrued thereon, together with any items classified as ‘Cash’ in Part G of Schedule 9 *(Financial Adjustments)*, calculated in accordance with the accounting policies and procedures set out in Part A of Schedule 9 *(Financial Adjustments)* as at the Effective Time, but excluding any Toucan Inter-Company Loan Receivables and all amounts/items included in the calculation of the Toucan Working Capital;

**Toucan Closing** means completion of the sale and purchase of the THL Toucan Shares and related obligations in respect of the Toucan Target Companies in accordance with the provisions of this Agreement;

**Toucan Closing Date** means the Relevant Closing Date for the Toucan Sale, as calculated in accordance with Clause 6.1(a);

**Toucan Conditions** has the meaning given in Clause 5.1;

**Toucan External Debt** means, in relation to the Toucan Group, the aggregate of the Financial Debt owed (together with any accrued interest) to any third party (which in each case is not a member of the Seller Group, and is not an amount or item included in the calculation of the Working Capital), together with any other items classified as ‘External Debt’ in Part G of Schedule 9 *(Financial Adjustments)*, calculated in accordance with the accounting policies and procedures set out in Part A of Schedule 9 *(Financial Adjustments)* as at the Effective Time;
**Toucan February 2020 Accounts Warranties** means the means the warranties set out in paragraphs 2.3, 2.4 and 2.11 of Part A of Schedule 4 (Sellers’ Warranties);

**Toucan February 2020 Management Accounts** means the unaudited profit and loss account for the full-year period ending on 29 February 2020 and the unaudited balance sheet at the 29 February 2020 provided to the Purchaser in accordance with Clause 4.2, such balance sheet being the Toucan FY 20 Group Reporting Balance Sheet;

**Toucan February 2020 Statutory Accounts** means the audited financial statements of each of the Toucan Target Companies for the financial year ended on the February 2020 Statutory Accounts Date and which in each case comprises a balance sheet, statement of cashflows, profit and loss account, statement of changes in equity and notes to the financial statements as provided to the Purchaser in accordance with Clause 4.5(a);

**Toucan February 2020 Statutory Accounts Delivery Date** has the meaning given to it in Clause 4.2(a);

**Toucan FY 19 Group Reporting Balance Sheet** means a balance sheet in respect of the Toucan Target Companies in the Agreed Form as at the FY 19 Reporting Date and disclosed as item 4.2.18 in the Thailand folder in the Data Room;

**Toucan FY 20 Group Reporting Balance Sheet** means a balance sheet in respect of the Toucan Target Companies as at the FY 20 Reporting Date provided to the Purchaser in accordance with Clause 4.2(a);

**Toucan Group** means the Toucan Target and any of its subsidiaries from time to time, but excluding the Toucan Joint Ventures;

**Toucan Inter-Company Loan Payables** means, in relation to any Toucan Target Company, any amounts owed as at the Relevant Time by the Toucan Target Company to any member of the Seller Group (which are not Toucan Inter-Company Trading Debt) together with accrued interest, if any, up to the Relevant Time on the terms of the applicable debt;

**Toucan Inter-Company Loan Receivables** means, in relation to each Toucan Target Company, any amounts owed as at the Relevant Time to that Toucan Target Company by any member of the Seller Group (which are not Toucan Inter-Company Trading Debt), together with accrued interest, if any, up to the Relevant Time on the terms of the applicable debt;

**Toucan Inter-Company Trading Debt** means all amounts owed, outstanding or accrued in the ordinary course of trading, including any VAT arising on such amounts, as between any member of the Seller Group and any Toucan Target Company as at the Relevant Time in respect of inter-company trading activity and the provision of services, facilities and benefits between them, and:

(a) includes, where applicable, amounts owed in respect of salaries or other employee benefits (including payroll Tax thereon but excluding any bonuses and related Taxes), insurance (including health and motor insurance), IT support, treasury services, and IT licence fees, or any other central management services provided between them up to the Relevant Time; but

(b) excludes amounts classified as ‘Inter-Company Loan Receivables’ and ‘Inter-Company Loan Payables’ in Part G of Schedule 9 (Financial Adjustments) and amounts due in respect of matters which would in the ordinary course of
business of the Toucan Target Companies remain outstanding or otherwise have the characteristics of an intra-group loan and also excludes any amounts in respect of Tax);

**Toucan Intra-Group Termination Deed** means the intra-group deed entered into between certain members of the Seller Group and certain the Toucan Target Companies under which certain arrangements between the Seller Group and the Toucan Target Companies and the Macaw Target are terminated with effect from the Toucan Closing Date;

**Toucan Joint Ventures** means those companies details of which are set out in Part C of Schedule 10 (Target Company Information);

**Toucan Last Accounts** means the audited financial statements of each of the Toucan Target Companies for the financial year ended on the Last Accounts Date and which in each case comprises a balance sheet, statement of cashflows, profit and loss account, statement of changes in equity and notes to the financial statements as disclosed at items 4.1.1.5, 4.1.2.6 and 4.1.3.1 in Thailand folder in the Data Room;

**Toucan Legal VDD Report** means the reports described in limb (c) of the definition of VDD Reports;

**Toucan Management Accounts** means the unaudited profit and loss account for the Management Accounts Period and the unaudited balance sheet at the Management Accounts Date disclosed as item 4.3.1 in the Thailand folder in the Data Room;

**Toucan Material Properties** means those properties identified in Exhibit 3;

**Toucan Regulatory Condition** has the meaning given to it in Clause 5.1(b);

**Toucan Sale** means the sale and purchase of the THL Toucan Shares in accordance with the provisions of this Agreement;

**Toucan Share Price** has the meaning given to it in Clause 2.1(a);

**Toucan Share Price Adjustment Amount** means an amount equal to:

(a) if the Toucan Closing Date occurs after the Estimated Closing Date, an amount, expressed as a positive number, equal to USD 1,366,120 multiplied by the actual number of days lapsed during the period from but excluding the Estimated Toucan Closing Date to and including the Toucan Closing Date, which reflects the forecasted cash profit generation of the Toucan Business during such period;

(b) if the Toucan Closing Date occurs prior to the Estimated Closing Date, an amount, expressed as a negative number, equal to USD 1,366,120 multiplied by the actual number of days lapsed during the period from but excluding the Toucan Closing Date to and including the Estimated Toucan Closing Date, which reflects the forecasted cash profit generation of the Toucan Business during such period; or

(c) if the Toucan Closing Date occurs on the Estimated Closing Date, nil;

**Toucan Shares** means the THL Toucan Shares and the Minority Toucan Shares;
**Toucan Target** means Tesco Stores (Thailand) Limited, further details of which are set out in Part A of Schedule 10 (Target Company Information);

**Toucan Target Companies** means the Toucan Target and its subsidiaries, details of which are set out in Part B of Schedule 10 (Target Company Information), (and, for the avoidance of doubt, does not include the Toucan Joint Ventures) and **Toucan Target Company** means any of them;

**Toucan Transitional Brand Licence** means the transitional brand licence agreement in the Agreed Form to be entered into at Closing by Ek-Chai Distribution System Co., Ltd. and Tesco Stores Limited;

**Toucan Unconditional Condition** has the meaning given in Clause 5.2(c);

**Toucan Unconditional Date** has the meaning given in Clause 5.21;

**Toucan Working Capital** means, in relation to the Toucan Group, the net working capital as at the Effective Time comprising each of the line items classified as ‘NWC’ set out in Part G of Schedule 9 (Financial Adjustments), calculated in accordance with the accounting policies and procedures set out in Part A of Schedule 9 (Financial Adjustments) as at the Effective Time, and no others;

**Transaction Documents** means this Agreement, the Disclosure Letter, the Transitional Services Agreement, the Transitional Brand Licences and any other documents in Agreed Form;

**Transitional Brand Licences** means the Toucan Transitional Brand Licence and the Macaw Transitional Brand Licence;

**Transitional Services Agreement** means the transitional services agreement in the Agreed Form to be entered into at Closing by Ek-Chai Distribution System Co., Ltd., Macaw Target, Tesco Stores Limited and the Purchaser;

**VAT** means value added tax, sales and services tax and any similar sales or turnover tax in any relevant jurisdiction;

**VDD Reports** means each of the following reports in relation to the Proposed Transaction, as disclosed in the Data Room:

- (a) the financial and tax vendor due diligence report prepared by Ernst & Young LLP comprising nine volumes:
  - (i) Volume 1, Aggregated financials dated 13 December 2019;
  - (ii) Volume 2, Toucan – Financial dated 13 December 2019;
  - (iii) Volume 3, Toucan – Taxation dated 16 January 2020;
  - (iv) Volume 4, Macaw – Financial dated 13 December 2019;
  - (v) Volume 5, Macaw – Taxation dated 16 January 2020;
  - (vi) Volume 6, Toucan – Databook dated 13 December 2019;
  - (vii) Volume 7, Macaw – Databook dated 13 December 2019;
(viii) Volume 8, Toucan – Financial trading update dated 14 February 2020; and

(ix) Volume 9, Macaw – Financial trading update dated 14 February 2020;

(b) the legal vendor due diligence report and the property legal vendor due diligence report (together with any documents scheduled or annexed to those reports) prepared by Adnan Sundra & Low dated 21 January 2020 and 22 January 2020 respectively; and

(c) the legal vendor due diligence report prepared by Allen & Overy and the property legal vendor due diligence reports prepared by Allen & Overy and DLA Piper (together with any documents scheduled or annexed to those reports) dated 21 January 2020 and 22 January 2020 respectively;

**Warranties** means the warranties given pursuant to Clause 8 and set out in Schedule 4 (**Sellers’ Warranties**) and the Tax Warranties;

**Warranty Claims** means any claim for breach of the Warranties;

**Working Capital** means, in relation to the Toucan Group, the Toucan Working Capital and, in relation to the Macaw Target, the Macaw Working Capital; and

**Working Hours** means 9.30am to 5.30pm in the relevant location on a Business Day.

2. **Interpretation.** In this Agreement, unless the context otherwise requires:

(a) references to a **person** include any individual, firm, body corporate (wherever incorporated), government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);

(b) references to a paragraph, clause or Schedule shall refer to those of this Agreement unless stated otherwise;

(c) headings do not affect the interpretation of this Agreement; the singular shall include the plural and vice versa; and references to one gender include all genders;

(d) references to any English law legal term or concept shall, in respect of any jurisdiction other than England and Wales, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction;

(e) references to THB are references to the lawful currency from time to time of Thailand, references to MYR are references to the lawful currency from time to time of Malaysia and references to USD are references to the lawful currency from time to time of the United States of America;

(f) for the purposes of applying a reference to a monetary sum expressed in USD (or other specified currency), an amount in a different currency shall be deemed to be an amount in USD (or other specified currency) translated at the Exchange Rate (if applicable, at the relevant date (which, in relation to a Claim, shall be the date of the notice of that Claim under Schedule 5 (**Limitations on**
Liability) and in relation to a claim under Clause 3.5 shall be the date of the notice of that claim));

(g) references to a time are, unless stated otherwise, references to Bangkok Time;

(h) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms and the ejusdem generis rule of construction shall not apply to this Agreement; and

(i) any statement in this Agreement qualified by the expression so far as the Sellers are aware or any similar expression shall be deemed to relate, in the case of the Toucan Seller, to matters concerning the Toucan Business only and, in the case of the Macaw Seller, to matters concerning the Macaw Business only and in each case only to be made on the basis of the actual knowledge, at the date of this Agreement, of the following persons and in each case in respect only of the Warranties identified below against their respective names and having made enquiry of only the persons identified below against their respective names (but with no requirement to make enquiries of any other person):

<table>
<thead>
<tr>
<th>Warranties / Disclosure</th>
<th>Actual awareness</th>
<th>Persons of whom reasonable enquiries have been made</th>
</tr>
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<tr>
<td></td>
<td></td>
<td>The Toucan Business</td>
</tr>
<tr>
<td>1.4 (Constitutional documents), 4.1 (Licences), 4.3 (Compliance), 4.5 (Anti-Bribery and Compliance) and 9.4 (Creditors) of Part A (General/Commercial) of Schedule 4 (Sellers’ Warranties)</td>
<td>Adrian Morris (Group General Counsel) David Ward (Group Legal Director for Regulation, Ethics and Compliance)</td>
<td>Alison Horner (Asia CEO) Sompong Rungnirattisai (Toucan CEO) Anusara Chokvanitphong (Toucan Legal Director)</td>
</tr>
<tr>
<td>2.9(b) (Position since Last Accounts Date)</td>
<td>Alan Stewart (Group Chief Financial Officer)</td>
<td>Gareth Sharpe (Asia Chief Financial Officer)</td>
</tr>
<tr>
<td>8 (Litigation) of Part A (General/Commercial) of Schedule 4 (Sellers’ Warranties)</td>
<td>Adrian Morris (Group General Counsel)</td>
<td>Alison Horner (Asia CEO)</td>
</tr>
<tr>
<td>Part C (Real Estate) of Schedule 4 (Sellers’ Warranties)</td>
<td>Steve Rigby (Group Property Director)</td>
<td>Miroslav Friml (Property Director SE Asia)</td>
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<td></td>
<td>Faye Goss (Group Property Legal Director)</td>
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<tr>
<th>Part D (Employment) of Schedule 4 (Sellers’ Warranties)</th>
<th>Adrian Morris (Group General Counsel)</th>
<th>Alison Horner (Asia CEO)</th>
<th>Alison Horner (Asia CEO)</th>
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<tr>
<td>Part G (Product Liability) of Schedule 4 (Sellers’ Warranties)</td>
<td>Kay Majid (Group Legal Director for Litigation)</td>
<td>Sompong Rungrinratthisai (Toucan CEO) Anusara Chokvanitphong (Toucan Legal Director)</td>
<td>Paul Ritchie (Macaw CEO) Azliza Baizura Azmel (Macaw Corporate Services Director)</td>
</tr>
<tr>
<td>1 (Returns), 7 (Residence), 10 (Related Party Transactions) and 11 (Tax Avoidance) of Part A (Tax Warranties) of Schedule 7 (Tax)</td>
<td>Robin Booth (Group Tax Director) Orawan Asawalertpanich (Sr. Finance Manager – Tax)</td>
<td>Yee Ming Soon (Finance Controller)</td>
<td></td>
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</tbody>
</table>

3. **Enactments.** Except as otherwise expressly provided in this Agreement, any express reference to an enactment (which includes any legislation in any jurisdiction) includes references to: (a) that enactment as amended, consolidated or re-enacted by or under any other enactment before or after the date of this Agreement; (b) any enactment which that enactment re-enacts (with or without modification); and (c) any subordinate legislation (including regulations) made (before or after the date of this Agreement) under that enactment, as amended, consolidated or re-enacted as described at (a) or (b) above, except to the extent that any of the matters referred to in (a) to 1(c) occurs after the date of this Agreement and increases or alters the liability of the Sellers or the Purchaser under this Agreement.

4. **Schedules.** The Schedules comprise schedules to this Agreement and form part of this Agreement.

5. **Inconsistencies.** Where there is any inconsistency between the definitions set out in this Schedule 11 (Definitions and Interpretation) and the definitions set out in any clause or any other Schedule, then, for the purposes of construing such clause or Schedule, the definitions set out in such clause or Schedule shall prevail.
SIGNATURE

This Agreement is signed by duly authorised representatives of the Parties:

Sellers

SIGNED

for and on behalf of

TESCO HOLDINGS B.V.

SIGNATURE: Alan Stewart

NAME: Mr Alan Stewart

SIGNED

for and on behalf of

TESCO HOLDINGS LIMITED

SIGNATURE: Dave Lewis

NAME: Mr Dave Lewis
Purchaser and Purchaser Guarantors

SIGNED (for and on behalf of) C.P. RETAIL DEVELOPMENT COMPANY LIMITED

SIGNATURE: Mr Adirek Sripratak

SIGNED (for and on behalf of) CHAROEN POKPHAND HOLDING CO., LTD

SIGNATURE: Mr Umroong Sanphasitvong

SIGNED (for and on behalf of) CP ALL PUBLIC COMPANY LIMITED

SIGNATURE: Mr Korak Chairasmisak
SIGNED
for and on behalf of
C.P. MERCHANDISING CO., LTD

SIGNATURE: Mr Adirek Sripratak