
Sample Clauses for API Use Agreements pursuant to the Banking Act

- * This document consists of sample clauses for API use agreements to be entered into by and between banks and Electronic Payment Service Providers as well as comments thereon. Upon using this document, we recommend that you refer to the comments together with the sample clauses as the comments point out the issues that reflect discussions we had before preparing these sample clauses.
- * This document is based on the Banking Act and related laws and regulations as of December 27, 2018.
- * This document is a draft proposal intended to assist banks and Third Party Providers in executing agreements promptly pursuant to their obligation to execute agreements as stipulated in Article 52-61-10 of the Banking Act. It does not intend to force them to execute agreements in accordance with these sample clauses, nor does it prevent them from agreeing on clauses that are different from these sample clauses based on their mutual agreement.
- * This document, which translated into English, is to be used solely as reference material to aid in the understanding of the original document (Japanese Ed.).

First Edition

December 27, 2018

Review Committee on Open APIs

Secretariat: The Japanese Bankers Association (JBA)

Version No.	Issue Date	Revision History
Preliminary version as of July 2018	July 6, 2018	(prepared by the Study Group for the Promotion of Open APIs)
First Edition	December 27, 2018	Revision reflecting the challenges revealed in practices concerning contracts between banks and Electronic Payment Service Providers

Foreword

As a result of the enactment on May 26, 2017 of the Act for Partial Revision of the Banking Act (Act No. 49 of 2017 promulgated on June 2, 2017), certain measures have been established to promote open innovation, including the introduction of a registration system for Electronic Payment Service Providers (“EPSPs”), their obligation to execute agreements with banks as well as the formulation and publication by banks of their policy on partnership and collaboration with EPSPs.

In line with this development and with the aim of stimulating open innovation in Japan, the “Review Committee on Open APIs” (the “Review Committee”) prepared the “Report of Review Committee on Open APIs” (the “Review Committee Report”), a public-private initiative to promote the use of open APIs that seeks to balance the promotion of innovation with security and user protection (published on July 13, 2017)¹.

With the development of systems to promote open innovation both in public and private sectors, banks have also advanced their efforts to release APIs, as seen in EPSPs’ launch of services for inquiries on deposit balances and account activities. If a bank and an EPSP intend to collaborate with each other on APIs, they need to enter into an agreement. If such collaboration on APIs is further accelerated in the future, multiple banks and EPSPs will execute agreements and such practices will be accompanied by certain administrative work. Therefore, the need to improve the efficiency of such work has come to be recognized as an issue. Thus, we have established the “Study Group for the Promotion of Open APIs” (the “Study Group”), whose members consist of banks, Third Party Providers (“TPPs”) and lawyers, as a venue for working-level opinion exchange. In light of the Banking Act and other laws and regulations as well as the Review Committee Report, they have provided sample clauses for agreements to be executed upon the provision of API access and summarized points that are commonly at issue.

An agreement on the use of APIs will be individually stipulated by and between the relevant bank and EPSP. However, if banks and EPSPs share with one another sample clauses for the agreements and the points at issue that should be considered in advance, it will contribute to the improvement of efficiency in their administrative work regarding the agreements to be executed upon the commencement of services that utilize API connection. In light of the issues summarized by the Study Group, the Review Committee has prepared sample clauses for API use agreements as well as comments thereon (these “Sample Clauses”), assuming a typical case where a bank and an EPSP execute the said agreement pursuant to the Banking Act².

¹ https://www.zenginkyo.or.jp/fileadmin/res/abstract/council/openapi/openapi_report_e1.pdf

² If any practical issue emerges as these Sample Clauses become widely used, it is also possible to have discussions as necessary and improve these Sample Clauses.

The Review Committee expects that these Sample Clauses will reduce the costs of communication between banks and EPSPs regarding agreements and contribute to smooth API connection, thereby leading to the formation and development of the API ecosystem.

Members of Review Committee on Open APIs (as of December 2018)

Members	Yasushi Sano	General Manager, Transaction Products Development Dept., Sumitomo Mitsui Banking Corporation
	Gou Iwase	Managing Director, Deputy Head of Digital Transformation Division, MUFG Bank, Ltd.
	Nobuhisa Abe	General Manager, Digital Innovation Department, Mizuho Financial Group, Inc.
	Keisuke Hirata	General Manager, Digital Strategy Division, The Bank of Fukuoka, Ltd.
	Seiichiro Matsuki	General Manager, Digital Strategy, Business Planning Division, The Keiyo Bank, Ltd.
	Norifumi Yoshimoto	General Manager, Fintech Business Planning Dept., SBI Sumishin Net Bank, Ltd.
	Daisuke Sahata	Executive Manager, e-Business Sales & Planning Section, NTT Data Corporation
	Shigeo Hagawa	Partner, BK/FM Business Solutions, FS & JP Group, IBM Japan, Ltd.
	Tamotsu Mizukami	General Manager, Marketing Promotion Department, Regional Financial Information Systems Business Unit, Hitachi, Ltd.
	Hiroki Maruyama	Representative Director, Fintech Association of Japan, and Representative Director, Infcurion Group, Inc.
	Mark Makdad	Director, Fintech Association of Japan, and Chief of Platform, Moneytree kk.
	Toshio Taki	Representative Director, Japan Association for Financial APIs, and Director, Money Forward, Inc., and Fintech Institute
	Koichiro Okamoto	Board member, Computer Software Association of Japan, and Chief Executive Officer, Yayoi Co., Ltd.
	Masakazu Masujima	Partner, Mori Hamada & Matsumoto
	Tetsuo Morishita	Professor of Law, Sophia University Law School
	Atsushi Koide	Professor, Faculty of Law, Gakushuin University
	Motonobu Matsuo	Deputy Director-General, Policy and Markets Bureau, Financial Services Agency
	Hidekazu Shimura	Director General, Planning Department, The Center for Financial Industry Information Systems
	Yumiko Nagasawa	Manager, Foster Forum
Observers	Yutaka Soejima	Head of FinTech Center, Deputy Director-General, Payment and Settlement Systems Department, Bank of Japan
	Sawaichiro Kamata	Chief Officer for Administration, Japan Securities Dealers Association
	Hideto Masaki	General Manager, Government Affairs Department, Mitsubishi UFJ NICOS Co., Ltd. /Japan Credit Card Association
Secretariat	Japanese Bankers Association	

Members of Study Group for the Promotion of Open APIs

The Study Group for the Promotion of Open APIs consists of 12 companies involved in API connection (six banks and six TPPs) and three lawyers. The Financial Services Agency and The Center for Financial Industry Information Systems participated in the group as observers. The Study Group had 14 meetings during the period from November 27, 2017 to December 3, 2018.

Banks	<p>Mizuho Bank, Ltd.</p> <p>Kazuhiro Nakamura Manager, e-Business Department (The 1st-The 13th meeting)</p> <p>Kunihiro Andou Manager, e-Business Department (The 14th)</p>
	<p>MUFG Bank, Ltd.</p> <p>Kazuyuki Harada Chief Manager, Digital Transformation Division (The 1st-The 9th)</p> <p>Rempei Iwata Senior Manager, Digital Transformation Division (The 10th, The 11th, The 13th)</p> <p>Ayaka Masaki Manager, Digital Transformation Division (The 12th, The 14th)</p>
	<p>Sumitomo Mitsui Banking Corporation</p> <p>Takuya Kaga Vice President, Transaction Products Development Dept. (The 1st-The 13th)</p> <p>Tomohiro Toi Assistant Vice President, Transaction Business Planning Dept. (The 14th)</p>
	<p>SBI Sumishin Net Bank, Ltd.</p> <p>Norifumi Yoshimoto General Manager, Fintech Business Planning Dept. (The 1st-The 11th, The 14th)</p> <p>Takayuki Hattori Joint General Manager, Corporate Planning Dept. (The 12th, The 13th)</p>
	<p>The Chiba Bank, Ltd.</p> <p>Toshiaki Sekiya Senior Deputy General Manager, FinTech Business Promotion Office (The 1st, The 2nd, The 6th, The 7th, The 9th, The 13th)</p> <p>Megumi Otsuka Manager, FinTech Business Promotion Office (The 3rd-The 5th, The 8th, The 10th-The 12th)</p>
	<p>The Bank of Fukuoka, Ltd.</p> <p>Masamichi Hirakawa Manager, Digital Strategy Division (The 14th)</p>
	<p>The Tochigi Bank, Ltd.</p> <p>Hitoshi Moriyama Manager, Business Strategy Office, Business Management Division (The 1st, The 2nd, The 4th-The 6th, The 8th, The 9th, The 12th, The 13th)</p> <p>Tomohito Hiraide Manager, Operation & Systems Division (The 3rd)</p> <p>Masayuki Kato Assistant Manager, Business Strategy Office, Business Management Division (The 7th, The 10th, The 11th)</p>
<p>The Keiyo Bank, Ltd.</p> <p>Hiroshi Suzuki Assistant Manager, Tokyo Office (The 14th)</p>	

Third Party Providers	<p>Infcurion Group, Inc. Hiroki Maruyama Representative Director (The 1st, The 3rd, The 4th)</p> <p>Zaim, Inc. Takako Kansai Representative Director (The 2nd)</p> <p>freee, Inc. Yasuhiro Kimura Executive Officer (The 5th-The 14th)</p>
	<p>Obic Business Consultants Co., Ltd. Kazumaro Hino General Manager, Product Development Department (The 1st, The 3rd) Tetsuhiko Umekawa Manager, Finance system Sales Department (The 2nd, The 4th-The 14th)</p>
	<p>TKC Corporation Hiroyuki Yaoi Manager, System Laboratory (The 1st-The 11th, The 13th) Tatsuya Umiki Senior System Engineer, System Laboratory (The 12th, The 14th)</p>
	<p>Moneytree kk. Mark Makdad Chief of Platform (The 1st, The 2nd, The 4th, The 6th, The 7th, The 9th) Rui Suzuki Chief of Finance (The 3rd, The 5th, The 8th, The 10th-The 14th)</p>
	<p>Money Forward, Inc. Toshio Taki Director (The 1st-The 6th, The 8th-The 14th) Hirokazu Ban Manager, Administration Division (The 7th)</p>
	<p>Yayoi Co., Ltd. Koichiro Okamoto Chief Executive Officer (The 1st-The 7th, The 9th-The 11th, The 13th, The 14th) Masahiko Uchiyama Project Manager, Marketing Department (The 8th, The 12th)</p>
	Lawyers
<p>TMI Associate Kazuyasu Shiraishi Attorney at law</p>	
<p>Mori Hamada & Matsumoto Takane Hori Attorney at law</p>	
The authorities concerned (Observers)	<p>Financial Services Agency Jumpei Miwa Director for Fintech, Banking, Payment and Insurance Regulations Office, Planning and Coordination Bureau (The 1st-The 13th) Eisuke Tamagawa Head, Banking, Payment and Insurance Regulations Office, Planning and Coordination Bureau (The 9th) Kazuyo Ikeda Deputy Director, Banking Business Division I, Supervision Bureau (The 9th-The 13th)</p>

	<p>Yutaka Ogawa Deputy Director, Banking, Payment and Insurance Regulations Office, Policy and Markets Bureau (The 14th)</p> <hr/> <p>The Center for Financial Industry Information Systems</p> <p>Hideki Osawa Deputy Director, Planning Department (The 1st-The 3rd, The 5th, The 7th-The 13th)</p> <p>Jutaro Kobayashi Director General, Planning Department (The 4th, The 6th)</p> <p>Hidekazu Shimura Director General, Planning Department (The 14th)</p>
<p>Secretariat</p>	<p>Japanese Bankers Association</p> <hr/> <p>Mori Hamada & Matsumoto</p> <p>Masaki Yukawa Attorney at Law</p>

Sample Clauses for API Use Agreements pursuant to the Banking Act

Article 1: Purpose

The purpose of this Agreement is to stipulate the conditions of use and other basic matters regarding the Bank's grant to the TPP of a non-exclusive license to use the APIs and the provision by the TPP of its services to the Users using the APIs so that the Users of the Bank's services designated by the Bank will be able to use the Bank's services via the services offered by the TPP.

This sample clause states the "purpose" of the agreement, as agreements generally stipulate their purposes and many of the API use agreements that are actually used by banks include such provision.

A member of the Study Group expressed an opinion that attention should be paid so as not to give a false impression that the API use agreement states all of the conditions and prerequisites for API connection. As the sample clause states that the API use agreement stipulates "basic matters," certain other matters would possibly be stipulated in the standards established by the Bank or API specifications.

In addition, since there are various types of APIs, with respect to the matters that relate only to certain APIs, parties may possibly execute an agreement separately from this Agreement. For example, in a possible case, economic conditions and the details of services may be stipulated separately in connection with read/write APIs. In order to clarify this, the following provision could be inserted: "provided, however, that the Read/Write APIs shall be governed not only by this Agreement, but also by the XX Agreement."

Article 2: Definitions

- (1) "Business Day" means any day other than those designated as bank holidays in Japan.
- (2) "Testing Environment" means any testing environment of the Bank's system that is separately released to check the operation of software that uses the APIs.
- (3) "Documents, Etc." means written documents and electronic records.
- (4) "Security Checklist" means any report in the form of Documents, Etc. submitted by the TPP to the Bank with respect to security (regardless of whether it is submitted before the conclusion of this Agreement; and it refers to revised versions in the case of any revision).
- (5) "Connection Test" means any test conducted to enable the Bank to confirm that the TPP has brought software that uses the APIs into compliance with specifications related to the APIs.

- (6) “Tokens, Etc.” means any token or other information required for the TPP to access the Bank’s system through the APIs.
- (7) “Unauthorized Access, Etc.” means unauthorized access, hacking and unauthorized network intrusion.
- (8) “API” means any application programming interface that complies with the specifications set forth in the specification document to be separately provided by the Bank to the TPP (the “API Specification Document”).
- (9) “API Access Right” means the non-exclusive right of the TPP to implement the API Linkage.
- (10) “API Linkage” means that the TPP links the Banking Functions with the Services by using the APIs.
- (11) “Banking Functions” means the Bank’s services provided by the Bank to the Users.
- [(12) “Read/Write API” means certain types of the APIs that are stipulated in the API Specification Document as those that transfer the balance of the deposit accounts of the Users.]
- [(13) “Read-only API” means certain types of the APIs that are stipulated in the API Specification Document as those that obtain the balance of the deposit accounts of the Users.]
- (14) “Services” means any service stipulated in the Exhibit to be provided by the TPP to the Users by using the APIs; provided, however, that if any service is added to the Services or the Services are amended pursuant to Article 17, Paragraph 3 hereof, the said term refers to the Services reflecting such addition or amendment.
- (15) “User” means any person who agrees to use the Services and the Banking Functions, is permitted by the TPP to use the Services and is permitted by the Bank to use the Banking Functions.
- (16) “User Information” means any information on the Users obtained by the TPP from the Bank via the APIs in accordance with the Users’ instructions.
- (17) “Linked Service Provision” means to provide any Linked Service Provider with all or a portion of the information obtained via the APIs in order to communicate such information to the Users, or to receive from any Linked Service Provider the Users’ instructions (including the content of the instruction alone) and communicate them to the Bank via the API.
- (18) “Linked Service Provider” means any Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. as stipulated in Article 34-64-9, Paragraph 3 of the Regulation for Enforcement of the Banking Act.

There are two ways to stipulate “definitions” in an agreement: (i) terms can be defined collectively in a “definition” clause; or (ii) terms can be defined in the text of the agreement as necessary. For ease of understanding, the sample clause includes an article dedicated to “definitions.”

With respect to the definition of the “Connection Test,” some of the agreements we referred to distinguish tests in a Testing Environment and tests in a production environment. However, the sample clause defines the term in a way that refers to those tests collectively in light of the argument that it is not necessary to distinguish them in a provision of an agreement. It should be noted that this argument concerns the issue of the extent that an agreement should prescribe types of tests in detail and the sample clause does not intend to deny the actual necessity of testing in the Testing Environment prior to testing in the production environment.

The term “Banking Functions” refers to the Bank’s Internet banking and other services provided by the Bank to the Users. It is defined in such a way that the term means the Bank’s functions excluding the Services provided by the TPP using the APIs.

Under the OAuth2.0, the definition of the term “Tokens, Etc.” refers to credentials including access tokens and refresh tokens. However, the sample clause adopts a broad definition of “token or other information” since authorization mechanisms or technologies for API linkage may be changed or added in the medium-to long-term.

While definitions of the terms “Read/Write API” and “Read-only API” use the expression “deposit accounts” in light of Items 1 and 2 of Article 2, Paragraph 17 of the amended Banking Act (the “Banking Act”) that became effective pursuant to the Act for Partial Revision of the Banking Act (Act No. 49 of 2017), the agreement may possibly include descriptions relating to borrowings and investment trusts in addition to deposit accounts (or simply use the expression “account”), depending on the types of APIs that will actually be provided. Please note that the portions with brackets ([]) in these Sample Clauses indicate that the relevant parties should choose whether to include such provisions in the agreement depending on the circumstances and do not mean that either one should be viewed as the principle. The same applies to the brackets used hereinafter.

While the term “Services” refers to the services provided by the TPP to the Users by using the APIs, the sample clause stipulates that the scope of the Services shall be specified in the Exhibit as such scope could vary according to the content of the services. On one hand, if the scope of the Services is defined broadly, data will be made widely available within such scope (Article 17, Paragraph 2 of this Agreement). On the other hand, some of the obligations imposed on the TPP in connection with the Services (such as Article 3, Paragraphs 3 and 4; Article 7, Paragraphs 1, 2, 3, 6 and 7; Article 8, Paragraphs 1 and 2; Article 9, Paragraphs 1 and 4; and Article 10, Paragraph 1 of this Agreement) may not necessarily be required to be applied across the board to the Services in entirety. Therefore,

for each of the services included in the Services, it would be desirable to consider the applicability of the provisions on an individual basis. Moreover, even in the case where the scope of the Services is stipulated broadly, it is not expected that the scope of the obligations of the TPP will be extended unnecessarily by expanding the scope of the Services to include services that are provided without using any User Information.

Item No. 171 in Exhibit 1 to “Publication of the finalized amendments to the ‘Order for Enforcement of the Banking Act’” published by the Financial Services Agency on May 30, 2018 (the “Public Comment Result³”) explains that “the information on users that the EPSP has acquired in connection with the Electronic Payment Service” as stipulated in Article 52-61-10, Paragraph 2, Item 2 of the Banking Act naturally includes processed information. Thus, the definition of “User Information” in this Agreement does not exclude processed information. In addition, Item No. 172 of the Public Comment Result clarifies that, even after information on a user acquired from a bank has been delivered to such user, measures to ensure the proper handling and safe control of such information will not become unnecessary. Thus, the definition of “User Information” in this Agreement does not exclude information that has been delivered to the Users.

In order to define “Linked Service Provision,” the sample clause first defines a Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc., as stipulated in Article 34-64-9, Paragraph 3 of the Regulation for Enforcement of the Banking Act, as a “Linked Service Provider.” Then, it defines acts of providing information to a Linked Service Provider and communicating instructions received from the Linked Service Provider to the Bank as “Linked Service Provision.” Article 34-64-9, Paragraph 3 of the Regulation for Enforcement of the Banking Act stipulates that the term “Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc.” includes any party that is entrusted by depositors via more than one step and any party that entrusts services to third party providers via more than one step. Thus, the term “Linked Service Provision” includes the act of providing information via another Linked Service Provider and the act of receiving instructions via another Linked Service Provider. Please note that the Linked Service Provision does not include any acts that are not entrusted by depositors (including entrustment via more than one step) (Item No. 139 of the Public Comment Result describes the same.). Moreover, Items No. 140 and No. 142 of the Public Comment Result provide an explanation of cases where a party does not fall under the category of a Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. These cases would not constitute the Linked Service Provision, either.

³ See the Addendum for the Public Comment Result quoted in these Sample Clauses.

Article 3: Use of the APIs, Paragraph 1 (Non-exclusive License)

1. The Bank hereby grants the TPP a non-exclusive license to use the APIs within the scope necessary to provide the Services. The TPP shall not transfer, place in trust, [cause another party to succeed to,] pledge or otherwise dispose of the API Access Right in any way without the prior approval of the Bank in the form of Documents, Etc., nor shall it sublicense such right to any third party; [provided, however, that no approval shall be required for the transfer [or succession] of the API Access Right pursuant to the provisions of the proviso of Article 22.]

The Banking Act assumes that banks will offer APIs to multiple EPSPs without any unreasonable discriminatory treatment. The sample clause stipulates the license to use APIs. Since the Bank will offer the same APIs to multiple EPSPs without any unreasonable discriminatory treatment, the license needs to be non-exclusive.

It is generally necessary to stipulate that the licensed TPP shall not transfer or otherwise dispose of the API Access Right or sublicense such right to any third party and such provision is included in some actually used agreements. Thus, the sample clause also stipulates such provision. Please refer to Article 22 for the issue of whether succession should be prohibited or not. In addition, if Article 22 stipulates exceptions to the prohibition of transfer or succession, it is necessary to include the language in the brackets to include those exceptions in this paragraph as well.

The Study Group discussed the relationship between the Linked Service Provision and sublicensing. In the case where instructions received from the Linked Service Provider are communicated to the Bank via the API, it is the TPP that uses the APIs. Thus, such case would not constitute sublicensing. Therefore, the sample clause does not add language such as “excluding Linked Service Provision.” Whether such language is added or not, this paragraph is not intended to specify whether the Linked Service Provision is allowed or not. Article 13 would govern the issue of whether the Linked Service Provision is allowed or not and the conditions therefor.

Article 3: Use of the APIs, Paragraph 2 (Change of API Specifications)

2. The specifications of the APIs are as specified in the API Specification Document stipulated by the Bank. The Bank may change the specifications of the APIs without obtaining the approval of the TPP by notifying the TPP of the specifications effective after the change at least ___ Business Days prior to the change in the form of Documents, Etc.; [provided, however, that prompt notice shall suffice in the case of any change that requires a prompt response for the improvement of

security.]

If the agreement stipulates that the Bank may not change the specifications of the APIs unless it obtains the approval of all TPPs to which the APIs are offered, it may possibly be unable to even implement necessary updates. Thus, the actual agreements we referred to as examples stipulate that the specifications may be changed by notice from the Bank.

A member of the Study Group who represents a TPP argued that since the purport of this paragraph is to establish preparation periods for specification changes, a simple expression of “prior notice” would be inappropriate and the parties should agree on the notice period in the agreement, such as “___ Business Days prior to the change.” Therefore, in the sample clause, the parties would agree on a notice period of “___ Business Days prior to the change.” The number of days of the agreed notice period is a minimum standard. It should be noted that, in the case of any material or extensive change of specifications, it would be necessary to establish a sufficient notice period that will enable the TPP to respond to such change practically so that the Users will not experience any adverse impact, including that resulting from the occurrence of an incident in the Services.

On the other hand, if a longer notice period is stipulated, it is necessary to stipulate exceptions to the notice period that are applicable to changes that require a prompt response, such as security holes.

Article 3: Use of the APIs, Paragraphs 3, 4 and 5 (Joint Performance and Linkage with, and Entrustment to, Third Parties)

3. Except for the Linked Service Provision pursuant to Article 13, Paragraph 1 hereof or except as approved by the Bank in the form of Documents, Etc. (including the case where the Exhibit specifies joint performance or linkage with any third party; the same shall apply in the following paragraph), the TPP shall not perform all or a portion of the Services or use the APIs jointly with any third party or link such services or use with any third party (excluding the development by any third party of software to be used by the Users to obtain the User Information from the TPP and the Users’ use of such software; the same shall apply in the following paragraph).

4. If the TPP, pursuant to the preceding paragraph, provides all or a portion of the Services or uses the APIs jointly with any third party or links such services or use with any third party based on the prior approval of the Bank in the form of Documents, Etc., it shall assume responsibility for any act of such third party pursuant to the provisions of this Agreement (limited to measures to ensure the proper handling and safe control of information and matters required under laws and

regulations; the same shall apply hereinafter in this paragraph) and cause such third party to comply with the provisions of this Agreement.

5. Except as listed in the Security Checklist, the TPP shall notify the Bank [in advance] of its entrustment to any third party of all or a portion of the Services or the use of the APIs; [provided, however, that if the TPP needs to change the descriptions in the Security Checklist as a result of such entrustment [or if it entrusts any type of the services specified in the Exhibit], it shall obtain the prior approval of the Bank in the form of Documents, Etc.]

In light of the fact that this Agreement licenses the TPP to use the APIs, the sample clause stipulates that the Bank and the TPP need to consult with each other on an individual basis prior to joint performance or linkage with third parties that does not fall under the definition of “Linked Service Provision.”

The Linked Service Provision is prescribed in Article 13 of the Sample Clauses based on the Study Group’s discussion on its necessity and assumptions. The prohibition in this paragraph is not applicable to the Linked Service Provision that is implemented pursuant to Article 13.

Items No. 139 and No. 179 of the Public Comment Result clarify that it is necessary to take measures to ensure the proper handling and safe control of information also in the case where user information is delivered to a third party that is not a Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. Thus, Paragraph 4 stipulates that, upon joint performance or linkage with a third party that does not fall under the category of the Linked Service Provision, such third party shall comply with the obligation regarding measures to ensure the proper handling and safe control of information as stipulated in this Agreement and matters required to be complied with pursuant to laws and regulations.

A member of the Study Group expressed an opinion that a notice to or the approval of the Bank should be required if the TPP entrusts the Services or the use of the APIs to any third party. On the other hand, in light of the fact that TPPs are required to properly manage their outsourcing contractors as a security measure (see Items No. 10 and No. 11 of the “API Connection Checklist (as of October 2018)” published by The Center for Financial Industry Information Systems on October 12, 2018), if the Security Checklist as stipulated in Article 7, Paragraph 5 is required to state the names of material outsourcing contractors as well, it may possibly be sufficient to check the descriptions in the amended Security Checklist since the said paragraph requires the submission to the Bank of the amended Security Checklist if any material amendment is made.

Item No. 107 of the Public Comment Result explains that, under certain circumstances, cloud service providers do not constitute outsourcing contractors. The same would apply in Paragraph 5. Naturally, however, TPPs would not be released from their responsibilities for the use of the cloud service even if such cloud service provider does not fall under the category of an outsourcing contractor.

Article 3: Use of the APIs, Paragraph 6 (Intellectual Property Rights)

6. The Bank grants a license to the TPP only for the use of the APIs within the scope stipulated by this Agreement. The TPP will not obtain any copyright, patent right or any other intellectual property right, ownership or any other right whatsoever in or to any of the APIs, their derivatives and the data provided by the APIs; provided, however, that, regardless of whether the Bank has any copyright, patent right or any other intellectual property right in or to the data provided by the APIs, the TPP may process data provided by the APIs for the purpose of the Services, link it to any third party pursuant to Paragraph 3, deliver it to any Linked Service Provider pursuant to Article 13 and use it within the scope permitted under Article 17.

Upon licensing APIs, it would be necessary to stipulate a provision providing that the licensed TPP will not have any right other than the right to use APIs and such provision is included in some of the actual agreements we referred to as examples. Thus, the sample clause also stipulates such provision.

The proviso reflects a suggestion that, if the Bank has a copyright to the data provided by the API, the act of processing such data may possibly constitute a violation of the right to maintain integrity and linkage to a third party pursuant to Paragraph 3 and the provision of such data to any Linked Service Provider pursuant to Article 13 may possibly constitute a violation of the right of reproduction.

Article 4: License Fees

License fees payable by the TPP to the Bank, if any, shall be separately determined upon agreement between the TPP and the Bank.

The sample clause stipulates that license fees shall be separately determined. The Study Group did not discuss this point.

Article 5: Commencement of API Linkage

1. If the TPP intends to commence the API Linkage, it shall submit to the Bank the Security

Checklist as stipulated by the Bank.

2. If the Bank has confirmed based on the Security Checklist that the TPP's arrangements satisfy the standards established by the Bank, the Bank shall notify the TPP to that effect. Even after such notice has been given and the TPP has passed the Connection Test as referred to in the following paragraph, if it becomes clear that the TPP does not satisfy the standards established by the Bank, the Bank may prevent the commencement of the API Linkage or suspend the API Linkage.
3. The TPP shall conduct the Connection Test to undergo the inspection by the Bank at least ___Business Days prior to the intended commencement date of the API Linkage. If the TPP receives notice from the Bank to the effect that it has passed the inspection, it may execute the API Linkage by notifying the Bank of the commencement date of the linkage at least ___Business Day prior to the commencement date of the API Linkage. Each of the Bank and the TPP shall notify the other party promptly (at least ___ Business Days prior to the commencement date of the linkage) if it desires to postpone the commencement date of the linkage.
4. If the Bank and the TPP enter into this Agreement pursuant to the obligation as stipulated in Article 52-61-10 of the Banking Act, they shall publicly announce the matters stipulated in Article 52-61-10, Paragraph 3 of the Banking Act upon mutual agreement [promptly after the notice as stipulated in Paragraph 2/promptly after the notice by the Bank as stipulated in Paragraph 3].

If the confidentiality obligation as stipulated in this Agreement is applicable to the provision by the Bank of API specifications to the TPP or the submission by the TPP of the Security Checklist to the Bank, or if the provisions of this Agreement regarding the Connection Test are applicable, this API Use Agreement will be executed before the commencement of API connection.

On the other hand, a member of the Study Group who represents a bank stated that the sample clause should allow for flexible treatment because, in certain cases where a bank receives a request for API connection from a potential TPP, the bank may prefer to enter into an agreement after conducting a certain degree of assessment. On the other hand, a representative of a TPP expressed a view that it is desirable if the process up to the commencement of API connection is standardized to the extent possible when a TPP executes agreements with many banks. Furthermore, another opinion was expressed that the sample clause should include a provision providing that the Bank shall promptly confirm the satisfaction of the standards established by it and conduct an inspection. With respect to these issues, in light of an opinion that it is difficult to uniformly establish an obligatory provision as the system varies from bank to bank, the sample clause does not include such provision. However, under Article 52-61-11, Paragraph 3 of the Banking Act, the Bank

must not engage in any unreasonable discriminatory treatment (attention needs to be paid to the following comments in Item No. 193 of the Public Comment Result: “We believe that a bank is permitted to refuse to conclude a contract if the relevant EPSP does not satisfy requirements that should naturally be included in the judgment standards in accordance with socially accepted conventions, such as, for example, a requirement that the relevant party must not have any relationship with any anti-social force, even if such requirements are not stated in the standards published by the bank. On the other hand, we suppose that an act of refusing to conclude an agreement merely because ‘EPSP’s services compete with ours or those of our subsidiary, affiliate or partner company’ or any other similar act cannot be generally regarded as an act based on a rational reason, whether such reason for refusal is published as a standard or not.”).

The sample clause stipulates that the Security Checklist shall be confirmed and that the Connection Test shall be conducted prior to API connection. However, if these processes have already been completed at the stage of concluding the API use agreement, these provisions are not necessary. In contrast, let us assume a practical case where the Connection Test is conducted after the conclusion of the agreement. Article 52-61-11, Paragraph 1 of the Banking Act stipulates that a bank shall establish standards upon concluding the contract as referred to in Article 52-61-10, Paragraph 1 of the Banking Act with an EPSP. As with the case of the sample clause, if the Bank confirms whether the TPP satisfies the standards established by the Bank after executing the API use agreement, it would be possible to deem that the Bank’s notice as stipulated in Paragraph 2 of this article constitutes the conclusion of a contract as referred to in Article 52-61-10, Paragraph 1 of the Banking Act (i.e., a contract is formed by giving notice of acceptance in response to the connection request). It would also be possible to deem that the Bank’s notice as stipulated in Paragraph 3 of this article constitutes the conclusion of a contract. Item No. 182 of the Public Comment Result explains that a bank may use a summary when publishing the matters stipulated in Article 52-61-10, Paragraph 3 of the Banking Act. Paragraph 4 of this article stipulates that the Bank and the TPP shall publicly announce the content of such matters upon mutual agreement.

Some of the example agreements we referred to distinguish the Connection Test to be conducted in a Testing Environment from that conducted in a production environment and stipulate that testing in the production environment shall be conducted after the completion of the testing in the Testing Environment. However, in light of an opinion heard in the meeting of the Study Group that it is not necessary for an agreement to distinguish them in its provisions, the sample clause collectively refers to them. However, it should be noted

that this does not mean that testing in the Testing Environment is unnecessary.

In addition, as it is not assumed that the security of a bank would be individually adjusted to each TPP, this Agreement, which will be concluded with each of the TPPs, does not have any provision on bank security. However, banks would be required to maintain appropriate security in light of the Review Committee Report and other relevant documents.

Article 6: Authentication and Tokens

1. If, at the request of a User, the Bank permits the API Linkage through the User's identity authentication or other procedures stipulated by the Bank, it shall award the TPP the Tokens, Etc. related to such User.
2. The TPP shall strictly manage the Tokens, Etc. issued by the Bank at its own cost and responsibility and shall not cause any third party to use the Tokens, Etc. or lend, assign, sell, purchase, pledge or otherwise dispose of the same.
3. The TPP shall use the Tokens, Etc. in accordance with the instructions (including general instructions; the same shall apply hereinafter in this article) of the User to whom such Tokens, Etc. relate and shall be responsible for any error, mix-up, falsification or leakage of the instructions or other information to be communicated to the Bank.
4. If the Tokens, Etc. are used and no special circumstance exists, the Bank shall deem that the TPP is using such Tokens, Etc. based on the instructions from the User to whom such Tokens, Etc. relate.
5. If the TPP becomes aware of the actual theft or unauthorized use of the Tokens, Etc., it shall immediately inform the Bank to that effect and act in accordance with the instructions of the Bank, if any.
6. If the Bank, the TPP, any User or any other third party incurs damage due to the inadequate management or erroneous use of the Tokens, Etc. by the TPP, the TPP shall be responsible for such damage; provided, however, that if such damage occurred for any reason attributable to the Bank, the Bank shall accept a claim for reimbursement from the TPP in proportion to its responsibility.

Paragraph 1 stipulates arrangements whereby the Bank permits the API Linkage through identity authentication or other procedures. Basically, before the Bank permits the API Linkage, the Bank would require an identity authentication procedure to confirm that the request for the API Linkage is made by the relevant User himself/herself. In addition, even if the request is made by the User himself/herself, the Bank may possibly determine that it is not appropriate to implement API linkage for certain reasons, including the case where

the Bank suspects unauthorized use in light of account activities known to the Bank or other factors. Therefore, the sample clause uses the phrase “identity authentication or other procedures.”

Paragraph 2 provides that the TPP shall be responsible for the management of the Tokens, Etc. in light of the fact that the Tokens, Etc. are awarded to the TPP. The Study Group discussed how to treat damage incurred in the following case: the Tokens, Etc. were stolen from the TPP, which requested the Bank to invalidate such Tokens, Etc.; however, despite the fact that the Bank could have invalidated them, it did not follow the procedure to do so within a reasonable period of time and such failure caused damage. It should be noted that, if the Bank is responsible to the Users for the invalidation of the Tokens, Etc. but fails to fulfill such duty, the Bank may possibly be held responsible to the Users.

Paragraph 3 prescribes that the Tokens, Etc. shall be used based on the instructions of the Users as it is assumed that they are used for the benefit of the Users. A member of the Study Group pointed out that, in reality, the TPP does not receive instructions from the Users every time it accesses the APIs, but rather it is anticipated that the TPP will access the APIs as necessary. Thus, the sample clause clarifies that general instructions shall suffice.

Paragraph 4 forms a counterpart to Paragraph 3. From the Bank’s perspective, there is no option but to stipulate that it shall deem access to the API using the Tokens, Etc. as access by the relevant User himself/herself. While this issue would be dealt with in the terms of use to be executed between the Bank and the Users, certain agreements executed with TPPs, which we referred to as examples, include provisions on this issue. Thus, the sample clause includes one, too. Moreover, with respect to APIs that are expected to be used solely by parties other than Users (for example, an API designed for a payee to confirm the completion of remittance instructions or the like), it is necessary to provide for the conditions to access such particular API (including, for instance, the existence of an agreement pursuant to which the relevant payment is made). The sample clause stipulates that the Bank will not deem that the User himself/herself has accessed the API if any special circumstance exists. Examples of such special circumstances include a case where the Bank deems it very obvious that the Tokens, Etc. have been used fraudulently.

Paragraph 5 is a provision to enable the Bank to take measures to maintain security upon the theft of the Tokens, Etc. In light of the discussion on Paragraph 2 described above, it would be possible to stipulate that the Bank shall take measures to invalidate the Tokens, Etc. within a certain period of time if it receives a report on the theft of the Tokens, Etc. or other similar matters. However, the sample clause does not include such provision since

specific invalidation procedures probably differ from bank to bank (it would also be difficult to uniformly prescribe a reasonable period of time that would be required for a bank to take invalidation measures.). However, as indicated in the discussion on Paragraph 2, it should be noted that, if the Bank has a duty to the Users to invalidate the Tokens, Etc. but fails to fulfill such duty, the Bank may possibly be held responsible to the Users.

Paragraph 6 sets forth the responsibility of the TPP for the management of the Tokens, Etc. However, it should be noted that the issue of whether or not the Bank is responsible is not determined by whether or not such responsibility is prescribed in this API Use Agreement; rather, as argued in the discussions on Paragraphs 2 and 5 described above, if the Bank has a duty to the Users to invalidate the Tokens, Etc. but fails to fulfill such duty, the Bank may possibly be held responsible to the Users. If any User incurs damage due to any reason other than the inadequate management or erroneous use of the Tokens, Etc. by the TPP, indemnification and compensation for such damage will be provided and a claim for reimbursement of such damages will be made pursuant to Article 10.

Article 7: Obligations of the TPP, Paragraph 1 (Terms of Use of the Services)

1. The TPP shall stipulate terms of use that are applicable to the Users concerning the method and content of the Services and obtain their consent and notify the Bank of the content of the terms of use [in advance/without delay after the fact]. If the TPP intends to change the terms of use as a result of any change made to the method or content of the Services, it shall notify the Bank of the details thereof [in advance/without delay after the fact]. The Bank may request the TPP to improve the provisions of the terms of use of the Services if it determines based on objective and rational grounds that such improvement is necessary in view of the protection of the Users and other factors. If it determines based on objective and rational grounds that adequate improvement has not been made within a reasonable period of time, it may suspend the API Linkage [upon notifying the TPP in advance].

Some of the contracts we referred to as examples stipulate the obligation of the TPP to prepare terms of use of the Services (services offered by the TPP to the Users by using the APIs) and to notify the Bank of the provisions of such terms. Certain API connection agreements we consulted list the matters to be stipulated in the terms of use. However, listing in an API connection agreement the matters to be stipulated in the terms of use would involve a troublesome response upon the revision of laws, regulations and guidelines, including necessary amendments to the API connection agreement. Thus the sample clause does not list such matters individually, but stipulates that the Bank shall be notified of the

terms of use and shall request the improvement thereof when it deems necessary.

A member of the Study Group stated that it is troublesome for both the TPP and the Bank to stipulate a duty to give notice of terms of use that have nothing to do with the APIs. Thus, such notification obligation is applicable only to those concerning the “Services” related to the APIs. There was also an opinion that it would be possible to limit the scope of the terms of use concerning the “Services” related to the APIs that are subject to such notification obligation to the provisions concerning the APIs. However, the sample clause does not adopt such limitation as it may not necessarily be clear whether a certain provision is one concerning the APIs. As the sample clause stipulates that notice needs to be given “if the TPP intends to change the terms of use as a result of any change made to the method or content of the Services,” no notice needs to be given upon a modification of the terms of use that does not involve any change to the method or content of the Services.

A member of the Study Group expressed concern that the Bank may possibly make arbitrary decisions as to the necessity or inadequacy of the improvement. Therefore the sample clause prescribes that “it determines based on objective and rational grounds” (the same applies to other clauses).

Article 7: Obligations of the TPP, Paragraph 2 (Prevention of Misunderstanding)

2. The TPP shall not display any false or misleading information or provide any false or misleading explanation in the Services. It shall display information or provide an explanation that is necessary to protect the Users. If the Bank determines based on objective and rational grounds that there is any problem due to any false or misleading information displayed by the TPP or otherwise in the terms for the prevention of misunderstanding, the protection of the Users, the proper handling or safe control of the User Information or compliance with laws and regulations, it may request the TPP to make improvements. If it determines based on objective and rational grounds that adequate improvements have not been made within a reasonable period of time, it may suspend the API Linkage [upon notifying the TPP in advance]; provided, however, that if the Bank determines based on objective and rational grounds that there is any serious problem due to any false or misleading information displayed by the TPP or otherwise in the terms for the prevention of misunderstanding, the protection of the Users, the proper handling or safe control of the User Information or compliance with laws and regulations, it may suspend the API Linkage without making requests for improvements and without notifying the TPP in advance.

In addition to the terms of use, it is possible that the TPP may display information and provide an explanation to Users in the Services. Some of the agreements we referred to

include provisions on this. Article 52-61-8, Paragraph 2 of the Banking Act also provides for the provision of information intended to prevent a misunderstanding.

The sample clause stipulates that the Bank shall request improvements if there is any problem and that it may suspend the API Linkage if no improvement is made. However, it prescribes that the Bank may omit making requests for improvements and suspend API Linkage if there is a serious problem in terms of the protection of the Users, including, for example, an extremely problematic case where the TPP offers services related to the communication of instructions regarding exchange transactions upon displaying information as if such services were offered by the Bank.

As with Paragraph 1, some of the example agreements we consulted individually list the matters to be explained to the Users. However, listing in an API connection agreement the matters to be stipulated in the terms of use would involve a troublesome response upon the revision of laws, regulations and guidelines, including necessary amendments to the API connection agreement. Thus, the sample clause does not list such matters individually, but stipulates that the Bank shall be notified of the terms of use and shall request the improvement thereof when it deems necessary.

Article 7: Obligations of the TPP, Paragraph 3 (Establishment of Help Desk)

3. The TPP shall establish a help desk to deal with complaints or inquiries from the Users [and the Linked Service Providers] in relation to the Services, notify the Bank thereof and publicly announce it. The TPP shall properly [and promptly] deal with any complaint or inquiry it receives from the Users [and the Linked Service Providers] in connection with the Services. The TPP may request the Bank for necessary cooperation to deal with complaints or inquiries received from the Users or any third party in relation to the Services.

Many of the agreements we referred to as examples stipulate that TPPs shall establish help desks and shall be primarily responsible for dealing with inquiries. In addition, the “Services” are positioned as services offered by the TPP. Thus, the sample clause prescribes that the TPP shall establish a help desk.

A member of the Study Group expressed an opinion that both the TPP and the Bank should establish respective help desks and that the Bank should establish a help desk in the case of read/write APIs. As the Bank has established its help desk for inquiries regarding the Banking Functions, the sample clause prescribes that, in light of the fact that the “Services” are offered by the TPP, the TPP shall establish its help desk (this is a help desk for the

Services, not for the Banking Functions) assuming that arrangements will be in place that enable both parties to escalate issues directly and matters will be dealt with properly so that Users will not get the runaround.

In addition, it would also be possible to provide for exceptions that do not require notice to the Bank if a website agreed on by and between the Bank and the TPP posts information on the help desk.

Depending on the content of the Services, persons who make inquiries are not necessarily limited to the Users. If the Services include the Linked Service Provision, the Linked Service Providers are expected to make such inquiries. Thus, in light of these and other similar cases, depending on the content of the Services, it is necessary to add parties responsible for dealing with such complaints or inquiries.

Article 7: Obligations of the TPP, Paragraph 4 (Development of Environment for Using Services)

4. The TPP shall prepare and maintain, at its own cost and responsibility, computers, software and other equipment, a cloud environment or use environment necessary to access the cloud environment and other communication lines that are necessary for the TPP to access the Bank's system via the APIs.

While it is considered natural that the TPP would need to prepare equipment to use the APIs at its own cost and responsibility as the Bank merely allows the use of the APIs, the sample clause includes a provision on this since many of the example agreements we consulted include one. This paragraph would be applicable not only to the provision of the Services, but also to the Connection Test for the API Linkage.

Article 7: Obligations of the TPP , Paragraphs 5 and 6 (Security)

5. The TPP shall maintain security in accordance with both the Security Checklist submitted to the Bank and the standards prescribed by the Bank. If any material amendment is made to the Security Checklist, the TPP shall submit the amended Security Checklist to the Bank at least ___Business Days prior to such amendment; provided, however, that if the TPP needs to take security measures in an emergency or if there is any other unavoidable reason, it shall promptly submit the amended Security Checklist to the Bank. If the Bank determines based on objective and rational grounds that the security of the TPP does not satisfy the standards stipulated by the Bank, it may request the TPP to make improvements. If it determines based on objective and rational grounds that adequate improvements have not been made within a reasonable period of

time, it may suspend the API Linkage [upon notifying the TPP in advance].

6. The TPP shall take security measures necessary to prevent infections by computer viruses, hacking, falsification or other unauthorized access to networks by third parties, leakage of information or any other similar incidents in connection with the Services at its own cost and responsibility.

Since the Bank confirms whether the TPP’s security satisfies the standards stipulated by the Bank based on the Security Checklist submitted by the TPP, the sample clause stipulates the following requirements: (i) the submitted Security Checklist and the standards prescribed by the Bank shall be satisfied; (ii) it shall submit the amended Security Checklist to the Bank upon amendment; and (iii) if the Bank determines that the TPP’s security does not satisfy the standards stipulated by the Bank, it may request improvements.

A member of the Study Group suggested that it would be difficult to give prior notice in an urgent circumstance. However, the sample clause stipulates that prior notice shall be given with respect to “material amendments.” Therefore, by considering that the act of taking urgent measures to improve security does not constitute “a material amendment”, it would not be impossible to deal with urgent issues due to the provision of Paragraph 5.

The provision of Paragraph 6 is included in the sample clause because we found many agreements stipulating that the TPP shall take security measures to prevent Unauthorized Access, Etc. at its own cost and responsibility.

As it is not assumed that the security of the Bank would be individually adjusted to each TPP, this Agreement, which will be concluded with each of the TPPs, does not prescribe the security of the Bank. However, the Bank would be required to maintain appropriate security in light of the Review Committee Report and other relevant documents.

Moreover, with respect to security measures to be taken by the TPP, attention should also be paid to the following comment in Section 3.3.2q of the Review Committee Report: “using open APIs is different from outsourcing to external contractors. The provision of information from banks to third parties is based on requests/consents from users, and part of a bank’s system, which requires a high level of robustness, is not outsourced to a contractor; it may therefore not be possible to rigidly apply the framework for managing external contractors to open APIs.”

Article 7: Obligations of the TPP, Paragraph 7 (Provision of the Services)

7. The TPP shall provide the Services at its own responsibility according to the details notified to the Bank in advance. If the TPP intends to suspend or terminate the Services, it shall widely inform the Users in advance after giving prior notice to the Bank; provided, however, that in the case of temporary suspension due to urgent security measures, it shall give notice to the Bank and widely inform the Users promptly after the fact.

The sample clause prescribes that the Services shall be provided by the TPP at its own responsibility. In light of an opinion that it is difficult to give prior notice in the case of temporary suspension due to urgent security measures, the sample clause stipulates that notice shall be given promptly after the fact in the case of such urgent temporary suspension. Moreover, in connection with prior notices, some of the agreements we referred to as examples prescribe deadlines, such as one month prior to the suspension. However, the sample clause does not stipulate any particular deadline because unavoidable suspension of services may possibly occur in an emergency in addition to temporary suspension due to urgent security measures. Furthermore, it would also be possible to provide for exceptions that do not require notice to the Bank if a website agreed on by and between the Bank and the TPP posts information on suspension or termination of the Services in advance.

Notice needs to be given pursuant to Article 7, Paragraph 1 if any amendment is made to the terms of use as a result of the change of the content of the Services. In addition, the procedures stipulated in Article 17, Paragraph 3 need to be followed if any new service is added to the Services.

Article 8: Responses to be Taken Upon Occurrence of Unauthorized Access, Etc., Paragraphs 1 and 2 (Reports; Identification of the Cause)

1. Each of the Bank and the TPP shall immediately report to the other party with respect to any actual occurrence of Unauthorized Access, Etc., leakage, divulgement or falsification of information resulting from Unauthorized Access, Etc. or a fund transfer resulting from Unauthorized Access, Etc., or any concrete possibility recognized by it that information may have been leaked, divulged or falsified as a result of Unauthorized Access, Etc. or that funds may have been transferred as a result of Unauthorized Access, Etc. in connection with the API Linkage or the Services (including the case where Unauthorized Access, Etc. has been discovered in connection with linkage with any financial institution other than the Bank; the same shall apply hereinafter in this article).
2. Each of the Bank and the TPP shall promptly take available measures before cooperating with the other party to identify the cause and take appropriate measures upon the occurrence of

Unauthorized Access, Etc., leakage, divulgement or falsification of information resulting from Unauthorized Access, Etc. or a fund transfer resulting from Unauthorized Access, Etc., or upon recognizing any concrete possibility that information may have been leaked, divulged or falsified as a result of Unauthorized Access, Etc. or that funds may have been transferred as a result of Unauthorized Access, Etc. in connection with the API Linkage or the Services. The Bank may restrict or suspend API Linkage until adequate measures have been taken.

Paragraph 1 stipulates that, if Unauthorized Access, Etc. occurred or either the Bank or the TPP recognizes any possibility of such occurrence, the relevant party shall immediately report to the other party. A member of the Study Group indicated that, although potential unauthorized access itself occurs frequently and it is not practicable to report every single case of such possibility, it would be practicable to report potential leakage, divulgement or falsification of information resulting from Unauthorized Access, Etc. In light of this, the sample clause stipulates that, while each party is required to report Unauthorized Access, Etc. only if it actually occurs, it shall report actual and potential leakage, divulgement or falsification of information resulting from Unauthorized Access, Etc. as well as actual and potential fund transfers resulting from Unauthorized Access, Etc.

Some of the agreements we used as examples stipulate that the bank shall request improvements while others prescribe that the TPP shall cooperate with the bank to deal with the issue. The sample clause provides that, in light of Section 3.3.4a of the Review Committee Report, the TPP shall take measures that can be taken by it promptly without waiting for the Bank's requests and that it shall cooperate with the Bank thereafter to identify the cause and take appropriate measures.

Article 8: Responses to be Taken Upon Occurrence of Unauthorized Access, Etc., Paragraphs 3 and 4 (Information Disclosure; Access Logs)

3. Upon the occurrence of Unauthorized Access, Etc., or leakage, divulgement or falsification of information or a fund transfer resulting from Unauthorized Access, Etc., or upon recognizing any concrete possibility that information may have been leaked, divulged or falsified as a result of Unauthorized Access, Etc. or that funds may have been transferred as a result of Unauthorized Access, Etc., each of the Bank and the TPP may request the other party to disclose account information, tokens and other information required to identify the relevant User in order to cooperate with the other party in gathering information. The requested party shall meet such request to a reasonable and appropriate extent. The party to whom the information is disclosed shall manage such information as Confidential Information pursuant to Article 16 hereof.

4. Each of the TPP and the Bank shall record and maintain access logs necessary to investigate the cause of Unauthorized Access, Etc. upon its occurrence.

Article 8, Paragraph 3 is a provision on the management of information in connection with the disclosure of information between the Bank and the TPP. However, with respect to personal data subject to the Act on the Protection of Personal Information, this provision does not release the parties from the obligation to obtain the consent of the Users for such disclosure. In principle, they need to obtain the consent of the Users before providing information, although there may be certain exceptional cases as stipulated in Article 23, Paragraph 1, Item 2 of the Act on the Protection of Personal Information, namely, “cases in which there is a need to protect human life, body or property and it is difficult to obtain a principal’s consent.”

Article 8, Paragraph 4 reflects Section 3.3.4b of the Review Committee Report. None of the agreements we referred to as examples stipulate a specific retention period or method. However, if the standards stipulated by the Bank include a provision on a retention period, the same provision could be included in the agreement.

Article 9: Responses to be Taken Upon Occurrence of Failure, Etc. (Responses to be Taken Upon Occurrence of Failure, Etc.)

1. Each of the Bank and the TPP shall immediately report to the other party with respect to the occurrence of any event that has or may have a material impact on the continuous provision of the API Linkage or the Services (including, but not limited to, the occurrence of a material failure of the system that is used to provide the Services, failure resulting from a material administrative procedure relating to the provision of the Services, unauthorized withdrawal and other financial crimes and any scandal caused by an employee of the TPP or any outsourcing contractor of the TPP that is involved in the provision of the Services; “Failure, Etc.”).
2. Upon the occurrence of Failure, Etc., each of the Bank and the TPP shall cooperate with each other to identify and eliminate the cause of the occurrence of such Failure, Etc. and shall take measures to mitigate further damage resulting from the Failure, Etc. and to prevent the recurrence thereof (the “Damage Mitigation Measures”). In such case, each of the Bank and the TPP may, to the extent reasonable and appropriate for taking the Damage Mitigation Measures, request the other party to disclose information on the Users who have suffered from the Failure, Etc., situations where the Failure, Etc. occurred and other information. The party who is requested to disclose such information shall meet the request within a reasonable and appropriate scope. The party to whom the information is disclosed shall manage such information as Confidential

Information pursuant to Article 16 hereof.

3. If the Failure, Etc. constitutes an incident that needs to be reported to the supervisory authorities of the Bank or the TPP, each of the Bank and the TPP shall provide materials that are required by the other party to make reports to the supervisory authorities or otherwise provide assistance to the other party.
4. If the Failure, Etc. referred to in Paragraph 1 hereof is caused by the Bank or its equipment, the Bank shall analyze the details of such Failure, Etc. without delay, take measures necessary to restore the Services, and provide answers to the TPP on the details of the Failure, Etc. and the restoration measures. On the other hand, if the Failure, Etc. referred to in Paragraph 1 hereof is caused by the TPP or its equipment, the TPP shall analyze the details of such Failure, Etc. without delay, take measures necessary to restore the Services, and provide answers to the Bank on the details of the Failure, Etc. and the restoration measures. If any action is required to restore the Services, the Bank and the TPP shall each take necessary measures upon mutual consultation.

This reflects Section 3.3.1o of the Review Committee Report. Some of the agreements we consulted as examples limit the applicable scope to events that may hinder the business of the Bank, while others limit such scope to material events. Certain agreements do not limit the scope and require reporting for any incident. The sample clause limits the scope of the events to be reported by prescribing an “event that has or may have a material impact on the continuous provision of the Services.”

Article 10: Compensation for the Users

1. If any User incurs damage in connection with the Services, the TPP shall promptly identify the cause thereof and compensate or indemnify the User for the damage in accordance with the terms of use of the Services, except for the case where it does not need to do so pursuant to the terms of use of the Services; provided, however, that if such damage is caused by unauthorized debits from a deposit account, the TPP shall indemnify the User in accordance with the indemnification principle stated in the Agreement on Illicit Deposit Withdrawals in the Internet Banking published by the Japanese Bankers Association.
2. In the case where the TPP has compensated or indemnified the User for the damage incurred in connection with the Services pursuant to the preceding paragraph, if the TPP makes a prima facie showing that such damage is caused by a reason that is solely attributable to the Bank, the TPP may claim reimbursement from the Bank of the amount it paid as compensation or indemnification for the damage incurred by the User. In addition, in the case where the TPP has compensated or indemnified the User for the damage incurred in connection with the Services

pursuant to the preceding paragraph, if the TPP makes a prima facie showing that such damage is caused by a reason that is attributable to both the Bank and the TPP, the TPP may claim reimbursement from the Bank of the amount agreed on with the Bank upon mutual consultation in good faith after taking into account the magnitude of the reason attributable to both parties.

3. In the case where the TPP has compensated or indemnified the User for the damage incurred in connection with the Services pursuant to Paragraph 1 hereof, if such damage is caused by a reason that is attributable to neither the Bank nor the TPP or if it is not clear which party is responsible for the cause that has resulted in such damage, the Bank and the TPP shall discuss with each other in good faith how the liability for such damage should be borne.

4. If the Bank compensates or indemnifies any User for the damage incurred in connection with the Banking Functions or the APIs or if it compensates or indemnifies any User for the damage incurred in connection with the Services after judging that such compensation or indemnification is unavoidable based on objective and rational grounds, it may claim reimbursement from the TPP as follows:

- (1) If the Bank makes a prima facie showing that such damage is caused by a reason that is solely attributable to the TPP, the Bank may claim reimbursement from the TPP of the amount it paid as compensation or indemnification for the damage incurred by the User.
- (2) If the Bank makes a prima facie showing that such damage is caused by a reason that is attributable to both the Bank and the TPP, the Bank may claim reimbursement from the TPP of the amount agreed on with the TPP upon mutual consultation in good faith after taking into account the magnitude of the reason attributable to both parties.
- (3) If such damage is caused by a reason that is attributable to neither the Bank nor the TPP or if it is not clear which party is responsible for the cause that has resulted in such damage, the Bank and the TPP shall discuss with each other in good faith how the liability for such damage should be borne.

Article 52-61-10, Paragraph 2, Item 1 of the Banking Act stipulates that an agreement to be executed by and between an EPSP and a bank shall prescribe the matters regarding the sharing of responsibility between the bank and the EPSP for any damage incurred by a user in connection with the Electronic Payment Service. In addition, Section 3.4.5e of the Review Committee Report states: compensation needs to be awarded to individual users who suffer damage through no fault of their own due to unauthorized debits from a deposit account even in cases where neither the bank nor the TPP has been negligent; in cases involving gross negligence or negligence on the part of the user, it is necessary to make a separate decision, including whether the user shall be held responsible for some or all of the amount. Section 3.4.5f of the Review Committee Report suggests that it is necessary to

make decisions on a case-by-case basis regarding the compensation to be provided to corporate users for damage incurred due to unauthorized debits from a deposit account.

Paragraph 1 provides that the TPP, who offers the Services, shall primarily compensate or indemnify a User for any damage incurred in connection with the Services. While it stipulates that any damage caused by an incident other than unauthorized debits from a deposit account shall be compensated for pursuant to the terms of use of the Services, the terms of use need to contain adequate provisions in terms of the protection of the Users. The Bank would need to confirm whether the terms of use stipulated by the TPP include any clause that unreasonably limits the liability of API-connected service providers in light of the Consumer Contract Act and other laws and request improvements pursuant to the provision of Article 7, Paragraph 1 if necessary.

The proviso of Paragraph 1 prescribes that indemnification shall be provided for any damage caused by unauthorized debits from a deposit account using APIs in light of the indemnification principle stated in the Agreement on Illicit Deposit Withdrawals in the Internet Banking published by the Japanese Bankers Association. As the term “Agreement on Illicit Deposit Withdrawals in the Internet Banking” refers to each version of the agreement that is applicable at the time of the occurrence of an incident for which compensation or indemnification should be provided, it would not be necessary to change this Agreement every time the said agreement is revised. The Users who solely use read-only APIs in the Services are not expected to suffer damage caused by unauthorized debits in connection with the Services and Paragraph 1 does not apply to any damage that is not related to the Services. Thus, if the applicable scope of the agreement is limited to read-only APIs, the proviso of Paragraph 1 could be deleted although the sample clause does not prescribe provisions separately for the case of read-only APIs and the case of read/write APIs.

With respect to the issue of whether particular damage was incurred in connection with the Services, let us assume the following example: in the case where the role of the Services is to communicate remittance instructions to the Bank based on the entrustment by the Users and the role of the Banking Functions is to process a remittance based on such remittance instructions, if any User incurs damage because the Bank processed a remittance that is different from that indicated in the communicated instructions although the remittance instructions were communicated to the Bank accurately, then, it is considered that such damage was incurred not in connection with the Services, but in connection with the Banking Functions. Thus, it is anticipated that the User will be indemnified for the damage incurred in connection with this incident not by the TPP, but by the Bank.

After providing that the TPP shall primarily compensate or indemnify the Users for the damage incurred pursuant to Paragraph 1, the sample clause prescribes in Paragraphs 2 and 3 how such damages shall be shared between the parties. The claim for reimbursement as stipulated in Paragraphs 2 and 3 is applicable to the damage incurred by the Users within the scope of reasonable and probable legal causation. Therefore, no claim for reimbursement may be made for any amount paid by the TPP to the User beyond the scope of the amount of the damage described above.

If the TPP compensates or indemnifies a User for the damage incurred pursuant to Paragraph 1, it is preferable for the TPP to discuss with the Bank the amount to be paid to the User as compensation or indemnification before providing such compensation or indemnification in light of the fact that consultation with the Bank will enable the TPP to compensate or indemnify the User smoothly and the fact that the TPP may need to discuss with the Bank how such damages should be shared between them.

Paragraph 2 prescribes that, in the case where a User incurred damage due to any reason attributable to the Bank although primary compensation or indemnification for the damage was provided by the TPP, the TPP may claim reimbursement from the Bank of such paid damages. As discussed above, the claim for reimbursement is applicable to the damage incurred by the Users within the scope of reasonable and probable legal causation. Therefore, in the case of the first sentence of Paragraph 2 (in the case where damage is caused by a reason that is solely attributable to the Bank), of the amount of compensation or indemnification provided by the TPP, a claim for reimbursement may be made only for the portion related to the damage incurred by the User within the scope of reasonable and probable legal causation. Moreover, the same principle as the case of the first sentence applies to the case of the second sentence of Paragraph 2 (in the case where damage is caused by a reason that is attributable to both parties). However, the amount of the reimbursement to be actually claimed will be the amount agreed on with the Bank upon mutual consultation in good faith.

Paragraph 3 stipulates that the Bank and the TPP shall determine each party's proportionate share of the compensation for damage incurred by a User due to a reason that is attributable to neither party upon mutual consultation in good faith.

Paragraph 4 prescribes that, in the case where the Bank primarily indemnifies a User for incurred damage, the Bank may claim reimbursement from the TPP for the paid damages based on the same requirements as those in Paragraphs 2 and 3. However, since the TPP is primarily in charge of the Services, the sample clause provides that the Bank may

compensate or indemnify Users for damage incurred in connection with the Services only under unavoidable circumstances. A possible example of such unavoidable circumstances would be the case where the Bank indemnifies the User because the TPP is unable to compensate or indemnify the User although it needs to do so pursuant to Paragraph 1.

According to the sample clauses, the Bank may claim reimbursement, as in the case of Paragraphs 2 and 3, if it provides indemnification or compensation pursuant to Paragraph 4. However, an opinion was expressed that, in light of the fact that Paragraph 4 is an exceptional case where the Bank primarily provides indemnification, Paragraph 4 should permit the Bank to claim reimbursement from the TPP to a broader extent than the cases in Paragraphs 2 and 3 (for example, the Bank shall be entitled to claim reimbursement except for the case where the damage is clearly caused by a reason solely attributable to it).

Paragraph 4 prescribes that the Bank may possibly be entitled to claim reimbursement from the TPP of the amount paid as compensation for damage incurred by a User in connection with the Banking Functions if the same requirements as those in Paragraphs 2 and 3 are satisfied. However, understandably, the Bank is not expected to claim reimbursement from the TPP of the amount paid as compensation for damage caused by a reason solely attributable to the Bank. The claim for reimbursement as stipulated in Paragraph 4 is applicable to the damage incurred by the Users within the scope of reasonable and probable legal causation. Therefore, no claim for reimbursement may be made for any amount paid by the Bank to the User beyond the scope of the amount of the damage described above.

If the Bank's fault in the development process or operation of the APIs (in principle, it is considered that the Bank should be responsible for the determination of the content and configuration of the APIs and the operation thereof) is found to be the cause of the damage incurred by a User at the time of or immediately after the occurrence of such damage, for both parties, it is not rational for the TPP to provide indemnification or compensation pursuant to Paragraph 1 and then claim reimbursement pursuant to Paragraph 2. In such case, notwithstanding the provisions of Paragraphs 1 through 3, it would be rational for the Bank to directly indemnify or compensate the User upon mutual agreement between the parties. However, even in the above case, it would be desirable for the TPP to continue to deal with inquiries from the Users and inform the Users of the Bank's contact point or otherwise hand over the matters to the Bank appropriately before the Bank provides indemnification or compensation.

Article 11: Monitoring and Supervision

1. If the Bank determines based on objective and rational grounds that the TPP may possibly fail to satisfy the standards stipulated by the Bank in terms of its security, the protection of the Users, the provision of the Services or business conditions, the Bank may request the TPP to report and submit materials on security, the protection of the Users, the status of the Services and business conditions. The TPP shall promptly respond to such request to the extent practically possible.
2. If the Bank determines based on objective and rational grounds that the TPP may possibly fail to satisfy the standards stipulated by the Bank in terms of its security, the protection of the Users, the provision of the Services or business conditions, the Bank may conduct or cause its designee to conduct an on-site audit upon obtaining the consent of the TPP. The TPP shall give consent unless it has any objective and rational reason to refuse consent and shall cooperate in the audit to the extent practically possible.
3. The Bank may request the TPP to make improvements if it determines based on objective and rational grounds that such improvements are necessary as a result of the measures taken pursuant to the preceding two (2) paragraphs. If it determines based on objective and rational grounds that adequate improvements have not been made within a reasonable period of time, it may restrict or suspend the API Linkage [upon notifying the TPP at least ___days prior to such restriction or suspension].

Paragraph 1 stipulates that the Bank may request the TPP to make reports and submit materials. Paragraph 2 provides that the Bank may conduct an on-site audit. The sample clauses state that measures stipulated in either provision may be permitted only if there are objective and rational grounds. The purpose of Paragraph 1's provision providing that the Bank may request reports and the submission of materials on business conditions is to confirm whether the standards stipulated by the Bank are satisfied or not. The Bank is not expected to demand extensive reports and the submission of materials on business conditions in general.

The sample clause stipulates that the on-site audit stipulated in Paragraph 2 shall be conducted upon obtaining the consent of the TPP and that the TPP shall give consent unless it has an objective and rational reason to refuse consent. An example of a reason for refusal would be the Bank's request for conducting an audit outside of business hours when it is not urgently needed.

With respect to Paragraph 3, there was an opinion that the clause should stipulate that "notice shall be given to the TPP with a certain notice period" since the Bank should allow a period to inform the Users if the Bank intends to restrict or suspend the API Linkage. On

the other hand, there was another opinion that it is not necessary to give a further notice period in a situation where adequate improvements have not been made within a reasonable period of time. Thus, the sample clause does not give any notice period. If a notice period is given, the following expression in brackets could be added: “upon notifying the TPP at least ___days prior to such restriction or suspension.”

Article 12: Exemption from Liability

1. Neither party shall be responsible to the other party for any damage incurred due to natural disasters, labor disputes, power failures, breakdowns of communication infrastructure, suspension of public services, natural phenomena, riots, governmental actions, acts of terrorism, wars and any other force majeure.
2. Provisions on exemption from liability related to the APIs shall be stipulated in the API Specification Document. In addition, the Bank shall have no responsibility for its inability to provide the APIs due to failures, maintenance work or the security improvement of communication devices, communication lines, the Internet, computers or software unless such failure is caused by any reason attributable to the Bank.
3. Unless otherwise agreed with the TPP, the Bank shall have no obligation to provide the TPP with services such as technical assistance, maintenance work or functional improvement of the Services and the API Linkage.
4. The TPP shall be entitled to express an objection to any change made pursuant to Article 3, Paragraph 2 hereof to the exemption clauses discharging the Bank from certain liabilities stipulated in the API Specification Document only if the TPP does so no later than ___Business Days after the receipt of notice from the Bank. If the TPP expresses an objection, the Bank and the TPP shall consult with each other in good faith.

Many of the example agreements we referred to only stipulate the bank’s exemption from liability. However, general force majeure provisions are applicable to both parties not only in API use agreements, but also in other types of agreements. Therefore, such provision is included as Paragraph 1. Even if neither the Bank nor the TPP is responsible to the other party pursuant to this paragraph, this clause does not prevent them from discussing with each other how damage should be borne between them.

Paragraph 2 stipulates that provisions on exemption from liability related to the APIs shall be stipulated in the API Specification Document since the desirable provisions would vary depending on individual circumstances. However, matters regarding the inability to provide the APIs due to failures, maintenance work or the security improvement of communication

devices, communication lines, the Internet, computers or software are stipulated in Paragraph 2.

While the provision of Paragraph 3 is included in the sample clause because such provision is included in some of the agreements we consulted as examples, it is not intended to deny a possible case where the Bank provides services to the TPP upon separate consultation. This clause does not mean that the Bank will not perform the API-related maintenance work that the Bank judges to be necessary in terms of the protection of the Users.

Article 13: Linked Service Providers

1. The TPP may implement the Linked Service Provision by notifying the Bank [in advance] of the name of the Linked Service Provider, the content of the Linked Service Provision, the timing of the commencement and any other matter agreed on between the parties in advance. The TPP shall notify the Bank [in advance] of any change to the Linked Service Provider, the content of the Linked Service Provision or any other matter agreed on between the parties in advance.
2. If the TPP newly commences the Linked Service Provision or makes any [material] change to the Linked Service Provider or the content of the Linked Service Provision, it shall obtain the consent of the Users who will be affected by such change.
3. The TPP shall [promptly] notify the Bank if it suspends or ends the Linked Service Provision concerning all or a portion of the Linked Service Providers.
4. The TPP shall impose on the Linked Service Provider the same obligations as those of the TPP as stipulated in Articles 7, 8, 9, 10 and 11, this article, and Articles 14, 16, 17 and 18 hereof and cause the Linked Service Provider to comply therewith at the cost and responsibility of the Linked Service Provider.
5. The TPP shall execute an agreement with the Linked Service Provider on the method and content of the Linked Service Provision, request the Linked Service Provider to make reports as necessary and provide guidance or make improvements for the purpose of such Linked Service Provider's security, the protection of the Users and the proper handling and safe control of the User Information. If the Bank determines based on objective and rational grounds that the Linked Service Provider fails to perform any of the obligations referred to in the preceding paragraph or that the TPP fails to properly provide such guidance to or make such improvements with respect to the Linked Service Provider, the Bank may demand that the TPP suspend the Linked Service Provision with such Linked Service Provider, or may restrict or suspend the API Linkage if the TPP does not suspend the Linked Service Provision with such Linked Service Provider within a reasonable period of time. If the Bank demands the suspension of the Linked Service Provision, it shall [make an effort to] explain the reason therefor to the TPP to the extent possible.

6. The TPP shall be jointly and severally liable with the Linked Service Provider for the Linked Service Provider's non-performance of its obligations under Paragraph 4 hereof.
7. The TPP shall be jointly liable with the Linked Service Provider for any damage incurred by users of the services offered by the Linked Service Provider. The Bank shall have no liability for any damage incurred by the Linked Service Provider or the users of the services offered by the Linked Service Provider unless such damage is caused by any reason attributable to the Bank.

With respect to the treatment of Linked Service Providers, the example agreements we referred to include the following two types of provisions: (i) a provision providing that the TPP shall report to the bank in advance and that the bank may demand that the TPP suspend the connection with the Linked Service Provider if there is any problem; and (ii) a provision providing that the consent of the bank needs to be obtained in advance.

Paragraph 1 prescribes that the TPP may add the Linked Service Providers by giving notice in advance or after the fact. However, it may possibly be preferable to require the TPP to obtain the prior approval of the Bank for the commencement of the Linked Service Provision or the addition of the Linked Service Providers in certain cases, including a case where, in light of the content of the Services, the management system of the TPP and other factors, the Bank needs to confirm whether each Linked Service Provider has an adequate management system or other similar issues in advance and a case where the Bank needs to confirm whether there is any risk that any further Linked Service Provision to be implemented by the relevant Linked Service Provider may involve any inappropriate Linked Service Provision (please see the following comments in Item No. 193 of the Public Comment Result on the standards to be stipulated by the Bank upon executing an agreement with the TPP: "We believe that a bank is permitted to refuse to conclude a contract if the relevant EPSP does not satisfy requirements that should naturally be included in the judgment standards in accordance with socially accepted conventions, such as, for example, a requirement that the relevant party must not have any relationship with any anti-social force, even if such requirements are not stated in the standards published by the bank. On the other hand, we suppose that an act of refusing to conclude an agreement merely because 'EPSP's services compete with ours or those of our subsidiary, affiliate or partner company' or any other similar act cannot be generally regarded as an act based on a rational reason, whether such reason for refusal is published as a standard or not.").

The "content of Linked Service Provision" to be notified by the TPP to the Bank is the information required by the Bank to understand what types of data and instructions will be communicated for what kind of services. If the Bank intends to include more detailed

information in the requirement, such requirement would need to be specified in advance upon consultation between the parties.

In addition, in the case where notice shall be given in advance or after the fact, it would be possible to deem that the TPP has given notice if it posts information on the Linked Service Providers on its website. Even in such case, it would be necessary to prescribe that notices could be given individually if the Linked Service Provider should not be known to any third party.

In order to ensure that the Linked Service Provider will maintain the same level of user protection and security as the TPP, the sample clause stipulates that the TPP shall impose the same obligations on the Linked Service Provider.

Paragraph 4 provides that the TPP shall impose on the Linked Service Providers certain obligations that it has under this Agreement that could be applicable to the Linked Service Providers. However, in certain particular cases, it may be necessary to consider the applicability of each obligation individually.

Pursuant to Article 34-64-16 of the Regulation for Enforcement of the Banking Act, the TPP needs to stipulate, in connection with the services of the Linked Service Provider, the matters regarding measures to be taken by the EPSP for the proper handling and safe control of information on the Users obtained by the Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. as well as measures that could be taken by the Bank if the EPSP fails to take such measures. Thus, Paragraph 5 prescribes measures to be taken by the TPP and measures that could be taken by the Bank if the TPP fails to take those measures. Furthermore, Paragraph 5 prescribes that, if the TPP does not suspend the Linked Service Provision with the relevant Linked Service Provider within a reasonable period of time, the Bank may restrict or suspend the API Linkage. The said reasonable period of time depends on each of the situations in individual cases. For example, in the case of actual unauthorized use or information leakage, the term “reasonable period of time” would be interpreted as “immediately.” Thus, in such case, the Bank may restrict or suspend the API Linkage immediately.

While Paragraph 7 stipulates that the TPP shall be jointly and severally liable with the Linked Service Provider, this provision would not prohibit the TPP and the Linked Service Provider from agreeing on how the liability will ultimately be borne by each party. Paragraph 7 states that the TPP shall be jointly liable with the Linked Service Provider for any damage incurred by users of the services offered by the Linked Service Provider. The principle that any reason attributable to the Linked Service Provider shall be deemed to be a

reason attributable to the TPP would also apply to Article 10.

Article 14: Prohibited Acts, Paragraph 1

1. The TPP shall not engage in any of the acts listed in the following items and shall take necessary measures to ensure that its subcontractors will not engage in such acts:

- (1) To copy, alter, decompile, disassemble or otherwise reverse-engineer all or a portion of the APIs or the Bank's system or program accessed via the APIs (including information on the content thereof; the "Bank System, Etc.");
- (2) To license, sell, lend, assign, disclose or lease the Bank System, Etc. to any third party;
- (3) To delete or alter the Bank's copyright notice and other notice on rights attached to the Bank System, Etc.;
- (4) To infringe intellectual property rights of the Bank, the Bank's alliance partners, licensees of the APIs other than the TPP or any other third party, damage their assets, credit or reputation, or violate their privacy, portrait or other rights;
- (5) To connect to the Testing Environment for any purpose other than an operational check or the Connection Test;
- (6) To implement the API Linkage without passing necessary inspections of the Bank;
- (7) Any act of using the Bank's trademark, company name and logo mark without obtaining its prior consent;
- (8) Any act of using the APIs and their derivatives for any purpose other than those permitted by the Bank;
- (9) Any act of obscuring Internet access points;
- (10) Any act of violating the Banking Act or other various laws or regulations or various rules on the Services or the API Linkage;
- (11) Any act of significantly increasing the load of the Bank System, Etc.;
- (12) Any act of obstructing third party access to the APIs;
- (13) Any act of disclosing or leaking the Tokens, Etc. to any third party or increasing the risk of such disclosure or leakage;
- (14) Any act that may offend public order and decency, significantly offend others or increase the reputational risk of the Bank;
- (15) Any act of reducing the security of the Bank System, Etc., including the transmission of a virus to, hacking or falsification of, or other unauthorized access to, websites, servers or the Bank System, Etc. operated by the Bank; and
- (16) Any act similar to any of the preceding items.

The provisions of Items 1 through 9, 12, 13 and 15 stipulate prohibited matters concerning

the API license. The sample clauses include those provisions although some of the prohibited acts are unlikely to take place in reality. Use of the User Information is not included in the prohibition in Item 8 as rules on such use are stipulated in Article 17. In addition, assuming that the Bank may possibly give consent or approval via email, the sample clauses do not limit the form of giving consent or approval to “in writing.” Item 2 prohibits the lending of the right concerning the use of the APIs to any third party. It does not prohibit outsourcing as permitted in this Agreement.

Moreover, the provisions of Items 10 and 14 are included in view of the reputational risks of the Bank.

The prohibited act in Item 11 does not refer to an increase in flow in proportion to an increase in the Users. Rather, it assumes possible changes to the method of providing services that will significantly increase the flow or the failure to take necessary measures despite a risk that normal API connection may become difficult.

Article 14: Prohibited Acts, Paragraph 2

2. The Bank shall not engage in any of the acts listed in the following items and shall take necessary measures to ensure that its subcontractors will not engage in such acts:

- (1) To infringe intellectual property rights of the TPP, the TPP’s alliance partners or any other third party, damage their assets, credit or reputation, or violate their privacy, portrait or other rights;
- (2) Any act of using the TPP’s trademark, company name and logo mark without obtaining its prior consent;
- (3) Any act of violating the Banking Act or other various laws or regulations or various rules on the API Linkage;
- (4) Any act that may offend public order and decency, significantly offend others or increase the reputational risk of the TPP;
- (5) Any act of reducing the security of the TPP’s system, including the transmission of a virus to, hacking or falsification of, or other unauthorized access to, websites, servers or the TPP’s system operated by the TPP;
- (6) Any act of shutting off or restricting the use of the APIs by the TPP, except for the case where such act is stipulated in this Agreement or the case where there is any rational reason for such act; and
- (7) Any act similar to any of the preceding items.

In light of the fact that the purpose of this Agreement is for the Bank to grant a license to

the TPP to use APIs, Paragraph 1 prescribes prohibited matters applicable to the TPP. Paragraph 2 stipulates prohibited acts that are similarly applicable to the Bank.

Article 15: Suspension of Use

1. The Bank may suspend a portion or all of the APIs by following any of the procedures stipulated in the following items:
 - (1) To give notice to the TPP upon clarifying in advance a suspension period required to conduct periodic maintenance work; or
 - (2) To give notice to the TPP upon stipulating an extraordinary suspension period required to take urgent security measures in cases other than as stipulated in (1) above.
2. If the Bank intends to suspend a portion or all of the APIs pursuant to Item 2 of the preceding paragraph, it shall give notice to the TPP [a reasonable period of time in advance/at least ___Business Day prior to the commencement of the suspension period]; provided, however, that in the case where the Bank takes urgent security measures, if there is any unavoidable reason, it shall give notice to the TPP in advance or promptly after the fact.
3. The Bank shall, and the TPP shall, after receiving notice from the Bank, inform the Users of the suspension of a portion or all of the APIs. The same shall apply to suspension or restriction of the API Linkage pursuant to Article 7, Paragraphs 1, 2 or 5; Article 8, Paragraph 2; or Article 11, Paragraph 3.

Provisions regarding suspension of the API Linkage in view of security or the protection of the Users are stipulated in Article 7, Paragraphs 1, 2 and 5; Article 8, Paragraph 2 and Article 11, Paragraph 3. Therefore, Article 15 does not include such provisions again.

However, provisions in Article 7, Paragraphs 1, 2 and 5; Article 8, Paragraph 2 and Article 11, Paragraph 3 do not stipulate the obligation to inform the Users. Thus, Paragraph 3 of this article collectively prescribes this obligation.

With respect to extraordinary suspension periods, some of the example agreements we consulted stipulate that prior notice shall be given upon granting a reasonable period. On one hand, it would be easier for the parties to act if a specific number of days is stipulated. On the other hand, it would be difficult to stipulate such specific number in advance. Therefore, the sample clauses list both options: “reasonable period” and a specific number of days.

Article 16: Secrecy/Confidentiality Obligations

1. Each of the Bank and the TPP shall keep strictly confidential the other party's information obtained through this Agreement ([limited to information that has been specified as confidential;] "Confidential Information") during the effective period of this Agreement and after the termination of this Agreement. Neither party shall disclose, provide or leak Confidential Information to any third party or use it for any purpose other than the performance of this Agreement without obtaining the prior approval of the other party in the form of Documents, Etc.; provided, however, that the User Information shall be handled in accordance with Articles 3, 13 and 17.
2. Notwithstanding the provision of the preceding paragraph, any information that falls under any of the following items shall not constitute Confidential Information unless it constitutes personal information:
 - (1) Any information that was already held by the receiving party at the time of the disclosure thereof;
 - (2) Any information that is independently created by the receiving party without relying on Confidential Information;
 - (3) Any information that is publicly known at the time of the disclosure thereof;
 - (4) Any information that has become publicly known after the disclosure thereof through no fault of the receiving party; or
 - (5) Any information that was legally held by the receiving party before the disclosure thereof.
3. A party that has received Confidential Information (the "Receiving Party") shall limit the scope of the persons who will receive such Confidential Information to those who need to know it for the performance of this Agreement even when it discloses such information to its own employees, and shall strictly provide guidance to and supervise its employees who have received such information in order to ensure that they will not use the Confidential Information for any purpose other than performance of this Agreement or disclose, provide or leak such information to any third party. The Receiving Party shall impose on its employees the same obligations as those imposed on it herein.
4. Notwithstanding Paragraph 1 hereof, the Receiving Party may disclose or provide Confidential Information to a third party in the cases stipulated in any of the items below (a third party to whom the disclosure or provision of such information is permitted shall be hereinafter referred to as the "Receiving Third Party"); provided, however, that the scope of the Confidential Information to be disclosed shall be limited to Confidential Information that is objectively and reasonably required for the performance of this Agreement. Moreover, the Receiving Party shall impose on the Receiving Third Party the same obligations as those imposed on it herein and shall have liability to compensate the disclosing party for any damage incurred due to any reason attributable to the Receiving Third Party:

- (1) The case where the disclosing party gives a prior approval in the form of Documents, Etc.;
 - or
 - (2) The case where Confidential Information is provided or disclosed to lawyers, accountants and other outside experts who have a confidentiality obligation under laws.
5. If the Receiving Party is required by any law or regulation, order, demand or request of a court or governmental agency or any other public agency, or regulations of [any securities exchange, self-regulatory body or similar overseas organization/securities exchange or self-regulatory body], it may disclose Confidential Information to the extent necessary to observe the same; provided, however, that in such case, the Receiving Party who has made the disclosure shall promptly notify the other party of the fact and content of such disclosure within a scope that does not conflict with laws and regulations.

Paragraph 1 prescribes that the User Information shall be governed by Article 17. While the User Information is not subject to the confidentiality obligation stipulated in this article, information on the specifications of the APIs and the Bank's system is subject to the confidentiality obligation stipulated in this article.

Article 17: Handling of Data

1. The TPP shall handle the User Information in compliance with the Act on the Protection of Personal Information and other laws, regulations and guidelines and in accordance with the terms of use of the Services.
2. The TPP shall use the User Information solely for the Services and shall communicate instructions (including the content of the instructions alone) to the Bank via the APIs only in the course of performing the Services.
3. If the TPP intends to add a new service to the Services or change the Services, it shall give prior notice to the Bank. The Bank shall be entitled to express an objection to the TPP only if it does so no later than ___Business Days after the receipt of such notice. If the Bank does not express an objection within such period, a new service shall be added to the Services or the Services shall be changed in accordance with the said notice. If the Bank does express an objection within such period, the Bank and the TPP shall discuss with each other in good faith the addition of a new service or change of the Services. If the parties reach an agreement, a new service shall be added to the Services or the Services shall be changed in accordance with such agreement. If the Bank does not agree with the addition or change of the Services, it shall [make an effort to] explain the reason therefor to the TPP to the extent possible.

Paragraph 1 confirms that, if the TPP obtains data from the Bank, the TPP shall be responsible for the management of the User Information. This is a natural provision. The TPP must not violate various laws, regulations and guidelines in handling the User Information. The reason this provision is included is as follows: assuming that the User Information is information of the Users, the Bank and the TPP agree on the handling of such information in view of the Bank's protection of customers (information); by reaching such an agreement, the Bank will be entitled to suspend API connection or take other measures upon the violation of this provision.

In connection with Paragraph 2, if the TPP is permitted to use the User Information for any services other than the Services without any limitation, it would become less meaningful to stipulate a requirement that measures shall be taken for security and the protection of the Users pursuant to this Agreement in connection with the Services. On the other hand, an opinion was expressed that, if the Services are interpreted as the entire services of the TPP and the TPP is required to take measures for security and the protection of the Users pursuant to this Agreement in connection with such entire services, it would bear an excessive burden. Therefore, while the sample clauses define in Article 2 the Services as those listed in the Exhibit and permit the use of the User Information within such scope, they prescribe in Paragraph 3 of this article that the TPP shall give prior notice to the Bank in the case of any addition or change to the Services (in the case of any change to the content of the Exhibit that prescribes the content of the Services). However, they stipulate that the Bank may express an objection within a certain period of time after its receipt of the notice in light of the fact that the Bank needs to determine whether the TPP satisfies the standards stipulated by the Bank in terms of its security, the protection of the Users, the provision of the Services or business conditions and the fact that, as this Agreement is executed after stipulating the initial content of the Services in the Exhibit, any addition or change to the Services would change the assumptions on which this Agreement is based. The sample clauses stipulate that, if the Bank expresses an objection, the Bank and the TPP shall discuss the proposed addition or change to the Services. On the other hand, in order to prevent wasting time while the TPP, which intends to commence a new service, cannot have a discussion with the Bank, the sample clauses provide that an addition or change to the Services shall become effective if the Bank does not express an objection within a certain period of time (please see the following comments in Item No. 193 of the Public Comment Result on the standards to be stipulated by the Bank upon executing an agreement with the TPP: "We believe that a bank is permitted to refuse to conclude a contract if the relevant EPSP does not satisfy requirements that should naturally be included in the judgment standards in accordance with socially accepted conventions, such as, for example,

a requirement that the relevant party must not have any relationship with any anti-social force, even if such requirements are not stated in the standards published by the bank. On the other hand, we suppose that an act of refusing to conclude an agreement merely because ‘EPSP’s services compete with ours or those of our subsidiary, affiliate or partner company’ or any other similar act cannot be generally regarded as an act based on a rational reason, whether such reason for refusal is published as a standard or not.”).

Article 18: Exclusion of Anti-social Forces

1. Each of the Bank and the TPP hereby represents that it does not, and commits that it will not, fall under the category of an organized crime group, member of an organized crime group or any person for whom five (5) years have not elapsed since such person ceased to be a member of an organized crime group, quasi-member of an organized crime group, company associated with an organized crime group, corporate racketeer group, group engaging in criminal activities under the pretext of conducting social campaigns or crime group specialized in intellectual crimes or any other person similar to any of the above (an “Organized Crime Group Member, Etc.”) or any of the following:

- (1) A person having a relationship with an Organized Crime Group Member, Etc. showing that the Organized Crime Group Member, Etc. controls the person’s management;
- (2) A person having a relationship with an Organized Crime Group Member, Etc. showing that the Organized Crime Group Member, Etc. is substantially involved in the person’s management;
- (3) A person having a relationship with an Organized Crime Group Member, Etc. showing that it unduly relies on the Organized Crime Group Member, Etc. for the purpose of unfairly benefiting itself or third parties, or damaging third parties;
- (4) A person having a relationship with an Organized Crime Group Member, Etc. showing that it provides funds, benefits or services to or otherwise is involved with an Organized Crime Group Member, Etc.; or
- (5) A person whose officer or other personnel substantially involved in its management has a socially condemnable relationship with an Organized Crime Group Member, Etc.

2. The Bank and the TPP shall not engage in or cause any third party to engage in any of the following acts:

- (1) Making violent demands;
- (2) Making an unfair demand that exceeds legal responsibility;
- (3) Using threatening language and behavior or violence in connection with transactions;
- (4) Spreading rumors or using fraudulent means or force to damage the trust placed in the other party or obstruct the business of the other party; or

(5) Any other act similar to any of the preceding items.

3. Each of the Bank and the TPP (in this article, the “Terminating Party”) may terminate this Agreement without making any demand if it becomes clear that the other party (in this article, the “Violating Party”) falls under the category of an Organized Crime Group Member, Etc. or any of the items of Paragraph 1 hereof, has engaged in an act that falls under any of the items of the preceding paragraph, or has made a false statement as to the representation and commitment pursuant to the provision of Paragraph 1 hereof.
4. The Violating Party shall have no right to demand that the Terminating Party compensate it for any damage incurred by the Violating Party as a result of the application of the provision of the preceding paragraph.

In light of the “Announcement on Partial Revision of Sample Clauses on Exclusion of Organized Crime Groups in Loan and Current Account Transactions” published on June 2, 2011 by the Japanese Bankers Association, this article stipulates that either party may terminate this Agreement in the case where the other party falls under the category of an anti-social force or in any other similar case.

Article 18-2: Responses to Economic Sanctions

1. Each of the Bank and the TPP hereby represents that it does not, and commits that it will not, fall under the category of a person subject to economic sanctions imposed by any of the United Nations, the Japanese government or any foreign government (not limited to designated persons, but also including any person subject to such sanctions because of a relationship of control, the country where it is located or any other similar factors; a “Person Subject to Economic Sanctions”).
2. Each of the Bank and the TPP (in this article, the “Terminating Party”) may terminate this Agreement without making any demand if it becomes clear that the other party (in this article, the “Violating Party”) falls under the category of a Person Subject to Economic Sanctions or has made a false statement as to the representation pursuant to the provision of the preceding paragraph.
3. The Violating Party shall have no right to demand that the Terminating Party compensate it for any damage incurred by the Violating Party as a result of the application of the provision of the preceding paragraph.

Both a representative of a third party provider and a representative of a bank stated that the potential implementation of the API Linkage with a person subject to economic sanctions

may involve risks. Thus, the sample clauses prescribe that both parties shall represent that they are not a Person Subject to Economic Sanctions and that either party may terminate this Agreement if the other party falls under such category.

Article 19: Effective Period

1. This Agreement shall be effective for ___years from the execution date. Unless either the Bank or the TPP notifies the other party in writing of its intention to terminate this Agreement at least ___months prior to the expiration of the term, this Agreement shall be extended for an additional ___years and the same shall apply thereafter.
2. Even after the termination of this Agreement for whatever reason, the provisions of Article 10; Article 11, Paragraph 1 (limited to the matters regarding security and the protection of the Users); Article 16; Article 17, Paragraph 2; this article; Article 21; Article 22; Article 23 and Article 24 shall remain effective.

This article prescribes a provision on the effective period and automatic renewal. A member of the Study Group argued that restrictions should be imposed on the refusal of renewal by the Bank. However, as Article 52-61-11, Paragraph 3 of the Banking Act provides that the Bank shall not engage in unreasonable discriminatory treatment, the Bank would need to act in light of such provision when it refuses renewal (see Item No. 192 of the Public Comment Result).

A clause on continuing effectiveness upon the termination of the agreement confirms that certain necessary clauses shall remain effective since the TPP continues to use data obtained via the APIs even after the use of the APIs has terminated. It would be possible to stipulate a period of continuing effectiveness for certain clauses that need to remain effective or exclude a portion of the clauses from such continued effectiveness depending on the content or status of the data to be used.

Article 20: Cancellation/Termination

1. Each of the Bank and the TPP may terminate this Agreement by giving a ___month prior notice in writing to the other party.
2. This Agreement shall terminate immediately if the TPP falls under any of the following items:
 - (1) Its registration as an EPSP has been cancelled; or
 - (2) A decision on the commencement of its bankruptcy procedures has been made.
3. The Bank may suspend the API Linkage or terminate this Agreement without being required to make demands if the TPP falls under any of the following items; provided, however, that in the

case where, although an event that falls under Item 2 has occurred as a result of a business improvement order given to the TPP, the TPP notifies the Bank in the form of Documents, Etc., before the Bank terminates this Agreement based on the said event, that its business improvement plan has been submitted to and accepted by the relevant supervisory agency, the Bank shall not be entitled to terminate this Agreement solely based on such event as long as the TPP is considered to continue its business in accordance with the said business improvement plan:

- (1) The TPP commits any material breach of this Agreement;
 - (2) The TPP receives a business suspension order, business improvement order or other similar punishment from any supervisory agency in connection with the Services;
 - (3) Any third party sends an order or notice of provisional attachment, provisional disposition, preservative attachment or attachment or otherwise files a petition for compulsory execution with respect to any of the assets owned by the TPP;
 - (4) The TPP suspends payments or becomes subject to suspension of transactions by a bill clearing house or an electronic monetary claim recording institution; or
 - (5) The TPP files a petition for the commencement of bankruptcy, civil rehabilitation, corporate reorganization, special liquidation or other similar legal liquidation procedures or voluntary liquidation procedures or a petition for such procedures is filed against it.
4. The Bank may suspend the API Linkage or terminate this Agreement after specifying a reasonable period of time and making demands if the TPP falls under any of the following items:
- (1) The TPP commits any breach of this Agreement;
 - (2) The TPP decides to implement a dissolution, [merger,] company split or transfer of all or an important portion of its business [(excluding a [merger,] company split or transfer of its business that does not involve the business related to the Services, and a [merger,] company split or transfer of its business as a result of which all of its businesses related to the Services will be succeeded to a third party that satisfies the standards established by the Bank)];
 - (3) The Bank determines based on objective and rational grounds that the sound and appropriate management of the TPP's business may not be ensured, the Bank determines based on objective and rational grounds that the interests of the Users may possibly be harmed, or the Users need to be protected; or
 - (4) In addition to each of the preceding items, the case where any event occurs that has a material adverse impact on the performance of obligations hereunder or there is any material event that would make the continuance of this Agreement inappropriate.
5. The Bank shall have no responsibility for any damage incurred by the TPP as a result of the application of the provisions in the preceding three (3) paragraphs.

Paragraph 1 stipulates that each party may terminate this Agreement by giving notice to the other party. The same discussion we had as to the refusal of renewal in Article 19, Paragraph 1 would apply to this provision.

Paragraph 2 provides that, if the registration of the TPP as an EPSP is cancelled or a decision on the commencement of bankruptcy is made, this Agreement shall terminate immediately even if the Bank does not make any demand.

In principle, Paragraphs 3 and 4 list a breach of obligations, credit concerns and other similar issues on the part of the TPP as causes for termination in light of the fact that this Agreement is basically a license agreement for APIs. However, it would be possible to give a right of termination to the TPP in order to avoid a situation where the TPP needs to pay license fees despite the Bank's breach of an obligation.

Paragraph 3 prescribes the cases where the Bank needs to suspend the API Linkage or terminate the agreement promptly in view of the protection of the Users. Thus, this provision does not require the Bank to make demands.

The events described in Paragraph 4, Item 2 are stipulated as termination events because a material change will be made to the management or system of the TPP or the provider of the Services will change. However, if the provider of the Services does not change or the Services are succeeded to a third party that satisfies the standards established by the Bank, one could possibly argue that it is not necessary to stipulate those events as termination events. In such case, the proviso in the brackets could be added.

Paragraph 4, Item 3 prescribes the cases where the sound and appropriate management of business may not be secured or the interests of the Users may be harmed. However, these provisions are based on the assumption that objective and rational grounds exist. A mere abstract concern does not constitute a termination event.

Articles 21 through 24: General Provisions

Article 21: Measures to be Taken upon Termination of Agreement

Upon the termination of this Agreement for whatever reason, the TPP shall delete and destroy materials of the APIs, their derivatives and matters related thereto (including their specifications and reproductions, but excluding the User Information); provided, however, that the TPP may retain information that is required to be maintained under laws and regulations for the period of time designated by those laws and regulations.

Article 22: Prohibition of Transfer of Rights and Obligations

Neither the Bank nor the TPP shall transfer to any third party, [cause any third party to succeed to,] or pledge all or a portion of its status hereunder and rights and obligations arising hereunder without obtaining the prior approval of the other party in the form of Documents, Etc.; [provided, however, that if the Bank transfers to any third party, or causes any third party to succeed to, all or a portion of its business related to the Banking Functions, it may include in such transfer or succession the entirety of its status hereunder and its rights and obligations arising hereunder [upon notifying the TPP]; and if the TPP transfers to any third party satisfying the standards established by the Bank, or causes such third party to succeed to, all or a portion of its business related to the Services, it may include in such transfer or succession the entirety of its status hereunder and its rights and obligations arising hereunder [upon notifying the Bank].]

Article 23: Governing Law and Jurisdiction

1. This Agreement shall be governed by and construed in accordance with the laws of Japan.
2. The parties hereby agree that the ___court shall have exclusive jurisdiction in the first instance over any and all disputes arising in connection with this Agreement.

Article 24: Good Faith Consultation

The Bank and the TPP shall make an effort to resolve any matter not stipulated in this Agreement or any question as to the interpretation of this Agreement upon good faith consultation.

Article 21 stipulates that materials related to the APIs shall be deleted. However, the TPP may continue to provide the Services after the termination of this Agreement and is expected to continue to use the User Information for the purpose of the Services. Therefore, the User Information is not subject to the obligation of deletion and destruction. With respect to the scope of the materials related to the API, even if the specifications of the TPP's system are based on the specifications of the APIs, the materials on the specifications of the TPP's system themselves are not materials related to the APIs and would not be subject to the obligation of deletion and destruction.

An opinion was expressed that, if succession is prohibited, it would be troublesome for the parties to be required to obtain the approval of the other party upon merger or company split. Therefore, Article 22 anticipates both the case where the prohibition of succession is stipulated and the case where such prohibition is not stipulated. There was another opinion that, if the prohibition of succession is not stipulated in this article, a merger or company split should be notified to the other party. In the case where the Bank transfers to a third

party, or causes a third party to succeed to, its business related to the Banking Functions or the TPP transfers to a third party, or causes a third party to succeed to, its business related to the Services, if it is permitted to include this Agreement in such transfer or succession, the proviso in the brackets could be added. In such case, the third party that is the transferee or successor of the TPP's business that is related to the Services needs to satisfy the standards established by the Bank (Article 52-61-11 of the Banking Act).

End of document

Publication of the finalized amendments to the “Order for Enforcement of the Banking Act”

(Excerpt)

*Published by the Financial Services Agency on May 30, 2018

<https://www.fsa.go.jp/news/30/ginkou/20180530.html>).

This English translation was prepared by the Secretariat of the Review Committee on Open APIs based on the Japanese original.

● **Matters related to the Banking Act (the Electronic Payment Service)**

No.	Summary of Comments	Views of the Financial Services Agency
● General Rules (Articles 34-64-2 through 34-64-8 of the Regulation for Enforcement)		
▼ Article 34-64-3 of the Regulation for Enforcement		
107	As explained by the Personal Information Protection Commission in its Q&A material, under the Act on the Protection of Personal Information, it is construed that, even if personal information is saved in the services offered by a cloud service provider, such provider does not fall under the category of an outsourcing contractor in certain cases, including the case where the cloud service provider is not supposed to handle any personal data, that is to say, the case where there is a contractual provision providing that such external business provider shall not handle any personal data saved on its servers and access is appropriately controlled. Similarly, the Electronic Payment Service often involves the saving of information using cloud services offered by cloud service providers. In such case, are those cloud servers interpreted as not falling under the category of outsourcing contractors? If they are construed to fall under the category of outsourcing contractors in the above case, please indicate specific cases where they are not deemed to constitute outsourcing contractors.	The judgment as to whether a cloud service provider constitutes an outsourcing contractor as stipulated in Article 34-64-3, Paragraph 2, Item 2 of the Regulation for Enforcement will be made on a case-by-case basis in light of the terms and conditions and other factors of the agreement between the Electronic Payment Service Provider (EPSP) and the said cloud service provider. In the case where personal data related to the Electronic Payment Service is saved on external cloud servers, if you use such external cloud service pursuant to a use agreement for such cloud service on the condition suggested by you that “there is a contractual provision providing that such external business provider shall not handle any personal data saved on its servers and access is appropriately controlled,” then we believe that such cloud service provider does not fall under the category of an outsourcing contractor as stipulated in the said Item.
▼ Article 34-64-9 of the Regulation for Enforcement		
139	Suppose a case where an EPSP periodically acquires from a bank the information as stipulated in Article 2, Paragraph 17, Item 2 of the Act based on entrustment by depositors and accumulates such information in its database. Even if the EPSP does not necessarily acquire from the bank the information as stipulated in Article 2, Paragraph 17, Item 2 of the Act every time a third party accesses such database, the said third party in effect entrusts the EPSP with the periodic acquisition of the information by using the said database. Thus, it is my understanding that the third party accessing such database falls under the category of “a	In order for a person to fall under the category of a Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. in connection with the act stipulated in Article 2, Paragraph 17, Item 2 of the Act, such person needs to satisfy the requirement of being “a person who entrusts (including entrustment via more than one step) an EPSP with the acquisition of the said information from the bank as stipulated in the said Item.” In the case suggested by you, if

	<p>person who entrusts (including entrustment via more than one step) an EPSP with the acquisition of the said information from the bank as stipulated in the said Item.” Is my understanding correct?</p> <p>The difference between the acquisition of the information from a bank every time a third party accesses the database and periodic acquisition of the information is merely a difference in the timing of data linkage. Proper handling and safe control of information are equally required in both cases. Thus, I believe that these two cases should be treated in the same way.</p>	<p>the third party entrusts the EPSP with such act and the EPSP acquires account information of the depositor from the bank based on such entrustment, then such third party would fall under the category of a Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc.</p> <p>On the other hand, if the third party does not entrust the EPSP with such act, such third party would not fall under the category of a Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. However, if an EPSP provides user information obtained in connection with the Electronic Payment Service for a third party that is not a Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc., it is required to take measures for the proper handling and safe control of information.</p>
140	<p>Let us assume the following case: an EPSP acquires information from a bank via read-only APIs after directly obtaining the permission of a user without involving any other business operator and accumulates such information; thereafter, with the permission of the user, another business operator (the “Company A”) acquires the data that has already been acquired and accumulated by the EPSP; here, the instructions from Company A to the EPSP on the provision of information are not communicated to the bank. I am of the opinion that, in the above case, Company A does not fall under the category of a Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. Please indicate your opinion.</p> <p>In the above case, I assume as follows: even after the information is acquired once, if the EPSP acquires information from the bank in a similar way, it does not accept instructions on information acquisition via Company A; it newly acquires account information of the user from the bank only if it is based on the instructions on information acquisition given by the user to the EPSP; the EPSP provides information to Company A solely based on the instructions given by the user to Company A (these instructions do not include instructions that would be given to the EPSP to additionally acquire account information of the bank; furthermore, the instructions given by the user to the EPSP via Company A on the provision of information by the EPSP to Company A are not communicated to the bank at all).</p>	We agree with your opinion.
▼ Article 34-64-16 of the Regulation for Enforcement		
171	It is my understanding that “the information on users that the	“The information on users that the said EPSP

	<p>said EPSP has acquired in connection with the Electronic Payment Service” as stipulated in Article 52-61-10, Paragraph 2, Item 2 of the Act only refers to the information acquired in connection with the Electronic Payment Service performed with the bank that is the counterparty to the relevant agreement. Is my understanding correct? Does it include any processed information derived from the said information? If so, I would like you to clarify this point as a matter requiring attention upon application for registration as an EPSP since I believe this point is not clarified in the provisions.</p>	<p>has acquired in connection with the Electronic Payment Service” refers to the information acquired in connection with the Electronic Payment Service performed with the bank that is the counterparty to the relevant agreement and naturally includes any processed information derived from the said information.</p>
172	<p>My understanding is as follows: the purpose of the requirement to stipulate “the matters regarding measures to be taken by the said EPSP for the proper handling and safe control of information on users obtained by the Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. in connection with its services as well as measures that could be taken by the said bank if the said EPSP fails to take such measures” (Article 52-61-10, Paragraph 2, Item 2 of the Act prescribes the proper handling of the information on users acquired by an EPSP and other similar matters) is to prevent information leakage or other similar issues; these measures are still required as long as the Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. (or the EPSP) retains the said information even if such information has been provided to the users via the services of the Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. (or the EPSP). Is my understanding correct?</p> <p>My understanding is as follows: the definition of the Electronic Payment Service in Article 2, Paragraph 17, Item 2 of the Act, which provides, “to acquire information on the said account from the said bank and provide such information to the said depositor,” does not mean that measures for proper handling and safe control are no longer required after the provision of the information. Is my understanding correct?</p>	<p>We agree with your opinion.</p>
179	<p>Article 34-64-16 of the Regulation for Enforcement does not prescribe obligations of a bank to take certain actions in the case where an EPSP provides user information to a Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. or a third party that does not fall under such category. Is it in line with the purpose of the revised Act if a bank considers providing information to certain persons, including the above-mentioned Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc., in light of the purpose of these revisions to promote open innovation?</p>	<p>We consider that, in the case where the EPSP provides user information acquired by it to the Party Entrusting Electronic Payment Service upon Entrustment from Depositors, Etc. or any other third party, measures to ensure the appropriate selection of recipients, the proper handling by the recipients of the said information and other similar matters would constitute “measures to be taken for the proper handling and safe control of the user information acquired by the EPSP” as stipulated in Article 52-61-10, Paragraph 2, Item 2 of the Act. We believe that the</p>

		specific details thereof need to be determined appropriately in light of the balance between the promotion of open innovation and user protection.
▼ Article 34-64-17 of the Regulation for Enforcement		
182	When publishing a contract executed between a bank and an EPSP, is it necessary to disclose the clauses that include the matters listed in each Item of Article 52-61-10, Paragraph 2 of the Act without any editing? Is it allowed to disclose a summary version? In addition, if we use uniform clauses in contracts executed with different counterparties, is it allowed to publish a single set of such clauses as those that are uniformly applicable to the contracts?	You do not need to disclose the clauses as is. You are allowed to disclose a summary version. In such case, it needs to be a summary that enables the users to understand the content clearly. In addition, if you use uniform clauses in contracts executed with different counterparties, you are allowed to publish a single set of the clauses as those that are uniformly applicable to the contracts.
▼ Article 34-64-19 of the Regulation for Enforcement		
192	Article 34-64-19 of the Regulation for Enforcement is a provision on the standards adopted by a bank upon executing an agreement. Is it correct to consider that the bank is not allowed to terminate the agreement early or refuse the renewal of the agreement after its expiration based on a certain argument if no event exists that would violate the said standards? In such case, is it correct to understand that, unless the bank changes the published standards, it is prohibited not only from unreasonably discriminating against business providers that satisfy the said standards at the time of the commencement of the agreement, but also from engaging in such discrimination through exercising the termination/cancellation right during the during period of the agreement or refusing the renewal of the agreement?	With respect to the first paragraph, we believe that there are certain cases where a bank is allowed to terminate the agreement early or refuse the renewal of the agreement after its expiration, even without a violation of the standards, if there is any termination event stipulated in the agreement or any other good reason. With respect to the second paragraph, there are certain cases where the termination of the agreement could be permitted not only based on the standards published by the bank, but also pursuant to the terms of the agreement between the bank and the EPSP. In such cases, such act of termination would not constitute unreasonable discrimination.
193	A bank may possibly include additional matters in the standards to be actually used in the eligibility test in addition to the matters stipulated under laws and regulations. In such case, if the standards to be actually used in the test are not published, it is impossible to judge whether there is any unreasonable discrimination. Therefore, is it correct to consider that the bank is not permitted to refuse connection based on the internal standards that are not published?	We believe that a bank is permitted to refuse to conclude a contract if the relevant EPSP does not satisfy requirements that should naturally be included in the judgment standards in accordance with socially accepted conventions, such as, for example, a requirement that the relevant party must not have any relationship with any anti-social force, even if such requirements are not stated in the standards published by the bank. On the other hand, we suppose that an act of refusing to conclude an agreement merely because “EPSP’s services compete with ours or those of our subsidiary, affiliate or partner company” or any other similar act cannot be generally regarded as an act based on a rational reason, whether such reason for refusal is published as a standard or not.