

- F. “Acquirer” means FDK or any other Person approved by the Commission to acquire the Portable NiMH Battery Business Assets and the Portable NiMH Battery Business License(s) pursuant to this Order.
- G. “Acquisition” means the proposed cash tender offer by Respondent Panasonic to acquire Respondent Sanyo pursuant to the Capital Business Alliance Agreement, dated December 19, 2008, and all amendments, attachments and exhibits thereto.
- H. “Acquisition Date” means the date the Acquisition is consummated.
- I. “Confidential Business Information” means all information not in the public domain related to the Portable NiMH Battery Business, the Portable NiMH Battery Business Assets, or the Portable NiMH Battery Business License(s) including without limitation, Portable NiMH Battery Business Intellectual Property, Portable NiMH Battery Business Know-How, and Portable NiMH Battery Business Records.
- J. “Divestiture Agreement(s)” means the FDK Acquisition Agreements, the Sintered Cathode Supply Agreement (if any), the Transition Services Agreement, or any other agreement(s) that effectuate the divestiture of the Portable NiMH Battery Business Assets and the conveyance of the Portable NiMH Battery Business License(s).
- K. “Divestiture Date” means the last closing date of a Divestiture Agreement, including without limitation, any FDK Acquisition Agreement.
- L. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service.
- M. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- N. “FDK Acquisition Agreements” means the following agreements, including all amendments, exhibits, attachments, agreements, and schedules thereto:
1. Master Agreement between SANYO Elect

- O. “Intellectual Property” means any type of intellectual property, including without limitation, patents, copyrights, trademarks, ~~trade~~ ~~secret~~ techniques, data, inventions, practices, methods and other ~~confidential~~ or proprietar

2. all customer contracts and other documents, contracts, agreements and information relating to any Person whom Respondent Sanyo, on or after January 1, 2008, has supplied or made efforts to supply Portable NiMH Battery Products;
 3. all supply agreements and other documents, contracts, agreements and information relating to any Person whom, or after January 1, 2008, has supplied Respondent Sanyo with any raw materials, products, services or other items used by Respondent Sanyo in the Portable NiMH Battery Business;
 4. all documents relating to the manufacturing and production of Portable NiMH Battery Products;
 5. all documents related to the research, development and design of Portable NiMH Battery Products; and
 6. all documents relating to the sales, marketing, distribution and promotion of any Portable NiMH Battery Products.
- CC. "Portable NiMH Battery Products" means rechargeable nickel metal hydride batteries for non-automotive use.
- DD. "Sanyo-Branded Retail Batteries" means ~~Portable~~ NiMH Business Battery Products for retail sale that are produced ~~using~~ Portable NiMH Battery Intellectual Property and sold under the brand names "Sanyo" or "eneloop."
- EE. "SANYO Twicell (Takasaki)" means SANYO Energy Twicell Co., Ltd. as constituted after execution of the Takasaki Formation Agreements.
- FF. "Suzhou Sub-C and D NiMH Battery Production" means the supply of Portable NiMH Battery Products in size Sub-C and ~~size D~~ produced or capable of being produced (utilizing 100% of current production capacity) at Respondent Sanyo's production facility in Suzhou, China. Included in "Suzhou Sub-C and D NiMH Battery Production" is the right to determine, upon reasonable notice, to current capacity limits, the volume and specifications for the production of Portable NiMH Battery Products in size Sub-C and size D at the Suzhou facility, and to acquire, pursuant to the terms of a Suzhou Sub-C and D NiMH Battery Agreement, all such products produced at the facility.
- GG. "Suzhou Sub-C and D NiMH Battery Agreement" means the Sub-C and D Supply Agreement attached to the Sanyo-FDK Stock Purchase Agreement as Exhibit 9.5, or any other Agreement that receives the prior approval of the Commission and through which the Acquirer obtains the Suzhou Sub-C and D NiMH Battery Production.
- HH. "Sintered Cathode Supply Agreement" means the Memorandum between SANYO Energy Twicell Co., Ltd (the "Buyer") and SANYO Electric Co., Ltd (the "Seller") under the Master Purchase Agreement dated October 2001, related to the Buyer's purchase of sintered cathode plates for industrial NiMH batteries from the Seller; or any other Agreement that receives the prior approval of the Commission and through which

Respondents supply the Acquirer with sintered cathodes needed by the Acquirer for use in Portable NiMH Battery Products.

II.

License(s) to an Acquirer and in a manner that receives the prior approval of the Commission.

- B. Each Divestiture Agreement, including without limitation, each FDK Acquisition Agreement, shall be incorporated by reference into this Order and made a part hereof. Further, nothing in any such Divestiture Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of the Acquirer or to reduce any obligations of Respondents under such Agreements. Respondents shall comply with the terms of any Divestiture Agreement; a breach by Respondents of any term of a Divestiture Agreement shall constitute a violation of this Order. To the extent that any term of a Divestiture Agreement conflicts with a term of this Order such that Respondents cannot fully comply with both, Respondents shall comply with the term of this Order. It shall be a violation of this Order to, without the prior approval of the Commission, i) make any modification to a Divestiture Agreement prior to the Divestiture Date or ii) fail to meet any material condition precedent to closing (whether waived or not). Further, notwithstanding any paragraph, section or other provision of a Divestiture Agreement, for a period of five (5) years after the Divestiture Date, it shall be a violation of this Order to make any material modification of a Divestiture Agreement, without the approval of the Commission.
- C. Prior to divesting the Portable NiMH Battery Business Assets and granting the Portable NiMH Battery Business License(s), Respondents shall,
1. secure all consents and waivers from Third Parties that are necessary to permit Respondents to fully divest the Portable NiMH Battery Business Assets and grant the Portable NiMH Battery Business License(s) and to permit the Acquirer to continue to operate the Portable NiMH Battery Business in a manner consistent with the past practice of Respondent Sanyo,
provided, however, Respondents may satisfy this requirement by certifying that the Acquirer has executed such agreements directly with each of the relevant Third Parties; and
 2. secure the consent of all Persons whose consent is necessary for the execution, under Japanese law, of the Takasaki Formation Agreements.
- D. Within fifteen (15) days of the Divestiture Date, Respondents shall transfer to the Acquirer a duplicate original copy of all Portable NiMH Battery Business Records licensed to the Acquirer pursuant to this Order or the Divestiture Agreement. Such copies shall be produced to the location(s) specified by the Acquirer and in the style and format of the original document unless otherwise specified by the Acquirer.
- E. Until the Divestiture Date, Respondents shall provide all Portable NiMH Battery Business Employees with reasonable financial incentives to continue in their positions and continue the research, development, manufacture, distribution, finishing, packaging, marketing, sale, storage and transport of Portable NiMH Battery Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and

- a) the date of hire and effective service date;
 - b) job title or position held;
 - c) a specific description of the employee's responsibilities related to the Portable NiMH Battery Products; *however*, in lieu of this description, Respondents may provide the employee's most recent performance appraisal;
 - d) the base salary or current wages;
 - e) the most recent bonus paid, aggregate annual compensation for Respondent Sanyo's last fiscal year and current target or guaranteed bonus, if any;
 - f) employment status (i.e., active or on leave or disability; full-time or part-time);
 - g) any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees;
 - h) copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees;
2. not interfere with the hiring or employment by the Acquirer of any Portable NiMH Battery Business Employee and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Acquirer, including without limitation, any non-compete or non-disclosure provisions of any employment agreements with respect to Portable NiMH Battery Products or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondents shall not make any counteroffer to a Portable NiMH Battery Business Employee who has received a written offer of employment from the Acquirer; and

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sintered cathodes, or iii) to manufacture or have manufactured Sanyo-Branded Retail Batteries,

provided that nothing in this paragraph shall affect the rights of Respondents to use any Confidential Business Information, including without limitation, any Portable NiMH Battery Business Intellectual Property, lawfully in the possession of Respondent Panasonic prior to the Acquisition Date.

- N. Respondents shall not disclose or convey Confidential Business Information that is exclusively related to the Portable NiMH Battery Business, directly or indirectly, to any Person or Persons except as follows:
1. Respondents may disclose Confidential Business Information to the Acquirer or Persons specifically authorized by the Acquirer to receive such information; and
 2. Respondents may disclose Confidential Business Information as necessary to manufacture or have manufactured sintered cathodes, fulfill the terms of the Suzhou Sub-C and D NiMH Battery Agreement or produce or have produced Sanyo-Branded Retail Batteries pursuant to rights retained or licensed under any Divestiture Agreement, *so long as* in doing so, Respondents do not disclose or convey any Confidential Information to any Person involved in the research, development, manufacture, sale, marketing or distribution of any of Respondents' Portable NiMH Battery Products (other than Sanyo-Branded Retail Batteries and products produced pursuant to Suzhou Sub-C and D NiMH Battery

2. waive conflicts of interest, if any, to allow either Respondent's outside legal counsel to represent the Acquirer in any ongoing patent litigation involving such Portable NiMH Battery Product; and
 3. permit the transfer to the Acquirer of all of the litigation files and any related attorney work-product in the possession of Respondents' outside counsel relating to such Portable NiMH Battery Product.
- T. Respondents shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Divestiture Agreement, or in any agreement related to any Portable NiMH Battery Products, a decision the result of which would be inconsistent with the terms of this Order and/or the remedial purposes thereof.
- U. Respondents shall not, without the prior approval of the Commission, grant to the Acquirer any rights or assets related to Portable NiMH Battery Products in sizes sub-C and D (other than those contained in the Suzhou Sub-C and D NiMH Battery Agreement).
- V. The English-language versions of the Divestiture Agreements, the Suzhou Sub-C and D NiMH Battery Agreement, the Sintered Cathode Supply Agreement (if applicable), the Interim Purchase Agreement and the Transition Services Agreement, as submitted to and approved by the Commission, shall be the versions of such agreements used in interpreting and enforcing this Order.
- W. The purpose of the divestiture of the Portable NiMH Battery Business Assets is:
1. to ensure the continued use of the Portable NiMH Battery Business Assets in the research, development, manufacture, import, export, distribution, and sale of Portable NiMH Battery Products;
 2. to provide for the future use of the Portable NiMH Battery Business Assets for the research, development, manufacture, import, export, distribution, and sale of Portable NiMH Battery Products;
 3. to create a viable and effective competitor, who is independent of the Respondents in the research, development, manufacture, use, import, export, distribution, or sale of Portable NiMH Battery Products; and
 4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

- A. The Commission may appoint a Monitor (“Interim Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Order to Maintain Assets.
- B. The Commission appoints ING Financial Markets LLC (“ING”), as Interim Monitor and approves the agreement between ING and Respondents, attached as Confidential Appendix E, which agreement, *inter alia*, names Philip Comerford, Jr. as ING designated Project Manager.
- C. Respondents shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Order, and shall take no action that interferes with or hinders the Interim Monitor’s authority, rights or responsibilities as set forth in this Order or any agreement between the Interim Monitor and Respondents.
- D. The Interim Monitor’s duties and responsibilities shall include the following:
 1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 2. the Interim Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out his or her duties and responsibilities in a manner consistent with the purposes of the Order and in consultation with the Commission;
 3. the Interim Monitor shall, in his or her sole discretion, consult with Third Parties in the exercise of his or her duties under this Order and any agreement between the Interim Monitor and Respondents; and
 4. the Interim Monitor shall evaluate reports submitted by Respondents pursuant to this Order, and within thirty (30) days from the date the Interim Monitor receives these reports, report in writing to the Commission concerning performance by Respondents of their obligations under the Order.
- E. Respondents shall grant and transfer to the Interim Monitor, and such Monitor shall have, all rights, powers, and authority necessary to carry out the Monitor’s duties and responsibilities, including but not limited to the following:
 1. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor’s ability to monitor Respondents’ compliance with the Order and the Order to Maintain Assets;
 2. subject to any demonstrated legally recognized privilege, Respondents shall provide the Interim Monitor full and complete access to Respondents’ personnel, books, documents, records kept in the ordinary course of business, facilities and

technical information, and such other ~~relevant~~ information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Order, including, but not limited to, its obligations related to the relevant assets;

3. the Interim Monitor shall ~~serve~~, without bond or other ~~security~~, at the expense of Respondents, on such reasonable and ~~ordinary~~ terms and conditions to which the Monitor and Respondents agreed ~~that the Commission approves~~;
 4. the Interim Monitor shall have authority to ~~employ~~, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably ~~needed~~ to carry out the Interim Monitor's duties and responsibilities;
 5. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, ~~damages~~ liabilities, or expenses arising out of, or in connection with, the ~~performance~~ of the Interim Monitor's duties, including all reasonable fees of counsel ~~and~~ other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, ~~except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor; and~~
 6. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and ~~other~~ representatives and assistants to sign a customary confidentiality agreement ~~provided, however, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission or require the Interim Monitor to report to Respondents the substance of communications to or from the Commission or the Acquirer.~~
- F. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- G. The Interim Monitor shall serve until the later of i) one (1) year after Respondents have fully and finally transferred and delivered to the Acquirer all of the Portable NiMH Battery Business Assets and all the Portable NiMH Battery Business Records licensed to the Acquirer; or ii) the termination of Respondents' obligations under the Transition Services Agreement,
- provided, however, that the Interim Monitor's service shall not exceed five (5) years from the date the Order becomes final;*
- provided, further, that the Commission may extend ~~or~~ modify this period as may be necessary or appropriate to accomplish ~~its~~ purposes of this Decision and Order and the Order to Maintain Assets.*

- H. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided for in this Paragraph.
- I. The Commission may on its own initiative, or at the request of an Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- J. An Interim Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by such Agreements and this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other available relief, including a court-appointed Divestiture Trustee pursuant to § 5 of the Federal Trade Commission Act, or any other statute enforced by the Commission, for failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Panasonic, which consent shall be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent Panasonic has opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice of the Trustee's appointment pursuant to the Federal Trade Commission Act, 15

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, delivered or otherwise conveyed;
2. the Divestiture Trustee shall have one (1) year from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; provided, however, the Commission may extend the divestiture period only two (2) times;
3. subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delay in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
4. the Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at a minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order, *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by

V.

IT IS FURTHER ORDERED that:

- A. Respondents shall assure that in any instance wherein their counsel (including in-house counsel under appropriate confidentiality arrangements) either retains Confidential Business Information provided to the Acquirer or accesses original documents containing Confidential Business Information (under circumstances where copies of documents are insufficient or otherwise unavailable), that Respondents' counsel does so only in order to do the following:
1. comply with this Order, a Divestiture Agreement, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any retention requirement of any applicable Government Entity, any taxation requirements; or
 2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the Portable NiMH Battery Products or assets and businesses associated with those products;
- provided, that Confidential Business Information may be disclosed to Third Parties as necessary for the purposes authorized by this Paragraph V pursuant to an appropriate confidentiality order, agreement or arrangement with the Acquirer (but Respondents shall not be deemed to have waived this requirement if the Acquirer withholds such agreement unreasonably); and (2) Respondents shall use their best efforts to obtain a protective order to protect the confidentiality of such Confidential Business Information during any adjudication;*
- provided, further, that nothing in the Paragraph V shall permit Respondents to use or disclose any Confidential Business Information for any purposes not authorized by this Order (including this Paragraph V).*

VI.

IT IS FURTHER ORDERED that:

- A. Within five (5) days after the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:
1. Within thirty (30) days after the date this Order becomes final,

2. Every sixty (60) days thereafter until Respondents have fully transferred the Portable NiMH Battery Business Assets and Portable NiMH Battery Business License(s) to an Acquirer; and
 3. Every six (6) months thereafter so long as Respondents have a continuing obligation under this Order and/or Divestiture Agreements to render transitional services to the Acquirer.
- C. One (1) year after the date this Order becomes final, annually for the next nine years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior:

- A. any proposed dissolution of Respondents; or
- B. any proposed acquisition, merger or consolidation of Respondents; or
- C. any other change in Respondents, including without limitation, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance with the Order.

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which the Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

CONFIDENTIAL APPENDIX A
FDK ACQUISITION AGREEMENTS

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL APPENDIX B

KEY EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL APPENDIX C

Agreement for Absorption-Type Split

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL APPENDIX D

Plan for Incorporation-Type Split

[Redacted From the Public Record Version, But Incorporated By Reference]

CONFIDENTIAL APPENDIX E

Interim Monitor Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]