

DRAFT FOR CONSULTATION



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**GLOBAL MASTER SECURITIES LENDING  
AGREEMENT**

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DRAFT 2008 AMENDED VERSION



**FRESHFIELDS BRUCKHAUS DERINGER**

ORIGINAL 2000 VERSION

**CLIFFORD CHANCE**

## CONTENTS

CLAUSE	PAGE
1. APPLICABILITY .....	3
2. INTERPRETATION.....	3
3. LOANS OF SECURITIES .....	8
4. DELIVERY.....	8
5. COLLATERAL .....	9
6. DISTRIBUTIONS AND CORPORATE ACTIONS.....	12
7. RATES APPLICABLE TO LOANED SECURITIES AND CASH COLLATERAL .....	13
8. DELIVERY OF EQUIVALENT SECURITIES .....	14
9. FAILURE TO DELIVER .....	15
<a href="#">10.</a> EVENTS OF DEFAULT .....	16
<a href="#">11.</a> <a href="#">SET-OFF ETC.</a> .....	17
11. TAXES.....	21
12. LENDER'S WARRANTIES.....	23
13. BORROWER'S WARRANTIES.....	23
15. INTEREST ON OUTSTANDING PAYMENTS.....	24
16. TERMINATION OF THIS AGREEMENT .....	24
17. SINGLE AGREEMENT .....	24
18. SEVERANCE .....	24
19. SPECIFIC PERFORMANCE.....	25
20. NOTICES.....	25
21. ASSIGNMENT .....	25
22. NON-WAIVER.....	25
23. GOVERNING LAW AND JURISDICTION .....	26
24. TIME.....	26
25. RECORDING .....	26
26. WAIVER OF IMMUNITY.....	26
27. MISCELLANEOUS .....	26
SCHEDULE.....	28
AGENCY ANNEX.....	31
1. TRANSACTIONS ENTERED INTO AS AGENT.....	31

ADDENDUM FOR MULTIPLE PRINCIPAL AGENCY LOANS .....	33
1. SCOPE .....	33
2. INTERPRETATION.....	33
3. MODIFICATIONS TO THE AGENCY ANNEX .....	33
4. ALLOCATION OF AGENCY LOANS.....	34
5. ALLOCATION OF COLLATERAL .....	34
6. POOLED PRINCIPALS: REBALANCING OF MARGIN.....	35
7. WARRANTIES .....	36

## AGREEMENT

### BETWEEN:

- (1) [●] a company incorporated under the laws of [●] of [●] acting through a Designated Office (**Party A**); and
- (2) [●] a company incorporated under the laws of [●] of [●] acting through a Designated Office (**Party B**).

### 1. APPLICABILITY

1.1 From time to time the Parties acting through one or more Designated Offices may enter into transactions in which one Party (**Lender**) will transfer to the other (**Borrower**) securities and financial instruments (**Securities**) against the transfer of Collateral (as defined in paragraph 2) with a simultaneous agreement by Borrower to transfer to Lender Securities equivalent to such Securities on a fixed date or on demand against the transfer to Borrower by Lender of assets equivalent to such Collateral.

1.2 Each such transaction shall be referred to in this Agreement as a **Loan** and shall be governed by the terms of this Agreement, including the supplemental terms and conditions contained in the Schedule and any Addenda or Annexes attached hereto, unless otherwise agreed in writing. In the event of any inconsistency between the provisions of an Addendum or Annex and this Agreement, the provisions of such Addendum or Annex shall prevail unless the Parties otherwise agree.

1.3 Either Party may perform its obligations under this Agreement either directly or through a Nominee.

### 2. INTERPRETATION

2.1 In this Agreement:-

**Act of Insolvency** means in relation to either Party

- (a) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors; or
- (b) its stating in writing that it is unable to pay its debts as they become due; or
- (c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (d) the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law

or regulation, such petition not having been stayed or dismissed within 30 days of its filing (except in the case of a petition for winding-up or any analogous proceeding in respect of which no such 30 day period shall apply); or

- (e) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property; or
- (f) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding);

**Agency Annex** means the Annex to this Agreement published by the International Securities Lending Association and providing for Lender to act as agent for a third party in respect of one or more Loans;

**Alternative Collateral** means Collateral having a Market Value equal to the Collateral delivered pursuant to paragraph 5 and provided by way of substitution in accordance with the provisions of paragraph 5.3;

**Base Currency** means the currency indicated in paragraph 2 of the Schedule;

**Business Day** means a day other than a Saturday or a Sunday on which banks and securities markets are open for business generally in each place stated in paragraph 3 of the Schedule and, in relation to the delivery of any of the following in relation to any Loan, in the place(s) where the relevant Securities, Equivalent Securities, Collateral or Equivalent Collateral are to be delivered;

**Cash Collateral** means Collateral that takes the form of a transfer of currency;

**Change in Tax Law** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretations of any law) that occurs after the parties enter into the relevant Agreement which gives rise to a Tax adjustment;

**Close of Business** means the time at which the relevant banks, securities settlement systems or depositaries close in the business centre in which payment is to be made or Securities or Collateral is to be delivered;

**Collateral** means such securities or financial instruments or transfers of currency as are referred to in the table set out under paragraph 1 of the Schedule as being acceptable or any combination thereof as agreed between the Parties in relation to any particular Loan and which are delivered by Borrower to Lender in accordance with this Agreement and shall include Alternative Collateral;

**Defaulting Party** shall have the meaning given in paragraph 10;

**Delivery** in relation to any Securities or Collateral or Equivalent Collateral comprising securities means, in the case of securities held by an agent or within a clearing or settlement system, upon the credit of such securities to an account of the Borrower or

Lender, as the case may be, or as it shall direct, or, in the case of other securities, the delivery to Borrower or Lender, as the case may be, or as it shall direct of the relevant instruments of transfer, or by such other means as may be agreed and **delivery** shall be construed accordingly;

**Designated Office** means the branch or office of a Party which is specified as such in paragraph 4 of the Schedule or such other branch or office as may be agreed to in writing by the Parties;

**Equivalent** or **equivalent to** in relation to any Loaned Securities or Collateral provided under this Agreement means securities, cash or other property, of an identical type, nominal value, description and amount to particular Loaned Securities or Collateral (as the case may be) so provided. If and to the extent that such Loaned Securities or Collateral (as the case may be) consists of securities that are partly paid or have been converted, subdivided, consolidated, made the subject of a takeover, rights of pre-emption, rights to receive securities or a certificate which may at a future date be exchanged for securities, the expression shall include such securities or other assets to which Lender or Borrower (as the case may be) is entitled following the occurrence of the relevant event, and, if appropriate, the giving of the relevant notice in accordance with paragraph 6.4 and provided that Lender or Borrower (as the case may be) has paid to the other Party all and any sums due in respect thereof. In the event that such Loaned Securities or Collateral (as the case may be) have been redeemed, are partly paid, are the subject of a capitalisation issue or are subject to an event similar to any of the foregoing events described in this paragraph, the expression shall have the following meanings:-

- (a) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (b) in the case of a call on partly-paid securities, securities equivalent to the relevant Loaned Securities or Collateral, as the case may be, provided that Lender shall have paid Borrower, in respect of Loaned Securities, and Borrower shall have paid to Lender, in respect of Collateral, an amount of money equal to the sum due in respect of the call;
- (c) in the case of a capitalisation issue, securities equivalent to the relevant Loaned Securities or Collateral, as the case may be, together with the securities allotted by way of bonus thereon;
- (d) in the case of any event similar to any of the foregoing events described in this paragraph, securities equivalent to the Loaned Securities or the relevant Collateral, as the case may be, together with or replaced by a sum of money or securities or other property equivalent to that received in respect of such Loaned Securities or Collateral, as the case may be, resulting from such event;

**Evidence of Tax Deduction** means any such evidence that shall enable the recipient to claim and receive from any relevant tax authority all and any repayment of tax or benefit of tax credit in the jurisdiction of the recipient's residence;

**Income** means any interest, dividends or other distributions of any kind whatsoever with respect to any Securities or Collateral;

**Income Payment Date**, with respect to any Securities or Collateral means the date on which Income is paid in respect of such Securities or Collateral, or, in the case of registered Securities or Collateral, the date by reference to which particular registered holders are identified as being entitled to payment of Income;

**Letter of Credit** means an irrevocable, non-negotiable letter of credit in a form, and from a bank, acceptable to Lender;

**Loaned Securities** means Securities which are the subject of an outstanding Loan;

**Margin** shall have the meaning specified in paragraph 1 of the Schedule with reference to the table set out therein;

**Market Value** means:

- (a) in relation to the valuation of Securities, Equivalent Securities, Collateral or Equivalent Collateral (other than Cash Collateral or a Letter of Credit):
  - (i) such price as is equal to the market quotation for the bid price of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service reasonably chosen in good faith by Lender; or
  - (ii) if unavailable, the market value thereof as derived from the prices or rates bid by a reputable dealer for the relevant instrument reasonably chosen in good faith by Lender,

in each case at Close of Business on the previous Business Day unless agreed otherwise or, at the option of either Party where in its reasonable opinion there has been an exceptional movement in the price of the asset in question since such time, the latest available price; plus (in each case)

- (iii) the aggregate amount of Income which has accrued but not yet been paid in respect of the Securities, Equivalent Securities, Collateral or Equivalent Collateral concerned to the extent not included in such price,

provided that the price of Securities, Equivalent Securities, Collateral or Equivalent Collateral that are suspended shall (for the purposes of paragraph 5) be nil unless the Parties otherwise agree and (for all other purposes) shall be the price of such Securities, Equivalent Securities, Collateral or Equivalent Collateral, as the case may be, as of Close of Business on the dealing day in the relevant market last preceding the date of suspension or a commercially reasonable price agreed between the Parties;

- (b) in relation to a Letter of Credit the face or stated amount of such Letter of Credit; and

(c) in relation to Cash Collateral the amount of the currency concerned;

**Nominee** means an agent or a nominee appointed by either Party to accept delivery of, hold or deliver Securities, Equivalent Securities, Collateral and/or Equivalent Collateral or to receive or make payments on its behalf;

**Non-Defaulting Party** shall have the meaning given in paragraph 10;

**Parties** means Lender and Borrower and "Party" shall be construed accordingly;

**Posted Collateral** has the meaning given in paragraph 5.4;

**Required Collateral Value** shall have the meaning given in paragraph 5.4;

**Settlement Date** means the date upon which Securities are transferred to Borrower in accordance with this Agreement;

**Tax** means any present or future tax levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax;

**Tax Event** means either: if due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction after an Agreement is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law whereby, a party to this Agreement will, or there is a substantial likelihood that it will, be required to pay to the other party an additional amount in respect of Tax or stamp registration documentation or similar tax.

## **Headings**

2.2 All headings appear for convenience only and shall not affect the interpretation of this Agreement.

## **Market terminology**

2.3 Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "Margin" etc. which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, title to Securities "borrowed" or "lent" and "Collateral" provided in accordance with this Agreement shall pass from one Party to another as provided for in this Agreement, the Party obtaining such title being obliged to deliver Equivalent Securities or Equivalent Collateral as the case may be.

## **Currency conversions**

2.4 For the purposes of determining any prices, sums or values (including Market Value and Required Collateral Value for the purposes of paragraphs 5 and 1 of this Agreement) prices, sums or values stated in currencies other than the Base Currency shall be converted into the Base Currency at the latest available spot rate of exchange

quoted by a bank selected by Lender (or if an Event of Default has occurred in relation to Lender, by Borrower) in the London interbank market for the purchase of the Base Currency with the currency concerned on the day on which the calculation is to be made or, if that day is not a Business Day the spot rate of exchange quoted at Close of Business on the immediately preceding Business Day.

2.5 The parties confirm that introduction of and/or substitution (in place of an existing currency) of a new currency as the lawful currency of a country shall not have the effect of altering, or discharging, or excusing performance under, any term of the Agreement or any Loan thereunder, nor give a party the right unilaterally to alter or terminate the Agreement or any Loan thereunder. Securities will for the purposes of this Agreement be regarded as equivalent to other securities notwithstanding that as a result of such introduction and/or substitution those securities have been redenominated into the new currency or the nominal value of the securities has changed in connection with such redenomination.

### **Modifications etc. to legislation**

2.6 Any reference in this Agreement to an act, regulation or other legislation shall include a reference to any statutory modification or re-enactment thereof for the time being in force.

## **3. LOANS OF SECURITIES**

Lender will lend Securities to Borrower, and Borrower will borrow Securities from Lender in accordance with the terms and conditions of this Agreement. The terms of each Loan shall be agreed prior to the commencement of the relevant Loan either orally or in writing (including any agreed form of electronic communication) and confirmed in such form and on such basis as shall be agreed between the Parties. Any confirmation produced by a Party shall not supersede or prevail over the prior oral, written or electronic communication (as the case may be).

## **4. DELIVERY**

### **Delivery of Securities on commencement of Loan**

4.1 Lender shall procure the Delivery of Securities to Borrower or deliver such Securities in accordance with this Agreement and the terms of the relevant Loan.

### **Requirements to effect Delivery**

4.2 The Parties shall execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:

- (a) any Securities borrowed pursuant to paragraph 3;
- (b) any Equivalent Securities delivered pursuant to paragraph 8;
- (c) any Collateral delivered pursuant to paragraph 5;
- (d) any Equivalent Collateral delivered pursuant to paragraphs 5 or 8;

shall pass from one Party to the other subject to the terms and conditions set out in this Agreement, on delivery of the same in accordance with this Agreement with full title guarantee, free from all liens, charges and encumbrances. In the case of Securities, Collateral, Equivalent Securities or Equivalent Collateral title to which is registered in a computer-based system which provides for the recording and transfer of title to the same by way of book entries, delivery and transfer of title shall take place in accordance with the rules and procedures of such system as in force from time to time. The Party acquiring such right, title and interest shall have no obligation to return or deliver any of the assets so acquired but, in so far as any Securities are borrowed or any Collateral is delivered to such Party, such Party shall be obliged, subject to the terms of this Agreement, to deliver Equivalent Securities or Equivalent Collateral as appropriate.

#### **Deliveries to be simultaneous unless otherwise agreed**

4.3 Where under the terms of this Agreement a Party is not obliged to make a Delivery unless simultaneously a Delivery is made to it, subject to and without prejudice to its rights under paragraph 8.6, such Party may from time to time, in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities, Collateral and cash transfers, waive its right under this Agreement in respect of simultaneous delivery and/or payment provided that no such waiver (whether by course of conduct or otherwise) in respect of one transaction shall bind it in respect of any other transaction.

#### **Deliveries of Income**

4.4 In respect of Income being paid in relation to any Loaned Securities or Collateral, Borrower (in the case of Income being paid in respect of Loaned Securities) and Lender (in the case of Income being paid in respect of Collateral) shall provide to the other Party, as the case may be, any endorsements or assignments as shall be customary and appropriate to effect the delivery of money or property equivalent to the type and amount of such Income to Lender, irrespective of whether Borrower received the same in respect of any Loaned Securities or to Borrower, irrespective of whether Lender received the same in respect of any Collateral.

### **5. COLLATERAL**

#### **Delivery of Collateral on commencement of Loan**

5.1 Subject to the other provisions of this paragraph 5, Borrower undertakes to deliver to or deposit with Lender (or in accordance with Lender's instructions) Collateral simultaneously with Delivery of the Securities to which the Loan relates and in any event no later than Close of Business on the Settlement Date.

#### **Deliveries through securities settlement systems generating automatic payments**

5.2 Unless otherwise agreed between the Parties, where any Securities, Equivalent Securities, Collateral or Equivalent Collateral (in the form of securities) are transferred through a book entry transfer or settlement system which automatically

generates a payment or delivery, or obligation to pay or deliver, against the transfer of such securities, then:-

- (a) such automatically generated payment, delivery or obligation shall be treated as a payment or delivery by the transferee to the transferor, and except to the extent that it is applied to discharge an obligation of the transferee to effect payment or delivery, such payment or delivery, or obligation to pay or deliver, shall be deemed to be a transfer of Collateral or delivery of Equivalent Collateral, as the case may be, made by the transferee until such time as the Collateral or Equivalent Collateral is substituted with other Collateral or Equivalent Collateral if an obligation to deliver other Collateral or deliver Equivalent Collateral existed immediately prior to the transfer of Securities, Equivalent Securities, Collateral or Equivalent Collateral; and
- (b) the party receiving such substituted Collateral or Equivalent Collateral, or if no obligation to deliver other Collateral or deliver Equivalent Collateral existed immediately prior to the transfer of Securities, Equivalent Securities, Collateral or Equivalent Collateral, the party receiving the deemed transfer of Collateral or Delivery of Equivalent Collateral, as the case may be, shall cause to be made to the other party for value the same day either, where such transfer is a payment, an irrevocable payment in the amount of such transfer or, where such transfer is a Delivery, an irrevocable Delivery of securities (or other property, as the case may be) equivalent to such property.

### **Substitutions of Collateral**

5.3 Borrower may from time to time call for the repayment of Cash Collateral or the Delivery of Collateral equivalent to any Collateral delivered to Lender prior to the date on which the same would otherwise have been repayable or deliverable provided that at the time of such repayment or Delivery Borrower shall have delivered or delivers Alternative Collateral acceptable to Lender and Borrower is in compliance with paragraph 5.4 or paragraph 5.5, as applicable.

### **Marking to Market of Collateral during the currency of a Loan on aggregated basis**

5.4 Unless paragraph 1.3 of the Schedule indicates that paragraph 5.5 shall apply in lieu of this paragraph 5.4, or unless otherwise agreed between the Parties:-

- (a) the aggregate Market Value of the Collateral delivered to or deposited with Lender (excluding any Equivalent Collateral repaid or delivered under Paragraphs 5.4(b) or 5.5(b) (as the case may be)) (***Posted Collateral***) in respect of all Loans outstanding under this Agreement shall equal the aggregate of the Market Value of the Loaned Securities and the applicable Margin (the ***Required Collateral Value***) in respect of such Loans;
- (b) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement exceeds the aggregate of the Required Collateral Values in respect of such Loans,

Lender shall (on demand) repay and/or deliver, as the case may be, to Borrower such Equivalent Collateral as will eliminate the excess;

- (c) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such Loans, Borrower shall (on demand) provide such further Collateral to Lender as will eliminate the deficiency.

**Marking to Market of Collateral during the currency of a Loan on a Loan by Loan basis**

5.5 If paragraph 1.3 of the Schedule indicates this paragraph 5.5 shall apply in lieu of paragraph 5.4, the Posted Collateral in respect of any Loan shall bear from day to day and at any time the same proportion to the Market Value of the Loaned Securities as the Posted Collateral bore at the commencement of such Loan. Accordingly:

- (a) the Market Value of the Posted Collateral to be delivered or deposited while the Loan continues shall be equal to the Required Collateral Value;
- (b) if at any time on any Business Day the Market Value of the Posted Collateral in respect of any Loan exceeds the Required Collateral Value in respect of such Loan, Lender shall (on demand) repay and/or deliver, as the case may be, to Borrower such Equivalent Collateral as will eliminate the excess; and
- (c) if at any time on any Business Day the Market Value of the Posted Collateral falls below the Required Collateral Value, Borrower shall (on demand) provide such further Collateral to Lender as will eliminate the deficiency.

**Requirements to deliver excess Collateral**

5.6 Where paragraph 5.5 applies, unless paragraph 1.4 of the Schedule indicates that this paragraph 5.6 does not apply, if a Party (the *first Party*) would, but for this paragraph 5.6, be required under paragraph 5.5 to provide further Collateral or deliver Equivalent Collateral in circumstances where the other Party (the *second Party*) would, but for this paragraph 5.6, also be required to or provide Collateral or deliver Equivalent Collateral under paragraph 5.5, then the Market Value of the Collateral or Equivalent Collateral deliverable by the first Party (*X*) shall be set off against the Market Value of the Collateral or Equivalent Collateral deliverable by the second Party (*Y*) and the only obligation of the Parties under paragraph 5.5 shall be, where X exceeds Y, an obligation of the first Party, or where Y exceeds X, an obligation of the second Party to repay and/or (as the case may be) deliver Equivalent Collateral or to deliver further Collateral having a Market Value equal to the difference between X and Y.

5.7 Where Equivalent Collateral is repaid or delivered (as the case may be) or further Collateral is provided by a Party under paragraph 5.6, the Parties shall agree to which Loan or Loans such repayment, delivery or further provision is to be attributed and failing agreement it shall be attributed, as determined by the Party making such repayment, delivery or further provision to the earliest outstanding Loan and, in the

case of a repayment or delivery up to the point at which the Market Value of Collateral in respect of such Loan equals the Required Collateral Value in respect of such Loan, and then to the next earliest outstanding Loan up to the similar point and so on.

### **Timing of repayments of excess Collateral or deliveries of further Collateral**

5.8 Where any Equivalent Collateral falls to be repaid or delivered (as the case may be) or further Collateral is to be provided under this paragraph 5, unless otherwise provided or agreed between the Parties, it shall be delivered on the same Business Day as the relevant demand.

### **Substitutions and extensions of Letters of Credit**

5.9 Where Collateral is a Letter of Credit, Lender may by notice to Borrower require that Borrower, on the third Business Day following the date of delivery of such notice, substitute Collateral consisting of cash or other Collateral acceptable to Lender for the Letter of Credit. Prior to the expiration of any Letter of Credit supporting Borrower's obligations hereunder, Borrower shall, no later than 10.30a.m. UK time on the second Business Day prior to the date such Letter of Credit expires, obtain an extension of the expiration of such Letter of Credit or replace such Letter of Credit by providing Lender with a substitute Letter of Credit in an amount at least equal to the amount of the Letter of Credit for which it is substituted.

### **Recall of non-cash Collateral**

5.10 Borrower shall recall any non-cash Collateral prior to an Income Payment Date unless any Income on such Collateral can be received by Lender or paid to the Borrower without any deduction or withholding of Tax provided that at the time of delivery of such Equivalent Collateral Borrower shall have delivered or delivers Alternative Collateral acceptable to Lender and Borrower is in compliance with paragraph 5.4 or paragraph 5.5, as applicable.

## **6. DISTRIBUTIONS AND CORPORATE ACTIONS**

### **Manufactured Payments**

6.1 Where Income is paid in relation to any Loaned Securities or Collateral (other than Cash Collateral) on or by reference to an Income Payment Date:

- (a) Borrower, in the case of Loaned Securities, shall, on the date of the payment of such Income, or on such other date as the Parties may from time to time agree, (the *Relevant Payment Date*) pay and deliver a sum of money or property equivalent to the type and amount of such Income that, in the case of Loaned Securities, Lender would have been entitled to receive had such Securities not been loaned to Borrower and had been retained by Lender on the Income Payment Date unless a different sum is agreed between the Parties;
- (b) where Lender has received any Income on non-cash Collateral (notwithstanding the obligation on Borrower in paragraph 5.10) then Lender

shall, on the date on which Lender receives such Income, or on such other date as the Parties may from time to time agree, pay and deliver a sum of money or property equivalent to the amount of such Income (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to Borrower and upon request from Borrower shall supply Evidence of Tax Deduction (if any) to Borrower.

### **Income in the form of Securities**

6.2 Where Income, in the form of securities, is paid in relation to any Loaned Securities or Collateral, such securities shall be added to such Loaned Securities or Collateral (and shall constitute Loaned Securities or Collateral, as the case may be, and be part of the relevant Loan) and will not be delivered to Lender, in the case of Loaned Securities, or to Borrower, in the case of Collateral, until the end of the relevant Loan, provided that the Lender or Borrower (as the case may be) fulfils their obligations under paragraph 5.4 or 5.5 (as applicable) with respect to the additional Loaned Securities or Collateral, as the case may be.

### **Exercise of voting rights**

6.3 Where any voting rights fall to be exercised in relation to any Loaned Securities or Collateral, neither Borrower, in the case of Equivalent Securities, nor Lender, in the case of Equivalent Collateral, shall have any obligation to arrange for voting rights of that kind to be exercised in accordance with the instructions of the other Party in relation to the Securities borrowed by it or transferred to it by way of Collateral, as the case may be, unless otherwise agreed between the Parties.

### **Corporate actions**

6.4 Where, in respect of any Loaned Securities or any Collateral, any rights relating to conversion, sub-division, consolidation, pre-emption, rights arising under a takeover offer, rights to receive securities or a certificate which may at a future date be exchanged for securities or other rights, including those requiring election by the holder for the time being of such Securities or Collateral, become exercisable prior to the delivery of Equivalent Securities or Equivalent Collateral, then Lender or Borrower, as the case may be, may, within a reasonable time before the latest time for the exercise of the right or option give written notice to the other Party that on delivery of Equivalent Securities or Equivalent Collateral, as the case may be, it wishes to receive Equivalent Securities or Equivalent Collateral in such form as will arise if the right is exercised or, in the case of a right which may be exercised in more than one manner, is exercised as is specified in such written notice.

## **7. RATES APPLICABLE TO LOANED SECURITIES AND CASH COLLATERAL**

### **Rates in respect of Loaned Securities**

7.1 In respect of each Loan, Borrower shall pay to Lender, in the manner prescribed in sub-paragraph 7.3, sums calculated by applying such rate as shall be

agreed between the Parties from time to time to the daily Market Value of the Loaned Securities.

### **Rates in respect of Cash Collateral**

7.2 Where Cash Collateral is deposited with Lender in respect of any Loan, Lender shall pay to Borrower, in the manner prescribed in paragraph 7.3, sums calculated by applying such rates as shall be agreed between the Parties from time to time to the amount of such Cash Collateral. Any such payment due to Borrower may be set-off against any payment due to Lender pursuant to paragraph 7.1.

### **Payment of rates**

7.3 In respect of each Loan, the payments referred to in paragraph 7.1 and 7.2 shall accrue daily in respect of the period commencing on and inclusive of the Settlement Date and terminating on and exclusive of the Business Day upon which Equivalent Securities are delivered or Cash Collateral is repaid. Unless otherwise agreed, the sums so accruing in respect of each calendar month shall be paid in arrears by the relevant Party not later than the Business Day which is one week after the last Business Day of the calendar month to which such payments relate or such other date as the Parties shall from time to time agree.

## **8. DELIVERY OF EQUIVALENT SECURITIES**

### **Lender's right to terminate a Loan**

8.1 Subject to paragraph 1 and the terms of the relevant Loan, Lender shall be entitled to terminate a Loan and to call for the delivery of all or any Equivalent Securities at any time by giving notice on any Business Day of not less than the standard settlement time for such Equivalent Securities on the exchange or in the clearing organisation through which the Loaned Securities were originally delivered. Borrower shall deliver such Equivalent Securities not later than the expiry of such notice in accordance with Lender's instructions.

### **Borrower's right to terminate a Loan**

8.2 Subject to the terms of the relevant Loan, Borrower shall be entitled at any time to terminate a Loan and to deliver all and any Equivalent Securities due and outstanding to Lender in accordance with Lender's instructions and Lender shall accept such delivery.

### **Delivery of Equivalent Securities on termination of a Loan**

8.3 Borrower shall procure the Delivery of Equivalent Securities to Lender or deliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Loan on termination of the Loan. For the avoidance of doubt any reference in this Agreement or in any other agreement or communication between the Parties (howsoever expressed) to an obligation to deliver or account for or act in relation to Loaned Securities shall accordingly be construed as a reference to an obligation to deliver or account for or act in relation to Equivalent Securities.

### **Delivery of Equivalent Collateral on termination of a Loan**

8.4 On the date and time that Equivalent Securities are required to be delivered by Borrower on the termination of a Loan, Lender shall simultaneously (subject to paragraph 5.4 if applicable) repay to Borrower any Cash Collateral or, as the case may be, deliver Collateral equivalent to the Collateral provided by Borrower pursuant to paragraph 5 in respect of such Loan. For the avoidance of doubt any reference in this Agreement or in any other agreement or communication between the Parties (however expressed) to an obligation to deliver or account for or act in relation to Collateral shall accordingly be construed as a reference to an obligation to deliver or account for or act in relation to Equivalent Collateral.

### **Delivery of Letters of Credit**

8.5 Where a Letter of Credit is provided by way of Collateral, the obligation to deliver Equivalent Collateral is satisfied by Lender delivering for cancellation the Letter of Credit so provided, or where the Letter of Credit is provided in respect of more than one Loan, by Lender consenting to a reduction in the value of the Letter of Credit.

### **Delivery obligations to be reciprocal**

8.6 Neither Party shall be obliged to make delivery (or make a payment as the case may be) to the other unless it is satisfied that the other Party will make such delivery (or make an appropriate payment as the case may be) to it. If it is not so satisfied (whether because an Event of Default has occurred in respect of the other Party or otherwise) it shall notify the other party and unless that other Party has made arrangements which are sufficient to assure full delivery (or the appropriate payment as the case may be) to the notifying Party, the notifying Party shall (provided it is itself in a position, and willing, to perform its own obligations) be entitled to withhold delivery (or payment, as the case may be) to the other Party.

## **9. FAILURE TO DELIVER**

### **Borrower's failure to deliver Equivalent Securities**

9.1 If Borrower fails to deliver Equivalent Securities in accordance with paragraph 8.3 Lender may:

- (a) elect to continue the Loan (which, for the avoidance of doubt, shall continue to be taken into account for the purposes of paragraph 5.4 or 5.5 as applicable); or
- (b) at any time while such failure continues, by written notice to Borrower declare that that Loan (but only that Loan) shall be terminated immediately in accordance with paragraph 11.2 as if references to the Termination Date were to the date on which notice was given under this sub paragraph and as if the Loan were the only Loan outstanding and for the avoidance of doubt, any such failure shall not constitute an Event of Default unless the Parties otherwise agree.

### **Lender's failure to deliver Equivalent Collateral**

9.2 If Lender fails to deliver Equivalent Collateral comprising non-cash collateral in accordance with paragraph 8.4 or 8.5 Borrower may, at any time while such failure continues, by written notice to Lender declare that that Loan (but only that Loan) shall be terminated immediately in accordance with paragraph 11.2 as if references to the Termination Date were to the date on which notice was given under this sub paragraph and as if the Loan were the only Loan outstanding.

### **Failure by either Party to deliver**

9.3 Where a Party (the *Transferor*) fails to deliver Equivalent Securities or Equivalent Collateral within the standard settlement time for the asset concerned on the exchange or in the clearing organisation through which the asset equivalent to the asset concerned was originally delivered or within such other period as may be agreed between the Transferor and the other Party (the *Transferee*) and the Transferee:

- (a) incurs costs and expenses as a direct result of being unable to exercise any rights or options of the type specified in paragraph 6.4 in connection with assets equivalent to the assets concerned;
- (b) incurs costs and expenses as a direct result of a "buy-in" exercised against it;
- (c) the Loan in question not having been terminated, incurs costs and expenses in purchasing or borrowing securities as a direct result of its failure to meet its obligations under a transaction to sell or deliver securities resulting directly from the failure of the Transferor to fulfil its delivery obligations,

then the Transferor agrees to pay on demand and hold harmless the Transferee with respect to all reasonable costs and expenses listed in sub paragraph (a)-(c) above properly incurred which arise directly from such failure other than (i) such costs and expenses which arise from the negligence or wilful default of the Transferee and (ii) any indirect or consequential losses.

## **10. EVENTS OF DEFAULT**

10.1 Each of the following events occurring in relation to either Party (the *Defaulting Party*, the other Party being the *Non-Defaulting Party*) shall be an Event of Default but only (subject to sub-paragraph (e) below) where the Non-Defaulting Party serves written notice on the Defaulting Party:-

- (a) Borrower or Lender failing to pay or repay Cash Collateral or deliver Collateral;
- (b) Lender or Borrower failing to comply with its obligations under paragraph 5;
- (c) Lender or Borrower failing to comply with its obligations under paragraph 6.1;
- (d) Lender or Borrower failing to pay any sum due under paragraph 9.1(b) or 9.3 upon the due date;

- (e) an Act of Insolvency occurring with respect to Lender or Borrower; provided that an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party shall not require the Non-Defaulting Party to serve written notice on the Defaulting Party;
- (f) any representation or warranty made by Lender or Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated;
- (g) Lender or Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations under this Agreement and/or in respect of any Loan;
- (h) Lender (if applicable) or Borrower being declared in default or being suspended or expelled from membership of or participation in, any securities exchange or association or suspended or prohibited from dealing in securities by any regulatory authority;
- (i) any of the assets of Lender or Borrower or the assets of investors held by or to the order of Lender or Borrower being transferred or ordered to be transferred to a trustee (or a person exercising similar functions) by a regulatory authority pursuant to any securities regulating legislation, or
- (j) Lender or Borrower failing to perform any other of its obligations under this Agreement and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure.

10.2 Each Party shall notify the other (in writing) if an Event of Default or an event which, with the passage of time and/or upon the serving of a written notice as referred to above, would be an Event of Default, occurs in relation to it.

10.3 The provisions of this Agreement constitute a complete statement of the remedies available to each Party in respect of any Event of Default.

10.4 Subject to paragraph 1.1 and 9, neither Party may claim any sum by way of consequential loss or damage in the event of failure by the other party to perform any of its obligations under this Agreement.

## **11. SET-OFF ETC.**

11.1 If an Event of Default occurs in relation to either Party then paragraphs 11.2 to 11.6 below shall apply.

11.2 The Parties' delivery and payment obligations (and any other obligations they have under this Agreement) shall be accelerated so as to require performance thereof at the time such Event of Default occurs (the date of which shall be the **Termination Date** for the purposes of this paragraph) so that performance of such delivery and payment obligations shall be effected only in accordance with the following provisions:

- (a) the Default Market Value of the Equivalent Securities and Equivalent Collateral comprising securities to be delivered and the amount of any Cash Collateral (including sums accrued) to be repaid and any other cash (including interest accrued) to be paid by each Party shall be established by the Non-Defaulting Party as at the Termination Date in accordance with paragraph 11.3; and
- (b) on the basis of the sums so established, an account shall be taken (as at the Termination Date) of what is due from each Party to the other under this Agreement (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral comprising securities equals the Default Market Value thereof) and the sums due from one Party shall be set off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the next following Business Day. For the purposes of this calculation, all sums not denominated in the Base Currency shall be converted into the Base Currency on the relevant date at the Spot Rate prevailing at the Relevant Time.
- (c) If the balance under sub paragraph (b) above is payable by the Non-Defaulting Party and the Non-Defaulting Party had delivered to the Defaulting Party a Letter of Credit, the Defaulting Party shall draw on the Letter of Credit to the extent of the balance due and shall subsequently deliver for cancellation the Letter of Credit so provided.
- (d) If the balance under sub paragraph (b) above is payable by the Defaulting Party and the Defaulting Party had delivered to the Non-Defaulting Party a Letter of Credit, the Non-Defaulting Party shall draw on the Letter of Credit to the extent of the balance due and shall subsequently deliver for cancellation the Letter of Credit so provided.
- (e) In all other circumstances, where a Letter of Credit has been provided to a Party, such Party shall deliver for cancellation the Letter of Credit so provided.

11.3 For the purposes of this Agreement, the **Default Market Value** of any Equivalent Collateral in the form of a Letter of Credit shall be zero and of any Equivalent Securities or Collateral equivalent to other types of Collateral (other than cash) shall be determined in accordance with paragraphs 11.4 and 11.5 below, and for this purpose:

- (a) the **Appropriate Market** means, in relation to securities of any description, the market which is the most appropriate market for securities of that description, as determined by the Non Defaulting Party;
- (b) the **Default Valuation Time** means, in relation to an Event of Default, the close of business in the Appropriate Market on the fifth dealing day after the day on which that Event of Default occurs or, where that Event of Default is the occurrence of an Act of Insolvency in respect of which under paragraph 10.1(e) no notice is required from the Non Defaulting Party in order for such event to constitute an Event of Default, the close of business on the fifth

dealing day after the day on which the Non Defaulting Party first became aware of the occurrence of such Event of Default;

- (c) ***Deliverable Securities*** means Equivalent Securities or Equivalent Collateral comprising securities to be delivered by the Defaulting Party;
- (d) ***Net Value*** means at any time, in relation to any Deliverable Securities or Receivable Securities, the amount which, in the reasonable opinion of the Non Defaulting Party, represents their fair market value, having regard to such pricing sources and methods (which may include, without limitation, available prices for securities with similar maturities, terms and credit characteristics as the relevant Equivalent Securities or Equivalent Collateral) as the Non Defaulting Party considers appropriate, less, in the case of Receivable Securities, or plus, in the case of Deliverable Securities, all Transaction Costs which would be incurred in connection with the purchase or sale of such securities;
- (e) ***Receivable Securities*** means Equivalent Securities or Equivalent Collateral comprising securities to be delivered to the Defaulting Party; and
- (f) ***Transaction Costs*** in relation to any transaction contemplated in paragraph 11.3 or 11.4 means the reasonable costs, commission, fees and expenses (including any mark-up or mark-down) that would be incurred in connection with the purchase of Deliverable Securities or sale of Receivable Securities, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction.

11.4 If between the occurrence of the relevant Event of Default and the Default Valuation Time the Non Defaulting Party gives to the Defaulting Party a written notice (a ***Default Valuation Notice***) which:

- (a) states that, since the occurrence of the relevant Event of Default, the Non Defaulting Party has sold, in the case of Receivable Securities, or purchased, in the case of Deliverable Securities, securities which form part of the same issue and are of an identical type and description as those Equivalent Securities or that Equivalent Collateral, and that the Non Defaulting Party elects to treat as the Default Market Value:
  - (i) in the case of Receivable Securities, the net proceeds of such sale after deducting all reasonable costs, fees and expenses incurred in connection therewith; provided that, where the securities sold are not identical in amount to the Equivalent Securities or Equivalent Collateral, the Non Defaulting Party may, acting in good faith, either (A) elect to treat such net proceeds of sale divided by the amount of securities sold and multiplied by the amount of the Equivalent Securities or Equivalent Collateral as the Default Market Value or (B) elect to treat such net proceeds of sale of the Equivalent Securities or Equivalent Collateral actually sold as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Collateral, and, in the case of (B), the Default Market Value of the balance of the

Equivalent Securities or Equivalent Collateral shall be determined separately in accordance with the provisions of this paragraph 11.4 and accordingly may be the subject of a separate notice (or notices) under this paragraph 11.4; or

- (ii) in the case of Deliverable Securities, the aggregate cost of such purchase, including all reasonable costs, fees and expenses incurred in connection therewith; provided that, where the securities purchased are not identical in amount to the Equivalent Securities or Equivalent Collateral, the Non Defaulting Party may, acting in good faith, either (A) elect to treat such aggregate cost divided by the amount of securities purchased and multiplied by the amount of the Equivalent Securities or Equivalent Collateral as the Default Market Value or (B) elect to treat the aggregate cost of purchasing the Equivalent Securities or Equivalent Collateral actually purchased as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Collateral, and, in the case of (B), the Default Market Value of the balance of the Equivalent Securities or Equivalent Collateral shall be determined separately in accordance with the provisions of this paragraph 11.4 and accordingly may be the subject of a separate notice (or notices) under this paragraph 11.4;
- (b) states that the Non Defaulting Party has received, in the case of Deliverable Securities, offer quotations or, in the case of Receivable Securities, bid quotations in respect of securities of the relevant description from two or more market makers or regular dealers in the Appropriate Market in a commercially reasonable size (as determined by the Non Defaulting Party) and specifies:
- (i) the price or prices quoted by each of them for, in the case of Deliverable Securities, the sale by the relevant market marker or dealer of such securities or, in the case of Receivable Securities, the purchase by the relevant market maker or dealer of such securities;
  - (ii) the Transaction Costs which would be incurred in connection with such a transaction; and
  - (iii) that the Non Defaulting Party elects to treat the price so quoted (or, where more than one price is so quoted, the arithmetic mean of the prices so quoted), after deducting, in the case of Receivable Securities, or adding, in the case of Deliverable Securities, such Transaction Costs, as the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral; or
- (c) states:
- (i) that either (A) acting in good faith, the Non Defaulting Party has endeavoured but been unable to sell or purchase securities in accordance with sub paragraph (a) above or to obtain quotations in accordance with sub paragraph (b) above (or both) or (B) the Non Defaulting Party has determined that it would not be commercially

reasonable to sell or purchase securities at the prices bid or offered or to obtain such quotations, or that it would not be commercially reasonable to use any quotations which it has obtained under sub paragraph (b) above; and

- (ii) that the Non Defaulting Party has determined the Net Value of the relevant Equivalent Securities or Equivalent Collateral (which shall be specified) and that the Non Defaulting Party elects to treat such Net Value as the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral,

then the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral shall be an amount equal to the Default Market Value specified in accordance with (a), (b)(iii) or, as the case may be, (c)(ii) above.

11.5 If by the Default Valuation Time the Non Defaulting Party has not given a Default Valuation Notice, the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral shall be an amount equal to their Net Value at the Default Valuation Time; provided that, if at the Default Valuation Time the Non Defaulting Party reasonably determines that, owing to circumstances affecting the market in the Equivalent Securities or Equivalent Collateral in question, it is not commercially reasonable for the Non Defaulting Party to determine a Net Value of such Equivalent Securities or Equivalent Collateral which is commercially reasonable, the Default Market Value of such Equivalent Securities or Equivalent Collateral shall be an amount equal to their Net Value as determined by the Non Defaulting Party as soon as reasonably practicable after the Default Valuation Time.

### **Other costs, expenses and interest payable in consequence of an Event of Default**

11.6 The Defaulting Party shall be liable to the Non-Defaulting Party for the amount of all reasonable legal and other professional expenses incurred by the Non-Defaulting Party in connection with or as a consequence of an Event of Default, together with interest thereon at such rate as is agreed by the Parties or, failing such agreement, the one-month London Inter Bank Offered Rate as quoted on a reputable financial information service ("**LIBOR**") as of 11.00 am, London Time, on the date on which it is to be determined or, in the case of an expense attributable to a particular transaction and where the parties have previously agreed a rate of interest for the transaction, that rate of interest if it is greater than LIBOR. The rate of LIBOR applicable to each month or part thereof that any sum payable pursuant to this paragraph 11 remains outstanding is the rate of LIBOR determined on the first Business Day of any such period of one month or any part thereof. Interest will accrue daily on a compound basis and will be calculated according to the actual number of days elapsed.

## **12. TAXES**

### **Gross-Up**

12.1 Except as otherwise agreed, all payments under this Agreement other than Manufactured Payments arising from Collateral pursuant to paragraph 6.1 (b) will be

made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant government revenue authority then in effect. If a party is so required to deduct or withhold, then that party (“X”) will:

- (a) promptly notify the other party (“Y”) of such requirement;
- (b) pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y will equal the full amount Y would have received had no such deduction or withholding been required; and
- (c) pay to the relevant tax authorities the full amount required to be deducted or withheld.

### **Stamp duty and indirect taxes**

12.2 Borrower hereby undertakes promptly to pay and account for any stamp, registration, documentation or similar Tax or duty chargeable connected with any transaction effected pursuant to or contemplated by this Agreement and shall identify and keep indemnified the Lender against any liability arising as a result of the Borrower’s failure to do so.

12.3 Any other Taxes, including but not limited to sales and value-added Taxes (and which, for the avoidance of doubt, shall not include any Taxes which are addressed elsewhere in this Agreement), shall be the responsibility of the Party in whose jurisdiction they arise.

12.4 Clause 12.5 shall apply if either Party notifies the other that a Tax Event has or will, in the notifying Party’s reasonable opinion, have a material adverse effect on the Party in the context of a Loan.

12.5 Subject to Clause 12.7, where this paragraph applies:

- (a) if so requested by the other Party, the notifying party will furnish the other with an opinion of a suitably qualified adviser that an event referred to in Clause 12.4 has occurred and affects the notifying Party;
- (b) the Party giving the notice referred to Clause 12.4 may, subject to subparagraph (d) below, terminate the Loan with effect from a date specified in the notice, not being earlier (unless so agreed by the other party) than 30 days after the date of the notice;
- (c) if the Party receiving the notice referred to in Clause 12.4 so elects, it may override that notice by giving a counter-notice to the other Party. If a counter-notice is given, the Party which gives the counter-notice will be deemed to have agreed to indemnify the other Party against the adverse effect referred to in Clause 12.4 so far as relates to the relevant Loan and the Loan will continue;

- (d) where a Loan is terminated as described in this paragraph, the Party which has given the notice to terminate shall indemnify the other Party against any reasonable legal and other professional expenses incurred by the other Party by reason of the termination, but the other Party may not claim any sum by way of consequential loss or damage in respect of a termination in accordance with this paragraph.

12.6 Clause 12.5 is without prejudice to paragraph 12.1(gross-up) but an obligation to pay such additional amounts may, where appropriate, be a circumstance which causes this paragraph to apply.

12.7 Nothing in Clause 12.5 shall entitle a Party to terminate a Loan or to be indemnified by the other Party under Clause 12.5 to the extent that any Tax Event shall have retrospective effect.

### **13. LENDER'S WARRANTIES**

Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Lender:

- (a) it is duly authorised and empowered to perform its duties and obligations under this Agreement;
- (b) it is not restricted under the terms of its constitution or in any other manner from lending Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it hereunder to Borrower free from all liens, charges and encumbrances; and
- (d) it is acting as principal in respect of this Agreement or, subject to the Agency Annex, as agent and the conditions referred to in paragraph 1.2 of the Agency Annex will be fulfilled in respect of any Loan which it makes as agent.

### **14. BORROWER'S WARRANTIES**

Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Borrower:

- (a) it has all necessary licences and approvals, and is duly authorised and empowered, to perform its duties and obligations under this Agreement and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;
- (b) it is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;

- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it hereunder to Lender free from all liens, charges and encumbrances; and
- (d) it is acting as principal in respect of this Agreement.

#### **15. INTEREST ON OUTSTANDING PAYMENTS**

In the event of either Party failing to remit sums in accordance with this Agreement such Party hereby undertakes to pay to the other Party upon demand interest (before as well as after judgment) on the net balance due and outstanding, for the period commencing on and inclusive of the original due date for payment to (but excluding) the date of actual payment, in the same currency as the principal sum and at the rate referred to in paragraph 11.6. Interest will accrue daily on a compound basis and will be calculated according to the actual number of days elapsed.

#### **16. TERMINATION OF THIS AGREEMENT**

Each Party shall have the right to terminate this Agreement by giving not less than 15 Business Days' notice in writing to the other Party (which notice shall specify the date of termination) subject to an obligation to ensure that all Loans which have been entered into but not discharged at the time such notice is given are duly discharged in accordance with this Agreement.

#### **17. SINGLE AGREEMENT**

Each Party acknowledges that, and has entered into this Agreement and will enter into each Loan in consideration of and in reliance upon the fact that, all Loans constitute a single business and contractual relationship and are made in consideration of each other. Accordingly, each Party agrees:

- (a) to perform all of its obligations in respect of each Loan, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Loans; and
- (b) that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan.

#### **18. SEVERANCE**

If any provision of this Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Agreement shall, however, thereafter be amended by the Parties in such reasonable manner so as to achieve as far as possible, without illegality, the intention of the Parties with respect to that severed provision.

## **19. SPECIFIC PERFORMANCE**

Each Party agrees that in relation to legal proceedings it will not seek specific performance of the other Party's obligation to deliver or deliver Securities, Equivalent Securities, Collateral or Equivalent Collateral but without prejudice to any other rights it may have.

## **20. NOTICES**

20.1 Any notice or other communication in respect of this Agreement may be given in any manner set forth below to the address or number or in accordance with the electronic messaging system details set out in paragraph 4 of the Schedule and will be deemed effective as indicated:

- (a) if in writing and delivered in person or by courier, on the date it is delivered;
- (b) if sent by telex, on the date the recipient's answerback is received;
- (c) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (d) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (e) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or the receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the Close of Business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Business Day.

20.2 Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## **21. ASSIGNMENT**

Neither Party may charge assign or transfer all or any of its rights or obligations hereunder without the prior consent of the other Party.

## **22. NON-WAIVER**

No failure or delay by either Party (whether by course of conduct or otherwise) to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other

or further exercise thereof or the exercise of any other right, power or privilege as herein provided.

### **23. GOVERNING LAW AND JURISDICTION**

23.1 This Agreement is governed by, and shall be construed in accordance with, English law.

23.2 The courts of England have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement (respectively, *Proceedings* and *Disputes*) and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.

23.3 Each party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any Proceedings and to settle any Disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

23.4 Each of Party A and Party B hereby respectively appoints the person identified in paragraph 5 of the Schedule pertaining to the relevant Party as its agent to receive on its behalf service of process in the courts of England. If such an agent ceases to be an agent of Party A or party B, as the case may be, the relevant Party shall promptly appoint, and notify the other Party of the identity of its new agent in England.

### **24. TIME**

Time shall be of the essence of the Agreement.

### **25. RECORDING**

The Parties agree that each may record all telephone conversations between them.

### **26. WAIVER OF IMMUNITY**

Each Party hereby waives all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgement) and execution to which it might otherwise be entitled in any action or proceeding in the courts of England or of any other country or jurisdiction relating in any way to this Agreement and agrees that it will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

### **27. MISCELLANEOUS**

27.1 This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

27.2 The Party (the *Relevant Party*) who has prepared the text of this Agreement for execution (as indicated in paragraph 7 of the Schedule) warrants and undertakes to the other Party that such text conforms exactly to the text of the standard form Global

Master Securities Lending Agreement posted by the International Securities Lending Association on its website on [date] 2008 except as notified by the Relevant Party to the other Party in writing prior to the execution of this Agreement.

27.3 No amendment in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the Parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

27.4 The obligations of the Parties under this Agreement will survive the termination of any Loan.

27.5 The warranties contained in paragraphs 13, 14 and 27.2 and in the Agency Annex will survive termination of this Agreement for so long as any obligations of either of the Parties pursuant to this Agreement remain outstanding.

27.6 Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

27.7 This Agreement (and each amendment in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

27.8 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**EXECUTED** by the **PARTIES**

SIGNED BY )  
 )  
 DULY AUTHORISED FOR AND )  
 ON BEHALF OF )

SIGNED BY )  
 )  
 DULY AUTHORISED FOR AND )  
 ON BEHALF OF )

## SCHEDULE

### 1. Collateral

1.1 The securities, financial instruments and deposits of currency set out in the table below with a cross marked next to them are acceptable forms of Collateral under this Agreement.

1.2 Unless otherwise agreed between the Parties, the Market Value of the Collateral delivered pursuant to paragraph 5 by Borrower to Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than the Market Value of the Loaned Securities together with the percentage contained in the row of the table below corresponding to the particular form of Collateral, referred to in this Agreement as the *Margin*.

Security/Financial Instrument/Deposit of Currency	Mark "X" if acceptable form of Collateral	Margin (%)

1.3 Basis of Margin Maintenance:

Paragraph 5.4 (aggregation) shall not apply\*

The assumption is that paragraph 5.4 (aggregation) applies unless the box is ticked.

1.4 Paragraph 5.6 (netting of obligations to deliver Collateral and deliver Equivalent Collateral) shall not apply\*

If paragraph 5.5 applies, the assumption is that paragraph 5.6 (netting) applies unless the box is ticked.

### 2. Base Currency

The Base Currency applicable to this Agreement is

### 3. Places of Business

(See definition of Business Day.)

4. **Designated Office and Address for Notices**

(A) **Designated office of Party A:**

Address for notices or communications to Party A:

Address:

Attention:

Facsimile No:

Telephone No:

Electronic Messaging System Details:

(B) **Designated office of Party B:**

Address for notices or communications to Party B:

Address:

Attention:

Facsimile No:

Telephone No:

Electronic Messaging System Details:

5. (A) **Agent of Party A for Service of Process**

Name:

Address:

(B) **Agent of Party B for Service of Process**

Name:

Address:

6. **Agency**

- The Agency Annex may apply to Party A\*
- The Agency Annex may apply to Party B\*
- The Addendum for Multiple Principal Agency Transactions

may apply to Party A\*

- The Addendum for Multiple Principal Agency Transactions may apply to Party B\*

7. **Party Preparing this Agreement**

Party A\*

Party B\*

8. **Default Interest**

Rate of default interest:

## AGENCY ANNEX

### 1. TRANSACTIONS ENTERED INTO AS AGENT

#### 1.1 Power for Lender to enter into Loans as agent

Subject to the following provisions of this paragraph, Lender may (if so indicated in paragraph 6 of the Schedule) enter into Loans as agent (in such capacity, the *Agent*) for a third person (a *Principal*), whether as custodian or investment manager or otherwise (a Loan so entered into being referred to in this paragraph as an *Agency Loan*).

#### 1.2 Conditions for Agency Loan

A Lender may enter into an Agency Loan if, but only if:-

- (a) it specifies that Loan as an Agency Loan at the time when it enters into it;
- (b) it enters into that Loan on behalf of a single Principal whose identity is disclosed to Borrower (whether by name or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) at the time when it enters into the Loan or as otherwise agreed between the Parties; and
- (c) it has at the time when the Loan is entered into actual authority to enter into the Loan and to perform on behalf of that Principal all of that Principal's obligations under the agreement referred to in paragraph 1.4(b) below.

#### 1.3 Notification by Lender of certain events affecting the principal

Lender undertakes that, if it enters as agent into an Agency Loan, forthwith upon becoming aware:-

- (a) of any event which constitutes an Act of Insolvency with respect to the relevant Principal; or
- (b) of any breach of any of the warranties given in paragraph 1.5 below or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the then current facts;

it will inform Borrower of that fact and will, if so required by Borrower, furnish it with such additional information as it may reasonably request.

#### 1.4 Status of Agency Loan

- (a) Each Agency Loan shall be a transaction between the relevant Principal and Borrower and no person other than the relevant Principal and Borrower shall be a party to or have any rights or obligations under an Agency Loan. Without limiting the foregoing, Lender shall not be liable as principal for the performance of an Agency Loan, but this is without prejudice to any liability of Lender under any other provision of this clause; and

- (b) all the provisions of the Agreement shall apply separately as between Borrower and each Principal for whom the Agent has entered into an Agency Loan or Agency Loans as if each such Principal were a party to a separate agreement with Borrower in all respects identical with this Agreement other than this paragraph and as if the Principal were Lender in respect of that agreement;

**PROVIDED THAT**

if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if Borrower served written notice under any sub-clause of paragraph 10 of the Agreement, Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given if given to Lender in accordance with paragraph 20 of the Agreement) to declare that by reason of that event an Event of Default is to be treated as occurring in relation to the Principal. If Borrower gives such a notice then an Event of Default shall be treated as occurring in relation to the Principal at the time when the notice is deemed to be given; and

if the Principal is neither incorporated in nor has established a place of business in Great Britain, the Principal shall for the purposes of the agreement referred to in paragraph 1.4(b) above be deemed to have appointed as its agent to receive on its behalf service of process in the courts of England the Agent, or if the Agent is neither incorporated nor has established a place of business in Great Britain, the person appointed by the Agent for the purposes of this Agreement, or such other person as the Principal may from time to time specify in a written notice given to the other Party.

The foregoing provisions of this paragraph do not affect the operation of the Agreement as between Borrower and Lender in respect of any Loans into which Lender may enter on its own account as principal.

**1.5 Warranty of authority by Lender acting as agent**

Lender warrants to Borrower that it will, on every occasion on which it enters or purports to enter into a Loan as an Agency Loan, have been duly authorised to enter into that Loan and perform the obligations arising under such Loan on behalf of the person whom it specifies as the Principal in respect of that Loan and to perform on behalf of that person all the obligations of that person under the agreement referred to in paragraph 1.4(b) above.

## ADDENDUM FOR MULTIPLE PRINCIPAL AGENCY LOANS

### 1. SCOPE

This addendum applies where a party wishes to enter into an Agency Loan on behalf of more than one Principal. The Agency Annex shall apply to such a Loan subject to the modifications and additional terms and conditions contained in paragraph 2 to 7 below.

### 2. INTERPRETATION

2.1 In this addendum:

- (a) *Collateral Transfer* has the meaning given in paragraph 5.1 below;
- (b) if at any time on any Business Day the aggregate Market Value of Posted Collateral in respect of all Agency Loans outstanding with a Principal under the Agreement exceeds the aggregate of the Required Collateral Value in respect of such Agency Loans, Borrower has a *Net Loan Exposure* to that Principal equal to that excess; if at any time on any Business Day the aggregate Market Value of Posted Collateral in respect of all Agency Loans outstanding under the Agreement with a Principal falls below the aggregate of the Required Collateral Value in respect of such Agency Loans, that Principal has a *Net Loan Exposure* to Borrower for such Agency Loans equal to that deficiency;
- (c) *Pooled Principal* has the meaning given in paragraph 6(a) below; and
- (d) *Pooled Loan* has the meaning given in paragraph 6(a) below.

### 3. MODIFICATIONS TO THE AGENCY ANNEX

3.1 Paragraph 1.2(b) of the Agency Annex is deleted and replaced by the following:

“it enters into that Loan on behalf of one or more Principals and at or before the time when it enters into the Loan it discloses to the other party the identity and the jurisdiction of incorporation, organisation or establishment of each such Principal (and such disclosure may be made either directly or by reference to a code or identifier which the parties have agreed will be used to refer to specified Principal);”.

3.2 Paragraph 1.2(c) of the Agency Annex is deleted and replaced by the following:

“it has at the time when the Loan is entered into actual authority to enter into the Loan on behalf of each Principal and to perform on behalf of each Principal all of that Principal’s obligations under the Agreement”.

#### 4. ALLOCATION OF AGENCY LOANS

4.1 The Agent undertakes that if, at the time of entering into an Agency Loan, the Agent has not allocated the Loan to a Principal, it will allocate the Loan before the Settlement Date for that Agency Loan either to a single Principal or to several Principals, each of whom shall be responsible for only that part of the Agency Loan which has been allocated to it. Promptly following such allocation, the Agent shall notify the other party of the Principal or Principals (whether by name or reference to a code or identifier which the parties have agreed will be used to refer to a specified Principal) to which that Loan or part of that Loan has been allocated.

4.2 Upon allocation of a Loan in accordance with paragraph 4.1 above or otherwise, with effect from the date on which the Loan was entered into:

- (a) where the allocation is to a single Principal, the Loan shall be deemed to have been entered into between the other party and that Principal; and
- (b) where the allocation is to two or more Principals, a separate Loan shall be deemed to have been entered into between the other party and each such Principal with respect to the appropriate proportion of the Purchased Securities.

4.3 If the Agent shall fail to perform its obligations under paragraph 4.2 above then for the purposes of assessing any damage suffered by the other party (but for no other purpose) it shall be assumed that, if the Loan concerned (to the extent not allocated) had been allocated in accordance with that paragraph, all the terms of the Loan would have been duly performed.

#### 5. ALLOCATION OF COLLATERAL

5.1 Unless the Agent expressly allocates (a) a deposit or delivery of Posted Collateral or (b) a repayment of Cash Collateral or a redelivery of Equivalent Collateral (each a *Collateral Transfer*) before such time, the Agent shall, at the time of making or receiving that Margin Transfer, be deemed to have allocated any Collateral Transfer in accordance with paragraph 6.3 below.

5.2

- (a) If the Agent has made a Collateral Transfer on behalf of more than one Pooled Principal, that Collateral Transfer shall be allocated in proportion to Borrower's Net Loan Exposure in respect of each Pooled Principal at the Agent's close of business on the Business Day before the Collateral Transfer is made; and
- (b) if the Agent has received a Collateral Transfer on behalf of more than one Pooled Principal, that Collateral Transfer shall be allocated in proportion to each Pooled Principal's Net Loan Exposure in respect of Borrower at the Agent's close of business on the Business Day before the Collateral Transfer is made.

- (c) Sub-paragraphs (a) and (b) shall not apply in respect of any Collateral Transfer which is effected or deemed to have been effected under paragraph 6.3 below.

## 6. POOLED PRINCIPALS: REBALANCING OF MARGIN

6.1 Where the Agent acts on behalf of more than one Principal, the parties may agree that, as regards all (but not some only) outstanding Agency Loans with those Principals, or with such of those Principals as they may agree (*Pooled Principals*, such Agency Loans being *Pooled Loans*), any Collateral Transfers are to be made on an aggregate net basis.

6.2 Paragraphs 6.3 to 6.6 below shall have effect for the purpose of ensuring that Posted Collateral is, so far as is practicable, transferred and held uniformly, as between the respective Pooled Principals, in respect of all Pooled Loans for the time being outstanding under the Agreement.

6.3 At or as soon as practicable after the Agent's close of business on each Business Day on which Pooled Loans are outstanding (or at such other times as the Parties may from time to time agree) there shall be effected such Collateral Transfers as shall ensure that immediately thereafter:

- (a) in respect of all Pooled Principals which have a Net Loan Exposure to Borrower, the amount of Collateral then deliverable or Cash Collateral then payable by Borrower to each such Pooled Principal is equal to such proportion of the aggregate amount of Collateral then deliverable or Cash Collateral then payable, to all such Pooled Principals as corresponds to the proportion which the Net Loan Exposure of the relevant Pooled Principal bears to the aggregate of the Net Loan Exposures of all Pooled Principals to Borrower; and
- (b) in respect of all Pooled Principals to which Borrower has a Net Loan Exposure, the aggregate amount of Equivalent Collateral then deliverable or repayable by each such Pooled Principal to Borrower is equal to such proportion of the aggregate amount of Equivalent Collateral then deliverable or repayable by all such Pooled Principals as corresponds to the proportion which the Net Loan Exposure of Borrower to the relevant Pooled Principal bears to the aggregate of the Net Loan Exposures of Borrower to all Pooled Principals.

6.4 Collateral Transfers effected under paragraph 6.3 shall be effected (and if not so effected shall be deemed to have been so effected) by appropriations made by the Agent and shall be reflected by entries in accounting and other records maintained by the Agent. Accordingly, it shall not be necessary for payments of cash or deliveries of Securities to be made through any settlement system for the purpose of such Collateral Transfers. Without limiting the generality of the foregoing, the Agent is hereby authorised and instructed by Borrower to do all such things on behalf of Borrower as may be necessary or expedient to effect and record the receipt on behalf of Borrower of cash and Securities from, and the delivery on behalf of Borrower of cash and Securities to, Pooled Principals in the course or for the purposes of any Collateral Transfer effected under that paragraph.

6.5 Promptly following the Collateral Transfers effected under paragraph 6.3 above at the close of business on any Business Day, the Agent shall prepare a statement showing in respect of each Pooled Principal the amount of cash Collateral which has been paid, and the amount of non-cash Collateral of each description which have been transferred, by or to that Pooled Principal immediately after those Collateral Transfers. If Borrower so requests, the Agent shall promptly deliver to Borrower a copy of the statement so prepared.

## **7. WARRANTIES**

7.1 The Agent warrants to the other party that:

- (a) all notifications provided to the other party under paragraph 4.1 above and all statements provided to the other party under paragraph 6.5 above shall be complete and accurate in all material respects;
- (b) at the time of allocating an Agency Loan in accordance with paragraph 4.1 above, each Principal or Principals to whom the Agent has allocated that Agency Loan or any part of that Agency Loan is duly authorised to enter into the Agency Loans contemplated by this Agreement and to perform its obligations thereunder; and
- (c) at the time of allocating an Agency Loan in accordance with paragraph 4.1 above, no Event of Default or event which would constitute an Event of Default with the service of a Default Notice or other written notice under any sub paragraph of paragraph 14 of the Agreement has occurred in relation to any Principal or Principals to whom the Agent has allocated that Agency Loan or any part of that Agency Loan.