

**Macquarie Group Limited**  
ABN 94 122 169 279

No.1 Martin Place  
Sydney NSW 2000  
GPO Box 4294  
Sydney NSW 1164  
AUSTRALIA

Telephone (61 2) 8232 3333  
Facsimile (61 2) 8232 7780  
Internet <http://www.macquarie.com.au>

27 June 2013

To: Company Name: Buru Energy Limited  
ABN: 71 130 651 437

**Form 604: Notice of change of interests of substantial holder**

Please find attached annexures J to N in relation to Change in substantial holding lodged by Macquarie Group Limited on 25 June 2013.

These annexures were submitted on the above date by e-lodgement but have not appeared in the company announcements.

Yours sincerely,

Macquarie Group Limited, Compliance

**ANNEXURE 'J'**

This is the annexure marked 'J' of 40 pages referred to in the Notice of change of interests of substantial holder.

---

Dennis Leong  
Company Secretary, Macquarie Group Limited  
25 June 2013

---



I4025

679  
S0679  
DC759916

# Australian Securities Lending Association Limited

MERRILL LYNCH  
(AUSTRALIA) LTD - BTAL

(ACN 054 944 482)  
Level 18, 20 Bond Street  
Sydney NSW 2000  
Tel: (02) 9220 1413  
Fax: (02) 9220 1379

## Coversheet to

### AUSTRALIAN MASTER SECURITIES LENDING AGREEMENT\*

(Version: 4 April 1997)

dated as of: 17 JULY.....1998

**Between: Bankers Trust Australia Limited**

**And: Merrill Lynch Equities Australia Limited**

- \* *This agreement is adapted from the ISLA Overseas Securities Lender's Agreement (Version: December 1995, as amended by 1996 UK Tax Addendum), prepared by Clifford Chance, London, England for use by parties required to meet UK Inland Revenue tax requirements.*
- \* *This agreement is also subject to the "Warning and Disclaimer" on the coversheet to the User's Guide relating to this agreement.*

## © Mallesons Stephen Jaques

SOLICITORS  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Telephone (02) 9296 2000  
Fax (02) 9296 3999  
DX 113 Sydney  
Ref: JCK



## Australian Securities Lending Association Limited

---

(ACN 054 944 482)  
Level 18, 20 Bond Street  
Sydney NSW 2000  
Tel: (02) 9220 1413  
Fax: (02) 9220 1379

### AUSTRALIAN MASTER SECURITIES LENDING AGREEMENT \*

(Version: 4 April 1997)

dated as of: .....17 JULY.....1998

**Between:** (1) **Bankers Trust Australia Limited** A.C.N. 003 017 221  
of Level 15, Chifley Tower, 2 Chifley Square, Sydney, NSW 2000

**And:** (2) **Merril Lynch Equities Australia Limited** A.C.N  
Of Level 49, MLC Center, 19-29 Martin Place, Sydney, NSW 2000

- \* *This agreement is adapted from the ISLA Overseas Securities Lender's Agreement (Version: December 1995, as amended by 1996 UK Tax Addendum), prepared by Clifford Chance, London, England for use by parties required to meet UK Inland Revenue tax requirements.*
- \* *This agreement is also subject to the "Warning and Disclaimer" on the coversheet to the "User's Guide" relating to this agreement.*

© **Mallesons Stephen Jaques**

S O L I C I T O R S  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Telephone (02) 9296 2000  
Fax (02) 9296 3999  
DX 113 Sydney  
Ref: JCK



<b>Contents</b>	<b>Agreement</b>	<b>Page No</b>
	<b>1 Interpretation</b>	<b>2</b>
	<b>2 Loans of Securities</b>	<b>3</b>
	<b>3 Delivery of Securities</b>	<b>4</b>
	<b>4 Title, Distributions and Voting</b>	<b>4</b>
	<b>5 Fees</b>	<b>5</b>
	<b>6 Collateral</b>	<b>6</b>
	<b>7 Redelivery of Equivalent Securities</b>	<b>8</b>
	<b>8 Set-off etc.</b>	<b>9</b>
	<b>9 Stamp duty, taxes etc and loss of tax benefits</b>	<b>11</b>
	<b>10 Lender's warranties</b>	<b>12</b>
	<b>11 Borrower's warranties</b>	<b>13</b>
	<b>12 Events of Default</b>	<b>13</b>
	<b>13 Outstanding payments</b>	<b>14</b>
	<b>14 Transactions entered into as agent</b>	<b>15</b>
	<b>15 Termination of course of dealings by notice</b>	<b>16</b>
	<b>16 No reliance or tax or accounting representations by other Party</b>	<b>16</b>
	<b>17 Observance of procedures</b>	<b>17</b>
	<b>18 Severance</b>	<b>17</b>
	<b>19 Specific performance</b>	<b>17</b>
	<b>20 Notices</b>	<b>17</b>
	<b>21 Assignment</b>	<b>18</b>
	<b>22 Non-Waiver</b>	<b>18</b>
	<b>23 Time</b>	<b>18</b>
	<b>24 Recording</b>	<b>18</b>
	<b>25 Miscellaneous</b>	<b>18</b>

---

<b>26 Definitions</b>	<b>19</b>
<b>27 Governing Law and Jurisdiction</b>	<b>27</b>
<b>Schedule 1 - Particulars</b>	<b>28</b>
<b>Schedule 2 Specimen Form of Borrowing Request (see clause 2.1 and definition of “Borrowing Request” in clause 26)</b>	<b>31</b>
<b>Schedule 3 Supplementary Terms and Conditions (if any)</b>	<b>33</b>

---

# AGREEMENT

## Recitals:

- A. The Parties hereto are desirous of agreeing to a procedure whereby either one of them (the “**Lender**”) will make available to the other of them (the “**Borrower**”) from time to time Securities (as hereinafter defined).
- B. All transactions carried out under this Agreement will be effected in accordance with the Rules (as hereinafter defined), if applicable, **together with** current market practices, customs and conventions, in so far as they are not inconsistent with the terms of this Agreement.

## Operative provisions:

### 1 Interpretation

---

- 1.1 **[Definitions]** The terms defined in clause 26 and in Schedule 1 have the meanings therein specified for the purposes of this Agreement.
- 1.2 **[Inconsistency]** In the event of any inconsistency between the provisions of Schedule 1 and the other provisions of this Agreement, Schedule 1 will prevail. In the event of any inconsistency between the provisions (if any) of Schedule 3 and the other provisions of this Agreement (including Schedule 1), Schedule 3 will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Agreement (including Schedules 1 and 3), such Confirmation will prevail for the purpose of the relevant transaction.
- 1.3 **[Single agreement]** All transactions are entered into in reliance on the fact that this Agreement and all Confirmations form a single agreement between the Parties (collectively referred to as this “**Agreement**”), and the Parties would not otherwise enter into any transactions.
- 1.4 **[Interpretation]** In this Agreement:
  - (a) Unless the context otherwise requires:
    - (i) The **singular** includes the plural and vice versa.
    - (ii) A **person** includes a corporation.
    - (iii) A **corporation** includes any body corporate and any statutory authority.
    - (iv) A reference to a statute, ordinance, code or other law or the Rules includes regulations or other instruments under it or them and consolidations, amendments, re-enactments or replacements of any of them.



- (b) Notwithstanding the use of expressions such as “borrow”, “lend”, “Collateral”, “Margin”, “redeliver” 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 redeliver Equivalent Securities or Equivalent Collateral, as the case may be.
- 1.5 [Headings] All headings appear for convenience only and shall not affect the interpretation of this Agreement.
- 1.6 [Currency conversion] For the purposes of clauses 6, 8.3 and 8.4, when a conversion into the Base Currency is required, all prices, sums or values (including any Value, Offer Value and Bid Value) of Securities, Equivalent Securities, Collateral or Equivalent Collateral (including Cash Collateral) stated in currencies other than the Base Currency shall be converted into the Base Currency at the rate quoted by an Australian bank selected by the Lender (or, if an Event of Default has occurred in relation to the Lender, by the Borrower) at or about 11.00am (Sydney time) on the day of conversion as its spot rate for the sale by the bank of the Base Currency in exchange for the relevant other currency.
- 1.7 [Other agreements] Where at any time there is in existence any other agreement between the Parties the terms of which make provision for the lending of Securities (as defined in this Agreement) as well as other securities, the terms of this Agreement shall apply to the lending of such Securities to the exclusion of any other such agreement.
- 1.8 [Nominees] If payment is to be made to a Party’s nominee or otherwise in accordance with the directions of a Party (whether by the other Party or by a third party), it shall be deemed, for the purposes of this agreement, to have been paid or made to the first mentioned Party.

## 2 Loans of Securities

---

- 2.1 [Borrowing Request and acceptance thereof] The Lender will lend Securities to the Borrower, and the Borrower will borrow Securities from the Lender, in accordance with the terms and conditions of this Agreement and with the Rules provided always that the Lender shall have received from the Borrower and accepted (by whatever means) a Borrowing Request.
- 2.2 [Changes to a Borrowing Request] The Borrower has the right to reduce the amount of Securities referred to in, or otherwise vary, a Borrowing Request provided that:
- (a) the Borrower has notified the Lender of such reduction or variation no later than midday Australian Eastern standard or summer (as appropriate) time on the day which is two Business Days prior to the Settlement Date, unless otherwise agreed between the Parties, and
- (b) the Lender shall have accepted such reduction or variation (by whatever means).



---

### 3 Delivery of Securities

---

[**Delivery of Securities**] The Lender shall procure the delivery of Securities to the Borrower or deliver such Securities in accordance with the relevant Borrowing Request **together with** appropriate instruments of transfer (where necessary) duly stamped (where necessary) and such other instruments (if any) as may be requisite to vest title thereto in the Borrower. Such Securities shall be deemed to have been delivered by the Lender to the Borrower on delivery to the Borrower or as it shall direct of the relevant instruments of transfer and certificates or other documents of title (if any), or in the case of Securities 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 electronic entries (such as CHESSE), on the transfer of title in accordance with the rules and procedures of such system as in force from time to time, or by such other means as may be agreed.

---

### 4 Title, Distributions and Voting

---

4.1 [**Passing of title**] 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 clause 2;
- (b) any Equivalent Securities redelivered pursuant to clause 7;
- (c) any Collateral delivered pursuant to clause 6;
- (d) any Equivalent Collateral redelivered pursuant to clauses 6 or 7,

shall pass from one Party to the other, on delivery or redelivery of the same in accordance with this Agreement, free from all liens, charges, equities 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 electronic 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.

4.2 [**Distributions**]

- (a) [**Cash distributions**] Unless otherwise agreed, where Income is paid in relation to any Securities on or by reference to an Income Payment Date on which such Securities are the subject of a loan under this Agreement, the Borrower 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 equivalent to the same to the Lender, irrespective of whether the Borrower received the same.
- (b) [**Non-cash distributions**] Subject to paragraph (c) (unless otherwise agreed), where, in respect of any borrowed Securities or any Collateral, any rights relating to conversion, sub-division, consolidation, pre-emption, rights arising under a takeover offer or other rights, including those requiring election by the holder for the time being of such Securities or Collateral, become exercisable prior to the redelivery of Equivalent Securities or Equivalent Collateral, then the 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 redelivery 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.

(c) **[Tax Act ss 26BC(3)(c)(ii) and (v) requirements]** Notwithstanding paragraph (b), where, in respect of any Borrowed Securities or any Collateral, the relevant issuer company, trustee, government or government authority issues any right or option in respect of the Borrowed Securities or Collateral, as the case may be, the Borrower or the Lender, respectively, must deliver or make, as the case may be, to the other Party on the date of such issue or on such other date as the Parties may from time to time agree:

- (i) the right, or option; or
- (ii) an identical right or option; or
- (iii) a payment equal to the value to the Lender or the Borrower, respectively, of the right or option;

together with any such endorsements or assignments as shall be customary and appropriate.

(d) **[Manner of payment]** Any payment to be made by the Borrower under this clause shall be made in a manner to be agreed between the Parties.

4.3 **[Voting]** Unless paragraph 4 in Schedule 1 specifies that this clause 4.3 does not apply, each Party undertakes that, where it holds Securities of the same description as any Securities borrowed by it or transferred to it by way of Collateral at a time when a right to vote arises in respect of such Securities, it will use its best endeavours to arrange for the voting rights attached to such Securities to be exercised in accordance with the instructions of the Lender or Borrower (as the case may be) **provided always that** each Party shall use its best endeavours to notify the other of its instructions in writing no later than seven Business Days prior to the date upon which such votes are exercisable, or as otherwise agreed between the Parties, and that the Party concerned shall not be obliged so to exercise the votes in respect of the number of Securities greater than the number so lent or transferred to it. For the avoidance of doubt, the Parties agree that, subject as hereinbefore provided, any voting rights attaching to the relevant Securities, Equivalent Securities, Collateral and/or Equivalent Collateral shall be exercisable by the persons in whose name they are registered, or in the case of Securities, Equivalent Securities, collateral and/or Equivalent Collateral in bearer form by the persons by or on behalf of whom they are held, and not necessarily by the Borrower or the Lender (as the case may be).

---

## 5 Fees

5.1 **[Fees]** In respect of each loan of Securities:

- (a) for which the Collateral is cash:
  - (i) the Lender must pay a fee to the Borrower in respect of the amount of that Collateral, calculated at the rate agreed between them; and



- 
- (ii) unless the Parties otherwise agree, the Borrower is not obliged to pay a fee to the Lender;
- (b) for which there is no Cash Collateral, the Borrower must pay a fee to the Lender, calculated at the rate agreed between them.
- 5.2 **[Where there are different types of Collateral]** Where the Collateral comprises only partly cash, clause 5.1 is to be construed as if there were separate loans of Securities, one secured solely by Cash Collateral and the other secured solely by non-cash Collateral.
- 5.3 **[Calculation of fees]** In respect of each loan of Securities, the payments referred to in clause 5.1 of this clause shall accrue daily in respect of the period commencing on and inclusive of the Settlement Day and terminating on and exclusive of the Business Day upon which Equivalent Securities are redelivered 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 Borrower to the Lender or to the Borrower by the Lender (as the case may be) not later than the Business Day which is one week after the last Business Day of the calendar month to which such payment relate or such other date as the Parties from time to time agree. Any payment made pursuant to clause 5.1 shall be in Australian currency, unless otherwise agreed, and shall be paid in such manner and at such place as shall be agreed between the Parties.

## 6 Collateral

---

- 6.1 **[Borrower's obligation to provide Collateral]** Unless otherwise agreed, subject to the other provisions of this clause 6, the Borrower undertakes to deliver to or deposit with the Lender (or in accordance with the Lender's instructions) Collateral of the kind specified in the relevant Borrowing Request or as otherwise agreed between the Parties (together with appropriate instruments of transfer duly stamped (where necessary) and such other instruments as may be requisite to vest title thereto in the Lender) simultaneously with delivery of the Borrowed Securities by the Lender.
- 6.2 **[Global margining]**
- (a) **[Adjustments to Collateral]** Unless otherwise agreed between the Parties, subject to paragraph (b), clause 6.4 and paragraph 1.5 in Schedule 1:
    - (i) The aggregate Value of the Collateral delivered to or deposited with the Lender or its nominated bank or depositary (excluding any Collateral repaid or redelivered under paragraph (ii) below (as the case may be)) in respect of all loans of Securities outstanding under this Agreement ("**Posted Collateral**") shall from day to day and at any time be at least the aggregate of the Required Collateral Values in respect of such loans.
    - (ii) If at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement exceeds the aggregate of the Required Collateral Values in respect of such loans, the Lender shall (on demand) repay such Cash Collateral and/or redeliver to the Borrower such Equivalent Collateral as will eliminate the excess.



- 
- (iii) If at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such loans, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.
- (b) **[Netting of Collateral obligations where a Party is both Lender and Borrower]** Unless otherwise agreed between the Parties, subject to clause 6.4 and paragraph 1.5 in Schedule 1, where paragraph (a) applies, if a Party (the “**first Party**”) would, but for this paragraph, be required under paragraph (a) to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral in circumstances where the other Party (the “**second Party**”) would, but for this paragraph, also be required to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral under paragraph (a), then the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the first Party (“**X**”) shall be set-off against the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the second Party (“**Y**”) and the only obligation of the Parties under paragraph (a) shall be, where X exceeds Y, an obligation of the first Party, or where Y exceed X, an obligation of the second Party, (on demand) to repay Cash Collateral, redeliver Equivalent Collateral or deliver further Collateral having a Value equal to the difference between X and Y.
- 6.3 **[Required Collateral Value]** For the purposes of clause 6.2(a), the Value of the Posted Collateral to be delivered or deposited in respect of any loan of Securities, while the loan of Securities continues, shall be equal to the aggregate of the Value of the borrowed Securities and the Margin applicable thereto (the “**Required Collateral Value**”).
- 6.4 **[Time for payment/repayment of Collateral]** Except as provided in clause 6.1 or clause 6.6, where any Cash Collateral is to be repaid, Equivalent Collateral is to be redelivered or further Collateral is to be provided under this clause 6, it shall be paid or delivered as stated in paragraph 1.4 in Schedule 1.
- 6.5 **[Substitution of Alternative Collateral]** The Borrower may from time to time call for the repayment of Cash Collateral or the redelivery of Equivalent Collateral prior to the date on which the same would otherwise have been repayable or redeliverable, provided that, at the time of such repayment or redelivery, the Borrower shall have delivered or delivers Alternative Collateral acceptable to the Lender.
- 6.6 **[Return of Collateral/Equivalent Collateral on redelivery of Equivalent Securities]**
- (a) Cash Collateral shall be repaid and Equivalent Collateral shall be redelivered at the same time as Equivalent Securities in respect of the Securities borrowed are redelivered.
- (b) Where Collateral is provided through a book entry transfer system (such as Austraclear or RITS), the obligation of the Lender shall be to redeliver Equivalent Collateral through such book entry transfer system in accordance with this Agreement. If the loan of Securities in respect of which Collateral



---

was provided has not been discharged when the Equivalent Collateral is redelivered, any payment obligation generated within the book entry transfer system on such redelivery shall, until the loan of Securities is discharged or further Collateral is provided, be deemed to constitute an obligation to pay Cash Collateral.

- 6.7 **[Receipt by Lender of Income on Collateral]** Where Collateral (other than Cash Collateral) is delivered in respect of which any Income may become payable and an Income Payment Date in respect of that Collateral occurs prior to the redelivery of Equivalent Collateral, then, unless such Income is paid directly to the Borrower, the Lender shall, on the date on which such Income is paid 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 such Income (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Borrower.
- 6.8 **[Borrower's rights re Collateral are not assignable]** The Borrower may not assign, transfer or otherwise dispose of, or mortgage, charge or otherwise encumber, or otherwise deal with its rights in respect of any Collateral without the prior written consent of the Lender.
- 6.9 **[Lender may set off obligation to repay or return Equivalent Collateral]** If the Borrower fails to comply with its obligation to redeliver Equivalent Securities, the obligation of the Lender in respect of any Collateral may be the subject of a set-off in accordance with clause 8.
- 6.10 **[Collateral provided to Lender's Nominee]** Without limiting clause 1.8, where Collateral is provided to the Lender's nominee, any obligation under this Agreement to repay or redeliver or otherwise account for Equivalent Collateral shall be an obligation of the Lender, notwithstanding that any such repayment or redelivery may be effected in any particular case by the nominee.

## **7 Redelivery of Equivalent Securities**

---

- 7.1 **[Borrower's obligation to redeliver Equivalent Securities]** The Borrower undertakes to redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Borrowing Request.
- 7.2 **[Lender may call for early redelivery of Equivalent Securities]** Subject to clause 8 and the terms of the relevant Borrowing Request, the Lender may call for the redelivery 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 or the equivalent time on the exchange or in the clearing organisation through which the relevant borrowed Securities were originally delivered. The Borrower shall as hereinafter provided redeliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions.
- 7.3 **[Lender may terminate loan if Borrower defaults]** If the Borrower does not redeliver Equivalent Securities in accordance with such call, the Lender may elect to continue the loan of Securities ; **provided that**, if the Lender does not elect to continue the loan, the Lender may by written notice to the Borrower elect to terminate the relevant loan. Upon the expiry of such notice the provisions of clauses 8.2 to 8.5 shall apply as if upon the expiry of such notice an Event of Default had occurred in relation to the Borrower (who shall thus be the Defaulting



---

Party for the purposes of this Agreement) and as if the relevant loan were the only loan outstanding.

- 7.4 **[Consequence of exercise of “buy-in” against Lender, as a result of Borrower default]** In the event that, as a result of the failure of the Borrower to redeliver Equivalent Securities to the Lender in accordance with this Agreement, a “buy-in” is exercised against the Lender, then, provided that reasonable notice has been given to the Borrower of the likelihood of such a “buy-in”, the Borrower shall account to the Lender for the total costs and expenses reasonably incurred by the Lender as a result of such “buy-in”.
- 7.5 **[Right of Borrower to terminate loan early]** Subject to the terms of the relevant Borrowing Request, the Borrower shall be entitled at any time to terminate a particular loan of Securities and to redeliver all and any Equivalent Securities due and outstanding to the Lender in accordance with the Lender’s instructions.

## **8 Set-off etc.**

---

- 8.1 **[Requirement for simultaneous delivery]** On the date and time that Equivalent Securities are required to be redelivered by the Borrower in accordance with the provisions of this Agreement the Lender shall simultaneously redeliver the Equivalent Collateral and repay any Cash Collateral held (in respect of the Equivalent Securities to be redelivered) to the Borrower. 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 simultaneously. 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.
- 8.2 **[Netting following occurrence of Event of Default]** If an Event of Default occurs in relation to either Party, 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 “**Performance Date**” for the purposes of this clause), and in such event:
- (a) the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each Party shall be established in accordance with clause 8.3; and
  - (b) on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party’s claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) 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 Performance Date.



- 
- 8.3 **[Relevant Value]** For the purposes of clause 8.2 the Relevant Value:
- (a) of any cash payment obligation shall equal its par value (disregarding any amount taken into account under (b) or (c) below);
  - (b) of any Securities to be delivered by the Defaulting Party shall, subject to clause 8.4(b) and (c) below, equal the Offer Value thereof; and
  - (c) of any Securities to be delivered to the Defaulting Party shall, subject to clause 8.4(b) and (c) below, equal the Bid Value thereof.
- 8.4 **[Bid Value/Offer Value]**
- (a) For the purposes of clause 8.3, but subject to (b) and (c) below, the Bid Value and Offer Value of any Securities shall be calculated as at the Close of Business in the most appropriate market for Securities of the relevant description (as determined by the Non-Defaulting Party) on the first Business Day following the Performance Date, or, if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Performance Date (the “**Default Valuation Time**”).
  - (b) Where the Non-Defaulting Party has, following the occurrence of an Event of Default but prior to the Default Valuation Time, purchased Securities forming part of the same issue and being of an identical type and description to those to be delivered by the Defaulting Party and in substantially the same amount as those Securities or sold Securities forming part of the same issue and being of an identical type and description to those to be delivered by him to the Defaulting Party and in substantially the same amount as those Securities, the cost of such purchase or the proceeds of such sale, as the case may be, (taking into account all reasonable costs, fees and expenses that would be incurred in connection therewith) shall be treated as the Offer Value or Bid Value, as the case may be, of the relevant Securities for the purposes of this clause 8.
  - (c) Where the amount of any Securities sold or purchased as mentioned in (b) above is not in substantially the same amount as those Securities to be valued for the purposes of clause 8.3, the Offer Value or the Bid Value (as the case may be) of those Securities shall be ascertained by:
    - (i) dividing the net proceeds of sale or cost of purchase by the amount of the Securities sold or purchased so as to obtain a net unit price; and
    - (ii) multiplying that net unit price by the amount of the Securities to be valued.
- 8.5 **[Interpretation: “Securities”]** Any reference in this clause 8 to Securities shall include any asset other than cash provided by way of Collateral.
- 8.6 **[Interpretation: “Event of Default”]** If the Borrower or the Lender for any reason fails to comply with its respective obligations under clause 6.6 in respect of the redelivery of Equivalent Collateral or the repayment of Cash Collateral, such failure shall be an Event of Default for the purposes of this clause 8, and the person failing to comply shall thus be the Defaulting Party.

- 8.7 **[Waiver of right to require simultaneous delivery]** Subject to and without prejudice to its rights under clause 8.1, either 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 in respect of one transaction shall bind it in respect of any other transaction.

## **9 Stamp duty, taxes etc and loss of tax benefits**

- 9.1 **[Stamp duty etc]** The Borrower hereby undertakes promptly to pay and account for any transfer or similar duties or taxes, and any loan security or other stamp duties, (if any) chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement, and shall indemnify and keep indemnified the Lender against any liability arising in respect thereof as a result of the Borrower's failure to do so.

- 9.2 **[Borrower to give Transfer of Dividend Statement to Lender re franked dividends]** If:

- (a) an Income Payment Date occurs during an Income Determination Period in relation to a particular loan of Securities;
- (b) had the Lender been the holder of those Securities on the relevant Income Payment Date, it would have received a Franked Dividend in respect of those Securities;
- (c) the Agreement or the relevant Confirmation states that the Lender is an Australian Taxpayer;
- (d) the failure of the Lender to receive a Franked Dividend is not due to any unreasonable act or omission by or on behalf of the Lender; and
- (e) neither item 7 in Schedule 1 nor the relevant Confirmation states that the Lender is **not** entitled to compensation for the loss of franking credits/rebates;

then:

- (f) the Borrower must either:
  - (i) as soon as practicable, and in any event within [10 Business Days] after the relevant Income Payment Date, give to the Lender a Transfer of Dividend Statement in respect of those Securities (which the Borrower is to be taken as having warranted is correct in all material respects and is effective for the purposes of Division 6A of Part IIIAA of the Tax Act); or
  - (ii) on the [10th Business Day] after the relevant Income Payment Date pay to the Lender an amount equal to the franking credit referable to the Franked Dividend.



**9.3 [Borrower to compensate corporate Lender for loss of intercorporate dividend rebate re unfranked dividends] If:**

- (a) an Income Payment Date occurs during an Income Determination Period in relation to a particular loan of Securities;
- (b) had the Lender been the holder of those Securities on the relevant Income Payment Date, it would have received an Unfranked Dividend in respect of those Securities;
- (c) the Agreement or the relevant Confirmation states the Lender is entitled to compensation for the loss of the intercorporate dividend rebate under the Tax Act;
- (d) the failure of the Lender to qualify for that rebate is not due to any unreasonable act or omission by or on behalf of the Lender; and
- (e) neither item 8 of the Agreement nor the relevant Confirmation states that the Lender is **not** entitled to compensation for the loss of that rebate;

then the Borrower must pay to the Lender an amount calculated as follows:

$$P = \frac{DT}{1-T}$$

Where:

P = the amount payable;

D = the amount of the Unfranked Dividend; and

T = the rate of income tax, expressed as a decimal, determined under the Tax Act at the relevant Income Payment Date as that payable in respect of the taxable income of a company (other than a private company, a company in the capacity of a trustee or a non-profit company that is a friendly society dispensary).

**9.4 [“Notifiable consideration” for the purposes of s26BC(3)(d) of the Tax Act] For the purposes of section 26BC(3)(d) of the Tax Act, the notifiable consideration in respect of any loan of Securities is dissected as follows:**

- (a) a fee - see clause 5.1(as applicable); and
- (b) other consideration - see clauses 4.2, 6 and 9 and the definition of “Equivalent Securities” in clause 26.

## **10 Lender’s warranties**

**[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 by this Agreement, 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 under this Agreement;
  - (c) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it under this Agreement to the Borrower free from all liens, charges, equities and encumbrances; and
  - (d) where paragraph 3 in Schedule 1 specifies that this clause 10(d) applies, it is not resident in Australia for the purposes of the Tax Act and either:
    - (i) does not have a branch or other permanent establishment in Australia for the purposes of the Tax Act or of any applicable double tax agreement between Australia and its country of tax residence; or
    - (ii) if it does have such a branch or other permanent establishment in Australia, that the loan is not entered into in the course of carrying on business through such branch or permanent establishment.

## 11 Borrower's warranties

---

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

## 12 Events of Default

---

12.1 **[Events of Default]** 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 for the purpose of clause 8:

- (a) the Borrower or Lender failing to pay or repay Cash Collateral or deliver or redeliver Collateral or Equivalent Collateral upon the due date, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (b) the Lender or Borrower failing to comply with its obligations under clause 6, and the Non-Defaulting Party serves written notice on the Defaulting Party;



- 
- (c) the Borrower failing to comply with clause 4.2, clause 9.2 or clause 9.3 and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (d) an Act of Insolvency occurring with respect to the Lender or the Borrower and (except in the case of 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 in which case no such notice shall be required) the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (e) any representations or warranties made by the Lender or the Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (f) the Lender or the Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations hereunder and/or in respect of any loan hereunder, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (g) the Lender (if appropriate) or the Borrower being declared in default by the appropriate authority under the Rules or being suspended or expelled from membership of or participation in any securities exchange or association or other self-regulatory organisation, or suspended from dealing in securities by any government agency, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (h) any of the assets of the Lender or the Borrower or the assets of investors held by or to the order of the Lender or the Borrower being ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the Non-Defaulting Party serves written notice on the Defaulting Party, or
  - (i) the Lender or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure, and the Non-Defaulting Party serves a further written notice on the Defaulting Party.

12.2 **[Obligation of each Party to notify its Event of Default]** Each Party shall notify the other if an Event of Default occurs in relation to it.

## 13 Outstanding payments

---

**[Default interest]** 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 at a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it in good faith) if it were to fund or of funding the relevant amount, plus 2% (or other agreed percentage) per annum.

## 14 Transactions entered into as agent

- 14.1 **[Agency Transactions]** Subject to the following provisions of this clause, the Lender may 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 clause as an “**Agency Transaction**”).
- 14.2 **[Conditions for Agency Transactions]** A Lender may enter into an Agency Transaction if, but only if:
- (a) it specifies that loan as an Agency Transaction 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 the 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; 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 clause 14.4(b) below.
- 14.3 **[Undertakings by Lender]** The Lender undertakes that, if it enters as agent into an Agency Transaction, 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 clause 14.5 below or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the current facts,

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

- 14.4 **[Consequences of Agency Transaction]**
- (a) Each Agency Transaction shall be a transaction between the relevant Principal and the Borrower and no person other than the relevant Principal and the Borrower shall be a party to or have any rights or obligations under an Agency Transaction. Without limiting the foregoing, the Lender shall not be liable as principal for the performance of an Agency Transaction or for breach of any warranty contained in clause 10(d) of this Agreement, but this is without prejudice to any liability of the Lender under any other provision of this clause.
  - (b) All the provisions of the Agreement shall apply separately as between the Borrower and each Principal for whom the Agent has entered into an Agency Transaction or Agency Transactions as if each such Principal were a party to a separate agreement with the 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:**



- 
- (i) if there occurs in relation to the Agent an Event or Default or an event which would constitute an Event of Default if the Borrower served written notice under any paragraph of clause 12, the Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given to the Lender in accordance with clause 20) to declare that, by reason of that event, an Event of Default is to be treated as occurring in relation to the Principal. If the 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
  - (ii) if the Principal is neither incorporated nor has established a place of business in Australia, the Principal shall for the purposes of the agreement referred to in the preamble in this paragraph (b) be deemed to have appointed as its agent to receive on its behalf service of process in the courts of Australia the Agent, or, if the Agent is neither incorporated nor has established a place of business in Australia, 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.
- (c) The foregoing provisions of this clause do not affect the operation of the Agreement as between the Borrower and the Lender in respect of any transactions into which the Lender may enter on its own account as principal.

14.5 **[Warranty by Lender]** The Lender warrants to the Borrower that it will, on every occasion on which it enters or purposes to enter into a transaction as an Agency Transaction, have been duly authorised to enter into that loan and perform the obligations arising thereunder on behalf of the person whom it specifies as the Principal in respect of that transaction and to perform on behalf of that person all the obligations of that person under the agreement referred to in clause 14.4(b).

## **15 Termination of course of dealings by notice**

---

Each Party shall have the right to bring the course of dealing contemplated under this Agreement to an end 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 and which have been entered into but not discharged at the time such notice is given are duly discharged in accordance with this Agreement and with the Rules (if applicable).

## **16 No reliance or tax or accounting representations by other Party**

---

Each Party acknowledges, represents and warrants to the other that, except as expressly stated in this Agreement or any Confirmation:

- (a) it has not relied on any advice, statement, representation or conduct of any kind by or on behalf of the other Party in relation to any tax (including stamp duty) or accounting issues concerning this Agreement or any transactions effected under it; and

- 
- (b) it has made its own determination as to the tax (including stamp duty) and accounting consequences and treatment of any transaction effected under this Agreement, including (without limitation) of any moneys paid or received or any property transferred or received in connection with any such transaction.

## 17 Observance of procedures

---

Each of the Parties hereto agrees that, in taking any action that may be required in accordance with this Agreement, it shall observe strictly the procedures and timetable applied by the Rules (if and to the extent applicable) and, further, shall observe strictly any agreement (oral or otherwise) as to the time for delivery or redelivery of any money, Securities, Equivalent Securities, Collateral or Equivalent Collateral entered into pursuant to this Agreement.

## 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, 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 redeliver Securities, Equivalent Securities, Collateral or Equivalent Collateral, but without prejudice to any other rights it may have.

## 20 Notices

---

**20.1 [Effectiveness]** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under clause 12 or clause 15 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see paragraph 6 in Schedule 1) 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 **[Change of Address]** 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 assign, transfer or otherwise dispose of all or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

## 22 Non-Waiver

---

No failure or delay by either Party to exercise any right, power or privilege under this Agreement 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 provided in this Agreement.

## 23 Time

---

Time shall be of the essence of the Agreement.

## 24 Recording

---

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

## 25 Miscellaneous

---

- 25.1 **[Entire Agreement]** 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.
- 25.2 **[Amendments]** 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.
- 25.3 **[Survival of Obligations]** The obligations of the Parties under this Agreement will survive the termination of any transaction.
- 25.4 **[Remedies Cumulative]** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive or any rights, powers, remedies and privileges provided by law.

- 25.5 [Counterparts]** 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.
- 25.6 [Expenses]** A defaulting Party will, on demand, indemnify and hold harmless the other Party for and against all reasonable out-of-pocket expenses, including legal fees and stamp duty, incurred by such other Party by reason of the enforcement and protection of its rights under this Agreement or by reason of the early termination of any transaction, including, but not limited to, costs of collection.

## 26 Definitions

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 admitting 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 (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) not having been stayed or dismissed within 30 days of its filing; 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 compromise or arrangement within Part 5.1 of the Corporations Law of Australia (or any analogous proceeding).

In this definition:

- (g) "liquidator" shall be deemed to include a "provisional liquidator";
- (h) "receiver" shall be deemed to include a "receiver and manager";
- (i) "administrator" shall be deemed to include an "official manager";



- 
- (j) “arrangement” shall be deemed to include a “scheme of arrangement”; and
  - (k) “creditors” shall be deemed to include “any class of creditors”.

**Agent** has the meaning given in clause 14.

**Alternative Collateral** means Collateral of a Value equal to the Collateral delivered pursuant to clause 6 and provided by way of substitution for Collateral originally delivered or previously substituted in accordance with the provisions of clause 6.5.

**Australian Taxpayer** means any person other than:

- (a) a Party who is not a resident of Australia for the purposes of the Tax Act (whether that Party is acting as a trustee, nominee or agent or in some other capacity) at the time a Franked Dividend is paid; or
- (b) a Party who is acting in the capacity of trustee, nominee or agent for a person who is not a resident of Australia for the purposes of the Tax Act at the time a Franked Dividend is paid.

**Bankers Acceptances** has the meaning given in paragraph 1.1(d) in Schedule 1.

**Base Currency** has the meaning given in paragraph 2 in Schedule 1.

**Bid Price**, in relation to Equivalent Securities or Equivalent Collateral, means the best available bid price thereof on the most appropriate market in a standard size.

**Bid Value**, subject to clause 8.5, means:

- (a) in relation to Equivalent Collateral at a particular time:
  - (i) in relation to Collateral type (h) (more specifically referred to in paragraph 1.1 in Schedule 1), the Value thereof as calculated in accordance with paragraph 1.2(d) in Schedule 1;
  - (ii) in relation to all other types of Collateral (more specifically referred to in paragraph 1.1 in Schedule 1), the amount which would be received on a sale of such Collateral at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection with selling or otherwise realising such Equivalent Collateral, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out such sale or realisation and adding thereto the amount of any interest, dividends, distributions or other amounts paid to the Lender and in respect of which equivalent amounts have not been paid to the Borrower in accordance with clause 6.7 prior to such time in respect of such Equivalent Collateral or the original Collateral held gross of all and any tax deducted or paid in respect thereof; and

- 
- (b) in relation to Equivalent Securities at a particular time, the amount which would be received on a sale of such Equivalent Securities at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection therewith, 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.

**Borrower**, in relation to a particular loan of Securities, means the Borrower as referred to in Recital A of this Agreement.

**Borrowing Request** means a request made in writing (an example of which comprises Schedule 2 to this Agreement) by the Borrower to the Lender pursuant to clause 2.1 specifying, as necessary:

- (a) the description, title and amount of the Securities required by the Borrower;
- (b) the description (if other than Australian currency) and amount of any Collateral to be provided;
- (c) the proposed Settlement Date;
- (d) the duration of such loan (if other than indefinite);
- (e) the mode and place of delivery, which shall, where relevant, include the bank, agent, clearing or settlement system and account to which delivery of the Securities and any Collateral is to be made;
- (f) the Margin in respect of the transaction (if different from that stated in Schedule 1 or Schedule 3, as appropriate); and
- (g) the Fee.

**Business Day** means a day on which banks and securities markets are open for business generally in each place stated in paragraph 5 in Schedule 1 and, in relation to the delivery or redelivery of any of the following in relation to any loan, in the place(s) where the relevant Securities, Equivalent Securities, Collateral (including Cash Collateral) or Equivalent Collateral are to be delivered.

**Cash Collateral** means Collateral that takes the form of a deposit of currency.

**Close of Business** means:

- (a) in relation to any borrowing of Securities or redelivery of Equivalent Securities under this agreement, the final time on a Business Day at which settlement of the transfer of those Securities can take place in the Stock Exchange in order to constitute good delivery on that day; and
- (b) in relation to the provision of Collateral or return of Equivalent Collateral or the making of any other payment under this agreement, the time at which trading banks close for general banking business in



---

the place in which payment is to be made or Collateral or Equivalent Collateral is to be delivered or redelivered.

**Collateral** means such securities or financial instruments or deposits of currency as are referred to in paragraph 1.1 in Schedule 1 or any combination thereof which are delivered by the Borrower to the Lender in accordance with this Agreement and includes the certificates or other documents of title (if any) and transfer in respect of the foregoing (as appropriate), and includes Alternative Collateral.

**Confirmation** means the Borrowing Request, as it may be amended pursuant to clause 2.2., or other confirming evidence exchanged between the Parties confirming the terms of a transaction.

**Defaulting Party** has the meaning given in clause 12.

**Dividend** means a dividend within the meaning of the definition of that term in section 6(1) (as affected by sections 6(4) and 6(5)) of the Tax Act.

**Equivalent Collateral or Collateral equivalent to**, in relation to any Collateral provided under this Agreement, means securities, cash or other property, as the case may be, of an identical type, nominal value, description and amount to particular Collateral so provided and shall include the certificates or other documents of title (if any) and transfer in respect of the foregoing (as appropriate). If and to the extent that such Collateral consists of securities that are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the relevant Collateral has been converted, subdivided or consolidated **provided that**, if appropriate, notice has been given in accordance with clause 4.2(b);
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Borrower has given notice to the Lender in accordance with clause 4.2(b);
- (d) in the case of a call on partly paid securities, the paid-up securities **provided that** the Borrower shall have paid to the Lender an amount of money equal to the sum due in respect of the call;
- (e) in the case of a capitalisation issue, the relevant Collateral **together with** the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the relevant Collateral **together with** the securities allotted thereon, **provided that** the Borrower has given notice to the Lender in accordance with clause 4.2(b), and has paid to the Lender all and any sums due in respect thereof;

- (g) in the event that a payment or delivery of Income is made of the relevant Collateral in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Lender in accordance with clause 4.2(b) the relevant Collateral **together with** securities or a certificate equivalent to those allotted; and
- (h) in the case of any event similar to any of the foregoing, the relevant Collateral **together with** or replaced by a sum of money or securities equivalent to that received in respect of such Collateral resulting from such event.

For the avoidance of doubt, in the case of Bankers' Acceptances (Collateral type (d)), Equivalent Collateral must bear dates, acceptances and endorsements (if any) by the same entitles as the bill to which it is intended to be equivalent and, for the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate).

**Equivalent Securities** means securities of an identical type, nominal value, description and amount to particular Securities borrowed and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (if appropriate). If and to the extent that such Securities are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the borrowed Securities have been converted, subdivided or consolidated **provided that** if appropriate, notice has been given in accordance with clause 4.2(b);
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Lender has given notice to the Borrower in accordance with clause 4.2(b);
- (d) in the case of a call on partly paid securities, the paid-up securities **provided that** the Lender shall have paid to the Borrower an amount of money equal to the sum due in respect of the call;
- (e) in the case of a capitalisation issue, the borrowed Securities **together with** the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the borrowed Securities **together with** the securities allotted thereon, **provided that** the Lender has given notice



to the Borrower in accordance with clause 4.2(b), and has paid to the Borrower all and any sums due in respect thereof;

- (g) in the event that a payment or delivery of Income is made in respect of the borrowed Securities in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Borrower in accordance with clause 4.2(b) the borrowed Securities **together with** securities or a certificate equivalent to those allotted; and
- (h) in the case of any event similar to any of the foregoing, the borrowed Securities **together with** or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event.

For the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate).

**Event of Default** has the meaning given in clause 12.

**Fee**, in respect of a transaction, means the fee payable by one Party to the other in respect of that transaction under clause 5.

**Franked Dividend** means a Dividend the whole or part of which is taken to have been franked in accordance with section 160AQF of the Tax Act.

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

**Income Determination Period**, in relation to a particular loan of Securities, means:

- (a) in relation to the Securities, the period commencing when the Securities cease to be registered in the name of the Lender (or the relevant transferor) upon or before delivery of those Securities under clause 3 and ending when Equivalent Securities are registered in the name of the Lender (or the relevant transferee) upon or following redelivery of those Equivalent Securities under clause 7.1; and
- (b) in relation to Collateral (other than Cash Collateral), the period commencing when the Collateral ceases to be registered in the name of the Borrower (or the relevant transferor) upon or before delivery of that Collateral under clause 6.1 and ending when Equivalent Collateral is registered in the name of the Borrower (or the relevant transferee) upon or following redelivery of that Equivalent Collateral under clause 6.6.

**Income Payment Date**, in relation 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.

**Lender**, in relation to a particular loan of Securities, means the Lender as referred to in Recital A of this Agreement.

**Margin** has the meaning in paragraph 1.3 in Schedule 1.

**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 on its behalf whose appointment has been notified to the other Party.

**Non-Defaulting Party** has the meaning given in clause 12.

**Offer Price**, in relation to Equivalent Securities or Equivalent Collateral, means the best available offer price thereof on the most appropriate market in a standard size.

**Offer Value**, subject to clause 8.5, means:

- (a) in relation to Collateral equivalent to Collateral type (h) (more specifically referred to in paragraph 1.1 in Schedule 1), the Value thereof as calculated in accordance with paragraph 1.2(d) in Schedule 1; and
- (b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral (more specifically referred to in paragraph 1.1 in Schedule 1), the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price thereof at such time **plus** all costs, fees and expenses that would be incurred in connection therewith, 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.

**paid**, in relation to a Dividend, includes credited, distributed or issued and like terms are to be construed accordingly.

**Parties** means the Lender and the Borrower and **Party** shall be construed accordingly.

**Performance Date** has the meaning given in clause 8.

**Posted Collateral** has the meaning given in clause 6.2(a)(i).

**Principal** has the meaning given in clause 14.

**Reference Price** means:

- (a) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to type (g) (more specifically referred to in paragraph 1.1 in Schedule 1), such price as is equal to the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable



---

pricing information service (such as the services provided by SEATS or Reuters) reasonably chosen in good faith by the Lender or 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 the Lender, in each case at Close of Business on the previous Business Day; and

- (b) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to Collateral types (b)-(f) (more specifically referred to in paragraph 1.1 in Schedule 1), the market value thereof as derived from the prices or rates bid by a market maker or reputable dealer for the relevant instrument reasonably chosen by the Lender in good faith or, in the absence of such a bid, the average of the rates bid by two leading market makers reasonably chosen in good faith by the Lender in each case at Close of Business on the previous Business Day.

**Relevant Payment Date** has the meaning given in clause 4.2(a).

**Required Collateral Value** has the meaning given in clause 6.3.

**Rules** means the rules for the time being of the Stock Exchange (where either Party is a member of the Stock Exchange) and/or any other regulatory authority whose rules and regulations shall from time to time affect the activities of the Parties pursuant to this Agreement (**provided that** in an Event of Default, where either Party is a member of the Stock Exchange, the Rules and Regulations of the Stock Exchange shall prevail).

**Securities** means “eligible securities” within the meaning of section 26BC(1) of the Tax Act which the Borrower is entitled to borrow from the Lender in accordance with the Rules and which are the subject of a loan pursuant to this Agreement and such term shall include the certificates or other documents of title (if any) in respect of the foregoing.

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

**Standard Settlement Time**, in relation to Australian Securities, means T + 5 Australian business days on which the Australian Stock Exchange Limited is open for trading, or such lesser time in which transactions in Australia in listed securities are customarily required to be settled.

**Stock Exchange** means the Australian Stock Exchange Limited.

**Tax Act** means the Income Tax Assessment Act 1936 (Commonwealth of Australia).

**Transfer of Dividend Statement**, in relation to Dividends, means a properly completed document in the form, or substantially in the form, of Appendix 6.26 to the Rules or a properly completed statement in another approved form within the meaning of the definition of that term in section 160APA of the Tax Act.

---

**Unfranked Dividend** means a Dividend no part of which has been franked in accordance with the Tax Act.

**Value** at any particular time means, in relation to Securities and Equivalent Securities, the Reference Price thereof then current and in respect of Collateral and/or Equivalent Collateral such worth as determined in accordance with paragraph 1.2 in Schedule 1.

## **27 Governing Law and Jurisdiction**

---

- 27.1 **[Governing law]** This Agreement is governed by, and shall be construed in accordance with, the law in force in New South Wales.
- 27.2 **[Consent to jurisdiction]** Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales in respect of any dispute in connection with this Agreement.

**EXECUTED** as an agreement



## Schedule 1 - Particulars

### 1 COLLATERAL (see definition in clause 26, and also clause 6)

#### 1.1 Types (see definition of "Collateral" in clause 26)

Collateral acceptable under this Agreement may include the following or otherwise, as agreed between the Parties from time to time, whether transferable by hand or within a depository:

- (a) Cash;
- (b) Australian Government Inscribed Stock;
- (c) Australian, State or Territory Government stock, bonds or promissory notes (including those issued by any statutory corporation such as Treasury Corporation of New South Wales);
- (d) Bills of exchange accepted by any bank carrying on business in Australia ("**Bankers Acceptances**");
- (e) Promissory notes issued by any such bank;
- (f) Certificates of Deposit issued by any such bank;
- (g) Corporate bonds in registrable or bearer form;
- (h) Irrevocable Standby Letters of Credit issued or confirmed by any such bank;
- (i) Shares in companies listed on the Australian Stock Exchange or other securities acceptable to the Lender.

#### 1.2 Valuation of Collateral (see definition of "Value" in clause 26 and clause 6.2)

Collateral provided in accordance with this Agreement shall be evaluated by reference to the following, or by such means as the Parties may from time to time agree:

- (a) in respect of Collateral type (a), the amount thereof in, or converted into, the Base Currency;
- (b) in respect of Collateral type (b), the value calculated by reference to the middle market price of each stock as determined daily by the Reserve Bank of Australia, adjusted to include the accumulated interest thereon;
- (c) in respect of Collateral types (c), (g) or (i), the Reference Price thereof;
- (d) in respect of Collateral type (h), the value specified therein.

#### 1.3 Margin (see definition in clause 26 and clause 6.3)

The Value of any Collateral delivered, or to be delivered, pursuant to clause 6 by the Borrower to the Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than the Value of the borrowed Securities together with the

following additional percentages, hereinbefore referred to as (“the Margin”), unless otherwise agreed between the Parties:

- (a) in the case of Collateral type (a): 5%; or
- (b) in the case of Collateral types (b) to (f) and (h): 5% (except that, for Certificates of Deposit, the Margin shall be the accumulated interest thereon); or
- (c) in the case of Collateral type (g): 5%; or
- (d) in the case of Collateral type (i): 15%, or such other amount as agreed between the parties.

If the Value of the borrowed Securities includes any margin over the mid market price of the borrowed Securities, this shall be taken into account in determining the Margin applicable.

#### **1.4 Basis of Margin Maintenance (see clause 6.4)**

Minimum period after demand for transferring Collateral or Equivalent Collateral:

- (a) Cash Collateral: within **one** Business Day;
- (b) Equivalent Collateral: within **one** Business Day
- (c) Other Collateral (ie a Letter of Credit): within **two** Business Days.

#### **1.5 Minimum adjustments (see clauses 6.2(a)(ii) and (iii))**

- (a) The Lender may not demand that further Collateral be provided by the Borrower if the aggregate deficiency calculated in accordance with clause 6.2 is less than the greater of:
  - (i) \$20,000; and
  - (ii) 2% of the Value of the Required Collateral Value.
- (b) The Borrower may not demand the return of Collateral provided to the Lender if the Borrower has committed an Event of Default in respect of any transaction or if the aggregate excess calculated in accordance with clause 6.2 is less than the greater of:
  - (i) \$20,000; and
  - (ii) 2% of the Required Collateral Value.

#### **2 BASE CURRENCY (see definition in clause 26 and clause 1.6)**

The Base Currency applicable to this Agreement is Australian Dollars.

#### **3 LENDER’S WARRANTIES (see clause 10(d))**

clause 10(d) shall not apply.

#### **4 VOTING (see clause 4.3)**

Clause 4.3 does not apply.



---

5 **PLACE OF BUSINESS** (*see definition of "Business Day" in clause 26*)

Sydney.

6 **ADDRESS FOR NOTICES AND STATUS OF PARTIES** (*see clause 20.1*)

6.1 Address for notices or communications to **Bankers Trust Australia Limited**

Address: Level 15, Chifley Tower, 2 Chifley Square, Sydney,  
NSW 2000

Attention: Equities Transaction Management

Facsimile No: 02 9259 3057

Telephone No: 02 9259 2756

which is an Australian Taxpayer.

6.2 Address for notices or communications to **Merrill Lynch Equities Australia Limited**

Address: Level 49 MLC Centre, 19-29 Martin Place, Sydney,  
NSW 2000

Attention: Equity Finance Group

Facsimile No: 02 226 5889

Telephone No: 02 9226 5893

which is an Australian Taxpayer.

7 **COMPENSATION FOR LOSS OF FRANKING CREDITS/REBATES** (*see clause 9.2*)

Is not required by either party unless expressly stated in a confirmation.

8 **COMPENSATION FOR LOSS OF INTERCORPORATE DIVIDEND REBATE** (*see clause 9.3*)

Is not required by either party unless expressly stated in a confirmation.

---

**Schedule 2                      Specimen Form of Borrowing Request (see clause 2.1 and definition of "Borrowing Request" in clause 26)**

---

To:    [Name and Address of Lender]

This is a Borrowing Request under the Master Securities Lending Agreement between us dated # (the "Agreement")

1       We wish to make the following borrowing of Securities:

- (a)    **Description of Securities:**                      # [eg "fully paid ordinary shares in #    "]
- (b)    **Amount of Securities:**                            # [eg "1 million"]
- (c)    **Proposed Settlement Date of Borrowing:**                      # [eg "today"]
- (d)    **Time, Mode and Place of Delivery of Securities, including (as appropriate) settlement system and account to which delivery is to be made:**                      # [eg "to the account of #, HIN #, in CHESS"]
- (e)    **Duration of Loan:**                                No longer than eleven months and 20 days after the Borrowed Securities are delivered under this Borrowing Request.
- (f)    **Type of Collateral:**                                # [eg "Cash"]
- (g)    **Time, Mode and Place of Delivery of Collateral:**                      # [eg "dvp on CHESS"]
- (h)    **Rates (see clause 5.1 of the Agreement):**                      #[eg (a) " #% per annum on the Cash Collateral", or (b) "# % per annum on the daily value of the Borrowed Securities" as appropriate].

2       Please confirm your acceptance of this Borrowing Request by return fax.

Dated:                      # \_\_\_\_\_

For and on behalf of [Name of Borrower]



---

Signature of Authorised  
Representative

---

Name and title of Authorised  
Representative

## Schedule 3 Supplementary Terms and Conditions (if any)

This Schedule forms part of and amends the Master Securities Lending Agreement (including Schedule 1) to which it is a Schedule, as follows:

1. **Clause 2.1**

The Borrowing Request may be made orally by the Borrower. Following receipt of the Borrowing Request the Lender, in its absolute discretion, may accept the Borrowing Request by serving on the Borrower a Confirmation.

2. **Clause 9.2**

Clause 9.2 is amended by:

(a) deleting paragraph (d) and inserting the following:

“(d) the Lender does not receive a Franked Dividend (and nor is the Lender taken to have been paid a Franked Dividend pursuant to the operation of section 160AQUA of the Tax Act) ,other than a reason arising as a consequence of an unreasonable act or omission of the Lender, but for which the full benefit would have been received,”

(b) deleting paragraph (e) and inserting the following:

“(e) the Confirmation expressly states that the Lender is entitled to compensation for the loss of franking credits/rebates;”

(c) deleting sub-paragraph (f)(ii) and inserting the following:

“(ii) if required by notice from the Lender, compensate the Lender for the loss of that Franked Dividend by payment on the 10th Business Day after the relevant Income Payment Date of an amount calculated in accordance with the following formula:

$$P = \frac{FT}{1 - T}$$

Where:

P = the amount payable;

F = the amount of the Franked Dividend (or, where the Franked Dividend is partly franked, the amount of the franked component of the Franked Dividend) paid or to be paid in respect of a particular loan of Securities; and

T = the rate of income tax, expressed as a decimal, determined under the Tax Act at the Income Payment Date as that payable in respect of the taxable income of a company (other than a private company, a company in the capacity of a trustee or a non-profit company that is a dispensary or friendly society).”



---

**3. Clause 9.3**

Clause 9.3 is amended by deleting paragraph (e) and inserting the following:

“(e) the Confirmation expressly states that the Lender is entitled to compensation for the loss of that rebate;”

**4. Clause 14.2**

The following additional clause is inserted:

“(d) the Borrower has agreed in writing that the Lender may act as Agent in respect of the relevant loan”

**5. Clause 26**

The definition of Reference Price is amended by inserting “or (i)” after “type (g)” in line 2 of paragraph (a) of that definition.

The definition of “Borrowing Request” is amended by inserting “or such other form as is agreed between the Parties” immediately before the word “by” in line 2.

**6. Schedule 1**

Amendments to Schedule 1 have been made directly in that Schedule.

**Execution page**

**SIGNED SEALED and DELIVERED** )  
by **BANKERS TRUST AUSTRALIA** )  
**LIMITED** by its duly authorised attorney )  
in the presence of: )

*S. Conoplia* )  
..... )  
Signature of witness )

*SASHA CONOPLIA* )  
..... )  
Name of witness )

*[Handwritten Signature]* )  
..... )  
Signature of **Robert John Woods**

**SIGNED SEALED and DELIVERED** )  
by **MERRILL LYNCH EQUITIES** )  
**AUSTRALIA LIMITED** by its duly )  
authorised attorney in the presence of: )

*J. David Montagu* )  
..... )  
Signature of witness <sup>PERSONS</sup> <sub>SUBSTITUTE DIRECTOR</sub> )

*J. DAVID MONTAGUE* )  
..... )  
Name of witness (block letters) <sub>SUBSTITUTE DIRECTOR</sub> )

*Freya Hedderman* )  
..... )  
Signature of **COMPANY SECRETARY**  
NAME: **FREYA HEDDERMAN**





## DEED POLL

**BY THIS DEED POLL** made on the day set out in item A of the Schedule. The person/s or corporation/s described in item B of the Schedule (called "the Grantor") hereby appoints the person/s and/or corporation/s described in item C of the Schedule (called "the Attorney") as its true and lawful Attorney, each Attorney severally to execute under hand, or under seal, and deliver at the Attorney's option (which delivery may be conditional or unconditional), in the place set out in item D of the Schedule the document or documents described in item E of the Schedule (called "the Document") and:

- (a) to complete any blanks which may be left therein;
- (b) to make any amendments or additions thereto which may be authorised by it;
- (c) to do, execute and perform any other deed, matter, act or thing which in the opinion of the Attorney ought to be done, executed or performed to perfect the Document; and
- (d) to execute under hand or under seal and deliver, at the Attorney's option (which delivery may be conditional or unconditional), any other deeds, documents or instruments supplemental to or varying the Document subject to a copy of any such deed, document or instrument having been approved by the Grantor.

### AND IT DECLARES THAT:

1. The powers and authorities hereby given shall remain in full force and effect until their revocation by written notice to the Attorney.
2. The Attorney may appoint from time to time any person or corporation as a sub-Attorney for all or any of the purposes, and with all or any of the powers and authorities contained herein.
3. The Grantor will, from time to time and at all times, ratify and confirm whatever the Attorney or Sub-Attorney lawfully does, or causes to become, pursuant to this Deed Poll, and will indemnify and keep the Attorney or Sub-Attorney indemnified against all claims, demands, costs, damages, losses and expenses, howsoever arising, consequent upon the lawful exercise of all or any of the powers and authorities contained therein.
4. The Grantor will forthwith upon execution and delivery of this Deed Poll as required by an applicable law, and in default thereof, it hereby authorises and empowers any person/s or corporation/s who are a party to the document (or if more than one document is executed, a party of any one or more of them), to stamp and/or register this Deed Poll on behalf of the Grantor, and all reasonable costs associated with such stamping and/or registration will be paid by the Grantor to the said person/s or corporation/s within a reasonable time after demand for payment is made.

**SCHEDULE**

- A. Dated: 20 January 1997
- B. The Grantor: **BANKERS TRUST AUSTRALIA LIMITED**
- C. The Attorneys: **ROBERT JOHN WOODS**
- D. Place in which Documents are to be executed: Sydney
- E. Documents to be executed: Any of the following documents :
  - 1. Option Agreements
  - 2. Standby Letters of Credit
  - 3. Fee Agreements
  - 4. Equity Hedge Agreements
  - 5. And such other documentation to effect Equity Derivative transactions

**IN WITNESS WHEREOF** the Grantor has executed this Deed Poll under seal on the date set out in the Schedule.

THE COMMON SEAL of )  
BANKERS TRUST AUSTRALIA )  
LIMITED was affixed in the )  
presence of: )



*Cameron Paterson*  
.....  
Cameron Paterson  
Secretary

*David Martin Hoare*  
.....  
David Martin Hoare  
Director



**ANNEXURE 'K'**

This is the annexure marked 'K' of 36 pages referred to in the Notice of change of interests of substantial holder.

---

Dennis Leong  
Company Secretary, Macquarie Group Limited  
25 June 2013

---

DC 43704

DATED 29 MAY 1996

I4231

MORGAN STANLEY & CO. INTERNATIONAL LIMITED

-and-

[ MACQUARIE BANK LIMITED ]

---

OVERSEAS SECURITIES LENDER'S AGREEMENT

---



## CONTENTS

<u>Clause</u>	<u>Page</u>
1. <u>INTERPRETATION</u> .....	1
2. <u>LOANS OF SECURITIES</u> .....	14
3. <u>DELIVERY OF SECURITIES</u> .....	14
4. <u>RIGHTS AND TITLE</u> .....	14
5. <u>RATES</u> .....	17
6. <u>COLLATERAL</u> .....	18
7. <u>REDELIVERY OF EQUIVALENT SECURITIES</u> .....	22
8. <u>SET-OFF ETC.</u> .....	23
9. <u>TAXATION</u> .....	26
10. <u>LENDER'S WARRANTIES</u> .....	26
11. <u>BORROWER'S WARRANTIES</u> .....	27
12. <u>EVENTS OF DEFAULT</u> .....	27
13. <u>OUTSTANDING PAYMENTS</u> .....	29
14. <u>TRANSACTIONS ENTERED INTO AS AGENT</u> .....	29
15. <u>TERMINATION OF COURSE OF DEALINGS BY NOTICE</u> .....	31
16. <u>GOVERNING PRACTICES</u> .....	31
17. <u>OBSERVANCE OF PROCEDURES</u> .....	31
18. <u>SEVERANCE</u> .....	31
19. <u>SPECIFIC PERFORMANCE</u> .....	32
20. <u>NOTICES</u> .....	32
21. <u>ASSIGNMENT</u> .....	32
22. <u>NON-WAIVER</u> .....	32
23. <u>ARBITRATION AND JURISDICTION</u> .....	32
24. <u>TIME</u> .....	33
25. <u>RECORDING</u> .....	33
26. <u>GOVERNING LAW</u> .....	33
<u>SCHEDULE</u> .....	35

THIS AGREEMENT is made the 27 day of May, 1996



**BETWEEN:-**

- (1) Morgan Stanley & Co. International Limited, a company incorporated under the laws of England and Wales whose registered office is at 25 Cabot Square, Canary Wharf, London E14 4QA; and
- (2) Macquarie Bank Limited (ACN 008 573 542) a company incorporated under the laws of the Australian Capital Territory whose registered office is at Level 10, National Mutual Centre, 17 London Circuit, Canberra, ACT, 2600, Australia.

**WHEREAS:-**

1. The Parties hereto are desirous of agreeing a procedure whereby either one of them (the "Lender") will make available to the other of them (the "Borrower") from time to time Securities (as hereinafter defined) in order to enable the Borrower, subject to any Inland Revenue provisions then in force, to fulfil a contract to sell such Securities or to on lend such Securities to a third party to enable such party to fulfil a contract to sell such Securities, whether or not as part of a chain of arrangements to enable the final party in such chain to fulfil a contract to sell such Securities or to replace an existing loan of Securities to such third party, or for other purposes.
2. All transactions carried out under this Agreement will be effected in accordance with the Rules (as hereinafter defined) **TOGETHER WITH** current market practices, customs and conventions.

**NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED AS FOLLOWS:-**

1. INTERPRETATION

(A) In this Agreement:-

"Act of Insolvency"

means in relation to either Party

- (i) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors, or
- (ii) its admitting in writing that it is unable to pay its debts as they become due, or
- (iii) 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;
- (iv) 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 (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) not having been stayed or dismissed within 30 days of its filing;

- (v) 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
- (vi) 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);

**"Agent"**

shall have the same meaning given in Clause 14;

**"Alternative Collateral"**

means Collateral of a Value equal to the Collateral delivered pursuant to Clause 6 and provided by way of substitution for Collateral originally delivered or previously substituted in accordance with the provisions of Clauses 6(F) or 6(G);

**"Appropriate Tax Vouchers"**

means:-

- (i) either such tax vouchers and/or certificates as shall enable the recipient to claim and receive from any relevant tax authority, in respect of interest, dividends, distributions and/or other amounts (including for the avoidance of doubt any manufactured payment) relating to particular Securities, all and any repayment of tax or benefit of tax credit to which the Lender would have been entitled but for the loan of Securities in accordance with this Agreement and/or to which the Lender is entitled in respect of tax withheld and accounted for in respect of any manufactured payment; or such tax vouchers and/or certificates as are provided by the Borrower which evidence an amount of overseas tax deducted which shall enable the recipient to claim and receive from any relevant tax authority all and any repayment of tax from

the UK Inland Revenue or benefits of tax credit in the jurisdiction of the recipient's residence; and

- (ii) such vouchers and/or certificates in respect of interest, dividends, distributions and/or other amounts relating to particular Collateral;

**"Approved UK Collecting Agent"** means a person who is approved as such for the purposes of the Rules of the UK Inland Revenue relating to stocklending and manufactured interest and dividends;

**"Approved Intermediary"** means a person who is approved as such for the purposes of the Rules of the UK Inland Revenue relating to stocklending and manufactured interest and dividends;

**"Assured Payment"** means a payment obligation of a Settlement Bank arising (under the Assured Payment Agreement) as a result of a transfer of stock or other securities to a CGO stock account of a member of the CGO for whom that Settlement Bank is acting;

**"Assured Payment Agreement"** means an agreement dated 24 October 1986 between the Bank of England and all the other banks which are for the time being acting as Settlement Banks in relation to the CGO regulating the obligations of such banks to make payments in respect of transfers of securities through the CGO as supplemented and amended from time to time;

**"Base Currency"** has the meaning given in the Schedule hereto;

**"Bid Price"** in relation to Equivalent Securities or Equivalent Collateral means the best available bid price thereof on the most appropriate market in a standard size;

**"Bid Value"** Subject to Clause 8(E) means:-

- (a) in relation to Equivalent Collateral at a particular time:-
  - (i) in relation to Collateral Types B(x) and C (more specifically referred to in the Schedule) the Value thereof as calculated in accordance with such Schedule;
  - (ii) in relation to all other types of Collateral (more specifically referred to in the Schedule) the amount which would be received on a sale of such



Collateral at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection with selling or otherwise realising such Equivalent Collateral, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out such sale or realisation and adding thereto the amount of any interest, dividends, distributions or other amounts paid to the Lender and in respect of which equivalent amounts have not been paid to the Borrower in accordance with Clause 6(G) prior to such time in respect of such Equivalent Collateral or the original Collateral held gross of all and any tax deducted or paid in respect thereof;

and

- (b) in relation to Equivalent Securities at a particular time the amount which would be received on a sale of such Equivalent Securities at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection therewith, 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;

**"Borrower"**

with respect to a particular loan of Securities means the Borrower as referred to in Recital 1 of this Agreement;

**"Borrowing Request"**

means a request made (by telephone or otherwise) by the Borrower to the Lender pursuant to Clause 2(A) specifying the description, title and amount of the Securities required by the Borrower, the proposed Settlement Date and duration of such loan and the date, time, mode and place of delivery which shall, where relevant, include the bank agent clearing or settlement system and account to which delivery of the Securities is to be made;

**"Business Day"**

means a day on which banks and securities markets are open for business generally in London and, in relation to the delivery or redelivery of any of the following in relation to any loan, in the place(s) where the relevant Securities, Equivalent Securities,

Collateral (including Cash Collateral) or Equivalent Collateral are to be delivered:

"Cash Collateral"	means Collateral that takes the form of a deposit of currency;
"Central Gilts Office" or "CGO"	means the computer based system managed by the Bank of England to facilitate the book-entry transfer of gilt-edged securities;
"CGO Collateral"	shall have the meaning specified in paragraph A of the Schedule;
"CGO Rules"	means the requirements of the CGO for the time being in force as defined in the membership agreement regulating membership of the CGO;
"Close of Business"	means the time at which banks close in the business centre in which payment is to be made or Collateral is to be delivered;
"Collateral"	means such securities or financial instruments or deposits of currency as are referred to in the Schedule hereto or any combination thereof which are delivered by the Borrower to the Lender in accordance with this Agreement and shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate), and shall include Alternative Collateral;
"Defaulting Party"	shall have the meaning given in Clause 12;
"Equivalent Collateral" or "Collateral Equivalent to"	<p>in relation to any Collateral provided under this Agreement means securities, cash or other property, as the case may be, of an identical type, nominal value, description and amount to particular Collateral so provided and shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate). If and to the extent that such Collateral consists of securities that are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:</p> <p>(a) in the case of conversion, subdivision or consolidation the securities into which the relevant Collateral has been converted, subdivided or consolidated <b>PROVIDED</b></p>



THAT, if appropriate, notice has been given in accordance with Clause 4(B)(vi);

- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Borrower has given notice to the Lender in accordance with Clause 4(B)(vi);
- (d) in the case of a call on partly paid securities, the paid-up securities **PROVIDED THAT** the Borrower shall have paid to the Lender an amount of money equal to the sum due in respect of the call;
- (e) in the case of a capitalisation issue, the relevant Collateral **TOGETHER WITH** the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the relevant Collateral **TOGETHER WITH** the securities allotted thereon, **PROVIDED THAT** the Borrower has given notice to the Lender in accordance with Clause 4(B)(vi), and has paid to the Lender all and any sums due in respect thereof;
- (g) in the event that a payment or delivery of Income is made in respect of the relevant Collateral in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Borrower in accordance with Clause 4(B)(vi) the relevant Collateral **TOGETHER WITH** securities or a certificate equivalent to those allotted;
- (h) in the case of any event similar to any of the foregoing, the relevant Collateral **TOGETHER WITH** or replaced by a sum of money or securities equivalent to that received in respect of such Collateral resulting from such event;

For the avoidance of doubt, in the case of Bankers' Acceptances (Collateral type B(v)), Equivalent Collateral must bear dates, acceptances and

endorsements (if any) by the same entities as the bill to which it is intended to be equivalent and for the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate);

**"Equivalent Securities"**

means securities of an identical type, nominal value, description and amount to particular Securities borrowed and such term shall include the certificates and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate). If and to the extent that such Securities are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the borrowed Securities have been converted, subdivided or consolidated **PROVIDED THAT** if appropriate, notice has been given in accordance with Clause 4(B)(vi);
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of takeover, a sum of money or securities, being the consideration or alternative consideration of which the Lender has given notice to the Borrower in accordance with Clause 4(B)(vi);
- (d) in the case of a call on partly paid securities, the paid-up securities **PROVIDED THAT** the Lender shall have paid to the Borrower an amount of money equal to the sum due in respect of the call;
- (e) in the case of a capitalisation issue, the borrowed Securities **TOGETHER WITH** the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the borrowed Securities **TOGETHER WITH** the securities allotted thereon, **PROVIDED THAT** the Lender has given notice to the Borrower in accordance with Clause

4(B)(vi), and has paid to the Borrower all and any sums due in respect thereof;

- (g) in the event that a payment or delivery of Income is made in respect of the borrowed Securities in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Borrower in accordance with Clause 4(B)(vi) the borrowed Securities **TOGETHER WITH** securities or a certificate equivalent to those allotted;
- (h) in the case of any event similar to any of the foregoing, the borrowed Securities **TOGETHER WITH** or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event;

For the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate):

<b>"Event of Default"</b>	has the meaning given in Clause 12:
<b>"Income"</b>	any interest, dividends or other distributions of any kind whatsoever with respect to any Securities or Collateral;
<b>"Income Payment Date"</b>	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;
<b>"Lender"</b>	with respect to a particular loan of Securities means the Lender as referred to in Recital 1 of this Agreement;
<b>"Manufactured Dividend"</b>	shall have the meaning given in Clause 4(B)(ii);
<b>"Margin"</b>	shall have the meaning specified in the Schedule hereto;



<b>"Nominee"</b>	means an agent or a nominee appointed by either Party and approved (if appropriate) as such by the Inland Revenue to accept delivery of, hold or deliver Securities, Equivalent Securities, Collateral and/or Equivalent Collateral on its behalf whose appointment has been notified to the other Party;
<b>"Non-Defaulting Party"</b>	shall have the meaning given in Clause 12;
<b>"Offer Price"</b>	in relation to Equivalent Securities or Equivalent Collateral means the best available offer price thereof on the most appropriate market in a standard size;
<b>"Offer Value"</b>	Subject to Clause 8(E) means:- <ul style="list-style-type: none"> <li>(a) in relation to Collateral equivalent to Collateral types B (ix) and C (more specifically referred to in the Schedule hereto) the Value thereof as calculated in accordance with such Schedule; and</li> <li>(b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral (more specifically referred to in the Schedule hereto) the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price thereof at such time together with all costs, fees and expenses that would be incurred in connection therewith, 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;</li> </ul>
<b>"Parties"</b>	means the Lender and the Borrower and "Party" shall be construed accordingly;
<b>"Performance Date"</b>	shall have the meaning given in Clause 8;
<b>"Principal"</b>	shall have the meaning given in Clause 14;

**"Reference Price"**

means:

- (a) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to types B (ii), (viii), (xi) and (xii) (more specifically referred to in the Schedule hereto) such price as is equal to the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service (such as the services provided by Reuters, Exel Statistical Services and Telerate) reasonably chosen in good faith by the Lender or 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 the Lender, in each case at Close of Business on the previous Business Day;
- (b) in relation to the valuation of Collateral and/or Collateral equivalent to Collateral types A and B(i) (more specifically referred to in the Schedule hereto), the CGO Reference Price of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral then current as determined in accordance with the CGO Rules from time to time in force.
- (c) in relation to the valuation of Collateral and/or Collateral equivalent to Collateral types B(iii), (iv), (v), (vi) (vii) and (ix), (more specifically referred to in the Schedule hereto), the market value thereof as derived from the rates bid by Barclays Bank PLC for such instruments or, in the absence of such a bid, the average of the rates bid by two leading market makers for such instruments at Close of Business on the previous Business Day;

**"Relevant Payment Date"**

shall have the meaning given in Clause 4(B)(i);

**"Rules"**

means the rules for the time being of the Stock Exchange (where either Party is a member of the Stock Exchange) and/or any other regulatory authority whose rules and regulations shall from time to time affect the activities of the Parties pursuant to this Agreement including but not limited to the stocklending regulations and guidance notes relating

to both stocklending and manufactured interest and dividends for the time being in force of the Commissioners of the Inland Revenue and any associated procedures required pursuant thereto (**PROVIDED THAT** in an Event of Default, where either Party is a member of the Stock Exchange, the Rules and Regulations of the Stock Exchange shall prevail);

**"Securities"**

means Overseas Securities as defined in the Income Tax (Stock Lending) Regulations 1989 (S.I. 1989 No. 1299) (as amended by the Income Tax (Stock Lending) (Amendment) Regulations 1990 (S.I. 1990 No. 2552) and 1993 (S.I. 1993 No. 2003)) or any statutory modification or re-enactment thereof for the time being in force which the Borrower is entitled to borrow from the Lender in accordance with the Rules and which are the subject of a loan pursuant to this Agreement and such term shall include the certificates and other documents of title in respect of the foregoing;

**"Settlement Bank"**

means a settlement member of the CHAPS and Town Clearing systems who has entered into contractual arrangements with the CGO to provide Assured Payment facilities for members of the CGO;

**"Settlement Date"**

means the date upon which Securities are or are to be transferred to the Borrower in accordance with this Agreement;

**"Stock Exchange"**

means the London Stock Exchange Limited;

**"Value"**

at any particular time means in respect of Securities and Equivalent Securities, the Reference Price thereof then current and in respect of Collateral and/or Equivalent Collateral such worth as determined in accordance with the Schedule hereto.

(B) All headings appear for convenience only and shall not affect the interpretation hereof.

(C) Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "Margin", "redeliver" 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 redeliver Equivalent Securities or Equivalent Collateral as the case may be.



- (D) For the purposes of Clauses 6(H)-6(K) and 8(C)-8(E) of this Agreement or otherwise where a conversion into the Base Currency is required, all prices, sums or values (including any Value, Offer Value and Bid Value) of Securities, Equivalent Securities, Collateral or Equivalent Collateral (including Cash Collateral) stated in currencies other than the Base Currency shall be converted into the Base Currency at the spot rate of exchange at the relevant time in the London interbank market for the purchase of the Base Currency with the currency concerned.
- (E) Where at any time there is in existence any other agreement between the Parties the terms of which make provision for the lending of Securities (as defined in this Agreement) as well as other securities the terms of this Agreement shall apply to the lending of such Securities to the exclusion of any other such agreement.

## 2. LOANS OF SECURITIES

- (A) The Lender will lend Securities to the Borrower, and the Borrower will borrow Securities from the Lender in accordance with the terms and conditions of this Agreement and with the Rules **PROVIDED ALWAYS THAT** the Lender shall have received from the Borrower and accepted (by whatever means) a Borrowing Request.
- (B) The Borrower has the right to reduce the amount of Securities referred to in a Borrowing Request **PROVIDED THAT** the Borrower has notified the Lender of such reduction no later than midday London time on the day which is two Business Days prior to the Settlement Date unless otherwise agreed between the Parties and the Lender shall have accepted such reduction (by whatever means).

## 3. DELIVERY OF SECURITIES

The Lender shall procure the delivery of Securities to the Borrower or deliver such Securities in accordance with the relevant Borrowing Request **TOGETHER WITH** appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the Borrower. Such Securities shall be deemed to have been delivered by the Lender to the Borrower on delivery to the Borrower or as it shall direct of the relevant instruments of transfer, or in the case of Securities held by an agent or a clearing or settlement system on the effective instructions to such agent or the operator of such system to hold the Securities absolutely for the Borrower, or by such other means as may be agreed.

## 4. RIGHTS AND TITLE

- (A) The Parties shall execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:
- (i) any Securities borrowed pursuant to Clause 2;
  - (ii) any Equivalent Securities redelivered pursuant to Clause 7;
  - (iii) any Collateral delivered pursuant to Clause 6;
  - (iv) any Equivalent Collateral redelivered pursuant to Clauses 6 or 7;

shall pass from one Party to the other subject to the terms and conditions mentioned herein and in accordance with the Rules, on delivery or redelivery of the same in accordance with this Agreement, 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 redeliver 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 redeliver Equivalent Securities or Equivalent Collateral as appropriate.

- (B)
- (i) Where Income is paid in relation to any Securities on or by reference to an Income Payment Date on which such Securities are the subject of a loan hereunder, the Borrower 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 same (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Lender or its Nominee, irrespective of whether the Borrower received the same. The provisions of sub-paragraphs (ii) to (v) below shall apply in relation thereto.
  - (ii) Subject to sub-paragraph (iii) below, in the case of any Income comprising a payment, the amount (the "**Manufactured Dividend**") payable by the Borrower shall be equal to the amount of the relevant Income together with an amount equivalent to any deduction, withholding or payment for or on account of tax made by the relevant issuer (or on its behalf) in respect of such Income together with an amount equal to any other tax credit associated with such Income unless a lesser amount is agreed between the Parties or an Appropriate Tax Voucher (together with any further amount which may be agreed between the Parties to be paid) is provided in lieu of such deduction, withholding tax credit or payment.
  - (iii) Where either the Borrower, or any person to whom the Borrower has on-lent the Securities, is unable to make payment of the Manufactured Dividend to the Lender without accounting to the Inland Revenue for any amount of relevant tax (as required by Schedule 23A to the Income and Corporation Taxes Act 1988) the Borrower shall pay to the Lender or its Nominee, in cash, the Manufactured Dividend less amounts equal to such tax. The Borrower shall at the same time if requested supply Appropriate Tax Vouchers to the Lender.
  - (iv) If at any time any Manufactured Dividend falls to be paid and neither of the Parties is an Approved UK Intermediary or an Approved UK Collecting Agent, the Borrower shall procure that the payment is paid through an Approved UK Intermediary or an Approved UK Collecting Agent agreed by the Parties for this purpose, unless the rate of relevant withholding tax in respect of any Income that would have been payable to the Lender but for the loan of the Securities would have been zero and no income tax liability under Section 123 of the Income and Corporation Taxes Act 1988 would have arisen in respect thereof.
  - (v) In the event of the Borrower failing to remit either directly or by its Nominee any sum payable pursuant to this Clause, the Borrower hereby undertakes to pay a rate to the Lender (upon demand) on the amount due and outstanding at the rate

provided for in Clause 13 hereof. Interest on such sum shall accrue daily commencing on and inclusive of the third Business Day after the Relevant Payment Date, unless otherwise agreed between the Parties.

- (vi) Each Party undertakes that where it holds securities of the same description as any securities borrowed by it or transferred to it by way of collateral at a time when a right to vote arises in respect of such securities, it will use its best endeavours to arrange for the voting rights attached to such securities to be exercised in accordance with the instructions of the Lender or Borrower (as the case may be) **PROVIDED ALWAYS THAT** each Party shall use its best endeavours to notify the other of its instructions in writing no later than seven Business Days prior to the date upon which such votes are exercisable or as otherwise agreed between the Parties and that the Party concerned shall not be obliged so to exercise the votes in respect of a number of Securities greater than the number so lent or transferred to it. For the avoidance of doubt the Parties agree that subject as hereinbefore provided any voting rights attaching to the relevant Securities, Equivalent Securities, Collateral and/or Equivalent Collateral shall be exercisable by the persons in whose name they are registered or in the case of Securities, Equivalent Securities, Collateral and/or Equivalent Collateral in bearer form, the persons by or on behalf of whom they are held, and not necessarily by the Borrower or the Lender (as the case may be).
- (vii) Where, in respect of any borrowed Securities or any Collateral, any rights relating to conversion, sub-division, consolidation, pre-emption, rights arising under a takeover offer or other rights, including those requiring election by the holder for the time being of such Securities or Collateral, become exercisable prior to the redelivery of Equivalent Securities or Equivalent Collateral, then the 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 redelivery 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.
- (viii) Any payment to be made by the Borrower under this Clause shall be made in a manner to be agreed between the Parties.

## 5. RATES

- (A) In respect of each loan of Securities, the Borrower shall pay to the Lender, in the manner prescribed in sub-Clause (C), sums calculated by applying such rate as shall be agreed between the Parties from time to time to the daily Value of the relevant Securities.
- (B) Where Cash Collateral is deposited with the Lender in respect of any loan of Securities in circumstances where:
  - (i) interest is earned by the Lender in respect of such Cash Collateral and that interest is paid to the Lender without deduction of tax, the Lender shall pay to the Borrower, in the manner prescribed in sub-Clause (C), an amount equal to the gross amount of such interest earned. Any such payment due to the Borrower may be set-off against any payment due to the Lender pursuant to sub-Clause (A) hereof if either the Borrower has warranted to the Lender in this Agreement that it is subject to tax in the United Kingdom under Case I of Schedule D in respect of



any income arising pursuant to or in connection with the borrowing of Securities hereunder or the Lender has notified the Borrower of the gross amount of such interest or income; and

(ii) sub-Clause (B)(i) above does not apply, the Lender shall pay to the Borrower, in the manner presented in sub-Clause (C), 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 the Borrower may be set-off against any payment due to the Lender pursuant to sub-Clause (A) hereof.

(C) In respect of each loan of Securities, the payments referred to in sub-Clauses (A) and (B) of this Clause shall accrue daily in respect of the period commencing on and inclusive of the Settlement Day and terminating on and exclusive of the Business Day upon which Equivalent Securities are redelivered 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 Borrower to the Lender or to the Borrower by the Lender (as the case may be) 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. Any payment made pursuant to sub-Clauses (A) and (B) hereof shall be in such currency and shall be paid in such manner and at such place as shall be agreed between the Parties.

## 6. COLLATERAL

(A) (i) Subject to sub-Clauses (B), (C) and (E) below the Borrower undertakes to deliver Collateral to the Lender (or in accordance with the Lender's instructions) **TOGETHER WITH** appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the Lender simultaneously with delivery of the borrowed Securities and in any event no later than Close of Business on the Settlement Date. Collateral may be provided in any of the forms specified in the Schedule hereto (as agreed between the Parties);

(ii) where Collateral is delivered to the Lender's Nominee any obligation under this Agreement to redeliver or otherwise account for Equivalent Collateral shall be an obligation of the Lender notwithstanding that any such redelivery may be effected in any particular case by the Nominee.

(B) Where CGO Collateral is provided to the Lender or its Nominee by member-to-member delivery or delivery-by-value in accordance with the provisions of the CGO Rules from time to time in force, the obligation of the Lender shall be to redeliver Equivalent Collateral through the CGO to the Borrower in accordance with this Agreement. Any references, (howsoever expressed) in this Agreement, the Rules, and/or any other agreement or communication between the Parties to an obligation to redeliver such Equivalent Collateral shall be construed accordingly. If the loan of Securities in respect of which such Collateral was provided has not been discharged when the Collateral is redelivered, the Assured Payment obligation generated on such redelivery shall be deemed to constitute a payment of money which shall be treated as Cash Collateral until the loan is discharged, or further Equivalent Collateral is provided later during that Business Day. This procedure shall continue daily where CGO Collateral is delivered-by-value for as long as the relevant loan remains outstanding.

- (C) Where CGO Collateral or other collateral is provided by delivery-by-value to a Lender or its Nominee the Borrower may consolidate such Collateral with other Collateral provided by the same delivery to a third party for whom the Lender or its Nominee is acting.
- (D) Where Collateral is provided by delivery-by-value through an alternative book entry transfer system, not being the CGO, the obligation of the Lender shall be to redeliver Equivalent Collateral through such book entry transfer system in accordance with this Agreement. If the loan of Securities in respect of which such Collateral was provided has not been discharged when the Collateral is redelivered, any payment obligation generated within the book entry transfer system on such redelivery shall be deemed to constitute a payment of money which shall be treated as Cash Collateral until the loan is discharged, or further Equivalent Collateral is provided later during that Business Day. This procedure shall continue when Collateral is delivered-by-value for as long as the relevant loan remains outstanding;
- (E) Where Cash Collateral is provided the sum of money so deposited may be adjusted in accordance with Clause 6(H). Subject to Clause 6(H)(ii), the Cash Collateral shall be repaid at the same time as Equivalent Securities in respect of the Securities borrowed are redelivered, and the Borrower shall not assign, charge, dispose of or otherwise deal with its rights in respect of the Cash Collateral. If the Borrower fails to comply with its obligations for such redelivery of Equivalent Securities the Lender shall have the right to apply the Cash Collateral by way of set-off in accordance with Clause 8.
- (F) The Borrower may from time to time call for the repayment of Cash Collateral or the redelivery of Collateral equivalent to any Collateral delivered to the Lender prior to the date on which the same would otherwise have been repayable or redeliverable **PROVIDED THAT** at the time of such repayment or redelivery the Borrower shall have delivered or delivers Alternative Collateral acceptable to the Lender.
- (G) (i) Where Collateral (other than Cash Collateral) is delivered in respect of which any Income may become payable, the Borrower shall call for the redelivery of Collateral equivalent to such Collateral in good time to ensure that such Equivalent Collateral may be delivered prior to any such Income becoming payable to the Lender, unless in relation to such Collateral the Parties are satisfied before the relevant Collateral is transferred that no tax will be payable to the UK Inland Revenue under Schedule 23A of the Income and Corporation Taxes Act 1988. At the time of such redelivery the Borrower shall deliver Alternative Collateral acceptable to the Lender.
- (ii) Where the Lender receives any Income in circumstances where the Parties are satisfied as set out in Clause 6(G)(i) above, then the Lender shall on the date on which the Lender receives such Income or on such date as the Parties may from time to time agree, pay and deliver a sum of money or property equivalent to such Income (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Borrower and shall supply Appropriate Tax Vouchers (if any) to the Borrower.
- (H) Unless the Schedule to this Agreement indicates that Clause 6(I) shall apply in lieu of this Clause 6(H), or unless otherwise agreed between the Parties, the Value of the Collateral delivered to or deposited with the Lender or its nominated bank or depositary (excluding any Collateral repaid or redelivered under sub-Clauses (H)(ii) or (I)(ii) below (as the case may be) ("**Posted Collateral**")) in respect of any loan of Securities shall bear from day to day

and at any time the same proportion to the Value of the Securities borrowed under such loan as the Posted Collateral bore at the commencement of such loan. Accordingly:

- (i) the Value of the Posted Collateral to be delivered or deposited while the loan of Securities continues shall be equal to the Value of the borrowed Securities and the Margin applicable thereto (the "**Required Collateral Value**");
- (ii) if on any Business Day the Value of the Posted Collateral in respect of any loan of Securities exceeds the Required Collateral Value in respect of such loan, the Lender shall (on demand) repay such Cash Collateral and/or redeliver to the Borrower such Equivalent Collateral as will eliminate the excess; and
- (iii) if on any Business Day the Value of the Posted Collateral falls below the Required Collateral Value, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.

(I) Subject to Clause 6(J), unless the Schedule to this Agreement indicates that Clause 6(H) shall apply in lieu of this Clause 6(I), or unless otherwise agreed between the Parties:-

- (i) the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement shall equal the aggregate of the Required Collateral Values in respect of such loans;
- (ii) if at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement exceeds the aggregate of the Required Collateral Values in respect of such loans, the Lender shall (on demand) repay such Cash Collateral and/or redeliver to the Borrower such Equivalent Collateral as will eliminate the excess;
- (iii) if at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such loans, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.

(J) Where Clause 6(I) applies, unless the Schedule to this Agreement indicates that this Clause 6(J) does not apply, if a Party (the "**first Party**") would, but for this Clause 6(J), be required under Clause 6(I) to repay Cash Collateral, redeliver Equivalent Securities or provide further Collateral in circumstances where the other Party (the "**second Party**") would, but for this Clause 6(J), also be required to repay Cash Collateral or provide or redeliver Equivalent Collateral under Clause 6(I), then the Value of the Cash Collateral or Equivalent Collateral deliverable by the first Party ("**X**") shall be set-off against the Value of the Cash Collateral, or Equivalent Collateral or further Collateral deliverable by the second Party ("**Y**") and the only obligation of the Parties under Clause 6(I) 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 Cash Collateral, redeliver Equivalent Collateral or to deliver further Collateral having a Value equal to the difference between X and Y.

(K) Where Cash Collateral is repaid, Equivalent Collateral is redelivered or further Collateral is provided by a Party under Clause 6(I), the Parties shall agree to which loan or loans of Securities such repayment, redelivery or further provision is to be attributed and failing agreement it shall be attributed, as determined by the Party making such repayment, redelivery or further provision to the earliest outstanding loan and, in the case of a



repayment or redelivery up to the point at which the Value of Collateral in respect of such loan is reduced to zero and, in the case of a further provision up to the point at which the Value of the 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.

- (L) Where any Cash Collateral falls to be repaid or Equivalent Collateral to be redelivered or further Collateral to be provided under this Clause 6, it shall be delivered within the minimum period after demand specified in the Schedule or if no appropriate period is there specified within the standard settlement time for delivery of the relevant type of Cash Collateral, Equivalent Collateral or Collateral, as the case may be.

## 7. REDELIVERY OF EQUIVALENT SECURITIES

- (A) The Borrower undertakes to redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Borrowing Request. For the avoidance of doubt any reference herein or in any other agreement or communication between the Parties (howsoever expressed) to an obligation to redeliver or account for or act in relation to borrowed Securities shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Securities.
- (B) Subject to Clause 8 hereof and the terms of the relevant Borrowing Request the Lender may call for the redelivery 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 relevant borrowed Securities were originally delivered. The Borrower shall as hereinafter provided redeliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions. Simultaneously with the redelivery of the Equivalent Securities in accordance with such call, the Lender shall (subject to Clause 6(I), if applicable) repay any Cash Collateral and redeliver to the Borrower Collateral equivalent to the Collateral delivered pursuant to Clause 6 in respect of the borrowed Securities. For the avoidance of doubt any reference herein or in any other agreement or communication between the Parties (however expressed) to an obligation to redeliver or account for or act in relation to Collateral shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Collateral.
- (C) If the Borrower does not redeliver Equivalent Securities in accordance with such call, the Lender may elect to continue the loan of Securities **PROVIDED THAT** if the Lender does not elect to continue the loan the Lender may by written notice to the Borrower elect to terminate the relevant loan. Upon the expiry of such notice the provisions of Clauses (8) (B) to (F) shall apply as if upon the expiry of such notice an Event of Default had occurred in relation to the Borrower (who shall thus be the Defaulting Party for the purposes of this Agreement) and as if the relevant loan were the only loan outstanding.
- (D) In the event that as a result of the failure of the Borrower to redeliver Equivalent Securities to the Lender in accordance with this Agreement a "buy-in" is exercised against the Lender then provided that reasonable notice has been given to the Borrower of the likelihood of such a "buy-in", the Borrower shall account to the Lender for the total costs and expenses reasonably incurred by the Lender as a result of such "buy-in".

- (E) Subject to the terms of the relevant Borrowing Request, the Borrower shall be entitled at any time to terminate a particular loan of Securities and to redeliver all and any Equivalent Securities due and outstanding to the Lender in accordance with the Lender's instructions. The Lender shall accept such redelivery and simultaneously therewith (subject to Clause 6(I) if applicable) shall repay to the Borrower any Cash Collateral or, as the case may be, redeliver Collateral equivalent to the Collateral provided by the Borrower pursuant to Clause 6 in respect thereof.
- (F) Where a TALISMAN short term certificate (as described in paragraph C of the Schedule) is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by the redelivery of the certificate to the Borrower or its expiry as provided for in the Rules applying to such certificate.
- (G) Where a Letter of Credit is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by the Lender redelivering for cancellation the Letter of Credit so provided, or where the Letter of Credit is provided in respect of more than one loan, by the Lender consenting to a reduction in the value of the Letter of Credit.

8. SET-OFF ETC.

- (A) On the date and time (the "**Performance Date**") that Equivalent Securities are required to be redelivered by the Borrower in accordance with the provisions of this Agreement the Lender shall simultaneously redeliver the Equivalent Collateral and repay any Cash Collateral held (in respect of the Equivalent Securities to be redelivered) to the Borrower. 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 simultaneously. 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.
- (B) If an Event of Default occurs in relation to either Party, 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 "**Performance Date**" for the purposes of this clause) and in such event:
- (i) the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each Party shall be established in accordance with Clause 8(C); and
  - (ii) on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) 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 Performance Date.

- (C) For the purposes of Clause 8(B) the Relevant Value:-
- (i) of any cash payment obligation shall equal its par value (disregarding any amount taken into account under (ii) or (iii) below);
  - (ii) of any securities to be delivered by the Defaulting Party shall, subject to Clause 8(E) below, equal the Offer Value thereof; and
  - (iii) of any securities to be delivered to the Defaulting Party shall, subject to Clause 8(E) below, equal the Bid Value thereof.
- (D) For the purposes of Clause 8(C), but subject to Clause 8(E) below, the Bid Value and Offer Value of any securities shall be calculated as at the Close of Business in the most appropriate market for securities of the relevant description (as determined by the Non-Defaulting Party) on the first Business Day following the Performance Date, or if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Performance Date (the "Default Valuation Time");
- (E)
- (i) Where the Non-Defaulting Party has following the occurrence of an Event of Default but prior to the Default Valuation Time purchased securities forming part of the same issue and being of an identical type and description to those to be delivered by the Defaulting Party and in substantially the same amount as those securities or sold securities forming part of the same issue and being of an identical type and description to those to be delivered by him to the Defaulting Party and in substantially the same amount as those securities, the cost of such purchase or the proceeds of such sale, as the case may be, (taking into account all reasonable costs, fees and expenses that would be incurred in connection therewith) shall be treated as the Offer Value or Bid Value, as the case may be, of the relevant securities for the purposes of this Clause 8.
  - (ii) Where the amount of any securities sold or purchased as mentioned in (E)(i) above is not in substantially the same amount as those securities to be valued for the purposes Clause 8(C) the Offer Value or the Bid Value (as the case may be) of those securities shall be ascertained by dividing the net proceeds of sale or cost of purchase by the amount of the securities sold or purchased so as to obtain a net unit price and multiplying that net unit price by the amount of the securities to be valued.
- (F) Any reference in this Clause 8 to securities shall include any asset other than cash provided by way of Collateral.
- (G) If the Borrower or the Lender for any reason fail to comply with their respective obligations under Clauses 6(F) or 6(G) in respect of redelivery of Equivalent Collateral or repayment of Cash Collateral such failure shall be an Event of Default for the purposes of this Clause 8, and the person failing to comply shall thus be the Defaulting Party.
- (H) Subject to and without prejudice to its rights under Clause 8(A) either 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 in respect of one transaction shall bind it in respect of any other transaction.



9. TAXATION

- (A) The Borrower hereby undertakes promptly to pay and account for any transfer or similar duties or taxes chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement, and shall indemnify and keep indemnified the Lender against any liability arising in respect thereof as a result of the Borrower's failure to do so.
- (B) The Borrower shall only make a Borrowing Request where the purpose of the loan meets the requirements of the Rules regarding the conditions that must be fulfilled for Section 129 of the Income and Corporation Taxes Act 1988 (or any statutory modification or re-enactment thereof for the time being in force) to apply to the arrangement concerning the loan, unless the Lender is aware that the transaction is unapproved for the purposes of the Rules of the UK Inland Revenue or such purpose is not met.
- (C) A Party undertakes to notify the other Party if it becomes or ceases to be an Approved UK Intermediary or an Approved UK Collecting Agent.

10. 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 the Borrower free from all liens, charges and encumbrances;
- (D) where the Schedule to this Agreement specifies that this Clause 10(D) applies, it is not resident in the United Kingdom for tax purposes and either is not carrying on a trade in the United Kingdom through a branch or agency or if it is carrying on such a trade the loan is not entered into in the course of the business of such branch or agency, and it has (i) delivered or caused to be delivered to the Borrower a duly completed and certified Certificate (MOD2) or a photocopy thereof bearing an Inland Revenue acknowledgement and unique number and such Certificate or photocopy remains valid or (ii) has taken all necessary steps to enable a specific authorisation to make gross payment of the Manufactured Dividend to be issued by the Inland Revenue;

11. 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 licenses 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 the Lender free from all liens, charges and encumbrances;
- (D) it is acting as principal in respect of this Agreement;
- (E) where the Schedule to this Agreement specifies this Clause 11(E) applies, it is subject to tax in the United Kingdom under Case I of Schedule D in respect of any income arising pursuant to or in connection with the borrowing of Securities hereunder.

## 12. EVENTS OF DEFAULT

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 for the purpose of Clause 8:-

- (A) the Borrower or Lender failing to pay or repay Cash Collateral or deliver or redeliver Collateral or Equivalent Collateral upon the due date, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (B) the Lender or Borrower failing to comply with its obligations under Clause 6, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (C) the Borrower failing to comply with Clause 4(B)(i), (ii) or (iii) hereof, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (D) an Act of Insolvency occurring with respect to the Lender or the Borrower and (except in the case of 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 in which case no such notice shall be required) the Non-Defaulting Party serves written notice on the Defaulting Party;
- (E) any representations or warranties made by the Lender or the Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (F) the Lender or the Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations hereunder and/or in respect of any loan hereunder, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (G) the Lender (if appropriate) or the Borrower being declared in default by the appropriate authority under the Rules or being suspended or expelled from membership of or participation in any securities exchange or association or other self-regulatory organisation, or suspended from dealing in securities by any government agency, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (H) any of the assets of the Lender or the Borrower or the assets of investors held by or to the order of the Lender or the Borrower being transferred or ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the Non-Defaulting Party serves written notice on the Defaulting Party, or

- (I) the Lender or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure, and the Non-Defaulting Party serves a further written notice on the Defaulting Party.

Each Party shall notify the other if an Event of Default occurs in relation to it.

13. OUTSTANDING PAYMENTS

In the event of either Party failing to remit either directly or by its Nominee sums in accordance with this Agreement such Party hereby undertakes to pay a rate to the other Party upon demand on the net balance due and outstanding of 1% above the Barclays Bank PLC base rate from time to time in force.

14. TRANSACTIONS ENTERED INTO AS AGENT

- (A) Subject to the following provisions of this Clause, the Lender may 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 clause as an "Agency Transaction").

- (B) A Lender may enter into an Agency Transaction if, but only if:-

- (i) if specifies that loan as an Agency Transaction at the time when it enters into it;
- (ii) it enters into that loan on behalf of a single Principal whose identity is disclosed to the 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; and
- (iii) 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 (D)(ii) below.

- (C) The Lender undertakes that, if it enters as agent into an Agency Transaction, forthwith upon becoming aware:-

- (i) of any event which constitutes an Act of Insolvency with respect to the relevant Principal; or
- (ii) of any breach of any of the warranties given in Clause 14(E) below or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the current facts;

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

- (D) (i) Each Agency Transaction shall be a transaction between the relevant Principal and the Borrower and no person other than the relevant Principal and the Borrower shall be a party to or have any rights or obligations under an Agency Transaction. Without limiting the foregoing, the Lender shall not be liable as principal for the performance of an Agency Transaction or for breach of any warranty contained in Clause 10(D) or 11(E) of this Agreement, but this is



without prejudice to any liability of the Lender under any other provision of this Clause.

- (ii) All the provisions of the Agreement shall apply separately as between the Borrower and each Principal for whom the Agent has entered into an Agency transaction or Agency Transactions as if each such Principal were a party to a separate agreement with the 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 the Borrower served written notice under any sub-Clause of Clause 12, the Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given if given to the Lender in accordance with Clause 20) to declare that by reason of that event an Event of Default is to be treated as occurring in relation to the Principal. If the 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 nor has established a place of business in Great Britain, the Principal shall for the purposes of the agreement referred to in (D)(ii) 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 the United Kingdom, 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.

- (iii) The foregoing provisions of this Clause do not affect the operation of the Agreement as between the Borrower and the Lender in respect of any transactions into which the Lender may enter on its own account as principal.

- (E) The Lender warrants to the Borrower that it will, on every occasion on which it enters or purports to enter into a transaction as an Agency Transaction, have been duly authorised to enter into that loan and perform the obligations arising thereunder on behalf of the person whom it specifies as the Principal in respect of that transaction and to perform on behalf of that person all the obligations of that person under the agreement referred to in (D)(ii).

#### 15. TERMINATION OF COURSE OF DEALINGS BY NOTICE

Each Party shall have the right to bring the course of dealing contemplated under this Agreement to an end 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 and which have been entered into but not discharged at the time such notice is given are duly discharged in accordance with this Agreement and with the Rules.

#### 16. GOVERNING PRACTICES

The Borrower shall use its best endeavours to notify the Lender (in writing) of any changes in legislation or practices governing or affecting the Lender's rights or obligations under this Agreement or the treatment of transactions effected pursuant to or contemplated by this Agreement.

17. OBSERVANCE OF PROCEDURES

Each of the Parties hereto agrees that in taking any action that may be required in accordance with this Agreement it shall observe strictly the procedures and timetable applied by the Rules and, further, shall observe strictly any agreement (oral or otherwise) as to the time for delivery or redelivery of any money, Securities, Equivalent Securities, Collateral or Equivalent Collateral entered into pursuant to this Agreement.

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, 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 redeliver Securities, Equivalent Securities, Collateral or Equivalent Collateral but without prejudice to any other rights it may have.

20. NOTICES

All notices issued under this Agreement shall be in writing (which shall include telex or facsimile messages) and shall be deemed validly delivered if sent by prepaid first class post to or left at the addresses or sent to the telex or facsimile number of the Parties respectively or such other addresses or telex or facsimile numbers as each Party may notify in writing to the other.

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 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. ARBITRATION AND JURISDICTION

(A) All claims, disputes and matters of conflict between the Parties arising hereunder shall be referred to or submitted for arbitration in London in accordance with English Law before a sole arbitrator to be agreed between the Parties or in default of agreement by an arbitrator to be nominated by the Chairman of The Stock Exchange on the application of either Party, and this Agreement shall be deemed for this purpose to be a submission to arbitration within the Arbitration Acts 1950 and 1979, or any statutory modification or re-enactment thereof for the time being in force.

(B) This Clause shall take effect notwithstanding the frustration or other termination of this Agreement.

(C) No action shall be brought upon any issue between the Parties under or in connection with this Agreement until the same has been submitted to arbitration pursuant hereto and an award made.

24. TIME

Time shall be of the essence of the Agreement.

25. RECORDING


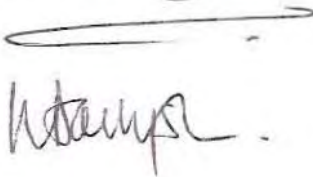
The Parties agree that each may electronically record all telephonic conversations between them.

26. GOVERNING LAW

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

IN WITNESS WHEREOF this Agreement has been executed on behalf of the Parties hereto the day and year first before written.

SIGNED BY )  
Merkur Zapico )  
ON BEHALF OF )  
MORGAN STANLEY & CO. )  
INTERNATIONAL LIMITED )  
IN THE PRESENCE OF: )

SIGNED BY )  
ON BEHALF OF )  
MACQUARIE BANK LIMITED )  
IN THE PRESENCE OF: )






## SCHEDULE

### COLLATERAL

#### Types

Collateral acceptable under this Agreement may include the following or otherwise, as agreed between the Parties from time to time whether transferable by hand or within a depositary:-

- A. British Government Stock and other stock registered at the Bank of England which is transferable through the CGO to the Lender or its Nominee against an Assured Payment, hereinbefore referred to as CGO Collateral.
  
- B.
  - (i) British Government Stock and Sterling Issues by foreign governments (transferable through the CGO), in the form of an enfaced transfer deed or a long term collateral certificate or overnight collateral chit issued by the CGO accompanied (in each case) by an executed unenfaced transfer deed;
  
  - (ii) Corporation and Commonwealth Stock in the form of registered stock or allotment letters duly renounced;
  
  - (iii) UK Government Treasury Bills;
  
  - (iv) U.S. Government Treasury Bills;
  
  - (v) Bankers' Acceptances;
  
  - (vi) Sterling Certificates of Deposit;
  
  - (vii) Foreign Currency Certificates of Deposit;
  
  - (viii) Local Authority Bonds;
  
  - (ix) Local Authority Bills;
  
  - (x) Letters of Credit;
  
  - (xi) Bonds or Equities in registrable form or allotment letters duly renounced;
  
  - (xii) Bonds or Equities in bearer form.
  
- C. Unexpired TALISMAN short-term certificates issued by The Stock Exchange; and
  
- D. Cash Collateral.

#### Valuation of Collateral

Collateral provided in accordance with this Agreement shall be evaluated by reference to the following, or by such means as the Parties may from time to time agree:-

- (A) in respect of Collateral types A(i) and B(i), the current CGO value calculated by reference to the middle market price of each stock as determined daily by the Bank of England, adjusted to include the accumulated interest thereon (the CGO Reference Price);
- (B) in respect of Collateral types B(ii) to (ix), (xi) and (xii) the Reference Price thereof;
- (C) in respect of Collateral types B(x) and C the value specified therein.

Margin

The Value of the Collateral delivered pursuant to Clause 6 by the Borrower to the Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than the Value of the borrowed Securities **TOGETHER WITH** the following additional percentages hereinbefore referred to as ("the Margin") unless otherwise agreed between the Parties:-

- (i) in the case of Collateral types B(i) to (x) and D: <sup>5%</sup> 105%, (for Certificates of Deposit the Margin shall be the accumulated interest thereon); or
- (ii) in the case of Collateral types B(xi), (xii) and C: <sup>5%</sup> 105%

If the Value of the borrowed Securities includes any margin over the mid market price of the borrowed Securities this shall be taken into account in determining the Margin applicable.

Basis of Margin Maintenance

Clause 6 (I)(global margining) shall apply.

Clause 6(J) (netting of margin where one party both a Borrower and Lender) shall apply.

Minimum period after demand for transferring Cash Collateral or Equivalent Collateral: The standard settlement time for delivery of the relevant type of Cash Collateral, Equivalent Collateral or Collateral, as the case may be.

BASE CURRENCY

The Base Currency applicable to this Agreement is United States Dollars, unless otherwise agreed.

LENDER'S WARRANTIES

~~Where Morgan Stanley & Co. International Limited is Lender, Clause 10(D) shall not apply.~~

BORROWER'S WARRANTIES

Where Morgan Stanley & Co. International Limited is Borrower, Clause 11(E) shall apply.

*where Macquarie Bank Limited is Borrower, Clause 11(E) shall not apply.*



## HONG KONG STOCK ADDENDUM

THIS ADDENDUM is entered into the 29<sup>th</sup> day of May 1996 between Morgan Stanley & Co. International Limited, a company incorporated under the laws of England and Wales whose registered office is at 25 Cabot Square, Canary Wharf, London, E14 4QA and a company whose registered office is situated at and supplements amends and forms part of the Securities Lending Agreement entered into between the Parties and dated (the "Agreement").

### 1. Interpretation

- (a) "Collector" means the Collector of Stamp Revenue appointed under section 3 of the Ordinance;
- "Hong Kong stock" has the meaning set out in section 2 of Ordinance;
- "Ordinance" means the Hong Kong Stamp Duty Ordinance (Cap.117); and
- "stock borrowing" has the meaning set out in section 19(16) of the Ordinance
- (b) From and after the date hereof in relation to a borrowing of Hong Kong stock, reference to the "Agreement" in the Agreement and in this Addendum shall be deemed to include a reference to the Agreement as amended by the terms of this Addendum, unless the context indicates otherwise.
- (c) Capitalised terms which are not otherwise defined in this Addendum shall have the meaning ascribed to them in the Agreement.

### 2. Application

- (a) The Parties hereby agree that the terms of this Addendum shall apply in addition to the terms set out in the Agreement in the event that Securities borrowed by the Borrower under the Agreement fall within the definition of Hong Kong stock. For the avoidance of doubt, where the Securities do not comprise Hong Kong stock, the terms of this Addendum shall not apply.
- (b) In the event of conflict between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall prevail, provided that nothing in this Addendum shall seek to amend any restrictions or provisions in the Agreement which are required by applicable English laws or regulations relating to stock lending transactions. Except as otherwise set forth herein, the Agreement shall remain unchanged and in full force and effect.
- (c) Each of the parties to this Addendum hereby agrees that the terms of this Addendum shall apply to all transactions of Hong Kong stock entered into under the Agreement on or after 8 July 1994.



### **3. Taxation and Indemnity**

The Borrower acknowledges that the provisions set out in Clause 9 of the Agreement, apply in the event of any breach by the Borrower of any or all of the undertakings given by the Borrower to the Lender under paragraphs 4(a), 4 (b) and 5(a) below.

### **4. Borrower's Warranties and Undertakings**

In addition to the warranties and undertakings set out in Clause 11 of the Agreement and in order to comply with the requirements of the Ordinance, the Borrower hereby undertakes to the Lender on a continuing basis to the intent that such warranties and undertakings shall survive the completion of any transaction contemplated herein that:

- (a) the Borrower is borrowing or will borrow Securities under the Agreement for one or more of the "specified purposes" as required by section 19 of the Ordinance, namely:
  - (i) to settle a contract to sell such Securities wherever effected, whether by the Borrower or another person;
  - (ii) to settle a future contract to sell such Securities, whether agreed or not when the transaction is effected and whether by the Borrower or another person;
  - (iii) to replace, in whole or in part Securities obtained by the Borrower under another stock borrowing;
  - (iv) to on-lend the Securities to another borrower who effects a stock borrowing in respect of the same; or
  - (v) such other purpose as the Collector may, in writing, agree; and
- (b) it will comply with the requirement for a "stock return" under section 19 of the Ordinance, namely that without prejudice to the rights of the Lender under Clause 7(B) of the Agreement, the Borrower shall under the terms of Clause 7 of the Agreement, return to the Lender Securities or Equivalent Securities before the expiry of twelve (12) months after the day on which the Securities were borrowed from the Lender under the Agreement or, if the Securities are borrowed in order to replace in whole or in part Securities obtained by the Borrower under another stock borrowing, that such borrowing is settled before the expiry of twelve (12) months after the day on which the Borrower first borrowed Securities in relation to such borrowing and is not rolled over beyond the twelve (12) month period by means of successive replacement borrowings.

### **5. The Borrowers Obligations**

- (a) The Borrower hereby undertakes to the Lender on a continuing basis that it shall:
  - (i) within ten(10) Business Days of the date of execution of the Agreement (or twenty (20) Business Days if executed overseas) and this Addendum, provide the Collector with: (x) an executed copy of the agreement, and this Addendum (or, in either case, in such other form thereof as may be

acceptable to the Collector); (y) such fees as may be specified from time to time by the Financial Secretary for these purposes; and (z) such other documents, particulars and information as the Collector may require;

- (ii) promptly notify the Lender upon its having complied with its undertaking under paragraph 5(a)(i) above and provide to the Lender such documents as the Lender may reasonably request in respect of the same; and
- (iii) promptly comply with all filing and reporting obligations and do all other acts and things as may be required by the Collector from time to time.

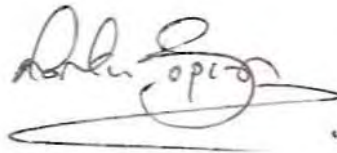
(b) In the event that the Borrower is in breach of its undertaking under paragraphs 5(a)(i), (ii) or (iii) above, the Lender may (but shall not be obliged to) provide the Agreement, this Addendum, pay such fee and provide such other documents, particulars and information and do all other acts and things at the cost and expense of and on behalf of the Borrower, without prejudice to the provisions of Clause 9 of the Agreement and paragraph 3 above.

**6. Law and Jurisdiction**

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

IN WITNESS whereof, this Addendum has been executed on behalf of the Parties the date and year first above written.

Signed by *Martin Zapico* )  
on behalf of )  
Morgan Stanley & Co )  
International Limited )



Signed by )  
on behalf of )  
*Macquarie* )  
*Bank Limited* )



# HONG KONG STOCK ADDENDUM



THIS ADDENDUM is entered into the 29<sup>th</sup> day of May 1996 between Morgan Stanley & Co. International Limited, a company incorporated under the laws of England and Wales whose registered office is at 25 Cabot Square, Canary Wharf, London, E14 4QA and a company whose registered office is situated at [redacted] and supplements amends and forms part of the Securities Lending Agreement entered into between the Parties and dated [redacted] (the "Agreement").

## 1. Interpretation

- (a) "Collector" means the Collector of Stamp Revenue appointed under section 3 of the Ordinance;
  - "Hong Kong stock" has the meaning set out in section 2 of Ordinance;
  - "Ordinance" means the Hong Kong Stamp Duty Ordinance (Cap.117); and
  - "stock borrowing" has the meaning set out in section 19(16) of the Ordinance
- (b) From and after the date hereof in relation to a borrowing of Hong Kong stock, reference to the "Agreement" in the Agreement and in this Addendum shall be deemed to include a reference to the Agreement as amended by the terms of this Addendum, unless the context indicates otherwise.
  - (c) Capitalised terms which are not otherwise defined in this Addendum shall have the meaning ascribed to them in the Agreement.

## 2. Application

- (a) The Parties hereby agree that the terms of this Addendum shall apply in addition to the terms set out in the Agreement in the event that Securities borrowed by the Borrower under the Agreement fall within the definition of Hong Kong stock. For the avoidance of doubt, where the Securities do not comprise Hong Kong stock, the terms of this Addendum shall not apply.
- (b) In the event of conflict between the terms of this Addendum and the terms of the Agreement, the terms of this Addendum shall prevail, provided that nothing in this Addendum shall seek to amend any restrictions or provisions in the Agreement which are required by applicable English laws or regulations relating to stock lending transactions. Except as otherwise set forth herein, the Agreement shall remain unchanged and in full force and effect.
- (c) Each of the parties to this Addendum hereby agrees that the terms of this Addendum shall apply to all transactions of Hong Kong stock entered into under the Agreement on or after 8 July 1994.



### **3. Taxation and Indemnity**

The Borrower acknowledges that the provisions set out in Clause 9 of the Agreement, apply in the event of any breach by the Borrower of any or all of the undertakings given by the Borrower to the Lender under paragraphs 4(a), 4 (b) and 5(a) below.

### **4. Borrower's Warranties and Undertakings**

In addition to the warranties and undertakings set out in Clause 11 of the Agreement and in order to comply with the requirements of the Ordinance, the Borrower hereby undertakes to the Lender on a continuing basis to the intent that such warranties and undertakings shall survive the completion of any transaction contemplated herein that:

- (a) the Borrower is borrowing or will borrow Securities under the Agreement for one or more of the "specified purposes" as required by section 19 of the Ordinance, namely:
  - (i) to settle a contract to sell such Securities wherever effected, whether by the Borrower or another person;
  - (ii) to settle a future contract to sell such Securities, whether agreed or not when the transaction is effected and whether by the Borrower or another person;
  - (iii) to replace, in whole or in part Securities obtained by the Borrower under another stock borrowing;
  - (iv) to on-lend the Securities to another borrower who effects a stock borrowing in respect of the same; or
  - (v) such other purpose as the Collector may, in writing, agree; and
- (b) it will comply with the requirement for a "stock return" under section 19 of the Ordinance, namely that without prejudice to the rights of the Lender under Clause 7(B) of the Agreement, the Borrower shall under the terms of Clause 7 of the Agreement, return to the Lender Securities or Equivalent Securities before the expiry of twelve (12) months after the day on which the Securities were borrowed from the Lender under the Agreement or, if the Securities are borrowed in order to replace in whole or in part Securities obtained by the Borrower under another stock borrowing, that such borrowing is settled before the expiry of twelve (12) months after the day on which the Borrower first borrowed Securities in relation to such borrowing and is not rolled over beyond the twelve (12) month period by means of successive replacement borrowings.

### **5. The Borrowers Obligations**

- (a) The Borrower hereby undertakes to the Lender on a continuing basis that it shall:
  - (i) within ten(10) Business Days of the date of execution of the Agreement (or twenty (20) Business Days if executed overseas) and this Addendum, provide the Collector with: (x) an executed copy of the agreement, and this Addendum (or, in either case, in such other form thereof as may be

acceptable to the Collector); (y) such fees as may be specified from time to time by the Financial Secretary for these purposes; and (z) such other documents, particulars and information as the Collector may require;

- (ii) promptly notify the Lender upon its having complied with its undertaking under paragraph 5(a)(i) above and provide to the Lender such documents as the Lender may reasonably request in respect of the same; and
- (iii) promptly comply with all filing and reporting obligations and do all other acts and things as may be required by the Collector from time to time.

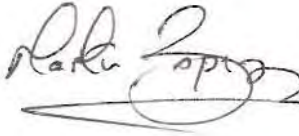
(b) In the event that the Borrower is in breach of its undertaking under paragraphs 5(a)(i), (ii) or (iii) above, the Lender may (but shall not be obliged to) provide the Agreement, this Addendum, pay such fee and provide such other documents, particulars and information and do all other acts and things at the cost and expense of and on behalf of the Borrower, without prejudice to the provisions of Clause 9 of the Agreement and paragraph 3 above.

**6. Law and Jurisdiction**

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

IN WITNESS whereof, this Addendum has been executed on behalf of the Parties the date and year first above written.

Signed by *Martin Zapico* )  
on behalf of )  
Morgan Stanley & Co )  
International Limited )



Signed by )  
on behalf of )  
*Macquarie Bank Limited* )  
)



**ANNEXURE 'L'**

This is the annexure marked 'L' of 42 pages referred to in the Notice of change of interests of substantial holder.

---

Dennis Leong  
Company Secretary, Macquarie Group Limited  
25 June 2013

---





# Australian Securities Lending Association Limited

(ACN 054 944 482)  
Level 18, 20 Bond Street  
Sydney NSW 2000  
Tel: (02) 9220 1413  
Fax: (02) 9220 1379

## AUSTRALIAN MASTER SECURITIES LENDING AGREEMENT \*

(Version: November 2003)

dated as of: ..... 3 August 2010 .....

**Between:** (1) (Name of Company) **Morgan Stanley Australia Securities Limited**  
(ACN or ARBN (as applicable)) ACN 078 652 276 \_\_\_\_\_  
a company incorporated under the laws of New South Wales \_\_\_\_\_  
of (Business address) Level 39 Chifley Tower, 2 Chifley Square, Sydney,  
New South Wales, 2000, Australia \_\_\_\_\_

**And:** (2) (Name of Company) **Macquarie Bank Limited**  
(ACN or ARBN (as applicable)) **ACN 008 583 542** \_\_\_\_\_  
a company incorporated under the laws of Australian Capital Territory  
of (Business address) Level 2, No.1 Martin Place,  
Sydney, NSW, 2000 Australia \_\_\_\_\_

- \* The original (Version: 4 April 1997) version of this agreement was adapted from the ISLA Overseas Securities Lender's Agreement (Version: December 1995, as amended by 1996 UK Tax Addendum), prepared by Clifford Chance, London, England for use by parties required to meet UK Inland Revenue tax requirements. The 4 April 1997 version has been updated in December 2002 and November 2003 to take account of, among other things, intervening Australian tax, stamp duty and regulatory changes, and also to better reflect Australian market practice.
- \* The original and updated versions of this agreement are both also subject to the "Warning and Disclaimer" on the coversheet to the original (Version: 4 April 1997) and updated (Version: November 2003) "User's Guide" relating to this agreement.

© m  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Telephone (02) 9296 2000  
Fax (02) 9296 3999  
DX 113 Sydney Ref: JCK





<b>1</b>	<b>Interpretation</b>	<b>1</b>
<b>2</b>	<b>Loans of Securities</b>	<b>2</b>
<b>3</b>	<b>Delivery of Securities</b>	<b>3</b>
<b>4</b>	<b>Title, Distributions and Voting</b>	<b>3</b>
<b>5</b>	<b>Fees</b>	<b>5</b>
<b>6</b>	<b>Collateral</b>	<b>5</b>
<b>7</b>	<b>Redelivery of Equivalent Securities</b>	<b>8</b>
<b>7A</b>	<b>Suspended Securities</b>	<b>9</b>
<b>8</b>	<b>Set-off etc.</b>	<b>9</b>
<b>9</b>	<b>Stamp duty, taxes etc and loss of tax benefits</b>	<b>11</b>
<b>10</b>	<b>Lender's warranties</b>	<b>15</b>
<b>11</b>	<b>Borrower's warranties</b>	<b>15</b>
<b>12</b>	<b>Events of Default</b>	<b>16</b>
<b>13</b>	<b>Outstanding payments</b>	<b>17</b>
<b>14</b>	<b>Transactions entered into as agent</b>	<b>17</b>
<b>15</b>	<b>Termination of course of dealings by notice</b>	<b>18</b>
<b>16</b>	<b>No reliance on tax or accounting representations by other Party</b>	<b>19</b>
<b>17</b>	<b>Observance of procedures</b>	<b>19</b>
<b>18</b>	<b>Severance</b>	<b>19</b>
<b>19</b>	<b>Specific performance</b>	<b>19</b>
<b>20</b>	<b>Notices</b>	<b>19</b>
<b>21</b>	<b>Assignment</b>	<b>20</b>
<b>22</b>	<b>Non-Waiver</b>	<b>20</b>
<b>23</b>	<b>Time</b>	<b>20</b>
<b>24</b>	<b>Recording</b>	<b>20</b>
<b>25</b>	<b>Miscellaneous</b>	<b>20</b>



<b>26</b>	<b>Definitions</b>	<b>21</b>
<b>27</b>	<b>Governing Law and Jurisdiction</b>	<b>29</b>
<b>Schedule 1</b>	<b>Particulars</b>	<b>30</b>
<b>Schedule 2</b>	<b>Specimen Form of Borrowing Request (see clause 2.1 and definition of "Borrowing Request" in clause 26)</b>	<b>33</b>
<b>Schedule 3</b>	<b>Supplementary Terms and Conditions (if any)</b>	<b>34</b>

---

## AGREEMENT

### Recitals:

- A. The Parties hereto are desirous of agreeing to a procedure whereby either one of them (the “**Lender**”) will make available to the other of them (the “**Borrower**”) from time to time Securities (as hereinafter defined).
- B. All transactions carried out under this Agreement will be effected in accordance with the Rules (as hereinafter defined), if applicable, **together with** current market practices, customs and conventions, in so far as they are not inconsistent with the terms of this Agreement.

### Operative provisions:

## 1 Interpretation

---

- 1.1 **[Definitions]** The terms defined in clause 26 and in Schedule 1 have the meanings therein specified for the purposes of this Agreement.
- 1.2 **[Inconsistency]** In the event of any inconsistency between the provisions of Schedule 1 and the other provisions of this Agreement, Schedule 1 will prevail. In the event of any inconsistency between the provisions (if any) of Schedule 3 and the other provisions of this Agreement (including Schedule 1), Schedule 3 will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Agreement (including Schedules 1 and 3), such Confirmation will prevail for the purpose of the relevant transaction.
- 1.3 **[Single agreement]** All transactions are entered into in reliance on the fact that this Agreement and all Confirmations form a single agreement between the Parties (collectively referred to as this “**Agreement**”), and the Parties would not otherwise enter into any transactions.
- 1.4 **[Interpretation]** In this Agreement:
  - (a) Unless the context otherwise requires:
    - (i) The **singular** includes the plural and vice versa.
    - (ii) A **person** includes a corporation.
    - (iii) A **corporation** includes any body corporate and any statutory authority.
    - (iv) A reference to a statute, ordinance, code or other law or the Rules includes regulations or other instruments under it or them and consolidations, amendments, re-enactments or replacements of any of them.
  - (b) Notwithstanding the use of expressions such as “borrow”, “lend”, “Collateral”, “Margin”, “redeliver” etc., which are used to reflect



terminology used in the market for transactions of the kind provided for in this Agreement, all right, title and interest in and to Securities “borrowed” or “lent” and “Collateral” which one Party Transfers to the other in accordance with this Agreement (“title”) shall pass from one Party to the other free and clear of any liens, claims, charges or encumbrances or any other interest of the Transferring Party or of any third party (other than a lien routinely imposed on all securities in a relevant clearance system), the Party obtaining such title being obliged to redeliver Equivalent Securities or Equivalent Collateral, as the case may be. Each Transfer under this Agreement will be made so as to constitute or result in a valid and legally effective transfer of the Transferring Party’s legal and beneficial title to the recipient.

(c) Where, in respect of any transaction, any distribution is made, or Income or fee is paid, other than in cash, the provisions of this agreement (other than clause 4.2(b)) shall apply, with necessary modifications, to the same extent as if the distribution, Income or fee had been made or paid in cash, and terms such as “pay” and “amount” shall be construed accordingly.

1.5 [Headings] All headings appear for convenience only and shall not affect the interpretation of this Agreement.

1.6 [Currency conversion] For the purposes of clauses 6, 8.3 and 8.4, when a conversion into the Base Currency is required, all prices, sums or values (including any Value, Offer Value and Bid Value) of Securities, Equivalent Securities, Collateral or Equivalent Collateral (including Cash Collateral) stated in currencies other than the Base Currency shall be converted into the Base Currency at the rate quoted by an Australian bank selected by the Lender (or, if an Event of Default has occurred in relation to the Lender, by the Borrower) at or about 11.00am (Sydney time) on the day of conversion as its spot rate for the sale by the bank of the Base Currency in exchange for the relevant other currency.

1.7 [Other agreements] Where at any time there is in existence any other agreement between the Parties the terms of which make provision for the lending of Securities (as defined in this Agreement) as well as other securities, the terms of this Agreement shall apply to the lending of such Securities to the exclusion of any other such agreement.

1.8 [Nominees] If payment is made or Securities, Equivalent Securities, Collateral or Equivalent Collateral is Transferred to a Party’s nominee or otherwise in accordance with the directions of a Party (whether by the other Party or by a third party), it shall be deemed, for the purposes of this agreement, to have been paid or made or Transferred to the first mentioned Party.

## 2 Loans of Securities

---

2.1 [Borrowing Request and acceptance thereof] The Lender will lend Securities to the Borrower, and the Borrower will borrow Securities from the Lender, in accordance with the terms and conditions of this Agreement and with the Rules. The terms of each Loan should 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 is 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).



2.2 **[Changes to a Borrowing Request]** The Borrower has the right to reduce the amount of Securities referred to in, or otherwise vary, a Borrowing Request **provided that:**

- (a) the Borrower has notified the Lender of such reduction or variation no later than midday Australian Eastern standard or summer (as appropriate) time on the day which is two Business Days prior to the Settlement Date, unless otherwise agreed between the Parties, and
- (b) the Lender shall have accepted such reduction or variation (by whatever means).

### **3 Delivery of Securities**

---

**[Delivery of Securities]** The Lender shall procure the delivery of Securities to the Borrower or deliver such Securities in accordance with the relevant agreement **together with** appropriate instruments of transfer (where necessary) duly stamped (where necessary) and such other instruments (if any) as may be requisite to vest title thereto in the Borrower. Such Securities shall be deemed to have been delivered by the Lender to the Borrower on delivery to the Borrower or as it shall direct of the relevant instruments of transfer and certificates or other documents of title (if any), or in the case of Securities 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 electronic entries (such as CHESS), on the transfer of title in accordance with the rules and procedures of such system as in force from time to time, or by such other means as may be agreed.

### **4 Title, Distributions and Voting**

---

4.1 **[Passing of title]** 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 clause 2;
- (b) any Equivalent Securities redelivered pursuant to clause 7;
- (c) any Collateral delivered pursuant to clause 6;
- (d) any Equivalent Collateral redelivered pursuant to clauses 6 or 7,

shall pass from one Party to the other, free from all liens, charges, equities and encumbrances, on delivery or redelivery of the same in accordance with this Agreement. 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 electronic 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.

4.2 **[Distributions]**

- (a) **[Distributions]** Unless otherwise agreed, where Income is paid by the issuer in relation to any Securities on or by reference to an Income Payment Date on which such Securities are the subject of a loan under this Agreement, the Borrower 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 to the Lender a sum of money (a



“**Substitute payment**”) equivalent to the amount that the Lender would have been entitled to receive (after any deduction, withholding or payment for or on account of any tax made by the relevant issuer (or on its behalf) in respect of such Income) had such Securities not been loaned to the Borrower and been held by the Lender on the Income Payment Date, irrespective of whether the Borrower received the same.

- (b) **[Corporate actions]** Subject to paragraph (c) (unless otherwise agreed), where, in respect of any borrowed Securities or any Collateral, any rights relating to conversion, subdivision, consolidation, pre-emption, rights arising under a takeover offer or other rights, including those requiring election by the holder for the time being of such Securities or Collateral, become exercisable prior to the redelivery of Equivalent Securities or Equivalent Collateral, then the 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 redelivery 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.
- (c) **[1936 Tax Act sections 26BC(3)(c)(ii) and (v) requirements]** Notwithstanding paragraph (b), where, in respect of any borrowed Securities or any Collateral, the relevant issuer company, trustee, government or government authority issues any right or option in respect of the borrowed Securities or Collateral, as the case may be, the Borrower or the Lender, respectively, must deliver or make available, as the case may be, to the other Party on the date of such issue or on such other date as the Parties may from time to time agree:
- (i) the right, or option; or
  - (ii) an identical right or option; or
  - (iii) a payment equal to the value to the Lender or the Borrower, respectively, of the right or option;
- together with any such endorsements or assignments as shall be customary and appropriate.
- (d) **[Manner of payment]** Any payment to be made by the Borrower under this clause shall be made in a manner to be agreed between the Parties.

- 4.3 **[Voting]** Unless paragraph 4 in Schedule 1 specifies that this clause 4.3 does not apply, each Party undertakes that, where it holds Securities of the same description as any Securities borrowed by it or transferred to it by way of Collateral at a time when a right to vote arises in respect of such Securities, it will use its best endeavours to arrange for the voting rights attached to such Securities to be exercised in accordance with the instructions of the other Party **provided always that** each Party shall use its best endeavours to notify the other of its instructions in writing no later than seven Business Days prior to the date upon which such votes are exercisable, or as otherwise agreed between the Parties, and that the Party concerned shall not be obliged so to exercise the votes in respect of the number of Securities greater than the number so lent or transferred to it. For the avoidance of doubt, the Parties agree that, subject as hereinbefore provided, any voting rights



attaching to the relevant Securities, Equivalent Securities, collateral and/or Equivalent Collateral shall be exercisable by the persons in whose name they are registered, or in the case of Securities, Equivalent Securities, collateral and/or Equivalent Collateral in bearer form by the persons by or on behalf of whom they are held, and not necessarily by the Borrower or the Lender (as the case may be).

## 5 Fees

---

- 5.1 **[Fees]** In respect of each loan of Securities:
- (a) for which the Collateral is cash:
    - (i) the Lender must pay a fee to the Borrower in respect of the amount of that Collateral, calculated at the rate agreed between them; and
    - (ii) unless the Parties otherwise agree, the Borrower is not obliged to pay a fee to the Lender;
  - (b) for which there is no Cash Collateral, the Borrower must pay a fee to the Lender, calculated at the rate agreed between them.
- 5.2 **[Where there are different types of Collateral]** Where the Collateral comprises only partly cash, clause 5.1 is to be construed as if there were separate loans of Securities, one secured solely by Cash Collateral and the other secured solely by non-cash Collateral.
- 5.3 **[Calculation of fees]** In respect of each loan of Securities, the payments referred to in clause 5.1 of this clause 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 redelivered 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 Borrower to the Lender or to the Borrower by the Lender (as the case may be) not later than the Business Day which is one week after the last Business Day of the calendar month to which such payment relates or such other date as the Parties from time to time agree. Any payment made pursuant to clause 5.1 shall be in Australian currency, unless otherwise agreed, and shall be paid in such manner and at such place as shall be agreed between the Parties.

## 6 Collateral

---

- 6.1 **[Borrower's obligation to provide Collateral]** Unless otherwise agreed, subject to the other provisions of this clause 6, the Borrower undertakes to deliver to or deposit with the Lender (or in accordance with the Lender's instructions) Collateral of the kind specified in the relevant Borrowing Request or as otherwise agreed between the Parties (together with appropriate instruments of transfer duly stamped (where necessary) and such other instruments as may be requisite to vest title thereto in the Lender) simultaneously with delivery of the borrowed Securities by the Lender.
- 6.2 **[Global margining]**
- (a) **[Adjustments to Collateral]** Unless otherwise agreed between the Parties, subject to paragraph (b), clause 6.4 and paragraph 1.5 in Schedule 1:
    - (i) The aggregate Value of the Collateral delivered to or deposited with the Lender or its nominated bank or depository (excluding any



Collateral repaid or redelivered under paragraph (ii) below (as the case may be)) in respect of **all** loans of Securities outstanding under this Agreement ("**Posted Collateral**") shall from day to day and at any time be at least the aggregate of the Required Collateral Values in respect of such loans.

- (ii) If at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement exceeds the aggregate of the Required Collateral Values in respect of such loans, the Lender shall (on demand) repay such Cash Collateral and/or redeliver to the Borrower such Equivalent Collateral as will eliminate the excess.
  - (iii) If at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such loans, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.
- (b) [**Netting of Collateral obligations where a Party is both Lender and Borrower**] Unless otherwise agreed between the Parties, subject to clause 6.4 and paragraph 1.5 in Schedule 1, where paragraph (a) applies, if a Party (the "**first Party**") would, but for this paragraph, be required under paragraph (a) to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral in circumstances where the other Party (the "**second Party**") would, but for this paragraph, also be required to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral under paragraph (a), then the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the first Party ("**X**") shall be set-off against the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the second Party ("**Y**") and the only obligation of the Parties under paragraph (a) shall be, where X exceeds Y, an obligation of the first Party, or where Y exceed X, an obligation of the second Party, (on demand) to repay Cash Collateral, redeliver Equivalent Collateral or deliver further Collateral having a Value equal to the difference between X and Y.
- 6.3 [**Required Collateral Value**] For the purposes of clause 6.2(a), the Value of the Posted Collateral to be delivered or deposited in respect of any loan of Securities, while the loan of Securities continues, shall be equal to the aggregate of the Value of the borrowed Securities and the Margin applicable thereto (the "**Required Collateral Value**").
- 6.4 [**Time for payment/repayment of Collateral**] Except as provided in clause 6.1 or clause 6.6 or as otherwise agreed, where any Cash Collateral is to be repaid, Equivalent Collateral is to be redelivered or further Collateral is to be provided under this clause 6, it shall be paid or delivered as stated in paragraph 1.4 in Schedule 1.
- 6.5 [**Substitution of Alternative Collateral**] The Borrower may from time to time call for the repayment of Cash Collateral or the redelivery of Equivalent Collateral prior to the date on which the same would otherwise have been repayable or redeliverable, provided that, at the time of such repayment or redelivery, the Borrower shall have delivered or delivers Alternative Collateral acceptable to the Lender.



- 6.6 **[Return of Collateral/Equivalent Collateral on redelivery of Equivalent Securities]**
- (a) Cash Collateral shall be repaid and Equivalent Collateral shall be redelivered at the same time as Equivalent Securities in respect of the Securities borrowed are redelivered.
  - (b) Where Collateral is provided through a book entry transfer system (such as Austraclear or RITS), the obligation of the Lender shall be to redeliver Equivalent Collateral through such book entry transfer system in accordance with this Agreement. If the loan of Securities in respect of which Collateral was provided has not been discharged when the Equivalent Collateral is redelivered, any payment obligation generated within the book entry transfer system on such redelivery shall, until the loan of Securities is discharged or further Collateral is provided, be deemed to constitute an obligation to pay Cash Collateral.
- 6.7 **[Receipt by Lender of Income on Collateral]** Where Collateral (other than Cash Collateral) is delivered in respect of which any Income may become payable and an Income Payment Date in respect of that Collateral occurs prior to the redelivery of Equivalent Collateral, then, unless such Income is paid directly to the Borrower, the Lender shall, on the date on which such Income is paid or on such other date as the Parties may from time to time agree, pay to the Borrower a sum of money (a “**Substitute payment**”) equivalent to the amount of such Income that (after any deduction, withholding or payment for or on account of any tax made by the relevant issuer (or on its behalf) in respect of such Income) the Lender either actually received, or would have been entitled to receive had such Collateral been held by the Lender on the Income Payment Date, irrespective of whether the Lender received the same. If the Lender is required by law, as modified by the practice of any relevant taxing authority, to make any deduction or withholding from any Substitute payment to be made under the preceding sentence, then the Lender must:
- (a) promptly pay to the relevant taxing authority the full amount of the deduction or withholding; and
  - (b) forward to the Borrower on request a copy of any official receipt or other evidence showing that the full amount of any such deduction or withholding has been paid over to the relevant taxing authority.
- 6.8 **[Borrower’s rights re Collateral are not assignable]** The Borrower may not assign, transfer or otherwise dispose of, or mortgage, charge or otherwise encumber, or otherwise deal with its rights in respect of any Collateral without the prior written consent of the Lender.
- 6.9 **[Lender may set off obligation to repay or return Equivalent Collateral]** If the Borrower fails to comply with its obligation to redeliver Equivalent Securities, the obligation of the Lender in respect of any Collateral may be the subject of a set-off in accordance with clause 8.
- 6.10 **[Collateral provided to Lender’s Nominee]** Without limiting clause 1.8, where Collateral is provided to the Lender’s nominee, any obligation under this Agreement to repay or redeliver or otherwise account for Equivalent Collateral shall be an obligation of the Lender, notwithstanding that any such repayment or redelivery may be effected in any particular case by the nominee.



- 6.11 **[Letters of Credit]** If the Collateral in respect of one or more loans of Securities is or includes a letter of credit, the Lender may only draw down under that letter of credit when an Event of Default occurs in relation to the Borrower and, upon the Lender drawing down, whether or not permitted under this clause 6.11, the Collateral (or that part of it represented by the letter of credit) becomes Cash Collateral.
- 6.12 **[Non-Cash Collateral]** If the Collateral in respect of one or more loans of Securities is or includes other Securities and either the Borrower is a taxpayer to whom the Tax Act applies in respect of the disposal of those other Securities or in any other case the Parties so agree:
- (a) The Parties acknowledge that the provision of those other Securities is by way of a loan of Securities under this Agreement, to which section 26BC(3)(a) of the 1936 Tax Act may apply (subject to the re-acquisition time being less than 12 months after the original disposal time).
  - (b) For the purposes of section 26BC(3)(d) of the 1936 Tax Act, the notifiable consideration in respect of the provision of those Securities by way of loan is specified as follows:
    - (i) There is no fee.
    - (ii) There is no adjustment for variations in the market value of the Collateral or Equivalent Collateral.
    - (iii) There is other consideration: see the obligations of the recipient of the Collateral under clauses 4.2(b), 4.2(c), 4.3 and 6.7.
  - (c) For the avoidance of doubt, this clause 6.12 is directed solely at clarifying either or both of the following issues: that the provision of the other Securities as Collateral is eligible for the application of first section 26BC and secondly, where applicable, sections 216-10 and 216-30 of the 1997 Tax Act. Accordingly, clauses 2, 4.2(a), 5, 6.1 to 6.11, 7, 8, 9.1, 9.2 (unless otherwise agreed), 9.4 and 12 do not apply to any loan of Securities under paragraph (a). Instead, those Securities are simply to be regarded as Collateral for the purposes of those clauses.

## **7 Redelivery of Equivalent Securities**

---

- 7.1 **[Borrower's obligation to redeliver Equivalent Securities]** The Borrower undertakes to redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Borrowing Request.
- 7.2 **[Lender may call for redelivery of Equivalent Securities]** Subject to clause 8 and the terms of the relevant Borrowing Request, the Lender may call for the redelivery 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 or the equivalent time on the exchange or in the clearing organisation through which the relevant borrowed Securities were originally delivered. The Borrower shall as hereinafter provided redeliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions.
- 7.3 **[Lender may terminate loan if Borrower defaults]** If the Borrower does not redeliver Equivalent Securities in accordance with such call, the Lender may elect to continue the loan of Securities; **provided that**, if the Lender does not elect to



continue the loan, the Lender may by written notice to the Borrower elect to terminate the relevant loan. Upon the expiry of such notice the provisions of clauses 8.2 to 8.5 shall apply as if upon the expiry of such notice an Event of Default had occurred in relation to the Borrower (who shall thus be the Defaulting Party for the purposes of this Agreement) and as if the relevant loan were the only loan outstanding.

- 7.4 **[Consequence of exercise of “buy-in” against Lender, as a result of Borrower default]** In the event that, as a result of the failure of the Borrower to redeliver Equivalent Securities to the Lender in accordance with this Agreement, a “buy-in” is exercised against the Lender, then, provided that reasonable notice has been given to the Borrower of the likelihood of such a “buy-in”, the Borrower shall account to the Lender for the total costs and expenses reasonably incurred by the Lender as a result of such “buy-in”.
- 7.5 **[Right of Borrower to terminate loan early]** Subject to the terms of the relevant Borrowing Request, the Borrower shall be entitled at any time to terminate a particular loan of Securities and to redeliver all and any Equivalent Securities due and outstanding to the Lender in accordance with the Lender’s instructions.

## **7A Suspended Securities**

---

- 7A.1 This clause 7A applies if:
- (a) dealings in any borrowed Securities or Collateral Securities are suspended from trading by the stock exchange on which the Securities were listed at the time of delivery under this Agreement, whether by reason of the adverse position of the issuer or otherwise; or
  - (b) for any other reason concerning the issuer of those Securities (such as the liquidation, provisional liquidation, administration or receivership of the issuer, or the Securities ceasing to be listed for trading on the stock exchange on which they were listed at the time of delivery under this Agreement), or concerning the exchange or clearing house through which they are traded, one Party is unable to transfer title to those Securities or Equivalent Securities to the Other Party.
- 7A.2 At any time while a situation described in clause 7A.1 prevails in relation to particular borrowed or Collateral Securities (the “**Suspended Securities**”), either the Lender or the Borrower may give notice (a “**Suspension Notice**”) to the other, in which event clauses 7A.3 and 7A.4 shall apply.
- 7A.3 If a Suspension Notice is given, the Borrower and the Lender shall promptly enter into negotiations in good faith with a view to promptly agreeing the market value of the Suspended Securities for the purposes of this clause 7A. Neither the Borrower nor the Lender may unreasonably withhold or delay its agreement to a market value reasonably proposed by the other Party.
- 7A.4 Any market value agreed under clause 7A.3 applies to the Suspended Securities notwithstanding the definition of Value in clause 26.

## **8 Set-off etc.**

---

- 8.1 **[Requirement for simultaneous delivery]** On the date and time that Equivalent Securities are required to be redelivered by the Borrower in accordance with the



provisions of this Agreement the Lender shall simultaneously redeliver the Equivalent Collateral and repay any Cash Collateral held (in respect of the Equivalent Securities to be redelivered) to the Borrower. 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 simultaneously. 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.

- 8.2 **[Netting following occurrence of Event of Default]** If an Event of Default occurs in relation to either Party, 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 "**Performance Date**" for the purposes of this clause), and in such event:
- (a) the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each Party shall be established in accordance with clause 8.3; and
  - (b) on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) 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 Performance Date.
- 8.3 **[Relevant Value]** For the purposes of clause 8.2 the Relevant Value:
- (a) of any cash payment obligation shall equal its par value (disregarding any amount taken into account under (b) or (c) below);
  - (b) of any Securities to be delivered by the Defaulting Party shall, subject to clause 8.4(b) and (c) below, equal the Offer Value thereof; and
  - (c) of any Securities to be delivered to the Defaulting Party shall, subject to clause 8.4(b) and (c) below, equal the Bid Value thereof.
- 8.4 **[Bid Value/Offer Value]**
- (a) For the purposes of clause 8.3, but subject to (b) and (c) below, the Bid Value and Offer Value of any Securities shall be calculated as at the Close of Business in the most appropriate market for Securities of the relevant description (as determined by the Non-Defaulting Party) on the first Business Day following the Performance Date, or, if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Performance Date (the "**Default Valuation Time**").



- (b) Where the Non-Defaulting Party has, following the occurrence of an Event of Default but prior to the Default Valuation Time, purchased Securities forming part of the same issue and being of an identical type and description to those to be delivered by the Defaulting Party and in substantially the same amount as those Securities or sold Securities forming part of the same issue and being of an identical type and description to those to be delivered by the Non-Defaulting Party to the Defaulting Party and in substantially the same amount as those Securities, the cost of such purchase or the proceeds of such sale, as the case may be, (taking into account all reasonable costs, fees and expenses that would be incurred in connection therewith) shall be treated as the Offer Value or Bid Value, as the case may be, of the relevant Securities for the purposes of this clause 8.
- (c) Where the amount of any Securities sold or purchased as mentioned in (b) above is not in substantially the same amount as those Securities to be valued for the purposes of clause 8.3, the Offer Value or the Bid Value (as the case may be) of those Securities shall be ascertained by:
- (i) dividing the net proceeds of sale or cost of purchase by the amount of the Securities sold or purchased so as to obtain a net unit price; and
  - (ii) multiplying that net unit price by the amount of the Securities to be valued.
- 8.5 **[Interpretation: “Securities”]** Any reference in this clause 8 to Securities shall include any asset other than cash provided by way of Collateral, and, for the avoidance of doubt, shall include Equivalent Securities and Equivalent Collateral.
- 8.6 **[Interpretation: “Event of Default”]** If the Borrower or the Lender for any reason fails to comply with its respective obligations under clause 6.6 in respect of the redelivery of Equivalent Collateral or the repayment of Cash Collateral, such failure shall be an Event of Default for the purposes of this clause 8, and the person failing to comply shall thus be the Defaulting Party.
- 8.7 **[Waiver of right to require simultaneous delivery]** Subject to and without prejudice to its rights under clause 8.1, either 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 in respect of one transaction shall bind it in respect of any other transaction.

## **9 Stamp duty, taxes etc and loss of tax benefits**

---

- 9.1 **[Stamp duty etc]** The Borrower hereby undertakes promptly to pay and account for any transfer or similar duties or taxes, and any loan security or other stamp duties, (if any) chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement, and shall indemnify and keep indemnified the Lender against any liability arising in respect thereof as a result of the Borrower’s failure to do so.
- 9.2 **[Borrower to give Transfer of Distribution Statement to Lender re Franked Distributions]** If:



- (a) an Income Payment Date occurs during an Income Determination Period in relation to a particular loan of Securities;
- (b) had the Lender been the holder of those Securities on the relevant Income Payment Date, it would have received a Franked Distribution in respect of those Securities;
- (c) the Agreement or the relevant Confirmation states that the Lender is an Australian Taxpayer;
- (d) the failure of the Lender to receive a Franked Distribution is not due to any unreasonable act or omission by or on behalf of the Lender; and
- (e) neither paragraph 7 in Schedule 1 nor the relevant Confirmation states that the Lender is **not** entitled to compensation for the loss of Imputation Benefits;

then:

- (f) the Borrower must either:
  - (i) if section 216-10 of the 1997 Tax Act applies, as soon as practicable, and in any event within 10 Business Days after the relevant Income Payment Date, give to the Lender a Transfer of Distribution Statement in respect of those Securities (which the Borrower is to be taken as having warranted is correct in all material respects and is effective for the purposes of section 216-30 of the 1997 Tax Act); or
  - (ii) otherwise, on the 10th Business Day after the relevant Income Payment Date pay to the Lender an amount equal to the Franking Credit allocated (or, under section 202-65 of the 1997 Tax Act, taken to have been allocated) to the Franked Distribution and specified in the Distribution Statement for that Franked Distribution.

9.3 [Deleted.]

9.4 **["Notifiable consideration" for the purposes of s 26BC(3)(d) of the 1936 Tax Act]** For the purposes of section 26BC(3)(d) of the 1936 Tax Act, the notifiable consideration in respect of any loan of Securities is dissected as follows:

- (a) a fee - see clause 5.1 (as applicable); and
- (b) other consideration - see clauses 4.2, 6 and 9 and the definition of "Equivalent Securities" in clause 26.

9.5 **[GST]**

- (a) All payments (including the provision of any non-monetary consideration) to be made by either Party under or in connection with this Agreement have been calculated without regard to GST.
- (b) If all or part of any such payment is the consideration for a Taxable Supply, then, when the payer makes the payment, the payer must, after receipt of a Tax Invoice, pay to the supplier additional consideration equal to the GST Amount. Such additional amount is to be paid on the earlier of:
  - (i) the date of the first payment for the Taxable Supply; and



- (ii) the date five Business Days after the date on which the Tax Invoice for the Taxable Supply is received by the payer.
- (c) Where under or in connection with this Agreement a Party is required to reimburse or indemnify for an amount, that Party will pay the relevant amount:
  - (i) including any sum in respect of GST which has been paid by the payee upon any supply made to the payee in connection with the circumstances giving rise to the operation of the indemnity or right of reimbursement;
  - (ii) less any GST Input Tax Credit that that Party determines (acting reasonably) that the payee is entitled to claim in respect of the circumstances giving rise to the operation of the indemnity or right of reimbursement.
- (d) If a person is a member of a GST Group, references to GST for which the person is liable and to Input Tax Credits to which the person is entitled include GST for which the Representative Member of the GST Group is liable and Input Tax Credits to which the Representative Member is entitled.

- (e) In this clause:

***GST*** means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charges.

***GST Amount*** means in relation to a Taxable Supply the amount of GST for which the supplier is liable in respect of the Taxable Supply.

***GST Group*** has the meaning given to this term by the GST Law.

***GST Law*** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia) and any regulation made under that Act.

***Input Tax Credit*** has the meaning given to that term by the GST Law.

***Invoice*** has the meaning given to that term by the GST Law.

***Representative Member*** has the meaning given to that term by the GST Law.

***Taxable Supply*** has the meaning given to that term by the GST Law.

***Tax Invoice*** has the meaning given to that term by the GST Law.

#### 9.6 [Non-Australian GST]

- (a) All payments (including the provision of any non-monetary consideration) to be made by either Party under or in connection with this Agreement have been calculated without regard to Non-Australian GST.
- (b) If all or part of any such payment is the consideration for a supply of goods or services (however defined) in respect of which Non-Australian GST is payable (whether by a Party or its Related Entities or any person on its behalf or in its place (the “**supplier**”)) to any relevant tax authority or government agency, the other Party must pay to the supplier additional



consideration equal to the amount of any such Non-Australian GST. Such additional amount is to be paid on demand by the supplier.

- (c) Where under or in connection with this Agreement a Party is required to reimburse or indemnify for an amount, that Party will pay the relevant amount:
  - (i) including any sum in respect of non-Australian GST which has been paid by the payee upon any supply made to the payee in connection with the circumstances giving rise to the operation of the indemnity or right of reimbursement;
  - (ii) less any input tax credit (however defined or described) that that Party determines (acting reasonably) that the payee is entitled under the law applicable to that Non-Australian GST to claim in respect of the circumstances giving rise to the operation of the indemnity or right of reimbursement.
- (d) In this clause, the expression *Non-Australian GST* means any goods and services tax, value added tax or similar transactional tax, however described, imposed on supplies of goods or services (however defined) under the law of any jurisdiction outside Australia, together with any related interest, penalties, fines or other charges.

9.7 [Grossing up]

- (a) All payments under clauses 4.2 (a), 5.1(a), 5.1(b) and 13 of this Agreement are to be made free and clear of, and without any deduction or withholding for or on account of, any taxes.
- (b) Accordingly, if any deduction or withholding in respect of any such payment is required by law, as modified by the practice of any relevant taxing authority, then the payer must:
  - (i) pay to the other Party, in addition to the payment to which that other Party is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount (free and clear of any taxes payable by deduction or withholding, whether assessed against one Party or the other) will equal the full amount that that other Party would have received had no such deduction or withholding been required;
  - (ii) promptly pay to the relevant taxing authority the full amount of the deduction or withholding by the payer; and
  - (iii) forward to the payee on request a copy of any official receipt or other evidence showing that the full amount of any such deduction or withholding has been paid over to the relevant taxing authority.
- (c) Otherwise, unless otherwise agreed in respect of a particular loan of Securities or a particular payment, no such gross up is required in respect of any payment under this Agreement.



## 10 Lender's warranties

---

**[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 by this Agreement, 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 under this Agreement;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it under this Agreement to the Borrower free from all liens, charges, equities and encumbrances;
- (d) where paragraph 3 in Schedule 1 specifies that this clause 10(d) applies, it is not resident in Australia for the purposes of the Tax Act and either:
  - (i) does not have a branch or other permanent establishment in Australia for the purposes of the Tax Act or of any applicable double tax agreement between Australia and its country of tax residence; or
  - (ii) if it does have such a branch or other permanent establishment in Australia, that the loan is not entered into in the course of carrying on business through such branch or permanent establishment; and
- (e) unless clause 14 applies, it is acting as principal in respect of this Agreement.

## 11 Borrower's warranties

---

**[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 by this Agreement, 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 under this Agreement;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it under this Agreement to the Lender free from all liens, charges, equities and encumbrances;
- (d) it is acting as principal in respect of this Agreement; and
- (e) unless otherwise agreed, it shall in respect of every loan of Securities return to the Lender Equivalent Securities not later than 360 days from the date of delivery by the Lender of the original Securities to the Borrower.



## 12 Events of Default

---

- 12.1 **[Events of Default]** 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 for the purpose of clause 8:
- (a) the Borrower or Lender failing to pay or repay Cash Collateral or deliver or redeliver Collateral or Equivalent Collateral upon the due date, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (b) the Lender or Borrower failing to comply with its obligations under clause 6, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (c) the Borrower failing to comply with clause 4.2 or clause 9.2 and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (d) an Act of Insolvency occurring with respect to the Lender or the Borrower and (except in the case of 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 in which case no such notice shall be required) the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (e) any representations or warranties made by the Lender or the Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (f) the Lender or the Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations hereunder and/or in respect of any loan hereunder, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (g) the Lender (if appropriate) or the Borrower being declared in default by the appropriate authority under the Rules or being suspended or expelled from membership of or participation in any securities exchange or association or other self-regulatory organisation, or suspended from dealing in securities by any government agency, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (h) any of the assets of the Lender or the Borrower or the assets of investors held by or to the order of the Lender or the Borrower being ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the Non-Defaulting Party serves written notice on the Defaulting Party, or
  - (i) the Lender or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure, and the Non-Defaulting Party serves a further written notice on the Defaulting Party.
- 12.2 **[Obligation of each Party to notify its Event of Default]** Each Party shall notify the other if an event occurs which would constitute an Event of Default in relation to it with the giving of notice.



## 13 Outstanding payments

---

**[Default interest]** 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 at a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it in good faith) if it were to fund or of funding the relevant amount, plus 2% (or other agreed percentage) per annum.

## 14 Transactions entered into as agent

---

14.1 **[Agency Transactions]** Subject to the following provisions of this clause, the Lender may 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 clause as an “**Agency Transaction**”).

14.2 **[Conditions for Agency Transactions]** A Lender may enter into an Agency Transaction if, but only if:

- (a) it specifies that loan as an Agency Transaction at or before the time when it enters into it;
- (b) it enters into that loan on behalf of a single Principal whose identity is disclosed to the 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;
- (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 clause 14.4(b) below; and
- (d) the Borrower has agreed that the Lender may act as Agent in respect of the relevant loan, including as indicated (if at all) in paragraph 8 in Schedule 1.

14.3 **[Undertakings by Lender]** The Lender undertakes that, if it enters as agent into an Agency Transaction, 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 clause 14.5 below or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the current facts,

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

14.4 **[Consequences of Agency Transaction]**

- (a) Each Agency Transaction shall be a transaction between the relevant Principal and the Borrower and no person other than the relevant Principal and the Borrower shall be a party to or have any rights or obligations under an Agency Transaction. Without limiting the foregoing, the Lender shall not



be liable as principal for the performance of an Agency Transaction or for breach of any warranty contained in clause 10(d) of this Agreement, but this is without prejudice to any liability of the Lender under any other provision of this clause.

- (b) All the provisions of the Agreement shall apply separately as between the Borrower and each Principal for whom the Agent has entered into an Agency Transaction or Agency Transactions as if each such Principal were a party to a separate agreement with the 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:**
  - (i) if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if the Borrower served written notice under any paragraph of clause 12, the Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given to the Lender in accordance with clause 20) to declare that, by reason of that event, an Event of Default is to be treated as occurring in relation to the Principal. If the 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
  - (ii) if the Principal is neither incorporated nor has established a place of business in Australia, the Principal shall for the purposes of the agreement referred to in the preamble in this paragraph (b) be deemed to have appointed as its agent to receive on its behalf service of process in the courts of Australia the Agent, or, if the Agent is neither incorporated nor has established a place of business in Australia, 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.
- (c) The foregoing provisions of this clause do not affect the operation of the Agreement as between the Borrower and the Lender in respect of any transactions into which the Lender may enter on its own account as principal.

14.5 **[Warranty by Lender]** The Lender warrants to the Borrower that it will, on every occasion on which it enters or purports to enter into a transaction as an Agency Transaction, have been duly authorised to enter into that loan and perform the obligations arising thereunder on behalf of the person whom it specifies as the Principal in respect of that transaction and to perform on behalf of that person all the obligations of that person under the agreement referred to in clause 14.4(b).

## **15 Termination of course of dealings by notice**

---

Each Party shall have the right to bring the course of dealing contemplated under this Agreement to an end 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 and with the Rules (if applicable).



## **16 No reliance on tax or accounting representations by other Party**

---

Each Party acknowledges, represents and warrants to the other that, except as expressly stated in this Agreement or any Confirmation:

- (a) it has not relied on any advice, statement, representation or conduct of any kind by or on behalf of the other Party in relation to any tax (including stamp duty) or accounting issues concerning this Agreement or any transactions effected under it; and
- (b) it has made its own determination as to the tax (including stamp duty) and accounting consequences and treatment of any transaction effected under this Agreement, including (without limitation) of any moneys paid or received or any property transferred or received in connection with any such transaction.

## **17 Observance of procedures**

---

Each of the Parties hereto agrees that, in taking any action that may be required in accordance with this Agreement, it shall observe strictly the procedures and timetable applied by the Rules (if and to the extent applicable) and, further, shall observe strictly any agreement (oral or otherwise) as to the time for delivery or redelivery of any money, Securities, Equivalent Securities, Collateral or Equivalent Collateral entered into pursuant to this Agreement.

## **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, 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 redeliver Securities, Equivalent Securities, Collateral or Equivalent Collateral, but without prejudice to any other rights it may have.

## **20 Notices**

---

20.1 **[Effectiveness]** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under clause 12 or clause 15 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see paragraph 6 in Schedule 1) 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 may 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 **[Change of Address]** 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 assign, transfer or otherwise dispose of all or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

## **22 Non-Waiver**

---

No failure or delay by either Party to exercise any right, power or privilege under this Agreement 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 provided in this Agreement.

## **23 Time**

---

Time shall be of the essence of the Agreement.

## **24 Recording**

---

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

## **25 Miscellaneous**

---

- 25.1 **[Entire Agreement]** 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.
- 25.2 **[Amendments]** 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.

- 25.3 **[Survival of Obligations]** The obligations of the Parties under this Agreement will survive the termination of any transaction.
- 25.4 **[Remedies Cumulative]** 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.
- 25.5 **[Counterparts]** 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.
- 25.6 **[Expenses]** A Defaulting Party will, on demand, indemnify and hold harmless the other Party for and against all reasonable out-of-pocket expenses, including legal fees and stamp duty, incurred by such other Party by reason of the enforcement and protection of its rights under this Agreement or by reason of the early termination of any transaction, including, but not limited to, costs of collection.

## 26 Definitions

---

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 admitting 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 (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) not having been stayed or dismissed within 30 days of its filing; 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 compromise or arrangement within Part 5.1 of the Corporations Law of Australia (or any analogous proceeding).

In this definition:



- (g) “liquidator” shall be deemed to include a “provisional liquidator”;
- (h) “receiver” shall be deemed to include a “receiver and manager”;
- (i) “administrator” shall be deemed to include an “official manager”;
- (j) “arrangement” shall be deemed to include a “scheme of arrangement”;  
and
- (k) “creditors” shall be deemed to include “any class of creditors”.

**Agent** has the meaning given in clause 14.

**Alternative Collateral** means Collateral of a Value equal to the Collateral delivered pursuant to clause 6 and provided by way of substitution for Collateral originally delivered or previously substituted in accordance with the provisions of clause 6.5.

**Australian Taxpayer** means any person other than:

- (a) a Party who is not a resident of Australia for the purposes of the Tax Act (whether that Party is acting as a trustee, nominee or agent or in some other capacity) at the time a Distribution is paid; or
- (b) a Party who is acting in the capacity of trustee, nominee or agent for a person who is not a resident of Australia for the purposes of the Tax Act at the time a Distribution is paid.

**Bankers Acceptances** has the meaning given in paragraph 1.1(d) in Schedule 1.

**Base Currency** has the meaning given in paragraph 2 in Schedule 1.

**Bid Price**, in relation to Equivalent Securities or Equivalent Collateral, means the best available bid price thereof on the most appropriate market in a standard size.

**Bid Value**, subject to clause 8.5, means:

- (a) in relation to Equivalent Collateral at a particular time:
  - (i) in relation to Collateral type (h) (more specifically referred to in paragraph 1.1 in Schedule 1), the Value thereof as calculated in accordance with paragraph 1.2(d) in Schedule 1;
  - (ii) in relation to all other types of Collateral (more specifically referred to in paragraph 1.1 in Schedule 1), the amount which would be received on a sale of such Collateral at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection with selling or otherwise realising such Equivalent Collateral, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out such sale or realisation and adding thereto the amount of any interest, dividends, distributions or other amounts paid to the Lender and in respect of which equivalent amounts have not been paid to the Borrower in accordance with clause 6.7 prior to such time in



respect of such Equivalent Collateral or the original Collateral held gross of all and any tax deducted or paid in respect thereof; and

- (b) in relation to Equivalent Securities at a particular time, the amount which would be received on a sale of such Equivalent Securities at the Bid Price thereof at such time **less** all costs, fees and expenses that would be incurred in connection therewith, 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.

**Borrower**, in relation to a particular loan of Securities, means the Borrower as referred to in Recital A of this Agreement.

**Borrowing Request** means a request which may be oral or in writing in such form as is agreed between the Parties (a written example of which comprises Schedule 2 to this Agreement) by the Borrower to the Lender pursuant to clause 2.1 specifying, as necessary:

- (a) the description, title and amount of the Securities required by the Borrower;
- (b) the description (if other than Australian currency) and amount of any Collateral to be provided;
- (c) the proposed Settlement Date;
- (d) the duration of such loan (if other than indefinite);
- (e) the mode and place of delivery, which shall, where relevant, include the bank, agent, clearing or settlement system and account to which delivery of the Securities and any Collateral is to be made;
- (f) the Margin in respect of the transaction (if different from that stated in Schedule 1 or Schedule 3, as appropriate); and
- (g) the Fee.

**Business Day** means a day on which banks and securities markets are open for business generally in each place stated in paragraph 5 in Schedule 1 and, in relation to the delivery or redelivery of any of the following in relation to any loan, in the place(s) where the relevant Securities, Equivalent Securities, Collateral (including Cash Collateral) or Equivalent Collateral are to be delivered.

**Cash Collateral** means Collateral that takes the form of a deposit of currency.

**Close of Business** means:

- (a) in relation to any borrowing of Securities or redelivery of Equivalent Securities under this Agreement, the final time on a Business Day at which settlement of the transfer of those Securities can take place in order to constitute good delivery on that day; and
- (b) in relation to the provision of Collateral or return of Equivalent Collateral or the making of any other payment under this agreement, the time at which trading banks close for general banking business in



the place in which payment is to be made or Collateral or Equivalent Collateral is to be delivered or redelivered.

**Collateral** means such securities or financial instruments or deposits of currency as are referred to in paragraph 1.1 in Schedule 1 or any combination thereof which are delivered by the Borrower to the Lender in accordance with this Agreement and includes the certificates or other documents of title (if any) and transfer in respect of the foregoing (as appropriate), and includes Alternative Collateral.

**Confirmation** means the Borrowing Request, as it may be amended pursuant to clause 2.2, or other confirming evidence exchanged between the Parties confirming the terms of a transaction.

**Defaulting Party** has the meaning given in clause 12.

**Distribution** has the meaning given to that term in section 995-1(1) of the 1997 Tax Act.

**Distribution Statement** means a statement given in accordance with section 202-80 (as it may be finally amended under section 202-85) of the 1997 Tax Act.

**Equivalent Collateral** or **Collateral equivalent to**, in relation to any Collateral provided under this Agreement, means securities, cash or other property, as the case may be, of an identical type, nominal value, description and amount to particular Collateral so provided and shall include the certificates or other documents of title (if any) and transfer in respect of the foregoing (as appropriate). If and to the extent that such Collateral consists of securities that are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the relevant Collateral has been converted, subdivided or consolidated **provided that**, if appropriate, notice has been given in accordance with clause 4.2(b);
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Borrower has given notice to the Lender in accordance with clause 4.2(b);
- (d) in the case of a call on partly paid securities, the paid-up securities **provided that** the Borrower shall have paid to the Lender an amount of money equal to the sum due in respect of the call;
- (e) in the case of a capitalisation issue, the relevant Collateral **together with** the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the relevant Collateral **together with** the securities allotted thereon, **provided that** the Borrower has given notice to the Lender in accordance with clause 4.2(b), and has paid to the Lender all and any sums due in respect thereof;



- (g) in the event that a payment or delivery of Income is made in respect of the relevant Collateral in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, and notice has been given to the Lender in accordance with clause 4.2(b), the relevant Collateral **together with** securities or a certificate equivalent to those allotted; and
- (h) in the case of any event similar to any of the foregoing, the relevant Collateral **together with** or replaced by a sum of money or securities equivalent to that received in respect of such Collateral resulting from such event.

For the avoidance of doubt, in the case of Bankers' Acceptances (Collateral type (d)), Equivalent Collateral must bear dates, acceptances and endorsements (if any) by the same entities as the bill to which it is intended to be equivalent and, for the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate).

**Equivalent Securities** means securities of an identical type, nominal value, description and amount to particular Securities borrowed and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (if appropriate). If and to the extent that such Securities are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the borrowed Securities have been converted, subdivided or consolidated **provided that** if appropriate, notice has been given in accordance with clause 4.2(b);
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Lender has given notice to the Borrower in accordance with clause 4.2(b);
- (d) in the case of a call on partly paid securities, the paid-up securities **provided that** the Lender shall have paid to the Borrower an amount of money equal to the sum due in respect of the call;
- (e) in the case of a capitalisation issue, the borrowed Securities **together with** the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the borrowed Securities **together with** the securities allotted thereon, **provided that** the Lender has given notice to the Borrower in accordance with clause 4.2(b), and has paid to the Borrower all and any sums due in respect thereof;



- (g) in the event that a payment or delivery of Income is made in respect of the borrowed Securities in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, and notice has been given to the Borrower in accordance with clause 4.2(b), the borrowed Securities **together with** securities or a certificate equivalent to those allotted; and
- (h) in the case of any event similar to any of the foregoing, the borrowed Securities **together with** or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event.

For the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate).

**Event of Default** has the meaning given in clause 12.

**Fee**, in respect of a transaction, means the fee payable by one Party to the other in respect of that transaction under clause 5.

**Franked Distribution** has the meaning given to that term in section 995-1(1) of the 1997 Tax Act.

**Franking Credit** has the meaning given to that term in section 995-1(1) of the 1997 Tax Act.

**Imputation Benefits** has the meaning given to that term in section 204-30(6) (other than paragraph (d) thereof) of the 1997 Tax Act.

**Imputation System** has the meaning given to that term in section 995-1(1) of the 1997 Tax Act.

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

**Income Determination Period**, in relation to a particular loan of Securities, means:

- (a) in relation to the Securities, the period commencing when the Securities cease to be registered in the name of the Lender (or the relevant transferor) upon or before delivery of those Securities under clause 3 and ending when Equivalent Securities are registered in the name of the Lender (or the relevant transferee) upon or following redelivery of those Equivalent Securities under clause 7.1; and
- (b) in relation to Collateral (other than Cash Collateral), the period commencing when the Collateral ceases to be registered in the name of the Borrower (or the relevant transferor) upon or before delivery of that Collateral under clause 6.1 and ending when Equivalent Collateral is registered in the name of the Borrower (or the relevant transferee) upon or following redelivery of that Equivalent Collateral under clause 6.6.



**Income Payment Date**, in relation 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.

**Lender**, in relation to a particular loan of Securities, means the Lender as referred to in Recital A of this Agreement.

**Margin** has the meaning in paragraph 1.3 in Schedule 1.

**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 on its behalf whose appointment has been notified to the other Party.

**Non-Defaulting Party** has the meaning given in clause 12.

**Offer Price**, in relation to Equivalent Securities or Equivalent Collateral, means the best available offer price thereof on the most appropriate market in a standard size.

**Offer Value**, subject to clause 8.5, means:

- (a) in relation to Collateral equivalent to Collateral type (h) (more specifically referred to in paragraph 1.1 in Schedule 1), the Value thereof as calculated in accordance with paragraph 1.2(d) in Schedule 1; and
- (b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral (more specifically referred to in paragraph 1.1 in Schedule 1), the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price thereof at such time **plus** all costs, fees and expenses that would be incurred in connection therewith, 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.

**Paid**, in relation to a Distribution, includes credited, distributed or issued and like terms are to be construed accordingly.

**Parties** means the Lender and the Borrower and **Party** shall be construed accordingly.

**Performance Date** has the meaning given in clause 8.

**Posted Collateral** has the meaning given in clause 6.2(a)(i).

**Principal** has the meaning given in clause 14.

**Reference Price** means:

- (a) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to type (g) or (i) (more specifically referred to in paragraph 1.1 in Schedule 1), such price as is equal to the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a



reputable pricing information service (such as the services provided by SEATS, Bloomberg or Reuters) reasonably chosen in good faith by the Lender or 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 the Lender, in each case at Close of Business on the previous Business Day; and

- (b) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to Collateral types (b)-(f) (more specifically referred to in paragraph 1.1 in Schedule 1), the market value thereof as derived from the prices or rates bid by a market maker or reputable dealer for the relevant instrument reasonably chosen by the Lender in good faith or, in the absence of such a bid, the average of the rates bid by two leading market makers reasonably chosen in good faith by the Lender in each case at Close of Business on the previous Business Day.

**Relevant Payment Date** has the meaning given in clause 4.2(a).

**Required Collateral Value** has the meaning given in clause 6.3.

**Rules** means the rules for the time being of the Stock Exchange (where either Party is a member of the Stock Exchange) and/or any other regulatory authority whose rules and regulations shall from time to time affect the activities of the Parties pursuant to this Agreement (**provided that** in an Event of Default, where either Party is a member of the Stock Exchange, the Rules and Regulations of the Stock Exchange shall prevail).

**Securities** means “eligible securities” within the meaning of section 26BC(1) of the 1936 Tax Act which the Borrower is entitled to borrow from the Lender in accordance with the Rules and which may be or are the subject of a loan or provided as Collateral pursuant to this Agreement and such term shall include the certificates or other documents of title (if any) in respect of the foregoing.

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

**Standard Settlement Time** in relation to a Security means the period of time within which transactions in such Securities are customarily required to be settled.

**Stock Exchange** means the Australian Stock Exchange Limited.

**Tax Act** includes:

- (a) the Income Tax Assessment Act 1936 (the “**1936 Tax Act**”);
- (b) the Income Tax Assessment Act 1997 (the “**1997 Tax Act**”); and
- (c) Schedule 1 to the Taxation Administration Act 1953.

**Transfer** means:

- (a) in relation to Cash, payment or delivery by wire transfer into one or more bank accounts;



- (b) in relation to certificated securities that cannot, or which the Parties have agreed will not, be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a valid and legally effective transfer to the recipient;
- (c) in relation to securities that must, or which the Parties have agreed will, be paid or delivered by book-entry, initiating the Transfer by the giving of written instructions (including instructions given by telephone, facsimile transmission, telex, e-mail or message generated by an electronic messaging system or otherwise) to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a valid and legally effective transfer of the relevant interest to the recipient.

**Transfer of Distribution Statement**, in relation to Distributions, means a properly completed document in the form, or substantially in the form, of Appendix 6.27 to the Rules or a properly completed statement in another form which is acceptable for the purposes of section 216-30 of the 1997 Tax Act.

**Transferring Party** means the Party making or effecting a Transfer to the other Party.

**Value** at any particular time means, in relation to Securities and Equivalent Securities, the Reference Price thereof then current and in respect of Collateral and/or Equivalent Collateral such worth as determined in accordance with paragraph 1.2 in Schedule 1.

## **27 Governing Law and Jurisdiction**

---

- 27.1 **[Governing law]** This Agreement is governed by, and shall be construed in accordance with, the law in force in New South Wales, Australia.
- 27.2 **[Consent to jurisdiction]** Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales in respect of any dispute in connection with this Agreement.

**EXECUTED** as an agreement



---

<b>Schedule 1</b>	<b>Particulars</b>
-------------------	--------------------

---

**1 COLLATERAL** (*see definition in clause 26, and also clause 6*)

**1.1 Types** (*see definition of “Collateral” in clause 26*)

Collateral acceptable under this Agreement may include the following or otherwise, as agreed between the Parties from time to time, whether transferable by hand or within a depository:

- (a) Cash;
- (b) Australian Government Inscribed Stock;
- (c) Australian, State or Territory Government stock, bonds or promissory notes (including those issued by any central borrowing authority such as Treasury Corporation of New South Wales);
- (d) Bills of exchange accepted by any bank carrying on business in Australia (“**Bankers Acceptances**”) with an S&P rating of A1+ or a Moody’s rating of P1;
- (e) Promissory notes issued by any such bank;
- (f) Negotiable Certificates of Deposit issued by any such bank;
- (g) Corporate bonds in registrable form;
- (h) Irrevocable Standby Letters of Credit issued or confirmed by any such bank; and
- (i) At the discretion of the Lender, Equity Securities listed on the Australian Stock Exchange and included in the S&P/ASX 200 Index.

**1.2 Valuation of Collateral** (*see definition of “Value” in clause 26 and clause 6.2*)

Collateral provided in accordance with this Agreement shall be evaluated by reference to the following, or by such means as the Parties may from time to time agree:

- (a) in respect of Collateral type (a), the amount thereof in, or converted into, the Base Currency;
- (b) in respect of Collateral type (b), the value calculated by reference to the middle market price of each stock as determined daily by the Reserve Bank of Australia, adjusted to include the accumulated interest thereon;
- (c) in respect of Collateral types (c) to (g) and (i), the Reference Price thereof;
- (d) in respect of Collateral type (h), the value specified therein.

**1.3 Margin** (*see definition in clause 26 and clause 6.3*)

The Value of any Collateral delivered, or to be delivered, pursuant to clause 6 by the Borrower to the Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than the Value of the borrowed Securities together with the following additional percentages, hereinbefore referred to as (the “**Margin**”), unless otherwise agreed between the Parties:



- (a) in the case of Collateral type (a): 5%; or
- (b) in the case of Collateral types (b) to (f) and (h): 5% (except that, for Negotiable Certificates of Deposit, the Margin shall be the accumulated interest thereon); or
- (c) in the case of Collateral type (g): 5%; or
- (d) in the case of Collateral type (i): such amount as is notified by the Lender to the Borrower and, in the event no amount is notified, then 10%.

If the Value of the borrowed Securities includes any margin over the mid market price of the borrowed Securities, this shall be taken into account in determining the Margin applicable.

#### **1.4 Basis of Margin Maintenance (see clause 6.4)**

Minimum period after demand for transferring Collateral or Equivalent Collateral other than Letters of Credit:

- (a) if a request is received prior to 11am EST (on a Sydney Business Day), then prior to close of business on the day the request is received;
- (b) if the request is received after 11am EST, then prior to 11am the following Sydney Business Day;
- (c) minimum period after demand for transferring Letter of Credit: within two Business Days.”

#### **1.5 Minimum adjustments (see clauses 6.2(a)(ii) and (iii))**

- (a) The Lender may not demand that further Collateral be provided by the Borrower if the aggregate deficiency calculated in accordance with clause 6.2 is less than the lesser of:
  - (i) \$5,000; and
  - (ii) 2% of the Value of the Required Collateral Value.
- (b) The Borrower may not demand the return of Collateral provided to the Lender if the Borrower has committed an Event of Default in respect of any transaction or if the aggregate excess calculated in accordance with clause 6.2 is less than the lesser of:
  - (i) \$5,000; and
  - (ii) 2% of the Required Collateral Value.

#### **2 BASE CURRENCY (see definition in clause 26 and clause 1.6)**

The Base Currency applicable to this Agreement is Australian Dollars.

#### **3 LENDER’S WARRANTIES (see clause 10(d))**

Not applicable

#### **4 VOTING (see clause 4.3)**

Clause 4.3 does/does not\* apply.

#### **5 PLACE OF BUSINESS (see definition of “Business Day” in clause 26)**



Sydney.

**6 ADDRESS FOR NOTICES AND STATUS OF PARTIES (see clause 20.1)**

6.1 Address for notices or communications to: Morgan Stanley Australia Securities Limited \_\_\_\_\_

Address: Level 39, Chifley Tower, 2 Chifley Square, Sydney,  
New South Wales, 2000, Australia

Attention: Equity Documentation Group \_\_\_\_\_

Facsimile No: +612 9770 1101 \_\_\_\_\_

Telephone No: +612 9770 1111 \_\_\_\_\_

Electronic Messaging System Details: \_\_\_\_\_;

which is an Australian Taxpayer.

6.2 Address for notices or communications to: Macquarie Bank Limited

Address: Macquarie Securities Group, Level 2, No.1 Martin  
Place, Sydney, NSW 2000 Australia

Attention: Head Legal and Compliance

Facsimile No: (61 2) 8232 6882

Telephone No: (61 2) 8232 3333

Electronic Messaging System Details: \_\_\_\_\_

which is an Australian Taxpayer.

**7 COMPENSATION FOR LOSS OF IMPUTATION BENEFITS (see clause 9.2)**

Is not required by

and

**[INSERT NAME OF RELEVANT AUSTRALIAN TAXPAYER PARTY (if applicable). OTHERWISE, DELETE THE PARAGRAPH OR LEAVE IT BLANK.**

Note: There is no need to insert the name of any Party who is not an Australian Taxpayer, as such a party is not entitled to compensation in any event.]

8 [Substituted in November 2003]

**8 AGENCY (see clause 14.2(d))**

Clause 14 may apply to Morgan Stanley Australia Securities Ltd...: Yes/No \*

Clause 14 may apply to Macquarie Bank Limited ...: Yes/No \*

**\* DELETE ONE ALTERNATIVE**



---

**Schedule 2 Specimen Form of Borrowing Request (see clause 2.1 and definition of “Borrowing Request” in clause 26)**

---

To: [Name and Address of Lender]

This is a Borrowing Request under the Master Securities Lending Agreement between us dated # (the “**Agreement**”)

1 We wish to make the following borrowing of Securities:

- (a) **Description of Securities:** # [eg “fully paid ordinary shares in # ”]
- (b) **Amount of Securities:** # [eg “1 million”]
- (c) **Proposed Settlement Date of Borrowing:** # [eg “today”]
- (d) **Time, Mode and Place of Delivery of Securities, including (as appropriate) settlement system and account to which delivery is to be made:**  
# [eg “to the account of #, HIN #, in CHESS”]
- (e) **Duration of Loan:** No longer than eleven months and 20 days after the Borrowed Securities are delivered under this Borrowing Request.
- (f) **Type of Collateral:** # [eg “Cash”]
- (g) **Time, Mode and Place of Delivery of Collateral:** # [eg “dvp on CHESS”]
- (h) **Rates (see clause 5.1 of the Agreement):** #[eg (a) “ #% per annum on the Cash Collateral”, or (b) “# % per annum on the daily value of the Borrowed Securities” as appropriate].

2 Please confirm your acceptance of this Borrowing Request by return fax.

Dated: #

\_\_\_\_\_  
For and on behalf of [Name of Borrower]

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name and title of Authorised Representative



---

## Schedule 3                      Supplementary Terms and Conditions (if any)

---

This Schedule forms part of and amends the Master Securities Lending Agreement (including Schedule 1) to which it is a Schedule, as follows:

1. **Clause 4.3** is amended by replacing the word “collateral” in lines 13 and 15 with the word “Collateral”.
2. **Clause 5.1(b)** shall be amended by deletion of the words “at the rate agreed between them” and substitution of the following “by applying such rate as shall be agreed between the Parties from time to time to the daily Value of the Securities”.
3. Clause 15 is amended by adding the following at the end of the existing clause:

“Any termination pursuant to this clause 15 will be without prejudice to the rights or remedies of either party against the other in respect of any breach of this Agreement occurring before such termination.”
4. **Clause 26 Definitions**

The definition of **Securities** is amended by adding the following after “foregoing”:

“, provided that such eligible securities are listed on the Australian Stock Exchange Limited”.
5. **Paragraph 1.1 of Schedule 1** is amended by deleting from paragraph (i) the words “At the discretion of the Lender,”.
6. **Paragraph 1.4 of Schedule 1** is deleted and replaced with the following:

**“1.4 Basis of Margin Maintenance (see clause 6.4)**

Minimum period after demand for transferring Collateral or Equivalent Collateral shall be within one Business Day.”
7. **Paragraph 1.5 of Schedule 1** is deleted and replaced with the following:

**“1.5 Minimum adjustments (see clauses 6.2(a)(ii) and (iii))**

  - (a) The Lender may not demand that further Collateral be provided by the Borrower if the aggregate deficiency calculated in accordance with clause 6.2 is less than AUD100,000.
  - (b) The Borrower may not demand the return of Collateral provided to the Lender if the Borrower has committed an Event of Default in respect of any transaction or if the aggregate excess calculated in accordance with clause 6.2 is less than AUD100,000.”
8. **Clause 7 of Schedule 1** is deleted and replaced with the following:

**“7. COMPENSATION FOR LOSS OF IMPUTATION BENEFITS (see clause 9.2)**

Is required unless the Lender notifies the Borrower as at the time of the Borrowing Request that compensation is not required.”



9. **Clause 8 of Schedule 1** – is deleted and replaced with the following:

“Clause 14 may apply to Morgan Stanley Australia Securities Ltd: Yes.

Clause 14 may apply to Macquarie Bank Limited: No.”

10. **Clause 4.2(b)**

For the purposes of this paragraph (b), a reasonable time is not less than the Standard Settlement Time for such Securities or Collateral.

11. **Clause 9.2(g)**

The word "and" and the following provision is inserted after clause 9.2(f):

“and

9.2(g) the Borrower is under an obligation to pay any Franked Distributions to the Lender calculated in accordance with clause 4.2(a).”

12. **Clause 12.1(a)**

Clause 12.1(a) is amended by inserting “, Equivalent Securities” after the words “redeliver Collateral” in line 2.

Clause 12.1(b) is amended by inserting “or clause 7” after “clause 6” in line 1.

13. **Clause 26**

Clause 26 is amended as follows:

The definition of “Act of Insolvency” is amended by replacing the words “Corporations Law of Australia” in sub clause (f) with the words “Corporations Act 2001 (Cwlth)”.

The definition of “Close of Business” is amended by replacing the word “agreement” in sub clause (b) with the word “Agreement”.

14. **Reverse Stock Loan Transactions**

With respect to stock loan transactions agreed by the Parties to be ‘reverse stock loan’ transactions:

(a) Paragraph 1.1 of Schedule 1 shall be amended to delete Collateral types (b) to (i) inclusive so that only Collateral type (a) Cash shall be acceptable;

(b) Paragraph 1.3(a) of Schedule 1 shall be deleted and replaced with the following

“(a) in the case of Collateral type (a): -5% (negative five per cent); and

(b) in the case of Collateral types (b) to (i): not applicable.”

Class 11 of schedule 1 - is a book and related with the following

Class 11 and apply to the following: Australia Securities Ltd

Class 11 and apply to the following: Book Limited

Class 11 (11)

For the purpose of this paragraph (a) a reference to a class of shares is a reference to a class of shares as defined in section 92(1)

Class 11 (11)

The word "class" and the following provisions is defined after class (11)

Class

Class 11 (11) is defined by reference to the word "class" as defined in section 92(1)

Class 11 (11)

Class 11 (11) is defined by reference to the word "class" as defined in section 92(1)

Class 11 (11) is defined by reference to the word "class" as defined in section 92(1)

Class 11

Class 11 is defined by reference to the word "class" as defined in section 92(1)

The definition of "class of shares" is amended by replacing the word "class" with the word "share" in section 92(1)

The definition of "class of shares" is amended by replacing the word "class" with the word "share" in section 92(1)

Section 92(1) of the Act

With respect to the amendments made by this section to the word "class" in section 92(1)

(a) Paragraph 1 of section 1 shall be amended to read as follows: (b) Paragraph 2 of section 1 shall be amended to read as follows:

(c) Paragraph 3 of section 1 shall be amended to read as follows:

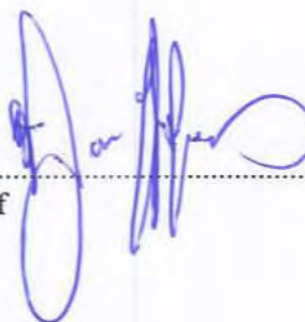
"1. In the definition of "class" in section 92(1) of the Act, the word "class" shall be replaced by the word "share".

(d) In the definition of "class" in section 92(1) of the Act, the word "class" shall be replaced by the word "share".

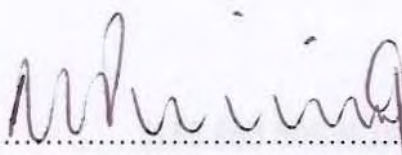



**Execution page**

SIGNED for and on behalf of MORGAN )  
STANLEY AUSTRALIA )  
SECURITIES LIMITED in the presence )  
of )  
Signature of witness )  
Paul Szalayko )  
Name of witness (block letters) )

Signature of 

**MACQUARIE BANK LIMITED**

By:   
Name: Michael Pickering  
Title: Division Director  
Date: 3/8/10

By:   
Name: Leslie Petro  
Title: Executive Director  
Date: 4/8/2010



# Australian Securities Lending Association Limited

---

(ACN 054 944 482)  
Level 18, 20 Bond Street  
Sydney NSW 2000  
Tel: (02) 9220 1413  
Fax: (02) 9220 1379

## Coversheet to

### AUSTRALIAN MASTER SECURITIES LENDING AGREEMENT\*

(Version: November 2003)

dated as of: .....

**Between: MORGAN STANLEY AUSTRALIA SECURITIES LIMITED  
(ACN 078 652 276)**

**And: MACQUARIE BANK LIMITED (ACN 008 583 542)**

- \* *The original (Version: 4 April 1997) version of this agreement was adapted from the ISLA Overseas Securities Lender's Agreement (Version: December 1995, as amended by 1996 UK Tax Addendum), prepared by Clifford Chance, London, England for use by parties required to meet UK Inland Revenue tax requirements. The 4 April 1997 version has been updated in December 2002 and November 2003 to take account of, among other things, intervening Australian tax, stamp duty and regulatory changes, and also to better reflect Australian market practice.*
- \* *The original and updated versions of this agreement are both also subject to the "Warning and Disclaimer" on the coversheet to the original (Version: 4 April 1997) and updated (Version: November 2003) "User's Guide" relating to this agreement.*

© m  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Telephone (02) 9296 2000  
Fax (02) 9296 3999  
DX 113 Sydney  
Ref: JCK



**ANNEXURE 'M'**

This is the annexure marked 'M' of 26 pages referred to in the Notice of change of interests of substantial holder.

---

Dennis Leong  
Company Secretary, Macquarie Group Limited  
25 June 2013

---

DATED 23 JANUARY 1991  
1990

**NATIONAL AUSTRALIA BANK LIMITED**

**("Supplier")**

and

**MACQUARIE BANK LIMITED**

**("Recipient")**

---

**DOMESTIC SECURITIES BORROWING AGREEMENT**

---

Macquarie Bank Limited  
Level 26, 20 Bond Street  
Sydney NSW 2000

Tel: (02) 237 3333



10

**DOMESTIC SECURITIES BORROWING AGREEMENT**

**THIS AGREEMENT** dated **23rd** day of **JANUARY** **1991**  
**1990**.

**BETWEEN:** **NATIONAL AUSTRALIA BANK LIMITED** 5th Floor South,  
271 Collins Street, Melbourne, Victoria ("**the Supplier**")

**AND:** **MACQUARIE BANK LIMITED** a company incorporated in  
the Australian Capital Territory and having its principal place  
of business at Level 26, 20 Bond Street, Sydney, New South  
Wales ("**the Recipient**")

**RECITALS:**

- A. The Parties have agreed a procedure whereby the Supplier will supply Securities to the Recipient from time to time for use by the Recipient in the ordinary course of its business.
- B. The Recipient has agreed to secure its obligations to the Supplier under this Agreement by the delivery to the Supplier of Collateral.
- C. The Parties have agreed that all Transactions will be effected in accordance with the rules and regulations of those regulatory authorities whose rules and regulations may from time to time affect the activities of the Parties pursuant to this Agreement together with current market practices, customs and conventions in so far as they are not inconsistent with the terms of this Agreement.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. INTERPRETATION**

**1.1 In this Agreement:**

"**Business Day**" means a day on which both trading banks are open for business in Melbourne and The Stock Exchange is open for business in Melbourne.

"**Close of Business**" means 4.00 p.m. on a Business Day.

"**Collateral**" means:-

- (a) cash deposited with the Supplier; or
- (b) cash deposited with another person nominated by the Supplier and subject to a charge over that deposit in favour of, and in a form and on terms acceptable to, the Supplier; or

150291 5426 01 200221488/01

\$10.00

- (c) letter of credit in favour of, and in a form and on terms acceptable to, the Supplier issued by a bank authorised under the Banking Act (Cth) 1959 or any other bank agreed by the Parties; or
- (d) other financial instruments as agreed by the Parties.

**"Collateral Amount"** means 105% of the Value of the Supplied Securities.

**"Confirmation"** means a confirmation in the form of that set out in Schedule 1.

**"Distribution Ex Date"** means the date (referred to in the Articles of Association, Rules, Regulations and market practice of The Stock Exchange as the "ex' date") on which the Securities issued by a corporation commence trading without the entitlement to receive any Right or Distribution in respect of those Securities.

**"Distribution Payment Date"** means the date on which any Right or Distribution in respect of Securities is paid issued or distributed to a holder of those Securities.

**"Documents of Title"** means, in relation to Supplied Securities, share certificates applicable thereto, duly completed and executed forms of transfer and all other documents necessary to vest the legal and beneficial title to those Securities in the Recipient.

**"11 a.m. Rate"** means the average of all indicative interbank bid rates as displayed on the Reuter's page "AFMZ" at or about 11.00 a.m. on the relevant Business Day and in the case of a day that is not a Business Day the rate on the previous Business Day.

**"Equivalent Securities"** in relation to any Supplied Securities, means Securities of an identical type, nominal value and description to the Supplied Securities. For the purpose of this Agreement "identical type" means a Security conferring identical rights and imposing identical obligations. If and to the extent that Supplied Securities are converted, redeemed or the subject of a Take-over offer, the expression has the following meaning:

- (a) in the case of conversion, Securities identical to the Securities into which the Supplied Securities are converted;
- (b) in the case of redemption, a cash sum equivalent to the proceeds of the redemption; and
- (c) in the case of a successful Take-over offer, the Securities or other consideration issued or payable to the holder of the Securities.



**"Equivalent Collateral"** means in respect of Collateral of the type referred to in paragraph (d) of the definition, Collateral of an identical type, nominal value and description of the Collateral.

**"Event of Default"** has the meaning given to it in clause 10 of this Agreement.

**"Fee Rate"** means in respect of a Transaction for which the Collateral is other than cash deposited with the Supplier, the fee rate agreed in respect of that Transaction.

**"Loan Value"** on any day means:

$$V \times M$$

where

V is the Value of the Supplied Securities on that day and

M is the Collateral Amount.

An example of the calculation of Loan Value is set out in Schedule 2.

**"Notifiable Consideration"** means consideration given by the Recipient other than the return or promise to return the Supplied Securities (or Equivalent Securities).

**"Notional Purchase Cost"** of Securities at a particular time means the amount which it would cost (including all broker's fees and commissions, stamp duty and all other reasonable costs, fees and expenses incurred in connection therewith) to buy such Securities at the Reference Price.

**"Parties"** means severally the Supplier and the Recipient, and "Party" is to be construed accordingly.

**"Re-acquisition Date"** means the date on which Supplied Securities (or Equivalent Securities) are to be returned to the Supplier in accordance with clause 8.1.

**"Rebate Rate"** means in respect of a Transaction for which the Collateral is cash deposited with the Supplier, the rebate rate agreed from time to time in respect of that Transaction.

**"Reference Price"**, in relation to Securities on any particular day, means the last sale price quoted on the SEATS trading system of The Stock Exchange for the preceding Business Day.

**"Rights and Distributions"** in relation to any Securities means all interest, dividends or other distributions whatsoever made on, or in respect of, those Securities and all rights attaching thereto whether arising by way of rights or bonus issue, consolidation, sub-division or upon a Take-over

offer or otherwise howsoever and includes rights and distributions in the nature of those specifically referred to in clause 4.3.

"**Securities**" means shares or stock of a company which is listed on The Stock Exchange and includes the Documents of Title in respect thereof.

"**Settlement Date**" in relation to Supplied Securities means the date specified in the relevant Confirmation as the date on which delivery of those Securities is to be effected.

"**Supplied Securities**" means Securities which are, the subject of a Transaction under this Agreement and, subject to Clause 4.9, includes any Rights and Distributions in respect of such Supplied Securities.

"**Supply Request**" means a request made (by telephone or otherwise) by the Recipient to the Supplier in respect of Securities proposed to be supplied under this Agreement which specifies:

- (a) the description, title and quantity of the Securities proposed to be supplied;
- (b) the date on which delivery of the Securities is required;
- (c) the manner and place of delivery of the securities; and
- (d) the description and amount of the Collateral to be provided by the Recipient and the date, place and manner of delivery of that Collateral.

"**Take-over offer**" means any offer for the whole of the issued share capital of a company or any class of share capital or a portion of such issued share capital or any such class which offer is sufficient to give the offeror control of such company, and the exercise of any right to acquire compulsorily such share capital or class of share capital.

"**Tax Act**" means the Income Tax Assessment Act 1936 and includes any statutory modification or re-enactment of that Act, any legislative provisions substituted for it, and any regulation, policy, directive or guideline or an interpretation or administration of them issued under it.

"**The Stock Exchange**" means the Australian Stock Exchange Limited.

"**Transaction**" means the mutual obligations of the Parties under a Supply Request which has been accepted by the Supplier.

"**Transaction Period**" in relation to a Transaction means the period commencing on the Settlement Date and ending on the Re-acquisition Date.



**"Value"** at a particular time, means:

- (a) in respect of Securities, the aggregate value of such Securities as calculated at the Reference Price;
- (b) in respect of Collateral other than Collateral of the type referred to in paragraph (d) of the definition, the amount of the cash deposit or the maximum amount which could be drawn on proper demand being made under the letter of credit; and
- (c) in respect of Collateral of the type referred to in paragraph (d) of the definition, the value agreed by the Parties.

The Value of Securities or Collateral shall be denominated in Australian dollars or in any other currency agreed by the Parties.

**"Withholding Tax"** means tax levied or imposed by the Commonwealth of Australia to be withheld or deducted under Division 11A of Part III of the Tax Act.

- 1.2 Headings to Clauses of this Agreement appear for convenience only and shall not affect the interpretation hereof.

## 2. SUPPLY OF SECURITIES

- 2.1 The Supplier will supply and transfer Securities to the Recipient and the Recipient will hold Securities in accordance with the terms of this Agreement.
- 2.2 No supply or transfer of Securities is to take place under this Agreement until a Supply Request has been made by the Recipient and received and accepted by the Supplier and the Recipient has otherwise complied with its obligations under this Agreement including its obligations with respect to the provision of the Collateral.
- 2.3 Upon the receipt of a Supply Request the Supplier must advise the Recipient of its acceptance or otherwise of that Supply Request by notifying one of the authorised persons specified in Schedule 3 of this Agreement. An acceptance must be confirmed by a duly authorised officer of the Recipient in a Confirmation.

## 3. DELIVERY AND RISK

Subject to the provisions of this Agreement, the Supplier will deliver the Supplied Securities together with the Documents of Title thereto by Close of Business on the Settlement Date at the head offices of the Supplier in Melbourne or Sydney.

#### 4. TITLE, RIGHTS AND DISTRIBUTIONS

- 4.1 Subject to the terms of this Agreement, the Recipient may as the beneficial owner of the Supplied Securities, register in its own name, transfer or otherwise deal with the Supplied Securities and exercise any rights relating thereto in such manner as it considers appropriate.
- 4.2 As between the Recipient and the Supplier, all right, title and interest to and in any Supplied Securities must pass to the Recipient free from all liens, charges, equities and encumbrances.
- 4.3 Irrespective of whether the Recipient is the registered holder of the Supplied Securities, the Supplier shall be entitled to receive and the Recipient shall be liable to account to the Supplier (in cash or otherwise) for an amount equivalent to all Rights and Distributions made on, or in respect of, the Supplied Securities to the same extent as if the Supplier had at all relevant times remained the registered holder of the Supplied Securities. Except where the Supplier has failed to make an election and given notice as required pursuant to clause 4.6 the Recipient must indemnify the Supplier against loss (including loss of profit, whether actual or prospective or whether contingent upon the exercise of a right or power in relation to the Supplied Securities), reasonable cost or expense which occurs by reason of the Supplier not being the registered holder of the Supplied Securities during the Transaction Period including, but not limited to, the following Rights and Distributions made on, or in respect of, the Supplied Securities:
- (a) any dividend paid on the Supplied Securities, including a capital dividend;
  - (b) any other distribution (whether in cash or otherwise) paid or made on the Supplied Securities;
  - (c) any share capital or other securities (or any interest in them) deriving from the Supplied Securities;
  - (d) any Securities or rights in respect of Securities received as a result of a scrip issue (whether as a consequence of any consolidation or subdivision or otherwise) in respect of the Supplied Securities;
  - (e) all rights deriving from the Supplied Securities to purchase additional securities including, without limitation, any right to purchase additional securities under the terms of a dividend reinvestment plan; and
  - (f) any securities issued to, or other consideration payable to, the holder of the Supplied Securities under the terms of a Take-over offer.



- 4.4 Where, under the terms of this Agreement, the Supplier is entitled (as a consequence of an election made by the Supplier) to receive the cash equivalent amount of any Rights and Distributions made on or in respect of the Supplied Securities, that amount shall be paid by the Recipient to the Supplier on the Distribution Payment Date without the need for any demand by the Supplier. If the Recipient fails to pay such cash equivalent amount on that date, the Supplier is authorised to deduct that amount from the Collateral.
- 4.5 Subject to the provisions of clause 4.6, Rights and Distributions made other than in cash on or in respect of the Supplied Securities (and in respect of which the Recipient is required to indemnify the Supplier pursuant to clause 4.3) must, at the election of the Supplier, be satisfied by the Recipient:
- (a) paying to the Supplier on the Re-acquisition Date the cash value of the Right and Distribution as reasonably calculated by the Supplier in good faith and reasonably notified to the Recipient together with particulars of the calculation and the method of calculation provided that in respect of the period from and including the Re-acquisition Date to but excluding the Distribution Payment Date the Supplier shall pay the Recipient interest on the cash value calculated daily at the 11.00 a.m. Rate, such interest to be paid on the Distribution Payment Date; or
  - (b) providing the Supplier with an additional number of Equivalent Securities on the later of the Distribution Payment Date or the Re-acquisition Date provided that, in the case of a rights issue, the obligation of the Recipient to provide Equivalent Securities is conditional upon the Supplier previously putting the Recipient in funds so as to enable the Recipient to timely pay the subscription price applicable to those Equivalent Securities.
- 4.6 At any time not being less than five (5) Business Days prior to the Distribution Ex Date, the Supplier must give notice to the Recipient of its election under clause 4.5 in relation to the relevant Rights and Distributions. If capable of calculation at that time, the Supplier must also notify the Recipient of the particulars and method of calculation together with the cash value of these Rights and Distributions or the number of Equivalent Securities (as the case may be) to be paid or delivered to the Supplier in accordance with this Agreement. The Supplier will (in the absence of manifest error) be bound by any election made and any notice given pursuant to this clause 4.6.
- 4.7 If the Supplier fails to give notice as required pursuant to clause 4.6, the Recipient will be entitled to elect the manner in which the obligation of the Recipient to the Supplier in respect of the Rights and Distributions will be satisfied, the Supplier will be bound by any election made.

- 4.8 Unless otherwise agreed in writing to the contrary, if, subsequent to the receipt of a notice given by the Supplier in accordance with clause 4.6, the Recipient fails to terminate the Transaction in accordance with the provisions of this Agreement in sufficient time (in the absence of default or negligence on the part of the Supplier) to enable the Supplier to itself become the registered holder of the Supplied Securities or Equivalent Securities and otherwise do all things necessary to take advantage of the proposed Rights and Distributions in respect of those Securities, the Recipient shall be bound by the terms of that notice and must account to and indemnify the Supplier accordingly.
- 4.9 Where a Recipient makes any payment or delivers any property to the Supplier in or toward satisfaction of its obligations under this clause 4 to account to and indemnify the Supplier in respect of Rights and Distributions, the obligation of the Recipient to re-deliver Supplied Securities (including Rights and Distributions) and Equivalent Securities will be reduced accordingly.

## 5. FEES AND NOTIFIABLE CONSIDERATION

### 5.1 In respect of each Transaction:

- (a) for which the Collateral is cash deposited with the Supplier, the Supplier will pay a rebate to the Recipient monthly in arrears by bank cheque; and
- (b) to which paragraph (a) does not apply, the Recipient will pay a fee to the Supplier monthly in arrears by bank cheque.

### 5.2 The rebate or fee as the case may be shall be calculated as follows for each day in respect of the period from and including the Settlement Date to and excluding the Re-acquisition Date:

- (a) the rebate in the case of Collateral which is cash deposited with the Supplier:

$$\frac{\text{The Loan Value} \times \text{Rebate Rate}}{365}$$

365

- (b) the fee in any other case:

$$\frac{\text{The Loan Value} \times \text{Fee Rate}}{365}$$

365

The rebate shall be paid by the Supplier within five (5) Business Days following the end of the month. The Supplier is authorised to withdraw the rebate from the Collateral or any interest earned in respect of the Collateral.



The fee shall be paid by the Recipient within five (5) Business Days following the rendering of an invoice by the Supplier.

The initial Loan Value will be the Loan Value as at the Settlement Date. However, the Parties by agreement may re-calculate the Loan Value (for the purpose of determining the fee or rebate) at such other date during the Transaction period as the Parties consider appropriate.

If an event specified in clause 10 occurs, any rebate or fee payable to or by the Recipient in accordance with this clause 5.2 shall be immediately due and payable on exercise by either Party of its rights under clause 11.

- 5.3 The Notifiable Consideration is the rebate or fee referred to in clause 5.2. There is no other consideration which is Notifiable Consideration.

## 6. COLLATERAL

- 6.1 To secure the obligations of the Recipient to the Supplier in respect of a Transaction, the Recipient must deliver Collateral to the Supplier to be held by the Supplier upon the terms of this Agreement.

- 6.2 The Recipient irrevocably authorises the Supplier at any time (upon giving the Recipient not less than two Business Days' prior notice) to appropriate the whole or any part of the Collateral towards satisfaction of any amount owed by the Recipient in respect of or in connection with any Transaction or in respect of any indemnity or other obligation contained in this Agreement.

- 6.3 Subject to clause 6.8, until the Recipient has fully performed its obligations to return Supplied Securities:

- (a) the Recipient may not withdraw or cancel any part of the Collateral; and
- (b) the Supplier need not repay or return any part of the Collateral to the Recipient,

provided that the Supplier may retain Collateral to the value of the Rights and Distributions yet to be paid until such time as those Rights and Distributions are paid and thereupon the Supplier shall pay the Recipient interest on that value calculated daily from and including the date of return of the Supplied Securities to but excluding the date on which the Rights and Distributions are paid at the 11.00 a.m. Rate.

Nothing in this clause 6.3 shall be taken to require the payment of a Right and Distribution in respect of the Supplied Securities before the date on which payment is due pursuant to clauses 4.4 and 4.5 of this Agreement. The Recipient is entitled to the return of the whole of the Collateral notwithstanding its continuing obligations to indemnify the Supplier in accordance with clause 4 of this Agreement.

- 6.4 The Recipient acknowledges that the Collateral and any interest earned in respect of the Collateral will be held subject to such terms and conditions as the Supplier may from time to time advise.
- 6.5 Simultaneously with the receipt of Supplied Securities, the Recipient must deliver to the Supplier Collateral (together with any document evidencing title to the Collateral and any other document reasonably required by the Supplier to enable it to exercise rights in respect of the Collateral in the manner contemplated by this Agreement) which has a Value in relation to such Supplied Securities of not less than the amount specified in the relevant Confirmation to be held by the Supplier as a continuing security for the obligations of the Recipient in respect of the Transaction.
- 6.6 The Value of the Supplied Securities may, at any time, be recalculated by either Party and, upon each such recalculation:
- (a) subject to clause 6.7, if, in relation to any Supplied Securities, the Value of Collateral provided in respect thereof is at that time less than the amount required in accordance with the terms of the relevant Confirmation, the Recipient must, on demand, provide such further Collateral to the Supplier as required to restore the Value of the Collateral to the required amount ;
  - (b) subject to clause 6.8, if, in relation to any Supplied Securities, the Value of the Collateral provided in respect thereof is at that time greater than the amount required in accordance with the terms of the relevant Confirmation, the Supplier must, on demand, re-deliver to the Recipient or agree to reduce, as the case may be, such amount of Collateral as is required to restore the Value of the Collateral to the required amount.
- 6.7 The Supplier may not demand further Collateral be provided by the Recipient if the Supplier has committed an Event of Default in respect of any Transaction or if the deficiency calculated in accordance with clause 6.6(a) is less than either:
- (a) \$5,000; or
  - (b) 5% of the Value of the Supplied Securities.
- 6.8 The Recipient may not demand the return of Collateral provided to the Supplier if the Recipient has committed an Event of Default in respect of any Transaction or if the excess calculated in accordance with clause 6.6(b) is less than either:
- (a) \$5,000; or
  - (b) 5% of the Value of the Supplied Securities.



- 6.9 Demands for the delivery of Collateral pursuant to clauses 6.6 above, made prior to 12:00 noon (Australian Eastern Standard Time) on a Business Day, must be satisfied by Close of Business on that day. If made after that time a demand must be satisfied by Close of Business on the next Business Day.
- 6.10 The Supplier undertakes to keep accurate records and accounts so as to enable it to ascertain amounts paid by the Recipient in connection with a Transaction and any amount to which the Recipient may otherwise be entitled.
- 6.11 Notwithstanding anything in this clause 6, where the Recipient has provided a letter of credit as Collateral, the Supplier is not required to re-deliver that letter of credit to the Recipient as a consequence of a demand made under clause 6.6(b) unless the Recipient provides to the Supplier a substitute letter of credit in a form and on terms satisfactory to the Supplier.
- 6.12 In the case of Collateral of the type referred to in paragraph (d) of the definition of Collateral, the Supplier may return Equivalent Collateral. Any reference in this Agreement or in any other agreement or communication between the Parties (howsoever expressed) to an obligation to return Supplied Securities is accordingly to be construed as a reference to an obligation to return the Collateral or Equivalent Collateral.

## **7. POWER OF ATTORNEY GIVEN TO SUPPLIER**

- 7.1 If the Recipient has committed an Event of Default then the Recipient irrevocably appoints the Supplier to be the attorney of the Recipient for the purpose of doing or performing any act or thing (including, without limitation, executing any document) and to take all other steps as may be required to enable the Supplier to realise any Collateral which has been delivered to it pursuant to this Agreement or to transfer or cause to be transferred the legal title to such Collateral to the Supplier or any transferee of the Collateral nominated by the Supplier.
- 7.2 The Recipient hereby undertakes (when required to do so by the Supplier) to ratify and confirm any action undertaken by the Supplier in pursuance of the powers conferred in clause 7.1 of this Agreement and to indemnify and keep indemnified the Supplier for any reasonable costs or expenses incurred (including without limitation legal costs on a full indemnity basis) in exercising its powers under this clause and otherwise on the default of the Recipient.

## **8. RETURN OF SUPPLIED SECURITIES OR EQUIVALENT SECURITIES**

- 8.1 In respect of a Transaction, the Recipient must return the Supplied Securities to the Supplier on the earlier of:

- (a) the date which is three months after the Settlement Date in respect of those Supplied Securities (or such later date as the Parties agree);
  - (b) the date on which a notice given in respect of those Supplied Securities pursuant to Clause 8.2 or 8.3, as the case may be, expires; and
  - (c) the date on which a notice given by the Supplier under clause 11 expires.
- 8.2 In respect of any Transaction, the Recipient may return Supplied Securities to the Supplier at any time upon giving notice to the Supplier specifying a date for return of the Supplied Securities being not less than one (1) Business Day's prior notice to the Supplier.
- 8.3 In respect of any Transaction, the Supplier may require the Recipient to return Supplied Securities at any time upon giving notice to the Recipient specifying a date for return of the Supplied Securities being not less than two (2) Business Day's prior notice.
- 8.4 A notice given by the Supplier or the Recipient under clause 8.2 or 8.3 respectively may not subsequently be revoked except by mutual agreement.
- 8.5 Subject to the rights of the Supplier arising on the occurrence of an Event of Default and to the Recipient having discharged all its obligations then due in respect of a Transaction, simultaneous with the return of Supplied Securities (together with all Documents of Title relating thereto and any Rights and Distributions thereon which may then be due to be delivered by the Recipient to the Supplier and any other document required to be supplied on termination of that Transaction in accordance with this Agreement), the Supplier will on the Re-acquisition Date return to the Recipient:
- (a) where the Collateral is cash deposited with the Supplier the balance of any Collateral; and
  - (b) where the Collateral is a letter of credit re-deliver that letter of credit to the Recipient;; and
  - (c) where the Collateral is of the type referred to in paragraph (d) of the definition, the Collateral and any document delivered previously by the Recipient in accordance with clause 6.5.8.6.

The return of Securities in accordance with this Agreement will not affect the obligation of the Recipient to pay any Right or Distribution in respect of the Supplied Securities in accordance with this Agreement.

- 8.7 The Recipient may return Equivalent Securities instead of the Supplied Securities. Any reference in this Agreement or in any other agreement or communication between the Parties (howsoever expressed) to an



obligation to return Supplied Securities is accordingly to be construed as a reference to an obligation to return Supplied Securities or Equivalent Securities.

- 8.8 On the Re-acquisition Date the Recipient further agrees to deliver up to the Supplier all documents, notices, demands or other communications relating to the Supplied Securities or Equivalent Securities delivered to the Supplier on the Re-acquisition Date including, without limitation, any document necessary for the purpose of enabling the Supplier to take the benefit of any Right or Distribution or to exercise any right to vote in respect of such securities.

## 9. WARRANTIES

The Parties hereby represent and warrant as follows, with the intent that such representations and warranties will survive the completion of this Agreement and the transactions contemplated by it and are to be deemed to be repeated on each day that this Agreement remains in effect, in the following terms:

### By each Party to the Other

- (a) it is a company duly organised and validly existing under the laws of its place of incorporation;
- (b)
  - (i) it has the power and authority to execute and deliver this Agreement, to enter into the transactions contemplated by it and to perform its obligations under it;
  - (ii) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
  - (iii) this Agreement constitutes legal, valid and binding obligations enforceable against it;
- (c) the execution, delivery and performance by it of this Agreement and each transaction under it will at all times comply with all applicable laws and regulations;
- (d) it has made its own determination as to the tax treatment of any dividends, remuneration, funds, rights or benefits received under this Agreement and the tax treatment of the Transactions contemplated by this Agreement;
- (e) this Agreement and the transactions contemplated by it are entered into in the ordinary course of its business;
- (f) to its knowledge no Event of Default is subsisting and nothing has occurred which is or would with the giving of notice or lapse of time constitute an Event of Default;

**By the Recipient to the Supplier**

- (g) at the time of delivery of any Collateral under this Agreement, the Recipient will be the beneficial owner of that Collateral free from all liens, charges, equities and encumbrances of any nature whatsoever and will have the right to give that Collateral on the terms of this Agreement;
- (h) upon delivery of the Supplied Securities or Equivalent Securities by the Recipient to the Supplier, those Supplied Securities or Equivalent Securities will be free from all liens, charges, equities and encumbrances and will not be subject to any right of forfeiture vested in any person as a consequence of any amount which is due and payable but which remains unpaid in respect of the Supplied Securities or the Equivalent Securities;
- (i) the Recipient is able to pay its debts as and when they fall due;
- (j) in entering into and performing this Agreement and the transactions contemplated by it, either:
  - (i) the Recipient is acting in its own right and not as trustee or agent on behalf of another; or
  - (ii) if it is acting as an agent, that it is duly authorised to do so; or
  - (iii) if it is acting as a trustee, that it is empowered to enter into this Agreement and perform all its obligations under it; and
- (k) any Collateral in respect of a Transaction is or will be provided by the Recipient in the same capacity as it incurred obligations pursuant to this Agreement or any Transaction contemplated by this Agreement;
- (l) if the Recipient is acting as agent or trustee for a non-resident and is obliged to withhold any tax in accordance with the Tax Act it will deduct from any amount payable to the non-resident Withholding Tax and any other amount required to be deducted in accordance with the Tax Act;

**By the Supplier to the Recipient**

- (m) at the time of delivery of any Supplied Securities under this Agreement, the Supplier will be the beneficial owner of or will have the right to supply those Supplied Securities free from all liens, charges, equities and encumbrances and will have the right to deliver those Securities on the terms of this Agreement;



- (n) upon re-delivery of the Collateral by the Supplier to the Recipient that Collateral will be free from all liens, charges, equities and encumbrances and will not be subject to any right of forfeiture vested in any person as a consequence of any amount which is due and payable but which remains unpaid to any person;
- (o) the Supplier is able to pay its debts as and when they fall due;
- (p) in entering into and performing this Agreement and the transactions contemplated by it, either:
  - (i) the Supplier is acting in its own right and not as trustee or agent on behalf of another; or
  - (ii) if it is acting as an agent, that it is duly authorised to do so; or
  - (iii) if it is acting as a trustee, that it is empowered to enter into this Agreement and perform all its obligations under it; and
- (q) if the Supplier is acting as agent or trustee for a non-resident and is obliged to withhold any tax in accordance with the Tax Act it will deduct from any amount payable to the non-resident Withholding Tax and any other amount required to be deducted in accordance with the Tax Act.

#### 10. EVENTS OF DEFAULT

Notwithstanding any other provision of this Agreement, all outstanding Transactions between the Supplier and the Recipient may be terminated by the other Party immediately upon the occurrence of any of the following events:

- (a) if any of the representations and warranties set out in Clause 9 above are incorrect or untrue on the date when made or deemed to be made;
- (b) if any Supplied Securities (or Equivalent Securities) are not delivered to the Supplier on the due date or the Recipient otherwise fails to comply with its obligations under this Agreement or with respect to a Transaction;
- (c) if the Recipient fails to deliver or the Supplier fails to re-deliver Collateral, as the case may be, as required by this Agreement;
- (d) if either Party fails to make any payment in respect of Rights and Distributions as required by a clause 4 of this Agreement

and such default is not cured within two (2) Business Days of notice of such failure;

- (e) if either Party makes a general assignment for the benefit of creditors, or is unable to pay its debts as they become due, or files a petition in bankruptcy or is adjudicated bankrupt or insolvent, or takes any steps preparatory to (or files a petition) seeking winding up, reorganisation, liquidation, dissolution or the appointment of a liquidator, receiver or administrator or similar relief under any present or future statute, law or regulation, or seeks, consents to or acquiesces in the appointment of any trustee, receiver, liquidator or administrator of its or any material part of its assets;
- (f) if either Party is suspended or expelled from membership of The Stock Exchange or any other securities exchange or self regulatory organisation or if it is suspended from dealing in securities by any governmental or regulatory authority or agency;
- (g) if either Party ceases or threatens to cease to carry on its business; or
- (h) if either Party fails to perform or satisfy when due any other obligation, covenant or condition required to be performed or satisfied by that Party under this Agreement, and such failure is not cured within two (2) Business Days.

## **11. POSITION WHERE EVENT OF DEFAULT OCCURS**

11.1 If any of the events specified in Clause 10 occur in relation to either Party, the Party not in default may give notice to the other Party terminating any outstanding Transaction. On receipt of the notice each Party must comply with all of its obligations under this Agreement arising on termination of a Transaction.

11.2 If the Recipient fails to comply with all of its obligations arising upon termination pursuant to clause 11.1, then at any time thereafter, without prejudice to any other available remedies which the Supplier may have:

- (a) (i) the Supplier shall be entitled (but not obliged) to purchase Equivalent Securities on The Stock Exchange or on any other market dealing in the Supplied Securities and the price paid by the Supplier for such Equivalent Securities (together with any associated costs) shall be an amount due by the Recipient to the Supplier by way of liquidated damages;

OR



- (ii) there shall immediately become due to the Supplier as liquidated damages for failure to deliver the Supplied Securities (or Equivalent Securities) a sum equal to the Notional Purchase Cost of all Supplied Securities (as determined by the Supplier) calculated as at that date which is two Business Days after the giving of notice by the Supplier under this clause 11;
- (b) the Supplier shall have the power to apply any Collateral in discharge or reduction of any sums due from the Recipient under this Clause or any other provision of this Agreement; and
- (c) if the Collateral is less than the amount of the Notional Purchase Cost of the Supplied Securities and all other amounts due to the Supplier under this Agreement, the Recipient shall continue to be liable to the Supplier for the amount of such deficit (together with any interest payable under the terms of this Agreement).

11.3 If the Supplier fails to comply with all of its obligations arising upon termination pursuant to clause 11.1, then at any time thereafter, without prejudice to any other available remedies which the Recipient may have, the Recipient shall be entitled (but not obliged) to sell the Supplied Securities on the Stock Exchange or on or in any other market dealing in the Supplied Securities and shall be released and discharged from its obligations to re-deliver those Supplied Securities or Equivalent Securities.

11.4 If the aggregate of:

- (a) the proceeds received by the Recipient (less any associated cost including stamp duty and brokerage incurred by the Recipient in effecting the sale referred to in clause 11.3); and
- (b) any amount due to the Supplier by the Recipient in respect of any Transaction

is less than the aggregate of:

- (c) the Value of the Collateral as at the date of the sale referred to in clause 11.3 (as determined by the Recipient in the case of Collateral of the type referred to in paragraph (d) of the definition); and
- (d) any amount due to the Recipient by the Supplier in respect of any Transaction,

the amount of the deficiency shall be an amount due by the Supplier to the Recipient by way of liquidated damages. If there is an excess, the amount of the excess together with any Supplied Securities not sold must be paid and delivered by the Recipient to the Supplier.

11.5 Any exercise by either Party of its rights arising under this clause is without prejudice to the rights and remedies of that Party arising under this Agreement or in respect of the Collateral including, without limitation, the right of either Party to prove for an amount by way of damages in excess of any amount of liquidated damages ascertained in accordance with this Agreement.

## 12. EFFECT OF TERMINATION

Termination of a Transaction in accordance with the provisions of this Agreement is without prejudice to the rights or remedies of either Party against the other under this Agreement either in respect of the Transaction terminated or any other Transaction.

## 13. RIGHT OF SET-OFF

13.1 If, whilst any Transaction remains current or upon termination of any Transaction in accordance with this Agreement, an amount is due and owing by the Recipient to the Supplier in respect of a Transaction, the Supplier may, without prior notice to the Recipient, set-off any amount held by it as Collateral for any Transaction against any such outstanding liability of the Recipient to the Supplier. For this purpose the Supplier may retain and apply the full amount of such Collateral in or toward satisfaction of amounts owed by the Recipient to the Supplier in respect of any Transaction.

13.2 If, whilst any Transaction remains current or upon termination of any Transaction in accordance with this Agreement, an amount is owing by the Supplier to the Recipient in respect of a Transaction, the Recipient may, without prior notice to the Supplier, set off any amount owed by it to the Supplier under any Transaction against any such outstanding liability of the Supplier to the Recipient.

13.3 If either party exercises its rights under this clause it shall advise the other party of the particulars thereof.

13.4 The Parties acknowledge and agree that the Transactions and their rights and obligations thereunder and under this Agreement are mutual credits and mutual debts arising out of mutual dealing with each other and that the Transactions are closely connected to one another.

13.5 A single or partial exercise of a right, power or remedy by either Party under this clause 13 will not prevent a further exercise of that or of any other right, power or remedy.

## 14. NOTICES

14.1 All notices issued under this Agreement shall be in writing (including telex) and shall be deemed validly delivered if marked to the attention of one of the authorised persons specified in Schedule 3 of this Agreement or such other persons as each Party may notify in writing to the other



and left at the addresses or sent to the telex number of the Parties as specified in Schedule 4 of the Agreement. Either Party may nominate additional authorised persons, a new address or telex number by notice to the other Party.

**14.2 Each notice or other communication shall be effective:-**

- (a) if given by telex, when the answerback code of the recipient is received; and
- (b) if given by delivery in person or by post, when delivered to the recipient at its address,

but if such delivery or receipt is later than Close of Business on a Business Day, it shall be deemed to have been given at the commencement of business on the next such day in that place.

**15. ASSIGNMENT**

Neither the Supplier nor the Recipient may assign or transfer all or any of its rights or obligations under this Agreement or under a Transaction without the prior written consent of the other Party.

**16. NON-WAIVER**

**16.1** No failure or delay by the Supplier or the Recipient to exercise any right, power or privilege under this Agreement 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 right, power or privilege as herein provided.

**16.2** The rights and remedies of the Parties under this Agreement are cumulative and not exclusive of any other rights or remedies which may be available under any applicable law.

**17. FURTHER ASSURANCES**

Each Party shall sign, execute and deliver all such documents and do all such acts as shall be reasonably requested by any other Party to enable the better exercise of their respective rights and the complete performance of their respective obligations under this Agreement and to give effect to this Agreement and the Transactions contemplated by it.

**18. CONTINUING OBLIGATIONS**

Each indemnity, warranty or covenant in this Agreement is a continuing indemnity, warranty or covenant, separate and independent from the other obligations and survives termination of this Agreement.

**19. STAMP DUTY**

The Recipient shall pay and indemnify the Supplier against all stamp duty (together with any penalties for late payment other than fines and penalties incurred as a result of delay or default by the supplier) and similar charges which may be payable or determined to be payable in connection with the execution, delivery, performance or enforcement of this Agreement or the transactions contemplated by it.

**20. CURRENCY CONVERSION**

Where for the purpose of this Agreement it is necessary to convert any currency into Australian Dollars the calculation shall be made as at such date at the closing wholesale rate of exchange published in the latest available edition of the Australian Financial Review or such other mutually agreed source that quotes the market rates prevailing on the date in question.

**21. LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of Victoria, Australia and the Parties submit to the non-exclusive jurisdiction of the Courts in the State of Victoria in relation to any matter arising in connection with this Agreement.

**22. TIME**

Time shall be of the essence of the Agreement.



**SCHEDULE 1**

**CONFIRMATION OF SUPPLY REQUEST**

TO: ("the Supplier")

Date:  
Our Ref:  
No:

We hereby confirm particulars in respect of the following Supply Request which has been accepted by you pursuant to the Domestic Stock Lending Agreement between us dated [                      ].

---

Date of Supply Request:

Description of Securities:

Title of Securities:

Quantity of Securities:

Settlement Date:

Description of Collateral:

- \* Fee Rate/Rebate Rate:
- \* Delete whichever is inapplicable

---

PLEASE TELEPHONE OR TELEX US IMMEDIATELY SHOULD THE PARTICULARS OF THIS CONFIRMATION NOT BE IN ACCORDANCE WITH YOUR UNDERSTANDING. PLEASE SIGN THE ATTACHED DUPLICATE OF THIS CONFIRMATION AND RETURN IT TO US AS SOON AS POSSIBLE.

For: Macquarie Bank Limited

For: The Recipient

---

**SCHEDULE 2**

(See definition of "Loan Value" in clause 1.1)

If:

- (a) the value of the Supplied Securities on a particular day (V) is \$1,000,000;  
and
- (b) the percentage, being the Collateral Amount (as defined), (M) is 105%;

then the Loan Value (V x M) is:

$\$1,000,000 \times 105\%$

namely \$1,050,000.



**SCHEDULE 3**

**AUTHORISED PERSON**

**The Supplier:**

**The Recipient:**

**SCHEDULE 4**

**NOTICES**

**The Supplier: Address:**

Telex:  
Facsimile:

**The Recipient:**

Address: Level 26  
20 Bond Street  
SYDNEY NSW 2000

Telex:  
Facsimile:



**EXECUTED** as an agreement on the date first written above.

**SIGNED** by

in the presence of:

The ~~COMMON SEAL~~ of NATIONAL AUSTRALIA BANK LIMITED was hereunto affixed (with the authority of the Board of Directors) in the presence of:

.....  
Signature of witness

) Director :.....

.....  
Name of witness (block letters)

) Secretary :.....

.....  
Address of witness

.....  
Occupation of witness

)By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of the Supplier.

~~**SIGNED**~~ by

~~as authorised representative for **MACQUARIE BANK LIMITED** in the presence of:~~

) THE COMMON SEAL OF MACQUARIE BANK LIMITED WAS HEREUNTO AFFIXED IN ACCORDANCE WITH THE COMPANY'S ARTICLES OF ASSOCIATION IN THE PRESENCE OF:

.....  
Signature of witness

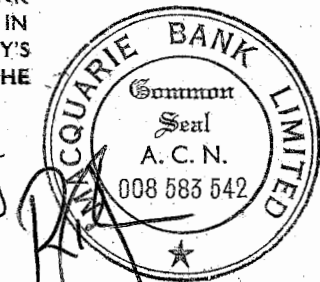
Ottmar WEISS  
.....  
Name of witness (block letters)

.....  
Address of witness

BANKER  
.....  
Occupation of witness

)By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of Macquarie Bank Limited.

MAAG  
Secretary



**NOTE: THE COMMON SEAL OF THE RECIPIENT MUST BE AFFIXED, AND A DIRECTOR AND SECRETARY MUST SIGN AND WITNESS, RESPECTIVELY.**

**ANNEXURE 'N'**

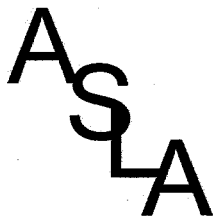
This is the annexure marked 'N' of 38 pages referred to in the Notice of change of interests of substantial holder.

---

Dennis Leong  
Company Secretary, Macquarie Group Limited  
25 June 2013

---





Draft 4, 4 April 1997 (showing change from Draft 3)

# Australian Securities Lending Association Limited

---

(ACN 054 944 482)  
Level 18, 20 Bond Street  
Sydney NSW 2000  
Tel: (02) 9220 1413  
Fax: (02) 9220 1379

**Coversheet  
to**

## **AUSTRALIAN MASTER SECURITIES LENDING AGREEMENT\***

(Version: 4 April 1997)

dated as of:

..... 22 March 1999 .....

**Between:**

**WARBURG DILLON READ AUSTRALIA EQUITIES LIMITED**

ACN 008 586 481

**And:**

**BANKERS TRUST AUSTRALIA LIMITED**

ACN 003 017 221

- \* *This agreement is adapted from the ISLA Overseas Securities Lender's Agreement (Version: December 1995, as amended by 1996 UK Tax Addendum), prepared by Clifford Chance, London, England for use by parties required to meet UK Inland Revenue tax requirements.*
- \* *This agreement is also subject to the "Warning and Disclaimer" on the coversheet to the User's Guide relating to this agreement.*

© **Mallesons Stephen Jaques**

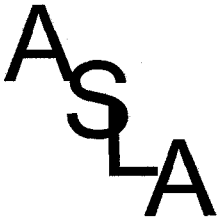
S O L I C I T O R S  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Telephone (02) 9296 2000  
Fax (02) 9296 3999  
DX 113 Sydney  
Ref: JCK

<b>Contents</b>	<b>Agreement</b>	<b>Page No</b>
	<b>1 Interpretation</b>	<b>2</b>
	<b>2 Loans of Securities</b>	<b>3</b>
	<b>3 Delivery of Securities</b>	<b>4</b>
	<b>4 Title, Distributions and Voting</b>	<b>4</b>
	<b>5 Fees</b>	<b>5</b>
	<b>6 Collateral</b>	<b>6</b>
	<b>7 Redelivery of Equivalent Securities</b>	<b>8</b>
	<b>8 Set-off etc.</b>	<b>9</b>
	<b>9 Stamp duty, taxes etc and loss of tax benefits</b>	<b>11</b>
	<b>10 Lender's warranties</b>	<b>13</b>
	<b>11 Borrower's warranties</b>	<b>13</b>
	<b>12 Events of Default</b>	<b>14</b>
	<b>13 Outstanding payments</b>	<b>15</b>
	<b>14 Transactions entered into as agent</b>	<b>15</b>
	<b>15 Termination of course of dealings by notice</b>	<b>16</b>
	<b>16 No reliance or tax or accounting representations by other Party</b>	<b>17</b>
	<b>17 Observance of procedures</b>	<b>17</b>
	<b>18 Severance</b>	<b>17</b>
	<b>19 Specific performance</b>	<b>17</b>
	<b>20 Notices</b>	<b>17</b>
	<b>21 Assignment</b>	<b>18</b>
	<b>22 Non-Waiver</b>	<b>18</b>
	<b>23 Time</b>	<b>18</b>
	<b>24 Recording</b>	<b>18</b>
	<b>25 Miscellaneous</b>	<b>19</b>



---

<b>26 Definitions</b>	<b>19</b>
<b>27 Governing Law and Jurisdiction</b>	<b>27</b>
<b>Schedule 1 - Particulars</b>	<b>28</b>
<b>Schedule 2 Specimen Form of Borrowing Request (see clause 2.1 and definition of "Borrowing Request" in clause 26)</b>	<b>31</b>
<b>Schedule 3 Supplementary Terms and Conditions (if any)</b>	<b>33</b>



## Australian Securities Lending Association Limited

---

(ACN 054 944 482)  
 Level 18, 20 Bond Street  
 Sydney NSW 2000  
 Tel: (02) 9220 1413  
 Fax: (02) 9220 1379

### AUSTRALIAN MASTER SECURITIES LENDING AGREEMENT \*

(Version: 4 April 1997)

dated as of:

..... 22 March 1999 .....

**Between:**

(1) WARBURG DILLON READ AUSTRALIA EQUITIES LIMITED

ACN 008 586 481

a company incorporated under the laws of the Australian Capital Territory

of Level 25, Governor Phillip Tower, 1 Farrer Place, Sydney NSW.

**And:**

(2) BANKERS TRUST AUSTRALIA LIMITED

ACN 003 017 221

of Level 2, Chifley Tower, 2 Chifley Square, Sydney NSW.

\* *This agreement is adapted from the ISLA Overseas Securities Lender's Agreement (Version: December 1995, as amended by 1996 UK Tax Addendum), prepared by Clifford Chance, London, England for use by parties required to meet UK Inland Revenue tax requirements.*

\* *This agreement is also subject to the "Warning and Disclaimer" on the coversheet to the "User's Guide" relating to this agreement.*

© **Mallesons Stephen Jaques**

S O L I C I T O R S

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Telephone (02) 9296 2000

Fax (02) 9296 3999

DX 113 Sydney



---

# AGREEMENT

## Recitals:

- A. The Parties hereto are desirous of agreeing to a procedure whereby either one of them (the "**Lender**") will make available to the other of them (the "**Borrower**") from time to time Securities (as hereinafter defined).
- B. All transactions carried out under this Agreement will be effected in accordance with the Rules (as hereinafter defined), if applicable, **together with** current market practices, customs and conventions, in so far as they are not inconsistent with the terms of this Agreement.

## Operative provisions:

### 1 Interpretation

---

- 1.1 **[Definitions]** The terms defined in clause 26 and in Schedule 1 have the meanings therein specified for the purposes of this Agreement.
- 1.2 **[Inconsistency]** In the event of any inconsistency between the provisions of Schedule 1 and the other provisions of this Agreement, Schedule 1 will prevail. In the event of any inconsistency between the provisions (if any) of Schedule 3 and the other provisions of this Agreement (including Schedule 1), Schedule 3 will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Agreement (including Schedules 1 and 3), such Confirmation will prevail for the purpose of the relevant transaction.
- 1.3 **[Single agreement]** All transactions are entered into in reliance on the fact that this Agreement and all Confirmations form a single agreement between the Parties (collectively referred to as this "**Agreement**"), and the Parties would not otherwise enter into any transactions.
- 1.4 **[Interpretation]** In this Agreement:
  - (a) Unless the context otherwise requires:
    - (i) The **singular** includes the plural and vice versa.
    - (ii) A **person** includes a corporation.
    - (iii) A **corporation** includes any body corporate and any statutory authority.
    - (iv) A reference to a statute, ordinance, code or other law or the Rules includes regulations or other instruments under it or them and consolidations, amendments, re-enactments or replacements of any of them.

- (b) Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "Margin", "redeliver" 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 redeliver Equivalent Securities or Equivalent Collateral, as the case may be.
- 1.5 **[Headings]** All headings appear for convenience only and shall not affect the interpretation of this Agreement.
- 1.6 **[Currency conversion]** For the purposes of clauses 6, 8.3 and 8.4, when a conversion into the Base Currency is required, all prices, sums or values (including any Value, Offer Value and Bid Value) of Securities, Equivalent Securities, Collateral or Equivalent Collateral (including Cash Collateral) stated in currencies other than the Base Currency shall be converted into the Base Currency at the rate quoted by an Australian bank selected by the Lender (or, if an Event of Default has occurred in relation to the Lender, by the Borrower) at or about 11.00am (Sydney time) on the day of conversion as its spot rate for the sale by the bank of the Base Currency in exchange for the relevant other currency.
- 1.7 **[Other agreements]** Where at any time there is in existence any other agreement between the Parties the terms of which make provision for the lending of Securities (as defined in this Agreement) as well as other securities, the terms of this Agreement shall apply to the lending of such Securities to the exclusion of any other such agreement.
- 1.8 **[Nominees]** If payment is to be made to a Party's nominee or otherwise in accordance with the directions of a Party (whether by the other Party or by a third party), it shall be deemed, for the purposes of this agreement, to have been paid or made to the first mentioned Party.

## 2 Loans of Securities

---

- 2.1 **[Borrowing Request and acceptance thereof]** The Lender will lend Securities to the Borrower, and the Borrower will borrow Securities from the Lender, in accordance with the terms and conditions of this Agreement and with the Rules **provided always that** the Lender shall have received from the Borrower and accepted (by whatever means) a Borrowing Request.
- 2.2 **[Changes to a Borrowing Request]** The Borrower has the right to reduce the amount of Securities referred to in, or otherwise vary, a Borrowing Request **provided that:**
- (a) the Borrower has notified the Lender of such reduction or variation no later than midday Australian Eastern standard or summer (as appropriate) time on the day which is two Business Days prior to the Settlement Date, unless otherwise agreed between the Parties, and
  - (b) the Lender shall have accepted such reduction or variation (by whatever means).

---

### 3 Delivery of Securities

---

**[Delivery of Securities]** The Lender shall procure the delivery of Securities to the Borrower or deliver such Securities in accordance with the relevant Borrowing Request **together with** appropriate instruments of transfer (where necessary) duly stamped (where necessary) and such other instruments (if any) as may be requisite to vest title thereto in the Borrower. Such Securities shall be deemed to have been delivered by the Lender to the Borrower on delivery to the Borrower or as it shall direct of the relevant instruments of transfer and certificates or other documents of title (if any), or in the case of Securities 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 electronic entries (such as CHESSE), on the transfer of title in accordance with the rules and procedures of such system as in force from time to time, or by such other means as may be agreed.

---

### 4 Title, Distributions and Voting

---

4.1 **[Passing of title]** 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 clause 2;
- (b) any Equivalent Securities redelivered pursuant to clause 7;
- (c) any Collateral delivered pursuant to clause 6;
- (d) any Equivalent Collateral redelivered pursuant to clauses 6 or 7,

shall pass from one Party to the other, on delivery or redelivery of the same in accordance with this Agreement, free from all liens, charges, equities 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 electronic 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.

4.2 **[Distributions]**

- (a) **[Cash distributions]** Unless otherwise agreed, where Income is paid in relation to any Securities on or by reference to an Income Payment Date on which such Securities are the subject of a loan under this Agreement, the Borrower 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 equivalent to the same to the Lender, irrespective of whether the Borrower received the same.
- (b) **[Non-cash distributions]** Subject to paragraph (c) (unless otherwise agreed), where, in respect of any borrowed Securities or any Collateral, any rights relating to conversion, sub-division, consolidation, pre-emption, rights arising under a takeover offer or other rights, including those requiring election by the holder for the time being of such Securities or Collateral, become exercisable prior to the redelivery of Equivalent Securities or Equivalent Collateral, then the 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



redelivery 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.

(c) **[Tax Act ss 26BC(3)(c)(ii) and (v) requirements]** Notwithstanding paragraph (b), where, in respect of any Borrowed Securities or any Collateral, the relevant issuer company, trustee, government or government authority issues any right or option in respect of the Borrowed Securities or Collateral, as the case may be, the Borrower or the Lender, respectively, must deliver or make, as the case may be, to the other Party on the date of such issue or on such other date as the Parties may from time to time agree:

- (i) the right, or option; or
- (ii) an identical right or option; or
- (iii) a payment equal to the value to the Lender or the Borrower, respectively, of the right or option;

together with any such endorsements or assignments as shall be customary and appropriate.

(d) **[Manner of payment]** Any payment to be made by the Borrower under this clause shall be made in a manner to be agreed between the Parties.

4.3 **[Voting]** Unless paragraph 4 in Schedule 1 specifies that this clause 4.3 does not apply, each Party undertakes that, where it holds Securities of the same description as any Securities borrowed by it or transferred to it by way of Collateral at a time when a right to vote arises in respect of such Securities, it will use its best endeavours to arrange for the voting rights attached to such Securities to be exercised in accordance with the instructions of the Lender or Borrower (as the case may be) **provided always that** each Party shall use its best endeavours to notify the other of its instructions in writing no later than seven Business Days prior to the date upon which such votes are exercisable, or as otherwise agreed between the Parties, and that the Party concerned shall not be obliged so to exercise the votes in respect of the number of Securities greater than the number so lent or transferred to it. For the avoidance of doubt, the Parties agree that, subject as hereinbefore provided, any voting rights attaching to the relevant Securities, Equivalent Securities, Collateral and/or Equivalent Collateral shall be exercisable by the persons in whose name they are registered, or in the case of Securities, Equivalent Securities, collateral and/or Equivalent Collateral in bearer form by the persons by or on behalf of whom they are held, and not necessarily by the Borrower or the Lender (as the case may be).

## 5 Fees

5.1 **[Fees]** In respect of each loan of Securities:

- (a) for which the Collateral is cash:
  - (i) the Lender must pay a fee to the Borrower in respect of the amount of that Collateral, calculated at the rate agreed between them; and

- 
- (ii) unless the Parties otherwise agree, the Borrower is not obliged to pay a fee to the Lender;
  - (b) for which there is no Cash Collateral, the Borrower must pay a fee to the Lender, calculated at the rate agreed between them.
- 5.2 **[Where there are different types of Collateral]** Where the Collateral comprises only partly cash, clause 5.1 is to be construed as if there were separate loans of Securities, one secured solely by Cash Collateral and the other secured solely by non-cash Collateral.
- 5.3 **[Calculation of fees]** In respect of each loan of Securities, the payments referred to in clause 5.1 of this clause shall accrue daily in respect of the period commencing on and inclusive of the Settlement Day and terminating on and exclusive of the Business Day upon which Equivalent Securities are redelivered 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 Borrower to the Lender or to the Borrower by the Lender (as the case may be) not later than the Business Day which is one week after the last Business Day of the calendar month to which such payment relate or such other date as the Parties from time to time agree. Any payment made pursuant to clause 5.1 shall be in Australian currency, unless otherwise agreed, and shall be paid in such manner and at such place as shall be agreed between the Parties.

## 6 Collateral

---

- 6.1 **[Borrower's obligation to provide Collateral]** Unless otherwise agreed, subject to the other provisions of this clause 6, the Borrower undertakes to deliver to or deposit with the Lender (or in accordance with the Lender's instructions) Collateral of the kind specified in the relevant Borrowing Request or as otherwise agreed between the Parties (together with appropriate instruments of transfer duly stamped (where necessary) and such other instruments as may be requisite to vest title thereto in the Lender) simultaneously with delivery of the Borrowed Securities by the Lender.
- 6.2 **[Global margining]**
- (a) **[Adjustments to Collateral]** Unless otherwise agreed between the Parties, subject to paragraph (b), clause 6.4 and paragraph 1.5 in Schedule 1:
    - (i) The aggregate Value of the Collateral delivered to or deposited with the Lender or its nominated bank or depository (excluding any Collateral repaid or redelivered under paragraph (ii) below (as the case may be)) in respect of **all** loans of Securities outstanding under this Agreement ("**Posted Collateral**") shall from day to day and at any time be at least the aggregate of the Required Collateral Values in respect of such loans.
    - (ii) If at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement exceeds the aggregate of the Required Collateral Values in respect of such loans, the Lender shall (on demand) repay such Cash Collateral and/or redeliver to the Borrower such Equivalent Collateral as will eliminate the excess.

- 
- (iii) If at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such loans, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.
- (b) **[Netting of Collateral obligations where a Party is both Lender and Borrower]** Unless otherwise agreed between the Parties, subject to clause 6.4 and paragraph 1.5 in Schedule 1, where paragraph (a) applies, if a Party (the "first Party") would, but for this paragraph, be required under paragraph (a) to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral in circumstances where the other Party (the "second Party") would, but for this paragraph, also be required to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral under paragraph (a), then the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the first Party ("X") shall be set-off against the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the second Party ("Y") and the only obligation of the Parties under paragraph (a) shall be, where X exceeds Y, an obligation of the first Party, or where Y exceed X, an obligation of the second Party, (on demand) to repay Cash Collateral, redeliver Equivalent Collateral or deliver further Collateral having a Value equal to the difference between X and Y.
- 6.3 **[Required Collateral Value]** For the purposes of clause 6.2(a), the Value of the Posted Collateral to be delivered or deposited in respect of any loan of Securities, while the loan of Securities continues, shall be equal to the aggregate of the Value of the borrowed Securities and the Margin applicable thereto (the "Required Collateral Value").
- 6.4 **[Time for payment/repayment of Collateral]** Except as provided in clause 6.1 or clause 6.6, where any Cash Collateral is to be repaid, Equivalent Collateral is to be redelivered or further Collateral is to be provided under this clause 6, it shall be paid or delivered as stated in paragraph 1.4 in Schedule 1.
- 6.5 **[Substitution of Alternative Collateral]** The Borrower may from time to time call for the repayment of Cash Collateral or the redelivery of Equivalent Collateral prior to the date on which the same would otherwise have been repayable or redeliverable, provided that, at the time of such repayment or redelivery, the Borrower shall have delivered or delivers Alternative Collateral acceptable to the Lender.
- 6.6 **[Return of Collateral/Equivalent Collateral on redelivery of Equivalent Securities]**
- (a) Cash Collateral shall be repaid and Equivalent Collateral shall be redelivered at the same time as Equivalent Securities in respect of the Securities borrowed are redelivered.
- (b) Where Collateral is provided through a book entry transfer system (such as Austraclear or RITS), the obligation of the Lender shall be to redeliver Equivalent Collateral through such book entry transfer system in accordance with this Agreement. If the loan of Securities in respect of which Collateral



was provided has not been discharged when the Equivalent Collateral is redelivered, any payment obligation generated within the book entry transfer system on such redelivery shall, until the loan of Securities is discharged or further Collateral is provided, be deemed to constitute an obligation to pay Cash Collateral.

- 6.7 **[Receipt by Lender of Income on Collateral]** Where Collateral (other than Cash Collateral) is delivered in respect of which any Income may become payable and an Income Payment Date in respect of that Collateral occurs prior to the redelivery of Equivalent Collateral, then, unless such Income is paid directly to the Borrower, the Lender shall, on the date on which such Income is paid 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 such Income (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Borrower.
- 6.8 **[Borrower's rights re Collateral are not assignable]** The Borrower may not assign, transfer or otherwise dispose of, or mortgage, charge or otherwise encumber, or otherwise deal with its rights in respect of any Collateral without the prior written consent of the Lender.
- 6.9 **[Lender may set off obligation to repay or return Equivalent Collateral]** If the Borrower fails to comply with its obligation to redeliver Equivalent Securities, the obligation of the Lender in respect of any Collateral may be the subject of a set-off in accordance with clause 8.
- 6.10 **[Collateral provided to Lender's Nominee]** Without limiting clause 1.8, where Collateral is provided to the Lender's nominee, any obligation under this Agreement to repay or redeliver or otherwise account for Equivalent Collateral shall be an obligation of the Lender, notwithstanding that any such repayment or redelivery may be effected in any particular case by the nominee.

## **7 Redelivery of Equivalent Securities**

---

- 7.1 **[Borrower's obligation to redeliver Equivalent Securities]** The Borrower undertakes to redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Borrowing Request.
- 7.2 **[Lender may call for early redelivery of Equivalent Securities]** Subject to clause 8 and the terms of the relevant Borrowing Request, the Lender may call for the redelivery 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 or the equivalent time on the exchange or in the clearing organisation through which the relevant borrowed Securities were originally delivered. The Borrower shall as hereinafter provided redeliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions.
- 7.3 **[Lender may terminate loan if Borrower defaults]** If the Borrower does not redeliver Equivalent Securities in accordance with such call, the Lender may elect to continue the loan of Securities ; **provided that**, if the Lender does not elect to continue the loan, the Lender may by written notice to the Borrower elect to terminate the relevant loan. Upon the expiry of such notice the provisions of clauses 8.2 to 8.5 shall apply as if upon the expiry of such notice an Event of Default had occurred in relation to the Borrower (who shall thus be the Defaulting

---

Party for the purposes of this Agreement) and as if the relevant loan were the only loan outstanding.

- 7.4 **[Consequence of exercise of "buy-in" against Lender, as a result of Borrower default]** In the event that, as a result of the failure of the Borrower to redeliver Equivalent Securities to the Lender in accordance with this Agreement, a "buy-in" is exercised against the Lender, then, provided that reasonable notice has been given to the Borrower of the likelihood of such a "buy-in", the Borrower shall account to the Lender for the total costs and expenses reasonably incurred by the Lender as a result of such "buy-in".
- 7.5 **[Right of Borrower to terminate loan early]** Subject to the terms of the relevant Borrowing Request, the Borrower shall be entitled at any time to terminate a particular loan of Securities and to redeliver all and any Equivalent Securities due and outstanding to the Lender in accordance with the Lender's instructions.

## **8 Set-off etc.**

---

- 8.1 **[Requirement for simultaneous delivery]** On the date and time that Equivalent Securities are required to be redelivered by the Borrower in accordance with the provisions of this Agreement the Lender shall simultaneously redeliver the Equivalent Collateral and repay any Cash Collateral held (in respect of the Equivalent Securities to be redelivered) to the Borrower. 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 simultaneously. 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.
- 8.2 **[Netting following occurrence of Event of Default]** If an Event of Default occurs in relation to either Party, 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 "**Performance Date**" for the purposes of this clause), and in such event:
- (a) the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each Party shall be established in accordance with clause 8.3; and
  - (b) on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) 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 Performance Date.

---

8.3 **[Relevant Value]** For the purposes of clause 8.2 the Relevant Value:

- (a) of any cash payment obligation shall equal its par value (disregarding any amount taken into account under (b) or (c) below);
- (b) of any Securities to be delivered by the Defaulting Party shall, subject to clause 8.4(b) and (c) below, equal the Offer Value thereof; and
- (c) of any Securities to be delivered to the Defaulting Party shall, subject to clause 8.4(b) and (c) below, equal the Bid Value thereof.

8.4 **[Bid Value/Offer Value]**

- (a) For the purposes of clause 8.3, but subject to (b) and (c) below, the Bid Value and Offer Value of any Securities shall be calculated as at the Close of Business in the most appropriate market for Securities of the relevant description (as determined by the Non-Defaulting Party) on the first Business Day following the Performance Date, or, if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Performance Date (the “**Default Valuation Time**”).
- (b) Where the Non-Defaulting Party has, following the occurrence of an Event of Default but prior to the Default Valuation Time, purchased Securities forming part of the same issue and being of an identical type and description to those to be delivered by the Defaulting Party and in substantially the same amount as those Securities or sold Securities forming part of the same issue and being of an identical type and description to those to be delivered by him to the Defaulting Party and in substantially the same amount as those Securities, the cost of such purchase or the proceeds of such sale, as the case may be, (taking into account all reasonable costs, fees and expenses that would be incurred in connection therewith) shall be treated as the Offer Value or Bid Value, as the case may be, of the relevant Securities for the purposes of this clause 8.
- (c) Where the amount of any Securities sold or purchased as mentioned in (b) above is not in substantially the same amount as those Securities to be valued for the purposes of clause 8.3, the Offer Value or the Bid Value (as the case may be) of those Securities shall be ascertained by:
  - (i) dividing the net proceeds of sale or cost of purchase by the amount of the Securities sold or purchased so as to obtain a net unit price; and
  - (ii) multiplying that net unit price by the amount of the Securities to be valued.

8.5 **[Interpretation: “Securities”]** Any reference in this clause 8 to Securities shall include any asset other than cash provided by way of Collateral.

8.6 **[Interpretation: “Event of Default”]** If the Borrower or the Lender for any reason fails to comply with its respective obligations under clause 6.6 in respect of the redelivery of Equivalent Collateral or the repayment of Cash Collateral, such failure



shall be an Event of Default for the purposes of this clause 8, and the person failing to comply shall thus be the Defaulting Party.

- 8.7 **[Waiver of right to require simultaneous delivery]** Subject to and without prejudice to its rights under clause 8.1, either 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 in respect of one transaction shall bind it in respect of any other transaction.

## **9 Stamp duty, taxes etc and loss of tax benefits**

- 9.1 **[Stamp duty etc]** The Borrower hereby undertakes promptly to pay and account for any transfer or similar duties or taxes, and any loan security or other stamp duties, (if any) chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement, and shall indemnify and keep indemnified the Lender against any liability arising in respect thereof as a result of the Borrower's failure to do so.

- 9.2 **[Borrower to give Transfer of Dividend Statement to Lender re franked dividends]** If:

- (a) an Income Payment Date occurs during an Income Determination Period in relation to a particular loan of Securities;
- (b) had the Lender been the holder of those Securities on the relevant Income Payment Date, it would have received a Franked Dividend in respect of those Securities;
- (c) the Agreement or the relevant Confirmation states that the Lender is an Australian Taxpayer;
- (d) the failure of the Lender to receive a Franked Dividend is not due to any unreasonable act or omission by or on behalf of the Lender; and
- (e) neither item 7 in Schedule 1 nor the relevant Confirmation states that the Lender is **not** entitled to compensation for the loss of franking credits/rebates;

then:

- (f) the Borrower must either:
  - (i) as soon as practicable, and in any event within [10 Business Days] after the relevant Income Payment Date, give to the Lender a Transfer of Dividend Statement in respect of those Securities (which the Borrower is to be taken as having warranted is correct in all material respects and is effective for the purposes of Division 6A of Part IIIAA of the Tax Act); or

- (ii) on the [10<sup>th</sup> Business Day] after the relevant Income Payment Date pay to the Lender an amount equal to the franking credit referable to the Franked Dividend.

**9.3 [Borrower to compensate corporate Lender for loss of intercorporate dividend rebate re unfranked dividends] If:**

- (a) an Income Payment Date occurs during an Income Determination Period in relation to a particular loan of Securities;
- (b) had the Lender been the holder of those Securities on the relevant Income Payment Date, it would have received an Unfranked Dividend in respect of those Securities;
- (c) the Agreement or the relevant Confirmation states the Lender is entitled to compensation for the loss of the intercorporate dividend rebate under the Tax Act;
- (d) the failure of the Lender to qualify for that rebate is not due to any unreasonable act or omission by or on behalf of the Lender; and
- (e) neither item 8 of the Agreement nor the relevant Confirmation states that the Lender is **not** entitled to compensation for the loss of that rebate;

then the Borrower must pay to the Lender an amount calculated as follows:

$$P = \frac{DT}{1-T}$$

Where:

P = the amount payable;

D = the amount of the Unfranked Dividend; and

T = the rate of income tax, expressed as a decimal, determined under the Tax Act at the relevant Income Payment Date as that payable in respect of the taxable income of a company (other than a private company, a company in the capacity of a trustee or a non-profit company that is a friendly society dispensary).

**9.4 [“Notifiable consideration” for the purposes of s26BC(3)(d) of the Tax Act] For the purposes of section 26BC(3)(d) of the Tax Act, the notifiable consideration in respect of any loan of Securities is dissected as follows:**

- (a) a fee - see clause 5.1(as applicable); and
- (b) other consideration - see clauses 4.2, 6 and 9 and the definition of “Equivalent Securities” in clause 26.

---

## 10 Lender's warranties

---

[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 by this Agreement, 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 under this Agreement;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it under this Agreement to the Borrower free from all liens, charges, equities and encumbrances; and
- (d) where paragraph 3 in Schedule 1 specifies that this clause 10(d) applies, it is not resident in Australia for the purposes of the Tax Act and either:
  - (i) does not have a branch or other permanent establishment in Australia for the purposes of the Tax Act or of any applicable double tax agreement between Australia and its country of tax residence; or
  - (ii) if it does have such a branch or other permanent establishment in Australia, that the loan is not entered into in the course of carrying on business through such branch or permanent establishment.

---

## 11 Borrower's warranties

---

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



---

## 12 Events of Default

---

- 12.1 [Events of Default] 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 for the purpose of clause 8:
- (a) the Borrower or Lender failing to pay or repay Cash Collateral or deliver or redeliver Collateral or Equivalent Collateral upon the due date, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (b) the Lender or Borrower failing to comply with its obligations under clause 6, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (c) the Borrower failing to comply with clause 4.2, clause 9.2 or clause 9.3 and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (d) an Act of Insolvency occurring with respect to the Lender or the Borrower and (except in the case of 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 in which case no such notice shall be required) the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (e) any representations or warranties made by the Lender or the Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (f) the Lender or the Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations hereunder and/or in respect of any loan hereunder, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (g) the Lender (if appropriate) or the Borrower being declared in default by the appropriate authority under the Rules or being suspended or expelled from membership of or participation in any securities exchange or association or other self-regulatory organisation, or suspended from dealing in securities by any government agency, and the Non-Defaulting Party serves written notice on the Defaulting Party;
  - (h) any of the assets of the Lender or the Borrower or the assets of investors held by or to the order of the Lender or the Borrower being ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the Non-Defaulting Party serves written notice on the Defaulting Party, or
  - (i) the Lender or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure, and the Non-Defaulting Party serves a further written notice on the Defaulting Party.

- 12.2 **[Obligation of each Party to notify its Event of Default]** Each Party shall notify the other if an Event of Default occurs in relation to it.

### 13 Outstanding payments

**[Default interest]** 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 at a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it in good faith) if it were to fund or of funding the relevant amount, plus 2% (or other agreed percentage) per annum.

### 14 Transactions entered into as agent

- 14.1 **[Agency Transactions]** Subject to the following provisions of this clause, the Lender may 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 clause as an “Agency Transaction”).
- 14.2 **[Conditions for Agency Transactions]** A Lender may enter into an Agency Transaction if, but only if:
- (a) it specifies that loan as an Agency Transaction 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 the 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; 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 clause 14.4(b) below.
- 14.3 **[Undertakings by Lender]** The Lender undertakes that, if it enters as agent into an Agency Transaction, 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 clause 14.5 below or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the current facts,

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

14.4 **[Consequences of Agency Transaction]**

- (a) Each Agency Transaction shall be a transaction between the relevant Principal and the Borrower and no person other than the relevant Principal

---

and the Borrower shall be a party to or have any rights or obligations under an Agency Transaction. Without limiting the foregoing, the Lender shall not be liable as principal for the performance of an Agency Transaction or for breach of any warranty contained in clause 10(d) of this Agreement, but this is without prejudice to any liability of the Lender under any other provision of this clause.

(b) All the provisions of the Agreement shall apply separately as between the Borrower and each Principal for whom the Agent has entered into an Agency Transaction or Agency Transactions as if each such Principal were a party to a separate agreement with the 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:**

(i) if there occurs in relation to the Agent an Event or Default or an event which would constitute an Event of Default if the Borrower served written notice under any paragraph of clause 12, the Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given to the Lender in accordance with clause 20) to declare that, by reason of that event, an Event of Default is to be treated as occurring in relation to the Principal. If the 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

(ii) if the Principal is neither incorporated nor has established a place of business in Australia, the Principal shall for the purposes of the agreement referred to in the preamble in this paragraph (b) be deemed to have appointed as its agent to receive on its behalf service of process in the courts of Australia the Agent, or, if the Agent is neither incorporated nor has established a place of business in Australia, 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.

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

14.5 **[Warranty by Lender]** The Lender warrants to the Borrower that it will, on every occasion on which it enters or purposes to enter into a transaction as an Agency Transaction, have been duly authorised to enter into that loan and perform the obligations arising thereunder on behalf of the person whom it specifies as the Principal in respect of that transaction and to perform on behalf of that person all the obligations of that person under the agreement referred to in clause 14.4(b).

## **15 Termination of course of dealings by notice**

---

Each Party shall have the right to bring the course of dealing contemplated under this Agreement to an end 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 and which have been entered into but not discharged at the time such notice is



---

given are duly discharged in accordance with this Agreement and with the Rules (if applicable).

## **16 No reliance or tax or accounting representations by other Party**

---

Each Party acknowledges, represents and warrants to the other that, except as expressly stated in this Agreement or any Confirmation:

- (a) it has not relied on any advice, statement, representation or conduct of any kind by or on behalf of the other Party in relation to any tax (including stamp duty) or accounting issues concerning this Agreement or any transactions effected under it; and
- (b) it has made its own determination as to the tax (including stamp duty) and accounting consequences and treatment of any transaction effected under this Agreement, including (without limitation) of any moneys paid or received or any property transferred or received in connection with any such transaction.

## **17 Observance of procedures**

---

Each of the Parties hereto agrees that, in taking any action that may be required in accordance with this Agreement, it shall observe strictly the procedures and timetable applied by the Rules (if and to the extent applicable) and, further, shall observe strictly any agreement (oral or otherwise) as to the time for delivery or redelivery of any money, Securities, Equivalent Securities, Collateral or Equivalent Collateral entered into pursuant to this Agreement.

## **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, 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 redeliver Securities, Equivalent Securities, Collateral or Equivalent Collateral, but without prejudice to any other rights it may have.

## **20 Notices**

---

20.1 **[Effectiveness]** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under clause 12 or clause 15 may not be given by facsimile transmission or electronic messaging system) to the address or number or in

---

accordance with the electronic messaging system details provided (see paragraph 6 in Schedule 1) 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 **[Change of Address]** 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 assign, transfer or otherwise dispose of all or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

## **22 Non-Waiver**

---

No failure or delay by either Party to exercise any right, power or privilege under this Agreement 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 provided in this Agreement.

## **23 Time**

---

Time shall be of the essence of the Agreement.

## **24 Recording**

---

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

---

## 25 Miscellaneous

---

- 25.1 **[Entire Agreement]** 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.
- 25.2 **[Amendments]** 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.
- 25.3 **[Survival of Obligations]** The obligations of the Parties under this Agreement will survive the termination of any transaction.
- 25.4 **[Remedies Cumulative]** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive or any rights, powers, remedies and privileges provided by law.
- 25.5 **[Counterparts]** 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.
- 25.6 **[Expenses]** A defaulting Party will, on demand, indemnify and hold harmless the other Party for and against all reasonable out-of-pocket expenses, including legal fees and stamp duty, incurred by such other Party by reason of the enforcement and protection of its rights under this Agreement or by reason of the early termination of any transaction, including, but not limited to, costs of collection.

---

## 26 Definitions

---

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 admitting 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 (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) not having been stayed or dismissed within 30 days of its filing; 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 compromise or arrangement within Part 5.1 of the Corporations Law of Australia (or any analogous proceeding).

In this definition:

- (g) "liquidator" shall be deemed to include a "provisional liquidator";
- (h) "receiver" shall be deemed to include a "receiver and manager";
- (i) "administrator" shall be deemed to include an "official manager";
- (j) "arrangement" shall be deemed to include a "scheme of arrangement"; and
- (k) "creditors" shall be deemed to include "any class of creditors".

**Agent** has the meaning given in clause 14.

**Alternative Collateral** means Collateral of a Value equal to the Collateral delivered pursuant to clause 6 and provided by way of substitution for Collateral originally delivered or previously substituted in accordance with the provisions of clause 6.5.

**Australian Taxpayer** means any person other than:

- (a) a Party who is not a resident of Australia for the purposes of the Tax Act (whether that Party is acting as a trustee, nominee or agent or in some other capacity) at the time a Franked Dividend is paid; or
- (b) a Party who is acting in the capacity of trustee, nominee or agent for a person who is not a resident of Australia for the purposes of the Tax Act at the time a Franked Dividend is paid.

**Bankers Acceptances** has the meaning given in paragraph 1.1(d) in Schedule 1.

**Base Currency** has the meaning given in paragraph 2 in Schedule 1.

**Bid Price**, in relation to Equivalent Securities or Equivalent Collateral, means the best available bid price thereof on the most appropriate market in a standard size.

**Bid Value**, subject to clause 8.5, means:

- (a) in relation to Equivalent Collateral at a particular time:

- 
- (i) in relation to Collateral type (h) (more specifically referred to in paragraph 1.1 in Schedule 1), the Value thereof as calculated in accordance with paragraph 1.2(d) in Schedule 1;
  - (ii) in relation to all other types of Collateral (more specifically referred to in paragraph 1.1 in Schedule 1), the amount which would be received on a sale of such Collateral at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection with selling or otherwise realising such Equivalent Collateral, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out such sale or realisation and adding thereto the amount of any interest, dividends, distributions or other amounts paid to the Lender and in respect of which equivalent amounts have not been paid to the Borrower in accordance with clause 6.7 prior to such time in respect of such Equivalent Collateral or the original Collateral held gross of all and any tax deducted or paid in respect thereof; and
- (b) in relation to Equivalent Securities at a particular time, the amount which would be received on a sale of such Equivalent Securities at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection therewith, 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.

**Borrower**, in relation to a particular loan of Securities, means the Borrower as referred to in Recital A of this Agreement.

**Borrowing Request** means a request made in writing (an example of which comprises Schedule 2 to this Agreement) by the Borrower to the Lender pursuant to clause 2.1 specifying, as necessary:

- (a) the description, title and amount of the Securities required by the Borrower;
- (b) the description (if other than Australian currency) and amount of any Collateral to be provided;
- (c) the proposed Settlement Date;
- (d) the duration of such loan (if other than indefinite);
- (e) the mode and place of delivery, which shall, where relevant, include the bank, agent, clearing or settlement system and account to which delivery of the Securities and any Collateral is to be made;
- (f) the Margin in respect of the transaction (if different from that stated in Schedule 1 or Schedule 3, as appropriate); and
- (g) the Fee.

**Business Day** means a day on which banks and securities markets are open for business generally in each place stated in paragraph 5 in Schedule 1 and, in relation to the delivery or redelivery of any of the following in relation to any loan, in the place(s) where the relevant Securities, Equivalent Securities, Collateral (including Cash Collateral) or Equivalent Collateral are to be delivered.

**Cash Collateral** means Collateral that takes the form of a deposit of currency.

**Close of Business** means:

- (a) in relation to any borrowing of Securities or redelivery of Equivalent Securities under this agreement, the final time on a Business Day at which settlement of the transfer of those Securities can take place in the Stock Exchange in order to constitute good delivery on that day; and
- (b) in relation to the provision of Collateral or return of Equivalent Collateral or the making of any other payment under this agreement, the time at which trading banks close for general banking business in the place in which payment is to be made or Collateral or Equivalent Collateral is to be delivered or redelivered.

**Collateral** means such securities or financial instruments or deposits of currency as are referred to in paragraph 1.1 in Schedule 1 or any combination thereof which are delivered by the Borrower to the Lender in accordance with this Agreement and includes the certificates or other documents of title (if any) and transfer in respect of the foregoing (as appropriate), and includes Alternative Collateral.

**Confirmation** means the Borrowing Request, as it may be amended pursuant to clause 2.2., or other confirming evidence exchanged between the Parties confirming the terms of a transaction.

**Defaulting Party** has the meaning given in clause 12.

**Dividend** means a dividend within the meaning of the definition of that term in section 6(1) (as affected by sections 6(4) and 6(5)) of the Tax Act.

**Equivalent Collateral** or **Collateral equivalent to**, in relation to any Collateral provided under this Agreement, means securities, cash or other property, as the case may be, of an identical type, nominal value, description and amount to particular Collateral so provided and shall include the certificates or other documents of title (if any) and transfer in respect of the foregoing (as appropriate). If and to the extent that such Collateral consists of securities that are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the relevant Collateral has been converted, subdivided or consolidated **provided that**, if appropriate, notice has been given in accordance with clause 4.2(b);



- 
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
  - (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Borrower has given notice to the Lender in accordance with clause 4.2(b);
  - (d) in the case of a call on partly paid securities, the paid-up securities **provided that** the Borrower shall have paid to the Lender an amount of money equal to the sum due in respect of the call;
  - (e) in the case of a capitalisation issue, the relevant Collateral **together with** the securities allotted by way of a bonus thereon;
  - (f) in the case of a rights issue, the relevant Collateral **together with** the securities allotted thereon, **provided that** the Borrower has given notice to the Lender in accordance with clause 4.2(b), and has paid to the Lender all and any sums due in respect thereof;
  - (g) in the event that a payment or delivery of Income is made of the relevant Collateral in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Lender in accordance with clause 4.2(b) the relevant Collateral **together with** securities or a certificate equivalent to those allotted; and
  - (h) in the case of any event similar to any of the foregoing, the relevant Collateral **together with** or replaced by a sum of money or securities equivalent to that received in respect of such Collateral resulting from such event.

For the avoidance of doubt, in the case of Bankers' Acceptances (Collateral type (d)), Equivalent Collateral must bear dates, acceptances and endorsements (if any) by the same entitles as the bill to which it is intended to be equivalent and, for the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate).

**Equivalent Securities** means securities of an identical type, nominal value, description and amount to particular Securities borrowed and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (if appropriate). If and to the extent that such Securities are partly paid or have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

- (a) in the case of conversion, subdivision or consolidation the securities into which the borrowed Securities have been converted, subdivided or

---

consolidated **provided that** if appropriate, notice has been given in accordance with clause 4.2(b);

- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration of which the Lender has given notice to the Borrower in accordance with clause 4.2(b);
- (d) in the case of a call on partly paid securities, the paid-up securities **provided that** the Lender shall have paid to the Borrower an amount of money equal to the sum due in respect of the call;
- (e) in the case of a capitalisation issue, the borrowed Securities **together with** the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the borrowed Securities **together with** the securities allotted thereon, **provided that** the Lender has given notice to the Borrower in accordance with clause 4.2(b), and has paid to the Borrower all and any sums due in respect thereof;
- (g) in the event that a payment or delivery of Income is made in respect of the borrowed Securities in the form of securities or a certificate which may at a future date be exchanged for securities or in the event of an option to take Income in the form of securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Borrower in accordance with clause 4.2(b) the borrowed Securities **together with** securities or a certificate equivalent to those allotted; and
- (h) in the case of any event similar to any of the foregoing, the borrowed Securities **together with** or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event.

For the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate).

**Event of Default** has the meaning given in clause 12.

**Fee**, in respect of a transaction, means the fee payable by one Party to the other in respect of that transaction under clause 5.

**Franked Dividend** means a Dividend the whole or part of which is taken to have been franked in accordance with section 160AQF of the Tax Act.

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

**Income Determination Period**, in relation to a particular loan of Securities, means:

- 
- (a) in relation to the Securities, the period commencing when the Securities cease to be registered in the name of the Lender (or the relevant transferor) upon or before delivery of those Securities under clause 3 and ending when Equivalent Securities are registered in the name of the Lender (or the relevant transferee) upon or following redelivery of those Equivalent Securities under clause 7.1; and
  - (b) in relation to Collateral (other than Cash Collateral), the period commencing when the Collateral ceases to be registered in the name of the Borrower (or the relevant transferor) upon or before delivery of that Collateral under clause 6.1 and ending when Equivalent Collateral is registered in the name of the Borrower (or the relevant transferee) upon or following redelivery of that Equivalent Collateral under clause 6.6.

**Income Payment Date**, in relation 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.

**Lender**, in relation to a particular loan of Securities, means the Lender as referred to in Recital A of this Agreement.

**Margin** has the meaning in paragraph 1.3 in Schedule 1.

**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 on its behalf whose appointment has been notified to the other Party.

**Non-Defaulting Party** has the meaning given in clause 12.

**Offer Price**, in relation to Equivalent Securities or Equivalent Collateral, means the best available offer price thereof on the most appropriate market in a standard size.

**Offer Value**, subject to clause 8.5, means:

- (a) in relation to Collateral equivalent to Collateral type (h) (more specifically referred to in paragraph 1.1 in Schedule 1), the Value thereof as calculated in accordance with paragraph 1.2(d) in Schedule 1; and
- (b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral (more specifically referred to in paragraph 1.1 in Schedule 1), the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price thereof at such time plus all costs, fees and expenses that would be incurred in connection therewith, 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.



**paid**, in relation to a Dividend, includes credited, distributed or issued and like terms are to be construed accordingly.

**Parties** means the Lender and the Borrower and **Party** shall be construed accordingly.

**Performance Date** has the meaning given in clause 8.

**Posted Collateral** has the meaning given in clause 6.2(a)(i).

**Principal** has the meaning given in clause 14.

**Reference Price** means:

- (a) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to type (g) (more specifically referred to in paragraph 1.1 in Schedule 1), such price as is equal to the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service (such as the services provided by SEATS or Reuters) reasonably chosen in good faith by the Lender or 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 the Lender, in each case at Close of Business on the previous Business Day; and
- (b) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to Collateral types (b)-(f) (more specifically referred to in paragraph 1.1 in Schedule 1), the market value thereof as derived from the prices or rates bid by a market maker or reputable dealer for the relevant instrument reasonably chosen by the Lender in good faith or, in the absence of such a bid, the average of the rates bid by two leading market makers reasonably chosen in good faith by the Lender in each case at Close of Business on the previous Business Day.

**Relevant Payment Date** has the meaning given in clause 4.2(a).

**Required Collateral Value** has the meaning given in clause 6.3.

**Rules** means the rules for the time being of the Stock Exchange (where either Party is a member of the Stock Exchange) and/or any other regulatory authority whose rules and regulations shall from time to time affect the activities of the Parties pursuant to this Agreement (**provided that** in an Event of Default, where either Party is a member of the Stock Exchange, the Rules and Regulations of the Stock Exchange shall prevail).

**Securities** means "eligible securities" within the meaning of section 26BC(1) of the Tax Act which the Borrower is entitled to borrow from the Lender in accordance with the Rules and which are the subject of a loan pursuant to this Agreement and such term shall include the certificates or other documents of title (if any) in respect of the foregoing.

---

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

**Standard Settlement Time**, in relation to Australian Securities, means T + 5 Australian business days on which the Australian Stock Exchange Limited is open for trading, or such lesser time in which transactions in Australia in listed securities are customarily required to be settled.

**Stock Exchange** means the Australian Stock Exchange Limited.

**Tax Act** means the Income Tax Assessment Act 1936 (Commonwealth of Australia).

**Transfer of Dividend Statement**, in relation to Dividends, means a properly completed document in the form, or substantially in the form, of Appendix 6.26 to the Rules or a properly completed statement in another approved form within the meaning of the definition of that term in section 160APA of the Tax Act.

**Unfranked Dividend** means a Dividend no part of which has been franked in accordance with the Tax Act.

**Value** at any particular time means, in relation to Securities and Equivalent Securities, the Reference Price thereof then current and in respect of Collateral and/or Equivalent Collateral such worth as determined in accordance with paragraph 1.2 in Schedule 1.

## **27 Governing Law and Jurisdiction**

---

- 27.1 **[Governing law]** This Agreement is governed by, and shall be construed in accordance with, the law in force in New South Wales, Australia.
- 27.2 **[Consent to jurisdiction]** Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales in respect of any dispute in connection with this Agreement.

**EXECUTED** as an agreement

---

## Schedule 1 - Particulars

---

### 1 COLLATERAL (*see definition in clause 26, and also clause 6*)

#### 1.1 Types (*see definition of "Collateral" in clause 26*)

Collateral acceptable under this Agreement may include the following, whether transferable by hand or within a depository:

- (a) Cash;
- (b) Australian Government Inscribed Stock;
- (c) Australian, State or Territory Government stock, bonds or promissory notes (including those issued by any statutory corporation such as Treasury Corporation of New South Wales);
- (d) Bills of exchange accepted by any bank carrying on business in Australia ("**Bankers Acceptances**");
- (e) Promissory notes issued by any such bank;
- (f) Certificates of Deposit issued by any such bank;
- (g) Corporate bonds in registrable or bearer form;
- (h) such Collateral as agreed between the Parties from time to time.

#### 1.2 Valuation of Collateral (*see definition of "Value" in clause 26 and clause 6.2*)

Collateral provided in accordance with this Agreement shall be evaluated by reference to the following, or by such means as the Parties may from time to time agree:

- (a) in respect of Collateral type (a), the amount thereof in, or converted into, the Base Currency;
- (b) in respect of Collateral type (b), the value calculated by reference to the middle market price of each stock as determined daily by the Reserve Bank of Australia, adjusted to include the accumulated interest thereon;
- (c) in respect of Collateral types (c) to (h), the Reference Price thereof.

#### 1.3 Margin (*see definition in clause 26 and clause 6.3*)

The Value of any Collateral delivered, or to be delivered, pursuant to clause 6 by the Borrower to the Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than the Value of the borrowed Securities together with the following additional percentages, hereinbefore referred to as ("**the Margin**"), unless otherwise agreed between the Parties:

- (a) in the case of Collateral type (a): 5%; or
- (b) in the case of Collateral types (b) to (f): 10% (except that, for Certificates of Deposit, the Margin shall be the accumulated interest thereon); or



- (c) in the case of Collateral type (g) and (h): as agreed between the Parties.

If the Value of the borrowed Securities includes any margin over the mid market price of the borrowed Securities, this shall be taken into account in determining the Margin applicable.

**1.4 Basis of Margin Maintenance (see clause 6.4)**

Minimum period after demand for transferring Collateral or Equivalent Collateral:

- (a) Cash Collateral: within **one** Business Day;
- (b) Equivalent Collateral: within **one** Business Day or as otherwise determined by the Borrower in the Borrower's absolute discretion;
- (c) Other Collateral (ie a Letter of Credit): within **one** Business Day or as otherwise determined by the Borrower in the Borrower's absolute discretion.

**1.5 Minimum adjustments (see clauses 6.2(a)(ii) and (iii))**

- (a) The Lender may not demand that further Collateral be provided by the Borrower if the aggregate deficiency calculated in accordance with clause 6.2 is less than the greater of:
- (i) **\$5,000**; and
- (ii) **2%** of the Value of the Required Collateral Value.
- (b) The Borrower may not demand the return of Collateral provided to the Lender if the Borrower has committed an Event of Default in respect of any transaction or if the aggregate excess calculated in accordance with clause 6.2 is less than the greater of:
- (i) **\$5,000**; and
- (ii) **2%** of the Required Collateral Value.

**2 BASE CURRENCY (see definition in clause 26 and clause 1.6)**

The Base Currency applicable to this Agreement is Australian Dollars.

**3 LENDER'S WARRANTIES (see clause 10(d))**

clause 10(d) shall not apply to Warburg Dillon Read Australia Equities Limited and shall / shall not [please advise] apply to [insert name if not a resident of Australia and where any transaction is not entered into through any branch of that non-resident in Australia].

**4 VOTING (see clause 4.3)**

Clause 4.3 does apply.

**5 PLACE OF BUSINESS (see definition of "Business Day" in clause 26)**

Sydney and Melbourne.

6 **ADDRESS FOR NOTICES AND STATUS OF PARTIES** (see clause 20.1)

6.1 Address for notices or communications to

Warburg Dillon Read Australia Equities Limited:

Address: Level 25, Governor Phillip Tower, 1 Farrer Place,  
Sydney 2000

Attention: Securities Lending Manager

Facsimile No: (02) 9240 7595

Telephone No: (02) 9324 2000

Electronic Messaging System Details: AA70732

which is an Australian Taxpayer.

6.2 Address for notices or communications to Bankers Trust Australia Limited:

Address: Level 2, Chifley Tower, 2 Chifley Square,  
Sydney 2000

Attention: Securities Lending Manager

Facsimile No: (02) 9259 9466

Telephone No: (02) 9259 2756

Electronic Messaging System Details:

which is an Australian Taxpayer.

7 **COMPENSATION FOR LOSS OF FRANKING CREDITS/REBATES** (see clause 9.2)

Is not required by

**[INSERT NAME OF RELEVANT AUSTRALIAN TAXPAYER PARTY (if applicable). OTHERWISE, DELETE THE PARAGRAPH OR LEAVE IT BLANK.**  
Note: There is no need to insert the name of any Party who is not an Australian Taxpayer, as such a party is not entitled to compensation in any event.]

8 **COMPENSATION FOR LOSS OF INTERCORPORATE DIVIDEND REBATE** (see clause 9.3)

Is not required by

**[INSERT NAME OF RELEVANT PARTY (if applicable). OTHERWISE, DELETE THE PARAGRAPH OR LEAVE IT BLANK.** Note: Only the name of a resident company (which is not a private company for the purposes of the Tax Act) or a trust estate that is treated as a resident company for the purposes of the Tax Act should be inserted in this item.]

\* **DELETE ONE ALTERNATIVE**

**Schedule 2****Specimen Form of Borrowing Request (see clause 2.1 and definition of "Borrowing Request" in clause 26)**

To: [Name and Address of Lender]

This is a Borrowing Request under the Master Securities Lending Agreement between us dated # (the "Agreement")

1 We wish to make the following borrowing of Securities:

- (a) **Description of Securities:** # [eg "fully paid ordinary shares in # "]
- (b) **Amount of Securities:** # [eg "1 million"]
- (c) **Proposed Settlement Date of Borrowing:** # [eg "today"]
- (d) **Time, Mode and Place of Delivery of Securities, including (as appropriate) settlement system and account to which delivery is to be made:**  
# [eg "to the account of #, HIN #, in CHESS"]
- (e) **Duration of Loan:** No longer than eleven months and 20 days after the Borrowed Securities are delivered under this Borrowing Request.
- (f) **Type of Collateral:** # [eg "Cash"]
- (g) **Time, Mode and Place of Delivery of Collateral:** # [eg "dvp on CHESS"]
- (h) **Rates (see clause 5.1 of the Agreement):** #[eg (a) "% per annum on the Cash Collateral", or (b) "% per annum on the daily value of the Borrowed Securities" as appropriate].

2 Please confirm your acceptance of this Borrowing Request by return fax.

Dated: # \_\_\_\_\_

For and on behalf of [Name of Borrower]

\_\_\_\_\_



---

Signature of Authorised  
Representative

---

Name and title of Authorised  
Representative

---

## Schedule 3                      Supplementary Terms and Conditions (if any)

---

This Schedule forms part of and amends the Master Securities Lending Agreement (including Schedule 1) to which it is a Schedule, as follows:

- (a) Clause 9 is amended by replacing the words, “[10 Business Days]”, where they occur in clause 9.2(f)(i), with the words, “3 Business Days”.
- (b) Sub clause 12.2 is deleted and replaced with:
- “12.2 [Obligation of each Party to notify] Each Party shall notify the other if an event occurs that, with the serving of written notice by the Non-Defaulting Party on the Defaulting Party, would constitute an Event of Default.”
- (c) Agency Transactions may not be effected under this Agreement and accordingly clause 14 will not apply.
- (d) Clause 15 is amended by adding the following paragraph:
- “Any termination pursuant to this clause 15 will be without prejudice to the rights or remedies of either party against the other in respect of any breach of this Agreement occurring before such termination.”
- (e) Sub-clause 25.4 is amended by replacing the word, “or” with the word, “of”.
- (f) Insert the following new sub-clause:
- “25.7 If either Party (“Party B”) requires the other Party (“Party A”) to act as its custodian in respect of any Securities or Collateral, then to the extent required by applicable law, all Securities and Collateral in the possession of Party A shall be segregated from other securities belonging to Party A by appropriate identification in the books of Party A.”
- (g) Sub-paragraph (a) of the definition of “Reference Price” in clause 26 is amended by adding, after the words, “to type (g)” in the second line of that sub-paragraph, the words, “and (h)”.
- (h) **Clause 2.1**
- The Borrowing Request may be made orally by the Borrower. Following receipt of the Borrowing Request the Lender, in its absolute discretion, may accept the Borrowing Request by serving on the Borrower a Confirmation.
- (i) **Clause 6.6(b)**
- Property in and title to the Equivalent Collateral redelivered by the Lender through a book entry transfer system shall not pass to the Borrower until the Securities due for redelivery have been received by the Lender.
- This provision shall (except to the extent that the same cannot overridden) override the regulations or other provisions governing the relevant book entry system.
- (j) **Clause 9.2**

Clause 9.2 is amended by:

(a) deleting paragraph (d) and inserting the following:

“(d) "the failure of the Borrower to receive a Franked Dividend is not due to any unreasonable act or omission by or on behalf of the Lender; and”;

(b) deleting sub-paragraph (f)(ii) and inserting the following:

“(ii) if required by notice from the Lender, compensate the Lender for the loss of that Franked Dividend by payment on the 3<sup>rd</sup> Business Day after the relevant Income Payment Date of an amount calculated in accordance with the following formula:

$$P = \frac{FT}{1 - T}$$

Where:

P = the amount payable;

F = the amount of the Franked Dividend (or, where the Franked Dividend is partly franked, the amount of the franked component of the Franked Dividend) paid or to be paid in respect of a particular loan of Securities; and

T = the rate of income tax, expressed as a decimal, determined under the Tax Act at the Income Payment Date as that payable in respect of the taxable income of a company (other than a private company, a company in the capacity of a trustee or a non-profit company that is a dispensary or friendly society).”

(k) **Clause 9.3**

Clause 9.3 shall not apply for the purpose of this Agreement.



**Execution page**

**SIGNED** by Warburg Dillon Read  
Australia Equities Limited by its duly  
appointed attorneys:

*Chris Madden*  
.....  
Signature

*Chris Madden*  
.....  
Name of attorney

**SIGNED** by Bankers Trust Australia )  
Limited in the presence of: )

*N. Luck* )  
..... )  
Signature of witness )

*NICHOLAS R. LUCK* )  
..... )  
Name of witness (block letters) )

*2 CHIFLEY SQUARE, SYDNEY 2000* )  
..... )  
Address of witness )

*FINANCE* )  
..... )  
Occupation of witness )

*Robert Woods*  
.....  
Signature of ROBERT WOODS

EXECUTIVE VICE PRESIDENT