

Admittance and Pay Out Date of Principal

15-Sep-14

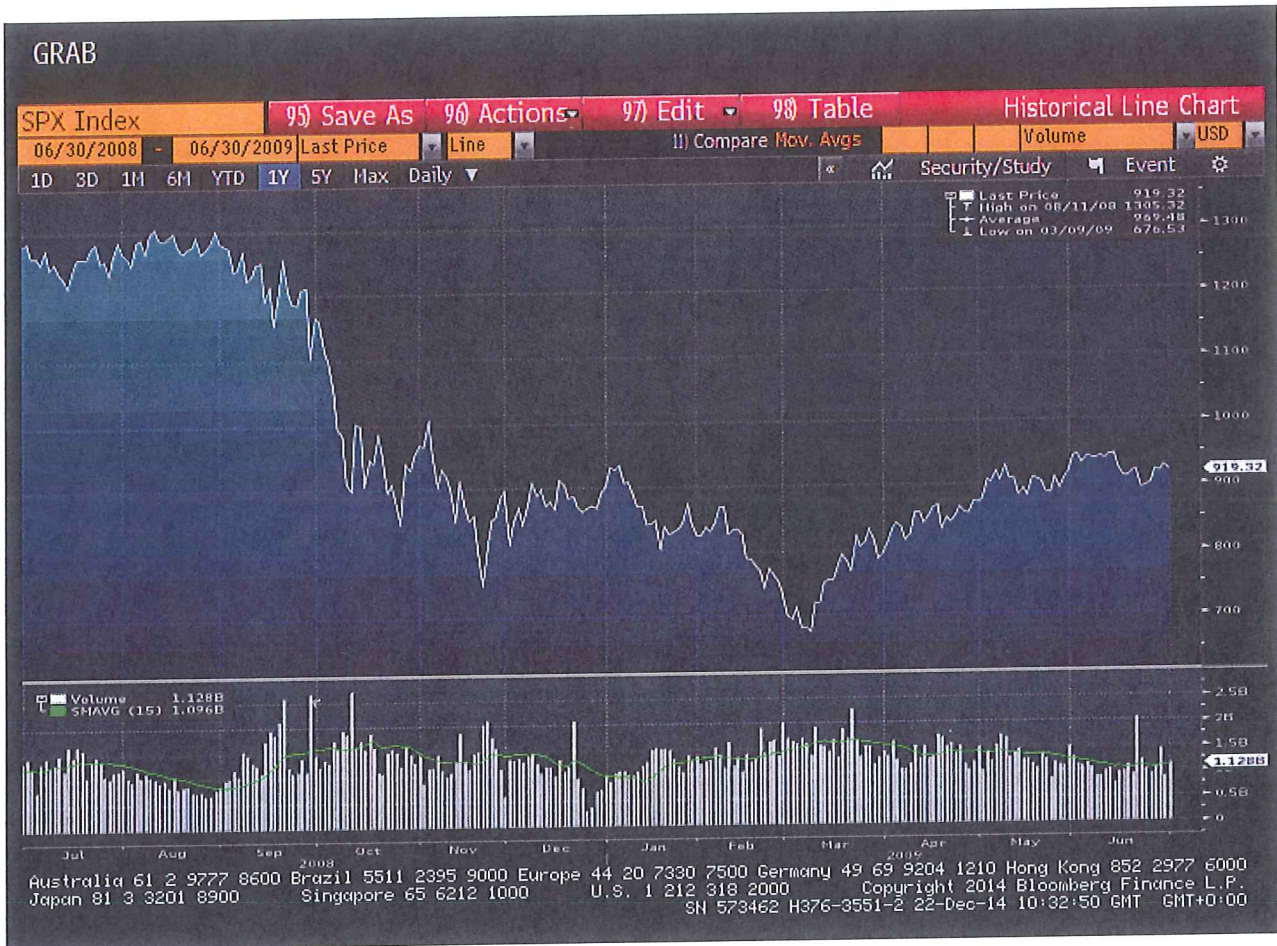
Scenario 1 : Creditor receives Interest from DoA

Scenario 2 : Creditor receives Interest from Termination

Creditor Type	"Benchmark" Creditor	CRA Creditor	"Cash" Creditor	"Increased" Creditor (i.e. the PWC scenario in AVL11)	"Decreased" Creditor
Original Contract					
		Prime Brokerage Agreement			
Post Administration Contract entered	CDD	CRA	CDD	CDD	CDD
<i>Date of attempt by creditor to obtain his cash and securities back from LBIE</i>	<i>On or around 15/9/2008</i>	<i>On or around 15/9/2008</i>	<i>On or around 15/9/2008</i>	<i>On or around 15/9/2008</i>	<i>On or around 15/9/2008</i>
Claim as of 15/9/2008	£10	£10	£10	£10	£10
Termination or Deemed Termination	15/09/2008	31/01/2010	15/09/2012	15/09/2012	15/09/2012
Valuation Date Used for Stipulation	15/09/2008	15/09/2008	15/09/2012	15/09/2012	15/09/2012
Stipulated Valuation	£10	£10	£10	£12	£8
Statutory Interest from DoA	4.8	4.8	4.8	5.8	3.8
<b>Scenario 1 Overall Recovery (Debt Agreed + Interest)</b>	<b>14.8</b>	<b>14.8</b>	<b>14.8</b>	<b>17.8</b>	<b>11.8</b>
Statutory Interest from Termination	4.8	3.7	1.6	1.9	1.3
<b>Scenario 2 Overall Recovery (Debt Agreed + Interest)</b>	<b>14.8</b>	<b>13.7</b>	<b>11.6</b>	<b>13.9</b>	<b>9.3</b>

Increase or Decrease in Recoveries vs. benchmark Creditor	"Benchmark" Creditor	CRA Creditor	"Cash" Creditor	"Increased" Creditor (i.e. the PWC scenario in AVL11)	"Decreased" Creditor
Scenario 1	N/A	£0.0	£0.0	£3.0	-£3.0
Scenario 2	N/A	-£1.1	-£3.2	-£0.9	-£5.5

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This INTERNATIONAL PRIME BROKERAGE AGREEMENT (this "Agreement") is made on [ ] 2008

**BETWEEN**

- (1) **LEHMAN BROTHERS INTERNATIONAL (EUROPE)** of 25 Bank Street, Canary Wharf, London, E14 5LE, United Kingdom, a company incorporated under the laws of England and Wales (the "Prime Broker") for itself and as agent and trustee for and on behalf of the Lehman Companies (as defined in Schedule 3); and
- (2) [fund or trustee of fund (the "Fund")] of [ ], a [insert type of entity] incorporated under the laws of [insert country of incorporation] (the "Counterparty"); and
- (3) [investment manager or custodian] of [ ], a [insert type of entity] incorporated under the laws of [insert country of incorporation] (the "Agent")]

**WHEREAS**

- (A) The Counterparty wishes to appoint the Prime Broker as its prime broker on the terms of this Agreement.
- (B) [The Counterparty wishes to appoint the Agent, who acts as its [investment manager/custodian] and as its agent for the purposes of this Agreement as set out in Clause 18 hereof.]
- (C) Pursuant to the accounting conventions of the Prime Broker:
  - (a) the receipt of securities delivered to the Prime Broker shall be recorded as a "debit" to the Counterparty's Securities Account and a transfer or advance of securities made to the Counterparty by the Prime Broker shall be recorded as a "credit" to the Counterparty's Securities Account;
  - (b) the payment, transfer or advance of cash to the Counterparty or to its order shall be recorded as a "debit" to the Counterparty's Cash Account and the receipt of cash by the Prime Broker shall be recorded as a "credit" to the Counterparty's Cash Account.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS AND CONSTRUCTION**

1.1 In this Agreement, capitalised terms not otherwise specifically defined shall have the meanings given to them in Schedule 3.

1.2 In this Agreement, unless the context otherwise requires -

- (a) References to the singular shall include the plural and vice versa;
- (b) A reference to a "Clause" is to the relevant clause in the main body of this Agreement and, unless otherwise stated, a reference to a "Paragraph" is to

the paragraph of that number in the Schedule to this Agreement in which the reference appears.

## 2. SCOPE OF AGREEMENT

2.1 This Agreement applies to all acquisitions and disposals of securities, and the provision of any advances of cash and securities in respect thereof, in the form of a Principal Transaction, a Third Party Transaction, a Collateral Contract or a Novated Third Party Contract (each, a "*Transaction*" and together the "*Transactions*").

2.2 All Transactions and ancillary arrangements contemplated by this Agreement are entered into by the Parties in reliance on the fact that this Agreement and all settlement requests, acknowledgements, Instructions, term sheets, confirmations and all other documents identified as being related to a Transaction contemplated by this Agreement form a single agreement between the parties. Except to the extent that any other document or notice is expressly referred to in this Agreement (including, without limitation, the Customer Agreements) the terms of this Agreement constitute the entire agreement between the parties as to its subject matter and, to the extent of any inconsistency between the terms of this Agreement and any such other document or notice, the terms of this Agreement will prevail.

2.3 The Prime Broker's rights under this Agreement are cumulative and are in addition to its rights under general law. Any failure to exercise or any delay in exercising any such rights will not operate as a waiver or variation of those rights and any defective or partial exercise of any such rights will not preclude any further exercise of those rights.

2.4 The Prime Broker is authorised and regulated by the FSA and is subject to its Rules. Affiliates of the Prime Broker may not be authorised by the FSA and certain services provided overseas pursuant to this Agreement may not be regulated by the Rules.

2.5 The performance by the Prime Broker of its obligations under this Agreement shall be subject to applicable laws and regulations, including the Rules or other applicable rules of any regulator or exchange including, without limitation, those applicable to the Prime Broker or the Counterparty and the Prime Broker may take or refrain from taking such course of action as it may deem necessary in order to ensure compliance with such laws, regulations or rules, notwithstanding any term of this Agreement and no such action shall constitute a breach of this Agreement. However, notwithstanding that, as between the Prime Broker or its Affiliates and its regulators, the Prime Broker and its Affiliates may be regulated by the Rules or equivalent regulations in the relevant jurisdiction, such Rules or regulations shall not be incorporated into this Agreement.

2.6 The Counterparty confirms its acceptance of and agreement to be bound by the provisions of the Schedules to this Agreement.

## 3. TRANSACTIONS, PAYMENTS AND DELIVERIES

3.1 Wherever the Counterparty wishes the Prime Broker to enter into a Transaction, or the Counterparty requests the Prime Broker to settle a Transaction on the Counterparty's behalf, or to make or receive any other delivery or payments to, from or on behalf of the Counterparty, it shall issue a Principal Transaction Request or a Third Party Transaction Request, as applicable, to the Prime Broker, in the manner specified in Schedule 1.

3.2 The Counterparty agrees and accepts that the Prime Broker or its Affiliates may act as agent for the Counterparty in settling Transactions or delivering securities and making payments and such parties are authorised to do so.

3.3 The Counterparty shall be responsible for complying with all exchange notification requirements.

3.4 The Prime Broker shall not be obliged to make any payments and or deliveries to a third party, except as contemplated by this Agreement.

#### 4. PROVISION OF FINANCE

4.1 The Prime Broker may in its absolute discretion -

- (a) lend money to the Counterparty;
- (b) as a result of the Counterparty's sales or purchases of securities pursuant to Transactions advance securities to the Counterparty;
- (c) discharge any obligation of the Counterparty to pay money or deliver securities under or in connection with a Transaction or pursuant to this Agreement and the Counterparty irrevocably authorises it to do so. Except to the extent that cash of the relevant currency is for the time being credited to the Counterparty's Cash Accounts or, as the case may be, securities of the description and amount in question are for the time being debited to the Counterparty's Securities Accounts and in either case available for the purpose, any such discharge shall be treated as a Loan or, as the case may be, an advance by the Prime Broker to the Counterparty of the securities so delivered.

4.2 Where the Prime Broker agrees to advance to the Counterparty securities which are Hong Kong securities, the Prime Broker will advance such securities by lending the securities to the Counterparty under the Stock Lending Agreement. The Counterparty shall not be required to issue a Borrowing Request (as defined in the Stock Lending Agreement) in respect of such loan.

4.3 Where the Prime Broker agrees to loan to the Counterparty securities which are South African listed securities (as defined in Section 1 of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985) the Counterparty warrants that:

- (a) the entering into of such Transactions under this Agreement is and will not be for the purposes of avoiding any tax liability under South African law, nor for the purposes of keeping a position open for more than 12 months;
- (b) on-delivery of the South African listed securities will be effected within 10 Business Days of the date of the transfer of the South African listed securities by the Prime Broker to the Counterparty;
- (c) Equivalent Securities will be returned to the Prime Broker within a period of 12 months as from the delivery of the South African listed securities by the Prime Broker to the Counterparty in respect of each Transaction; and

- (d) The Prime Broker will be compensated for any distributions in respect of the South African listed securities to which the Prime Broker would have been entitled to receive had such Transactions under this Agreement not been entered into.

4.4 The Counterparty will indemnify and hold the Prime Broker harmless in respect of any uncertificated securities tax which may become payable by the Prime Broker pursuant to the provisions of the Uncertificated Securities Tax, 1998 of South Africa in relation to any Transaction.

4.5 The Counterparty shall on demand by the Prime Broker –

- (a) repay any Loan (together with fees and interest thereon);
- (b) deliver securities equivalent to any Advanced Securities (together with fees and interest on the value thereof) and shall make such payments as are provided by Clause 8 with respect to income on such securities. Where the Advanced Securities are Hong Kong securities, the Counterparty shall deliver Equivalent Securities to the Prime Broker in accordance with the Stock Lending Agreement and such delivery shall discharge the Counterparty's obligation under this Clause.

4.6 The Counterparty may not use the proceeds of any Loan in any way, directly or indirectly, for any purpose which is unlawful under any applicable law nor for the making, instigation or conducting of a takeover of, or tender offer for, any person or any other action which, when complete, will have the effect of acquiring control of any such person. The Prime Broker shall be entitled to assume (without any enquiry on its part) that the purpose of any Loan falls within the investment guidelines and requirements of the Fund and will be used only in connection with the prime brokerage business contemplated by this Agreement.

4.7 The Counterparty shall not request the Prime Broker to advance any securities or discharge any obligation of the Counterparty to deliver securities in accordance with Clause 4.1 where such request will result in the aggregate Market Value Equivalent of Advanced Securities in respect of which Equivalent Securities have not been delivered by the Counterparty to the Prime Broker exceeding any limits notified by the Prime Broker to the Counterparty from time to time.

## 5. SECURITIES AND CASH ACCOUNTS

5.1 The Prime Broker shall open and maintain one or more Cash Accounts and Securities Accounts to which -

- (a) in the case of Cash Accounts there shall be -
  - (i) debited the amount of any Loan and all cash paid or deemed or treated as paid by the Prime Broker to or on behalf of the Counterparty; and
  - (ii) credited all cash paid or deemed or treated as paid to the Prime Broker, by or on behalf of the Counterparty (including sums received by the Prime Broker in settlement of Third Party Transactions); and



- (b) in the case of Securities Accounts there shall be -
- (i) debited all securities delivered to the Prime Broker by or on behalf of the Counterparty (including securities received by the Prime Broker in settlement of Third Party Transactions) or delivered or deemed or treated as delivered by or on behalf of the Counterparty to the Prime Broker; and
  - (ii) credited all securities advanced by the Prime Broker to the Counterparty (including Hong Kong securities advanced under the Stock Lending Agreement) or delivered or deemed or treated as advanced, by the Prime Broker to or on behalf of the Counterparty,

and the Prime Broker may combine such accounts where it considers appropriate.

5.2 The parties acknowledge and agree that any cash held by us for you is received by us as collateral with full ownership under a collateral arrangement and is subject to the security interest contained in the Agreement. Accordingly, such cash will not be client money pursuant to the Rules (or any successor provisions thereto) and will not be subject to the protections conferred by the Rules. Such cash held by the Prime Broker will not be segregated from the money of the Prime Broker or any other counterparty of the Prime Broker and will be held free and clear of all trusts. The parties further agree that the Prime Broker will use such cash in the course of its business and the Counterparty will, therefore, rank as a general creditor of the Prime Broker in respect of such cash.

## 6. MARGIN REQUIREMENT

6.1 For the purpose of this Agreement, "*Net Equity*" means the aggregate of -

- (a) the sum of -
  - (i) the absolute value of all credit balances on the Cash Accounts; and
  - (ii) the Market Value Equivalent of all securities comprised in all debit balances on the Securities Accounts;
- (b) less the sum of -
  - (i) the absolute value of all debit balances on the Cash Accounts; and
  - (ii) the Market Value Equivalent of all securities comprised in all credit balances on the Securities Accounts; and
  - (iii) the absolute value of all sums due to the Prime Broker pursuant to this Agreement (to the extent not debited from the Cash Accounts).

6.2 The Counterparty shall ensure that at all times the Net Equity is not less than the Margin Requirement.

6.3 If, for the purposes of determining the credit or debit balances on the Cash Accounts or the Securities Accounts (including for the purposes of calculating the Net Equity), the relevant cash or securities are denominated in a currency other than the Base Currency, then the Prime Broker may convert such currencies as are necessary for the

purposes of such determination into the Base Currency at the Spot Rate prevailing at such time.

6.4 If at any time there is a Margin Deficit, the Counterparty shall pay or deliver (whether or not pursuant to a Margin Call) to the Prime Broker such cash or securities acceptable to the Prime Broker as will ensure that, following such payment or delivery, such Margin Deficit will be eliminated.

6.5 When calculating the value of any balance on any account for the purposes of Clause 6.1, the Prime Broker may in its absolute discretion take into account any variation or potential variation in the value of cash or securities due to the availability, liquidity, solvency or market volatility of such asset or other market variable applicable to that asset.

6.6 In the event of a Margin Call, the Counterparty shall make such payment or delivery within such period as is notified by the Prime Broker in its absolute discretion and, if no such period is specified, not later than close of business on the Business Day following that on which the Margin Call is made.

6.7 Any cash paid and any securities delivered by or on behalf of the Counterparty to the Prime Broker pursuant to a Margin Call or otherwise under Clause 6.4 shall (in the case of cash) be credited to the Cash Accounts and (in the case of securities) be debited to the Securities Accounts.

6.8 The Prime Broker may from time to time specify general principles, criteria and margin rates which it intends to adopt in connection with its calculation of the Margin Requirement applicable to any Transactions and positions. Such specified information may be notified by the Prime Broker to the Counterparty in such manner as the Prime Broker considers appropriate including, without limitation, by means of any Terms.

6.9 If at any time the Counterparty is required to provide margin or collateral to the Prime Broker under a Customer Agreement which may be a title transfer agreement, to the extent that there is a Margin Excess, the Counterparty authorises and requests the Prime Broker to transfer from the appropriate Cash Account or Securities Account cash or securities with a Market Value Equivalent sufficient to fulfil that requirement or otherwise to designate in its books and records an amount sufficient to fulfil that requirement.

## 7. PAYMENT AND DELIVERY

7.1 Subject to Clause 7.2 -

- (a) upon reasonable request, the Prime Broker shall repay the Counterparty any cash standing for the time being to the credit of a Cash Account;
- (b) upon reasonable request, the Prime Broker shall deliver to the Counterparty securities equivalent to any securities standing for the time being to the debit of a Securities Account.

7.2 The Prime Broker shall not be required to make a payment or delivery under Clause 7.1 if -

- (a) an Event of Default or Potential Event of Default has occurred and is continuing; or
- (b) the Prime Broker is entitled to apply the amount of cash so payable or securities so deliverable in respect of a debt or obligation owed to it by or on behalf of the Counterparty or (in the case of cash) to reduce or eliminate a debit balance on the Cash Accounts or (in the case of securities) to increase or create a debit balance to the Securities Accounts.

7.3 The Counterparty undertakes to pay any amount payable under this Agreement on the due date without deduction or the exercise of any right of equity, set-off or counterclaim that the Counterparty may have or allege against the Prime Broker.

7.4 The Prime Broker may in its sole and absolute discretion refuse to accept (or accept on such terms as it may in its sole and absolute discretion determine) any delivery of securities or Equivalent Securities by or on behalf of the Counterparty.

7.5 The Prime Broker may refuse to effect any request to make any payment or delivery under this Agreement or any Customer Agreement where this would result in the creation of, or an increase in, a Margin Deficit.

7.6 Securities or Equivalent Securities delivered to the Prime Broker are only accepted by the Prime Broker when transferred into the sole name of the Prime Broker or its nominee.

7.7 The Counterparty shall pay any Taxes arising in respect of a Transaction and acknowledges and agrees that the filing of tax returns, payment of tax liabilities, and all other actions related to its tax affairs shall be the responsibility of the Counterparty.

7.8 Subject to Clause 8, all cash payable by one party to the other shall be paid free and clear of, and without withholding or deduction for, any Taxes of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having power to tax, unless the withholding or deduction is required by law. In that event, the paying party shall pay such additional amounts as will result in the net amounts receivable by the other party (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such Taxes been required to be withheld or deducted; provided that -

- (a) to the extent any amount is recovered in respect of such withholding or deduction by any party receiving such additional amounts, an amount equal to that recovered shall be paid promptly following receipt to the paying party or (where any such payment recovered is to be made to the Counterparty) credited to any Cash Accounts;
- (b) no such additional amounts shall be payable by the Prime Broker to the Counterparty in respect of any payment by that party under Clause 13.2; and
- (c) no such additional amounts shall be payable by the Prime Broker in respect of any payment made by the Prime Broker under Clause 8 or Clause 10.6(d).

7.9 If the Counterparty is, at any time, required to make any payment of cash or any delivery of securities to the Prime Broker under any provision of this Agreement, including, without limitation, in respect of Margin under Clause 6, fees or interest under Clause 9 and cash or Equivalent Securities under Clause 11, the Counterparty hereby authorises the Prime Broker to debit or credit the relevant Cash Account or Securities Account in order to effect such payment or delivery.

## 8. INCOME, CORPORATE EVENTS AND VOTING

### Income

8.1 If income is paid or distributed by the issuer of any securities comprised in the balances on the Securities Accounts -

- (a) in respect of securities standing to the credit of a Securities Account, the Counterparty will (subject to Clause 8.2) pay to the Prime Broker an amount equal to, and in the same currency as, the amount paid by the issuer or, in the case of income in the form of securities, deliver to the Prime Broker securities equivalent to such securities;
- (b) in respect of securities standing to the debit of a Securities Account, the Prime Broker will (subject to Clause 8.3) pay to the Counterparty an amount equal to, and in the same currency as, the amount paid by the issuer or, in the case of income in the form of securities, deliver to the Counterparty securities equivalent to such securities. The Prime Broker will credit the relevant Cash Account in respect of the amount so payable or, as the case may be, debit the relevant Securities Account in respect of the securities so deliverable.

8.2 The amount debited or credited under Clause 8.1(a) shall include but not be restricted to -

- (a) any amount which is deducted or withheld in respect of tax by or on behalf of the issuer of the relevant securities, and
- (b) any additional tax credits to which a holder of such securities as specified by the Prime Broker would be entitled in respect of such income.

8.3 Any amount credited or debited pursuant to Clause 8.1(b) shall not -

- (a) include any amount in respect of cash or securities which is -
  - (i) deducted or withheld in respect of tax by or on behalf of the issuer of the relevant securities;
  - (ii) required to be accounted for to the United Kingdom Inland Revenue in respect of the income in question; or
  - (iii) might be recovered by the Prime Broker or any other holder of the securities from any relevant taxation authority outside the United Kingdom in respect of the income in question; and

- (b) exceed the amount of cash (or the amount of securities comprising income) which the Counterparty would have received from the issuer in respect of the income, had the Counterparty been the holder of such securities on the relevant date, net of any amount which is or, as the case may be, would have been, held or deducted or withheld in respect of tax by or on behalf of the issuer of the relevant securities. In this Clause, "relevant date" means, in relation to any income, the date by reference to which the identity is determined of those holders to whom that income is paid.

8.4 The Prime Broker will use reasonable efforts to claim dividends and interest payments on the Counterparty's securities but will not have any duty to take steps to recover any amounts due in respect of which the issuer or its registrar, paying agent or other agent defaults.

#### Corporate Events

8.5 The Prime Broker shall inform the Counterparty if it becomes aware of the occurrence or prospective occurrence of any conversion, subscription, sub-division, consolidation, redemption, rights issue, takeover or other offer, capital reorganisation, call, capitalisation issue or distribution of, or a granting of, an entitlement to receive securities or any other corporate event (each a "Corporate Event") with respect to any securities comprised in any debit balance on the Securities Accounts.

8.6 Where a Corporate Event giving rise to a right or option occurs, the Counterparty (in respect of securities debited to the Securities Accounts) or the Prime Broker (in respect of securities credited to the Securities Accounts) may within a reasonable time before the latest time for the exercise of the right or option give notice to the other party that it wishes to receive Equivalent Securities or other assets in such form as will arise if the right is exercised in such manner as is stated in the notice.

8.7 The Prime Broker may, upon service of such notice, credit or debit the relevant Cash Account or the relevant Securities Account (or both) with such amounts of cash or, as the case may be, securities as would reflect the performance of the instructions in such notice by the Prime Broker. If the Counterparty does not serve notice under Clause 8.6, the Prime Broker shall credit or debit the relevant Cash Account or the relevant Securities Account (or both) to reflect the taking of such action as the Prime Broker in its absolute discretion deems appropriate. The Counterparty acknowledges that Equivalent Securities, or other assets required to be delivered under Clause 8.6, may be the subject of a loan made by the Prime Broker to third parties and that reasonable notice must be given to the Prime Broker to provide for the return of such Equivalent Securities or other assets.

8.8 A notice served by the Counterparty under Clause 8.6 shall not be effective -

- (a) where it refers to an event which involves the payment of money by the holder of securities, unless the Counterparty pays to the Prime Broker, for value not later than the due date of the relevant payment, an amount equal to that which is required to be paid by such a holder of securities; or
- (b) if the exercise of the right or option stated in the notice would create or increase a Margin Deficit.

8.9 If a call becomes payable in respect of partly-paid securities, the Prime Broker may debit the Cash Accounts with a sum equal to the amount so payable, but shall have no liability whatsoever for the consequences of a failure to satisfy any calls made.

8.10 Where the Prime Broker or any third party holding securities on behalf of the Prime Broker is legally liable to meet any payment due or to become due in respect of such securities, the Counterparty will provide the Prime Broker or such other person (as the case may be) with funds to meet such payment, for value not later than the day on which the call is payable.

### Voting

8.11 If a right to vote (other than a right contemplated by Clause 8.5) arises in respect of any securities comprised in a debit balance on the Securities Accounts, the Prime Broker may in its absolute discretion –

- (a) deliver such securities to the Counterparty or to its order within a reasonable time before the latest time for the exercise of such vote; or
- (b) request instructions from the Counterparty in respect of such voting rights and use its reasonable endeavours to arrange for such voting rights to be exercised in accordance with such instructions provided those instructions are received within such period as the Prime Broker reasonably requires.

In the absence of such instructions, the Prime Broker may exercise the right to vote as it in its absolute discretion deems appropriate.

8.12 The provisions of this Clause 8 shall apply to Advance Securities which are Hong Kong securities.

### 9. FEES AND INTEREST

9.1 The Counterparty shall pay fees and remuneration to the Prime Broker in respect of Transactions, at such rates, at such times and calculated in such manner as may from time to time be notified by the Prime Broker to the Counterparty, whether generally (including by means of the Terms) or in respect of a particular Transaction, such notification to have immediate effect unless otherwise specified in the notification. Such fees and remuneration at the commencement of this Agreement are set out in the last Terms provided by the Prime Broker to the Counterparty.

9.2 The Prime Broker may pay interest to the Counterparty on any credit balance on a Cash Account. The Counterparty shall pay interest to the Prime Broker on any debit balances on a Cash Account. Such interest shall be at such rates as may be notified by the Prime Broker to the Counterparty from time to time (including by means of the Terms).

9.3 Any amount payable by one party to the other under this Agreement which is not paid when due shall bear interest (compounded on a daily basis) from the date on which such payment became due until the date of actual payment at a rate equal to LIBOR plus two per cent..

## 10. SECURITY

10.1 As continuing security for the payment and discharge of all the Liabilities (as defined below), the Counterparty hereby, with full title guarantee and free from any encumbrances whatsoever, charges in favour of the Prime Broker for itself and as trustee for the other Lehman Companies by way of first fixed charge -

- (a) all right, title and interest in and to securities and any other assets not falling within sub-paragraphs (b) to (f) constituted for the time being by debits to any Securities Account;
- (b) all securities and other assets which, or the certificates or documents of title to which, are for the time being deposited with or held by a Lehman Company;
- (c) all other securities and all rights, cash (including without limitation dividends) and property whatsoever which may from time to time accrue on, be derived from or be offered in respect of any assets referred to in sub-paragraphs (a) and (b) above, whether by way of Corporate Event or otherwise;
- (d) all cash for the time being credited to any Cash Account;
- (e) all rights of the Counterparty arising in respect of any securities, assets or cash referred to in sub-paragraphs (a) to (d) above, including, without limitation, any rights against any custodian, banker or other person;
- (f) all rights of the Counterparty under this Agreement including, without limitation, all rights of the Counterparty to delivery of Equivalent Securities;
- (g) all rights of the Counterparty to receive payment of the Net Default Amount payable under any Customer Agreement,

but in each case so that the covenants implied by the Law of Property (Miscellaneous Provisions) Act 1994 in the charges contained in or created pursuant to this Agreement are construed with the omission of -

- (i) the words "other than any charges, encumbrances or rights which that person does not and could not reasonably be expected to know about" in section 3(1) of that Act; and
- (ii) section 6(2) of that Act.

10.2 "*Liabilities*" at any time, means the aggregate (as determined by the Prime Broker, including without limitation in accordance with Clause 13) of all monies, debts, liabilities and obligations, whether present or future, actual or contingent, owing or incurred by the Counterparty to the Prime Broker or any Lehman Company under or in connection with this Agreement, any Transaction, the Customer Agreements, any other contract or otherwise (in each case, whether alone or jointly (or jointly and severally) with any other person, whether actually or contingently and whether as principal, surety or otherwise), plus any costs and expenses (including, without limitation, legal fees) which the Prime

Broker may incur in enforcing, perfecting or maintaining any of its rights, whether pursuant to the terms of this Agreement or any Transaction, contract or otherwise, including without limitation:

- (a) the amounts of principal, interest, fees, remuneration, Margin Requirement and other monies due and payable; and
- (b) any loss of bargain, the cost of funding or currency exchange and, to the extent not already covered, any loss incurred by the Prime Broker in liquidating, obtaining or re-establishing any hedge or related position.

10.3 The security provided under this Clause 10 is continuing security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part by or on behalf of the Counterparty.

10.4 Subject to Clause 10.14, if the Prime Broker is satisfied that all the Liabilities have been irrevocably paid in full and that all facilities which might give rise to Liabilities have terminated, the Prime Broker shall, at the request and cost of the Counterparty, release, reassign or discharge (as appropriate) the Charged Assets from the security created pursuant to this Clause 10.

10.5 Upon or at any time after the occurrence of an Event of Default in relation to the Counterparty, all sums provided to be paid and securities provided to be delivered by the Counterparty pursuant to the terms of this Agreement shall become immediately due and payable or deliverable (as applicable) and the Prime Broker shall not be obliged to accept any further Instructions from the Counterparty in respect of the Charged Assets, including without limitation, the exercise of any rights in respect of the events described in Clause 8. Without prior notice or demand, the Prime Broker (for itself and as agent, or as the case may be, trustee for the Lehman Companies) may enforce the Security and exercise all powers and rights of a mortgagee conferred by statute or otherwise.

10.6 Without limiting Clause 10.5, the Counterparty hereby irrevocably authorises the Prime Broker, at any time after an Event of Default in relation to the Counterparty and without notice to the Counterparty, to sell or otherwise realise the Charged Assets in such manner as it may deem appropriate and apply the proceeds of sale as follows –

- (a) first, in or towards payment of all costs and expenses incurred by the Prime Broker in connection with such disposal;
- (b) secondly, in or towards payment and satisfaction of any sum due to the Prime Broker pursuant to Clause 13 in such order and manner as the Prime Broker may determine;
- (c) thirdly, in or towards payment and satisfaction of any other sum and liability comprising the Liabilities due from the Counterparty to the Prime Broker and the Lehman Companies in such order and manner as the Prime Broker may determine; and
- (d) fourthly, in payment of any surplus to the Counterparty.



10.7 For all purposes, including any legal proceedings, a certificate by any officer of the Prime Broker as to the sums or Liabilities for the time being due to or incurred by the Prime Broker or any Lehman Company shall be conclusive in the absence of manifest error.

10.8 Sections 93 (restriction of right of consolidation) and 103 (regulation of exercise of power of sale) of the Law of Property Act 1925 will not apply to this Agreement.

10.9 The Counterparty shall not create or permit to subsist any mortgage, charge, pledge, lien or other security interest securing any obligation of any person (or any other agreement or arrangement having a similar effect), over the Charged Assets except for the security created or expressed to be created by or pursuant to this Agreement in favour of the Prime Broker, nor shall it seek or agree to dispose of such Charged Assets, save in accordance with this Agreement.

10.10 The Prime Broker may, at the request of the Counterparty, in its absolute discretion permit the Counterparty to deal with or otherwise dispose of any of the Charged Assets, subject to the other provisions of this Agreement. If at any time the Prime Broker consents to such a dealing or disposition, that consent shall in no way constitute a waiver of the Prime Broker's right to refuse to give its consent to any other request. If the Prime Broker permits such a dealing or disposition of any of the Charged Assets, then on such dealing or disposition the relevant Charged Assets shall be automatically released from the Security.

10.11 For the purpose of perfecting or enforcing the Security, if the Prime Broker so requests at any time or times, the Counterparty will promptly execute and sign all such transfers, assignments, powers of attorney, further assurances or other documents and do all such other acts and things as may reasonably be required to vest or to realise the Security or any of it in the Prime Broker or any Lehman Company or to its order or to a purchaser or transferee to perfect or preserve the rights and interests of the Prime Broker and the Lehman Companies in respect of the Security (including, without limitation, the institution and conduct of legal proceedings) or for the exercise by the Prime Broker of all or any of the powers, authorities and discretions conferred on the Prime Broker by this Agreement.

10.12 The Counterparty by way of security hereby irrevocably appoints the Prime Broker as its attorney on the Counterparty's behalf and in the Counterparty's name or otherwise to execute any transfers, assignments, further assurances or other documents as may reasonably be required to vest or to realise the Security or any of it in the Prime Broker or to its order or any Lehman Company or to its order or to a purchaser or transferee to perfect or preserve the rights and interests in respect of the Security of the Prime Broker and the Lehman Companies (including, without limitation, the institution and conduct of legal proceedings) or for the exercise by any Lehman Company of all or any of the powers, authorities and discretions conferred on them by this Agreement. The Counterparty hereby ratifies and confirms and agrees to ratify and confirm whatever the Prime Broker shall do in the exercise or purported exercise of the above power of attorney.

10.13 The powers conferred on the Prime Broker pursuant to this Agreement in relation to the Charged Assets or any part thereof shall be in addition to and not in substitution for the powers conferred on mortgagees under the Law of Property Act 1925 and where there

is any ambiguity or conflict between the powers contained in such Act and those conferred by this Agreement, this Agreement shall prevail.

10.14 If the Prime Broker reasonably determines that any payment received or recovered by the Prime Broker or any Lehman Company may be avoided or invalidated after the Liabilities have been discharged in full, and after any facility which might give rise to such Liabilities has been terminated, this Agreement (and the Security created thereby) will remain in full force and effect and neither the Prime Broker nor any Lehman Company will be obliged to release any Charged Assets until the expiry of such period as the Prime Broker or that Lehman Company as the case may be shall reasonably determine.

10.15 No payment which may be avoided or adjusted under any law, including any enactment relating to bankruptcy or insolvency, and no release, settlement or discharge given or made by the Prime Broker or any Lehman Company on the faith of any such assurance, security or payment, shall prejudice or affect the right of the Prime Broker or any Lehman Company to recover the Liabilities from the Counterparty or to enforce the Security to the full extent of the Liabilities.

10.16 At any time following (i) the Prime Broker or any Lehman Company receiving notice (either actual or otherwise) of any subsequent security interest affecting any assets subject to the Security or (ii) the occurrence of any Act of Insolvency in respect of the Counterparty, the Prime Broker may open a new Cash Account or Securities Account (or both) in the Counterparty's name (whether or not the Prime Broker permits any existing account to continue). If the Prime Broker does not open such a new account, the Prime Broker will nevertheless be treated as if the Prime Broker had done so at the time, as the case may be, when the notice was received or deemed to have been received of the subsequent security interest or at the time of the Act of Insolvency. No cash or assets thereafter paid or delivered into any Cash Account or Securities Account, whether new or continuing, shall discharge or reduce the amount receivable pursuant to this Agreement.

10.17 No person dealing with the Prime Broker shall be concerned to enquire whether any event has happened upon which any of the powers, authorities and discretions conferred by or pursuant to this Agreement, and conditions in relation to the Charged Assets or any part thereof, are or may be exercisable by the Prime Broker, or otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such powers, authorities and discretions, and all the protections to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925 shall apply to any person purchasing from or dealing with the Prime Broker in like manner as if the statutory powers of sale in relation to the Charged Assets hereby charged had not been varied or extended by this Agreement.

10.18 The receipt of the Prime Broker shall be an absolute and a conclusive discharge to a purchaser and shall relieve the purchaser of any obligation to see to the application of any moneys paid to or by the direction of the Prime Broker or any Lehman Company, as the case may be.

10.19 The Prime Broker may credit any amounts received or recovered by it in exercise of its rights under this Agreement to, and require the same to be paid to it for crediting to, an interest bearing suspense account for so long and in such manner as it may determine.

## 11. RIGHT OF USE

11.1 The Counterparty hereby authorises the Prime Broker at any time or times to borrow, lend, charge, hypothecate, dispose of or otherwise use for its own purposes any securities which are included in the Charged Assets by transferring such securities to itself or to another person without giving notice of such transfer to the Counterparty. The Counterparty agrees that the Prime Broker may retain for its own account all fees, profits and other benefits received in connection with any such borrowing, loan, charge, hypothecation, disposal or use.

### 11.2 Upon –

- (a) a borrowing, lending, disposal or other use, such securities will become the absolute property of the Prime Broker (or that of the transferee) free from the Security and from any equity, right, title or interest of the Counterparty;
- (b) a charge or hypothecation of any of the Counterparty's securities, all of those securities, including the Counterparty's interest in those securities, will be subject to the charge or other security interest created by such charge or rehypothecation.

11.3 Upon any such borrowing, lending, charge, hypothecation, disposal or use, the Counterparty will have a right against the Prime Broker for the delivery of securities equivalent to those securities. Where, in respect of any securities, the Counterparty has instructed the Prime Broker to exercise any rights under Clause 8, the Prime Broker shall deliver securities equivalent to those securities in such form as has resulted from the exercise of such rights.

11.4 If on the due date for delivery thereof the Prime Broker shall for any reason be unable to deliver any Equivalent Securities to the Counterparty, the Prime Broker may, pending such delivery, credit the Cash Accounts in an amount equal to the Market Value Equivalent of those Equivalent Securities. Upon delivery of those Equivalent Securities to the Counterparty, the Prime Broker will debit the relevant Cash Account in the amount of the cash so credited.

11.5 Upon delivery or payment to the Counterparty of Equivalent Securities or Collateral, such Equivalent Securities or Collateral will become subject to the Security and constitute Charged Assets and shall be subject to all the provisions of this Agreement including, without limitation, those of Clause 10 and this Clause 11.

## 12. EVENTS OF DEFAULT

12.1 Each of the following events is an "*Event of Default*" in relation to the relevant party (the "*Defaulting Party*", the other party being the "*Non-Defaulting Party*"):

- (a) the Counterparty fails to eliminate a Margin Deficit on the due date in accordance with Clause 6 and the Prime Broker serves a Default Notice on the Counterparty; or
- (b) the Counterparty fails to make any other payment of cash or delivery of securities by the due date, such failure is not remedied within 24 hours

following written notice of such failure given to the Counterparty by the Prime Broker, and the Prime Broker serves a Default Notice on the Counterparty; or

- (c) the Counterparty fails to comply with or perform any other agreement or obligation in accordance with this Agreement and such failure, if capable of remedy, is not remedied within 24 hours following written notice of such failure given to the Counterparty by the Prime Broker, and the Prime Broker serves a Default Notice on the Counterparty; or
- (d) an Act of Insolvency occurs in relation to the Counterparty (including any general partner, managing member or analogous representative entity) or, where applicable, the Fund or the Agent; or
- (e) an Act of Insolvency occurs in relation to the Prime Broker and the Counterparty serves a Default Notice on the Prime Broker; or
- (f) any representations made or deemed to have been made or repeated by the Counterparty or the Agent are incorrect or untrue in any material respect, and the Prime Broker serves a Default Notice on the Counterparty or the Agent; or
- (g) the Counterparty admits to the Prime Broker that it is unable to, or intends not to, perform any of its obligations under this Agreement, and the Prime Broker serves a Default Notice on the Counterparty; or
- (h) the Counterparty or, where applicable, the Fund or the Agent is suspended or expelled from or surrenders its membership of or participation in any securities exchange or association or other self-regulating organisation, or is suspended from dealing in securities by any government agency, or any of the assets of the Counterparty or the assets of an investor held by, or to the order of, the Counterparty are transferred or ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation, and the Prime Broker serves a Default Notice on the Counterparty; or
- (i) there is a material adverse change in the business affairs of the Counterparty or the Agent or their respective affiliates and the Prime Broker serves a Default Notice on the Counterparty; or
- (j) an event of default or equivalent event occurs under a Customer Agreement, or under any other agreement between the Counterparty or the Agent or its affiliates and the Prime Broker or any of its Affiliates and the Prime Broker serves a Default Notice on the Counterparty; or
- (k) a financial obligation of the Counterparty or the Agent or any of their respective affiliates in an amount greater than US\$[5,000,000] (or its equivalent in another currency) is not paid in accordance with its terms and the Prime Broker serves a Default Notice on the Counterparty; or

- (l) any material document or constitutional document (including, without limitation, the investment policies or guidelines) of the Counterparty or, where applicable, the Fund or the Agent is modified in a manner which, in the sole and absolute discretion of the Prime Broker, may have a material adverse effect on any Transaction or on such party's ability to perform its obligations under this Agreement or any Customer Agreement; or
- (m) the General Partner of the Counterparty resigns or there is a change in the management or control of, or a loss of a key person (including incapacity) of, the Counterparty or, where applicable, the Fund or the Agent which, in the sole and absolute discretion of the Prime Broker, may be prejudicial to the interests of the Prime Broker or to its ability to continue to offer its services under this Agreement; or
- (n) the Counterparty or, where applicable, the Fund suffers a decline in net asset value of such amount and for such period as may from time to time be specified in any Terms.

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

### 13. CLOSE-OUT

13.1 Upon the occurrence of an Event of Default, the Non-Defaulting Party may, by written notice to the Defaulting Party, terminate this Agreement with effect from the time of the Event of Default (the date of such occurrence being the "*Termination Date*"). On the Termination Date, the following shall immediately occur -

- (a) any obligation of the Prime Broker to settle any Transaction, on behalf of the Counterparty shall cease;
- (b) the Loan shall be immediately repayable;
- (c) all other outstanding obligations of each party to deliver securities or Equivalent Securities or to pay cash to the other under this Agreement shall become due for performance immediately (and shall be effected only in accordance with the following provisions of this Clause 13);
- (d) the Prime Broker shall establish, as at the date of the Event of Default, the Default Market Values of all cash and securities to be delivered or paid by each party under paragraph (c) above and the Net Default Amount payable under any Customer Agreement that has been terminated.

13.2 On the basis of the sums so established, an account shall be taken (as at the Termination Date) of what is due from each party to the other under this Agreement (on the basis that each party's claim against the other in respect of the transfer to it of securities or Equivalent Securities equals the Default Market Value therefor) and the sums due from one party shall be set off against the sums due from the other and only the balance of the account shall be payable (by the party having the claims valued at the lower amount) and such balance shall be due and payable on the next following Business Day. For the purpose of this calculation, all sums not denominated in the Base Currency shall

be converted by the Prime Broker into the Base Currency at the Spot Rate prevailing at the relevant time.

#### 14. INDEMNITY AND LIABILITY

14.1 The Counterparty shall indemnify and hold the Prime Broker, and its agents and Affiliates, and their respective directors, officers, employees and agents (the "*Indemnitees*") harmless from and against all Losses which they may incur or have asserted against them and which arise directly or indirectly in connection with the entry into, or acting in respect of, this Agreement or any Transaction, including, without limitation, those arising directly or indirectly in connection with -

- (a) any breach of the obligations, warranties and representations of the Counterparty or the Agent under this Agreement; or
- (b) any Instructions, request, communication or purported instructions believed in good faith by the Prime Broker to have been given by the Agent or any other Authorised Person;
- (c) any liability for Taxes arising in respect of a Transaction; or
- (d) the settlement or attempted settlement of any Transaction or any failure to settle any such Transaction; or
- (e) the entry into and performance of any agreements with third parties pursuant to this Agreement; or
- (f) the costs of the Prime Broker in defending itself successfully against any claims of fraud, gross negligence or wilful default; or
- (g) any action taken by a third party (which is not a signatory to this Agreement) to gain control of cash or securities governed by this Agreement.

14.2 If, in the Prime Broker's sole and absolute discretion, any sum owed by the Counterparty under or in connection with this Agreement or any Transaction, or any order or judgment given or made in relation to this Agreement or any Transaction, has to be converted from the currency in which such sum is payable into another currency for the purposes of this Agreement, then the Counterparty shall indemnify the Prime Broker from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such conversion and (b) the rate or rates of exchange available to the Prime Broker at the time of such receipt of such sum owing by the Counterparty.

14.3 The Prime Broker accepts no liability and shall not be liable to the Counterparty or, where applicable, the Fund or the Agent for any Losses whatsoever which any such party may incur (in connection with this Agreement and any Transaction) as a result directly or indirectly from -

- (a) the general risks of investing; or
- (b) investing or holding assets in a particular country (including, but not limited to, Losses arising from nationalisation, expropriation or other governmental

actions; regulations of the banking or securities industries; currency restrictions, devaluations or fluctuations; and market conditions affecting the orderly execution of securities transactions or affecting the value of assets);or

- (c) acting on Instructions or in relation to notices, requests, waivers, consents, receipts, corporate actions or other documents which the Prime Broker in good faith believes to be genuine and to have been given or signed by Authorised Persons, and the Counterparty will be bound by the same; or
- (d) the collection, deposit or credit of invalid, fraudulent or forged securities or cash transfers; or
- (e) effecting delivery or payment against an expectation of receipt save where such delivery or payment was contrary to local market practice; or
- (f) an Instruction to deliver securities to a broker, even if the Prime Broker might have information tending to show that this course of action, or the choice of a particular broker for a transaction, was unwise; or
- (g) the Prime Broker's inability to deliver securities on the same day that such securities are received for the Counterparty's Securities Accounts,

and such exclusion of liability shall extend, without limitation, to obligations in tort, any indirect, punitive Special or Consequential loss or damage, even if the Prime Broker was previously informed of the possibility of such loss or damage, provided that this does not apply to any loss or damage caused by fraud on the part of the Prime Broker or to death or personal injury arising from any failure on the part of the Prime Broker to take reasonable care or exercise reasonable skill.

14.4 Where the Prime Broker has been found to be liable, the Prime Broker shall only be liable to the Counterparty to the extent that the Prime Broker has been grossly negligent, fraudulent or is in wilful default of its duties as set out in this Agreement save that nothing in this Agreement shall restrict any liability owed by the Prime Broker to the Counterparty under the Financial Services and Markets Act 2000 or the Rules or disclaim any liability to an extent not permitted by such Act or the Rules. The parties agree that, as a genuine pre-estimate of loss, the Prime Broker's liability to the Counterparty shall be determined based only upon the Market Value of the relevant cash or securities as at the date of the discovery of loss and without reference to any special circumstances, indirect or consequential losses, or subsequent variations to the Market Values of the relevant cash or securities.

14.5 The Prime Broker shall not be responsible for any Losses resulting from an act or omission of any broker or any other third party, whether or not appointed by the Prime Broker, which is beyond the control of the Prime Broker and shall not be obliged to request such broker or any third party to comply with its obligations. Payments of income and settlement proceeds are at the risk of the Counterparty. If the Prime Broker, at the Counterparty's request, appoints a broker or agent to effect any transaction on behalf of the Counterparty, the Prime Broker shall have no liability whatsoever in respect of such broker's duties, actions, omissions or solvency and such broker or agent is not the agent of Prime Broker for any purpose.

14.6 The Counterparty acknowledges that the Prime Broker will not be monitoring the suitability of any Transaction or any of the Cash Accounts or Securities Accounts for the purposes of evaluating their composition or their or the Counterparty's performance and will not be aware of or monitoring the Counterparty's overall financial position, investment objectives or investment restrictions.

14.7 The holding of assets in, and investing in, foreign jurisdictions may involve risks of loss or other special features and the Counterparty accepts that the consequences of so investing and holding assets in such foreign jurisdictions shall be entirely at the risk of the Counterparty. The Prime Broker or any of its divisions or Affiliates may be in possession of information tending to show that the Instructions received may not be in the best interests of the Counterparty. The Prime Broker is not under any duty to disclose any such information.

14.8 The Prime Broker is not obliged to maintain any insurance cover for the benefit of the Counterparty.

14.9 References in this Clause 14 to the Prime Broker shall include any Affiliate of the Prime Broker.

14.10 The obligation of the Counterparty to make payments to the Prime Broker in the currency in which they are due shall be enforceable as a separate cause of action.

14.11 Without prejudice to Clause 13, all sums due to the Prime Broker shall be paid free and clear of any equity, set-off or counterclaim.

## 15. GUARANTEE AND INDEMNITY

### Guarantee

15.1 The Prime Broker and each Affiliate (each a *Lehman Group Company* and together the *Lehman Group Companies*), in consideration of the Counterparty undertaking to indemnify each Lehman Group Company on the terms of Clause 15.6, hereby, unconditionally and irrevocably, as a continuing obligation, guarantees and, as principal debtor and not merely as surety, undertakes to pay to any other Lehman Group Company on demand, if the Counterparty fails to pay them or any part thereof, all Liabilities from time to time owing to that Lehman Group Company.

15.2 A Lehman Group Company's liability under this Guarantee shall not exceed the net amount owing from that Lehman Group Company to the Counterparty under this Agreement and the Customer Agreements on the date of demand on it hereunder after taking into account any Liabilities owed to it (whether or not due and payable at the date of demand and whether or not demand shall have been made therefor on it).

15.3 Any release, compromise or discharge of the obligations of a Lehman Group Company under this Guarantee shall be deemed to be made subject to the condition that it will be void if any payment, performance or security which the Counterparty may receive or have received is set aside or proves invalid for whatever reason.

15.4 The obligations of each Lehman Group Company under this Clause 15 are, and will remain, in full force and effect by way of continuing security until the Agreement and



the Customer Agreements have been terminated and each of the Lehman Group Companies has irrevocably received or recovered all amounts payable under the Customer Agreements and this Agreement. Furthermore, the obligations of each Lehman Group Company hereunder are additional to, and not in place of, any security or other guarantee at any time existing in favour of any of the Lehman Group Companies and may be enforced without first having recourse to the Counterparty, any other person, any security or any other guarantee.

#### **Exclusion of Defences**

15.5 A Lehman Group Company's liability hereunder shall remain in force notwithstanding any act, omission, neglect, event or matter whatsoever whether or not known to the Lehman Group Company, the Counterparty or any other Lehman Group Company (other than irrevocable payment to the relevant Lehman Group Company of the amounts guaranteed hereunder) and nothing shall impair or discharge the liabilities or obligations of a Lehman Group Company under this Guarantee and the foregoing shall apply, without limitation, in relation to -

- (a) anything which would have discharged a Lehman Group Company (wholly or in part) whether as surety, co-obligor or otherwise or which would have afforded a Lehman Group Company any legal or equitable defence;
- (b) the existence, validity, taking or renewal of any other guarantee, security, right of recourse, set-off or combination or other right or interest held or had by any Lehman Group Company in relation to this Agreement or any demand or enforcement of, neglect to perfect, failure to demand or enforce or the release or waiver of any such guarantee, security, right of recourse, set-off or combination or other right or interest;
- (c) any amendment, variation, assignment, novation or departure (however substantial or material) of, to or from the Agreement or any Customer Agreement or any security or other document relating to the Agreement or any Customer Agreement which shall be binding upon the Lehman Group Company in all circumstances, notwithstanding it may increase or otherwise affect the liability of the Lehman Group Company;
- (d) any release of or granting of time or any other indulgence to the Counterparty or any third party;
- (e) any winding up, dissolution, reconstruction or reorganisation, legal limitation, disability, incapacity or lack of corporate power or authority or other circumstances of, or any change in the constitution or corporate identity or loss of corporate identity by, the Counterparty or any other person (or any act taken by the Lehman Group Company or the Counterparty in relation to such event);
- (f) any other circumstances which might render void or unenforceable the obligations of the Counterparty under the Agreement or any Customer Agreement or which might affect the ability of any Lehman Group Company to recover amounts from the Client; or

- (g) any defence or counterclaim which the Counterparty may be able to assert against any Lehman Group Company.

### Indemnity

15.6 The Counterparty irrevocably undertakes and covenants to each Lehman Group Company that it will indemnify the Lehman Group Company on demand against any Claims relating to or arising out of this Clause 15. For the avoidance of doubt, the Counterparty hereby acknowledges and confirms that its obligation to indemnify each Lehman Group Company pursuant to this Clause will arise as soon as a liability (including any contingent liability) is incurred by a Lehman Group Company pursuant to this Clause 15, and accordingly that the obligation to indemnify a Lehman Group Company shall arise whether or not a Lehman Group Company has paid any amounts to any other Lehman Group Company pursuant to this Clause 15, and whether or not such other Lehman Group Company has made a demand on the Counterparty. For the avoidance of doubt, the Counterparty's indemnity obligations shall be liabilities secured by and subject to the provisions of this Agreement.

In the event that any amount is paid by a Lehman Group Company under the guarantee set out in Clause 15 and all or part of the corresponding amount payable to that Lehman Group Company by the Counterparty pursuant to the indemnity set out in Clause 15 becomes repayable by such Lehman Group Company (the amount of such repayment being the *Repayment*) then, whichever Lehman Group Company received the guarantee payment, shall pay to that Lehman Group Company the amount of such Repayment, and an amount equal to such Repayment will fall due from the Counterparty to that Lehman Group Company.

*Claims* means all direct and indirect costs, charges, fees, expenses, damages, liabilities and losses, including any consequential losses and damages and including any costs, charges, fees, expenses, damages, liabilities and losses incurred or sustained by the Prime Broker or an Affiliate from time to time in accordance with or as a result of terminating, liquidating, obtaining or re-establishing any hedge or related trading position including, without limitation, break costs and any legal costs of enforcing or protecting or attempting to enforce or protect any of the Prime Brokers' or Affiliate's rights under this Agreement or any Customer Agreement.

### 16. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

16.1 Each party represents and warrants to the other that -

- (a) it is duly incorporated or organised under the laws of its country of incorporation or organisation;
- (b) it is duly authorised to execute and deliver this Agreement, to enter into the Transactions contemplated under this Agreement and to perform its obligations thereunder and in the case of the Counterparty, it has all obtained all necessary authorisations and consents, and taken all necessary corporate actions to deposit and control the cash and securities in the Cash Accounts and Securities Accounts, as appropriate, to grant the Security, generally to appoint Sub-Custodians (and specifically to use the Prime Broker as a

custodian) in accordance with the terms of this Agreement and to borrow money and enter into foreign exchange transactions;

- (c) except in the case of the Agent, it enters into this Agreement as principal;
- (d) the person signing this Agreement on its behalf is, and any person representing it in entering into a Transaction is and will be, duly authorised to do so on its behalf;
- (e) in the case of the Counterparty and, where applicable, the Fund –
  - (i) any partnership deed or agreement has not been dissolved or terminated and no party has taken steps towards the same; and
  - (ii) no Act of Insolvency has occurred or is pending in respect of such party or in respect of any general partner, managing member or analogous representative entity signing this Agreement;
- (f) it has obtained all authorisations of any governmental or regulatory body required in connection with this Agreement and the Transactions contemplated and such authorisations are in full force and effect;
- (g) the execution, delivery and performance of its obligations under this Agreement and all Transactions will not violate any law, ordinance, charter, bye-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected and this Agreement is its legal, valid and binding obligation, enforceable in accordance with its terms;
- (h) except where the Counterparty is the trustee of a trust, the Counterparty beneficially owns all cash and securities held by the Prime Broker in the Cash Accounts and the Securities Accounts, free of all encumbrances and other adverse interests (other than arising under this Agreement);
- (i) at any time the Counterparty delivers or procures the delivery of securities to the Prime Broker it will have the full and unqualified right to make such delivery and all securities will be delivered fully paid and free from any lien, prohibition, impediment or restriction (on transfer or otherwise) imposed by law, regulation, agreement or by any constitutional document;
- (j) in connection with this Agreement and each Transaction it is not relying on any advice (whether written or oral) of the other party;
- (k) the Counterparty understands the nature and risks of all Transactions and the subject matter of this Agreement and has obtained such independent advice (if any) as it considers appropriate;
- (l) at the time it delivers, or is treated as delivering, to the other party any securities or Equivalent Securities it will have the full and unqualified right to make such delivery;

- (m) the Counterparty will, at the Prime Broker's request, provide any necessary certificate of non-residence or other appropriate documentation necessary to minimise the incidence of UK taxation in respect of income arising in respect of securities that are the subject of any Transaction or standing to the credit or debit of the Securities Accounts; and
- (n) the Counterparty is not an ERISA Plan or a person acting on behalf of an ERISA Plan and the Counterparty's assets do not constitute assets of an ERISA Plan.

16.2 Where the Counterparty enters into this Agreement as the trustee of a trust it represents and warrants to the Prime Broker that –

- (a) it has been properly appointed as trustee of the trust, is empowered under the trust deed to enter into and deliver this Agreement and any other documentation relating to this Agreement, to enter into each Transaction or contract entered into pursuant thereto and to perform its obligations thereunder and is entitled to deal with all relevant trust assets and that it has complied with the internal management procedures of the trust and any other procedural requirements;
- (b) it is absolutely entitled to pass full legal and beneficial ownership of all assets provided by it under this Agreement and each Transaction free of all encumbrances and adverse interests (other than those arising under this Agreement);
- (c) it is not in breach of the trust and has the right to be indemnified out of the assets of the trust for all obligations under this Agreement and each Transaction;
- (d) it has not lost and will not do anything or omit to do anything which may jeopardise or cause it to lose or in any way compromise its right to be indemnified in full out of the trust assets in respect of its obligations under this Agreement and each Transaction;
- (e) it has an express right of indemnity from the assets of the trust in respect of Transactions entered into which are in breach of any aspect of the relevant terms of the trust; and
- (f) it is not acting in breach of its fiduciary duties in entering into this Agreement or any Transaction.

16.3 Each party acknowledges and agrees that -

- (a) they have not relied on any representation, warranty or other statement of another party in entering into this Agreement other than those expressly set out in this Clause 16; and
- (b) in the case of the Counterparty, the Counterparty further represents and warrants to the Prime Broker that -

- (i) it has not relied on any oral or written representation made by the Prime Broker or any person on behalf of the Prime Broker, and acknowledges that this Agreement sets out to the fullest extent the duties of the Prime Broker;
- (ii) it understands the nature and risks of the subject matter of this Agreement and all Transactions and shall seek independent advice where necessary;
- (iii) the cash and securities are not subject to any encumbrance or security interest, save for the charge created pursuant to Clause 10; and
- (iv) it is neither a "United States person" nor a "foreign person controlled by a United States person" as such terms are defined in Regulation X of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 224 (Regulation X defines (1) "United States person" to include "a person which is organised or exists under the laws of any state of the United States of America or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50% of the value of the trust" and (2) "foreign person controlled by a United States person" to include "any non corporate entity in which United States persons directly or indirectly have more than a 50% beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50% of the total combined voting power of all classes of stock entitled to vote, or more than 50% of the total value of shares of all classes of stock").

16.4 On the day on which any Transaction is entered into and on each day on which securities or Equivalent Securities are to be transferred or a payment is to be made under this Agreement, each party shall each be deemed to repeat all of the foregoing representations. For the avoidance of doubt, the Counterparty will be liable as a principal for its obligations under this Agreement.

16.5 A party shall notify the other immediately in writing if any of the representations or warranties in this Clause 16 ceases to be true and correct or, with the service of notice or passage of time, would cease to be true and correct.

16.6 The Counterparty undertakes that it will supply the Prime Broker with monthly net asset value calculations and audited annual financial statements (or more frequent calculations or statements if available) promptly after their production and, in any event, upon demand by the Prime Broker.

## 17. CUSTODY

17.1 With the exception of any assets transferred to the Prime Broker pursuant to Clause 11, any securities debited to the Securities Accounts shall be held by the Prime Broker as custodian, and the Counterparty hereby appoints the Prime Broker, and the Prime Broker agrees to act, as its custodian, in accordance with the terms of Schedule 2.

## 18. APPOINTMENT OF AGENT

18.1 The Counterparty hereby appoints the Agent, and the Agent hereby agrees, to act as its agent with regard to this Agreement as if the Agent were herein named instead of the Counterparty, and the Counterparty hereby authorises the Prime Broker to accept and act on -

- (a) all and any Instructions, requests, information or other information believed by the Prime Broker in good faith to have been made or given by the Agent without any duty on the Prime Broker to make further enquiries;
- (b) any other Instructions of the Agent in any respect concerning the Cash Accounts and Securities Accounts (including, without limitation, delivering or otherwise transferring investments and paying cash to the Agent or otherwise as the Agent may order or direct).

18.2 The Counterparty hereby ratifies all and any actions taken by the Agent in its name under the Agreement.

18.3 The Counterparty may at any time terminate the agency of the Agent and shall notify the Prime Broker in writing of such termination. On and after receipt of such written notification the Prime Broker shall cease to act in accordance with any new instructions given by the Agent, provided that the Prime Broker shall be entitled to act in accordance with any existing instructions and that such termination is without prejudice to any other liabilities which the retiring Agent may have incurred prior to the termination of its agency.

## 19. CONFLICTS OF INTEREST

19.1 The Counterparty hereby authorises the Prime Broker to act hereunder notwithstanding that the Prime Broker, or any of its divisions or Affiliates may have a material interest in the transaction or that circumstances are such that the Prime Broker may have a potential conflict of duty or interest, including the fact that the Prime Broker or any of its Affiliates may -

- (a) deal as principal or act as a market maker or broker fund adviser in the securities to which Instructions relate;
- (b) provide broking services to other persons;
- (c) act as financial adviser to the issuer of such securities;
- (d) act in the same Transaction as agent for more than one person;
- (e) have a material interest in the issue of the securities; or
- (f) earn profits from any of the activities listed herein;

and none of the Prime Broker, its agents or Affiliates shall have any fiduciary duties to the Counterparty.

## 20. TERMS

20.1 In relation to any Terms notified by the Prime Broker to the Counterparty from time to time -

- (a) the Prime Broker may in its sole and absolute discretion amend such Terms (in whole or in part) with immediate effect by notification to the Counterparty of revised Terms (subject to the terms of any applicable notice periods); and
- (b) where any fact, criterion or qualitative issue falls to be determined by the Prime Broker under any Terms, the Prime Broker will be entitled to exercise such determination in its sole and absolute discretion; and
- (c) in the event of any inconsistency between the terms of this Agreement and any Terms, the terms of this Agreement will prevail.

## 21. ADVICE

21.1 The Counterparty acknowledges that nothing in this Agreement nor any act, omission, communication or course of conduct of the Prime Broker or its agents pursuant to this Agreement shall constitute the giving of advice.

## 22. CONFIDENTIALITY

22.1 Subject to Clause 22.2, the Counterparty undertakes with the Prime Broker that it will keep confidential (and will ensure that its officers, employees, agents and professional and other advisers keep confidential) any information which relates to the contents of this Agreement (or any agreement or arrangement entered into pursuant to this Agreement). The Counterparty shall not use for its own business purposes or disclose to any third party any such confidential information without the consent of the Prime Broker.

22.2 Clause 22.1 shall not apply to any information which the Counterparty discloses -

- (a) in accordance with any legal or regulatory requirement by which it is bound;  
or
- (b) with the Prime Broker's consent.

## 23. NOTICES

23.1 Any notice to be given under this Agreement -

- (a) shall be in English and, except where expressly otherwise provided in this Agreement, shall be given in writing or by facsimile or such other means of communication and subject to such security measures as may be agreed between the parties hereto;
- (b) may be given and shall be effective -
  - (i) if in writing and delivered in person or by courier, at the time when it is delivered;

- (ii) if sent by facsimile, at the time when the transmission is received by a responsible employee of the recipient in legible form;
- (iii) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), at the time when the mail is delivered or its delivery attempted;

except that any notice or communication received, or delivery of which is attempted, after close of business, or on a day which is not a Business Day, shall be treated as given at the opening of business on the next Business Day. Notices and communications served on any Agent shall be effective as if served directly on the Counterparty.

23.2 The Prime Broker may make a Margin Call by e-mail or any other electronic messaging system and such a Margin Call shall be effective when received by the Counterparty.

#### 24. INSTRUCTIONS

24.1 The Counterparty may make any request to make payments of cash or deliveries of securities to or on behalf of the Counterparty ("*Instructions*") orally, by e-mail or by such electronic means of communication as the parties may agree from time to time. The Prime Broker may require the Counterparty to confirm oral Instructions in writing (by letter, facsimile or electronically) at any time. Instructions shall be given in accordance with this Clause 24 and the Counterparty confirms that such persons as may be notified orally or in writing by the Counterparty from time to time ("*Authorised Persons*") has the authority to give Instructions to the Prime Broker.

24.2 The Counterparty further confirms that each of the persons listed in Schedule 4 and such other persons as may be notified in writing by the Counterparty from time to time has the authority give cash payment instructions or instructions for the free delivery of securities from the Securities Account to the Prime Broker ("*Payment Authorised Person*").

24.3 The Prime Broker shall be entitled without further inquiry to execute or otherwise act upon Instructions, requests, information or other communication believed in good faith by the Prime Broker to have been made or given by any Authorised Person or Payment Authorised Person, notwithstanding that any such Instruction, request, information or other communication may afterwards be found not to have been genuine or not to have been made or given by an Authorised Person or Payment Authorised Person. Such execution or action shall in the absence of gross negligence, wilful default or fraud by the Prime Broker constitute a good discharge by the Prime Broker of its obligations and it shall not be liable for any actions taken or omitted to be taken in good faith.

24.4 The Counterparty undertakes –

- (a) to ensure that no person other than an Authorised Person shall give Instructions to the Prime Broker;
- (b) to comply with any security procedures specified by the Prime Broker from time to time; and



- (c) to notify the Prime Broker immediately of any unauthorised access or if it has reasonable grounds to suspect any unauthorised use of any user name or password.

## 25. DETERMINATION

25.1 Where matters are referred to in this Agreement as being for the determination of the Prime Broker, such determination shall, in the absence of manifest error, be conclusive and binding upon the parties.

## 26. NON-ASSIGNABILITY; TERMINATION

26.1 Subject to Clause 26.2 below, the rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned or charged, provided however that this Agreement and all Transactions shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Prime Broker may, however, delegate to a third party the performance of its obligations under this Agreement or all or any part of a Transaction on such terms as it considers appropriate.

26.2 Notwithstanding the foregoing, the Prime Broker may, in its sole and absolute discretion, novate, assign or charge any rights, benefits and obligations under this Agreement to any of its Affiliates, provided that such Affiliate has, or its obligations are guaranteed by an entity which has, a credit rating at least equal to or higher than that of the Prime Broker at the time of such assignment or charge.

26.3 Notwithstanding the provisions of Clause 13.1, a party may terminate this Agreement by giving written notice to the other parties, provided that:

- (a) this Agreement shall remain applicable to all Transactions and Liabilities then outstanding, provided further that the parties shall use reasonable endeavours to close out all such Transactions and discharge such Liabilities as soon as practicable in accordance with their terms;
- (b) all remedies under this Agreement shall survive termination;
- (c) the Counterparty may not terminate this Agreement if, at the time of termination a Margin Deficit would be created or increased, save where (i) the Defaulting Party is the Prime Broker and (ii) no Event of Default has occurred or is continuing in respect of the Counterparty; and
- (d) Clauses 9, 10, 13, 15, 22, 28 and 29 and this Clause 26 shall survive termination of this Agreement.

## 27. FORCE MAJEURE

27.1 The Prime Broker shall not be liable for taking or not taking and shall not be obliged to take or refrain from taking any action which is beyond its power to take or refrain from taking wholly or partly as a result of a state of affairs (including any change of applicable regulations or any directive or policy) which it was beyond the Prime Broker's control to prevent and the effect of which is beyond its power to avoid.

27.2 The Prime Broker will not be liable to the other parties for any delay in performance, or for the non-performance of any of its obligations hereunder by reason of any cause beyond the Prime Broker's (or that of any Sub-Custodian) reasonable control or for any losses caused by the occurrence of any contingency beyond the Prime Broker's (or that of any Sub-Custodian) reasonable control. This includes without limitation any breakdown or failure of transmission, communication or computer facilities, postal or other strikes or similar industrial action, acts of war or terrorism, insurrection, revolution, nuclear fusion, fission or radiation, acts of God and the failure of any relevant exchange, clearing house and/or broker for any reason to perform its obligations.

27.3 Any delay in performance or non-performance of any of its obligations under this Agreement by the Prime Broker by reason of the application of this Clause 27 shall not constitute an event for the purposes of Clause 12 which would, upon the serving of a Default Notice or otherwise, be an Event of Default in respect of the Prime Broker.

27.4 References in this Clause 27 to the Prime Broker shall include any Affiliate of the Prime Broker.

## 28. GOVERNING LAW AND JURISDICTION

28.1 This Agreement shall be governed by and construed in accordance with the laws of England.

28.2 The parties agree that the courts of England are to have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Agreement or otherwise arising in connection with this Agreement and for such purposes irrevocably submit to the jurisdiction of the English courts.

28.3 The agreement in Clause 28.2 is concluded for the benefit of the Prime Broker alone. The Prime Broker retains the right to bring proceedings against the Counterparty in its absolute discretion in the courts of any other country which may have jurisdiction including the courts of the jurisdiction in which the Counterparty is located (as specified on page 1 of this Agreement), to whose jurisdiction the Counterparty irrevocably submits.

28.4 The Counterparty hereby irrevocably appoints \_\_\_\_\_ at present having its offices at \_\_\_\_\_ as its agent to receive on its behalf service of process in such courts, and service upon such agent shall constitute good service notwithstanding any failure by such agent to notify the Counterparty of such service. If such agent ceases to be its agent, the Counterparty shall promptly appoint, and notify the Prime Broker of the identity of, a new agent in England. Nothing in this Clause 28 shall however affect the right to serve process in any other manner permitted by law.

## 29. WAIVER OF IMMUNITY

29.1 The Counterparty hereby waives, to the fullest extent permitted by applicable law, all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgement) and execution to which it might otherwise be entitled in any country or jurisdiction, relating in any way to this Agreement or any

Transaction, and agrees that it will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

**30. RECORDING**

30.1 The parties agree that each may without further notice electronically record all telephone conversations between them and such recordings may be admitted in evidence in any proceedings relating to this Agreement.

**31. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

31.1 Other than Affiliates of the Prime Broker and the directors, officers, employees and agents of the Prime Broker or its Affiliates, a person who is not a party to this Agreement shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

**Lehman Brothers International (Europe) )**  
By: \_\_\_\_\_ )  
Title: \_\_\_\_\_ )  
Date: \_\_\_\_\_ )  
[Counterparty] )

**EXECUTED AS A DEED for and on behalf of the Counterparty**

[by the Counterparty's duly authorised )  
investment manager/agent [ ] )  
By: \_\_\_\_\_ )  
Title: \_\_\_\_\_ )  
Date: \_\_\_\_\_ )

By: \_\_\_\_\_ )  
Title: \_\_\_\_\_ )  
Date: \_\_\_\_\_ )

[Agent] )  
By: \_\_\_\_\_ )  
Title: \_\_\_\_\_ )  
Date: \_\_\_\_\_ )

## SCHEDULE 1

### PROCEDURES

#### 1. THIRD PARTY TRANSACTIONS

1.1 Whenever the Counterparty wishes the Prime Broker to settle a Third Party Transaction, it shall request the Prime Broker to do so by giving Instructions (a "*Third Party Transaction Request*") to the Prime Broker in writing or by facsimile or by such other means of communication as may be agreed to by the parties which may include, without limitation, LehmanLive, Bloomberg, or another form of electronic messaging system.

1.2 The Prime Broker may at any time before settlement of a Third Party Transaction and in its absolute discretion reject the relevant Third Party Transaction Request by giving oral or written notice to that effect to the Counterparty. Within one Business Day following receipt by the Prime Broker of a Third Party Transaction Request the Prime Broker may send a confirmation of the Third Party Transaction to the Counterparty by facsimile or email. The Prime Broker shall be deemed to have accepted the terms of a Third Party Transaction only on settling such Third Party Transaction.

1.3 Unless any particular settlement method is specified in the Third Party Transaction Request, the Prime Broker may effect settlement of the relevant Third Party Transaction, or attempt to do so, by any means it considers appropriate; including without limitation, a means which does not provide for delivery-versus-payment.

1.4 Save where a Third Party Transaction is novated in accordance with Paragraph 1.5, the Prime Broker shall, as between the Prime Broker and the third party or its agent, act as the Counterparty's agent in settling any Third Party Transaction and the Prime Broker may inform the third party, or its agent, that the Prime Broker is acting as agent of the Counterparty.

1.5 The Prime Broker may, in its absolute discretion, agree to a Novated Third Party Contract. The Counterparty appoints the Prime Broker as its agent to agree any such novation with a third party on its behalf upon such terms as the Prime Broker sees fit without consultation with the Counterparty. Upon novation of a Third Party Transaction there shall arise a Collateral Contract.

1.6 The Prime Broker shall not be liable for any Losses incurred in respect of any failure by the third party to settle its obligations under a Third Party Transaction (including any Novated Third Party Contract) on the Contractual Settlement Date or at all.

1.7 The Prime Broker shall give oral or written notice to the Counterparty of the failure of any Third Party Transaction (including any Novated Third Party Contract) or any Collateral Contract to settle on the Contractual Settlement Date as soon as reasonably practicable after becoming aware of such failure.

1.8 The Prime Broker shall, on the Contractual Settlement Date of -

- (a) a Third Party Transaction, credit any cash received from, or debit any cash payable to, the relevant third party to or from the Cash Accounts or, as appropriate, debit any securities received from, or credit any securities deliverable to, the relevant third party from or to the Securities Accounts;
- (b) a Collateral Contract, debit any cash payable by, or credit any cash payable to the Counterparty from or to the Cash Accounts or, as appropriate, credit any securities deliverable by, or debit any securities deliverable to, the Counterparty to or from the Securities Accounts.

1.9 The Prime Broker may reverse any entries made under Paragraph 1.8 if the Transaction fails to settle within such period following the relevant Contractual Settlement Dates as the Prime Broker considers reasonable. Any costs associated with any such failure to settle or such a reversal shall be for the account of the Counterparty.

## 2. PRINCIPAL TRANSACTIONS

2.1 Whenever the Counterparty wishes to enter into an agreement to purchase from, or sell to, the Prime Broker securities or a sum of specified currency, it shall submit a Principal Transaction Request to the Prime Broker in writing or by facsimile or by such other means of communication as may be agreed to by the parties which may include, without limitation, LehmanLive, Bloomberg, or another form of electronic messaging system.

2.2 Service of a Principal Transaction Request shall constitute an offer by the Counterparty to enter into the Principal Transaction specified in the Principal Transaction Request, and that offer may be amended or revoked only with the consent of the Prime Broker.

2.3 Within one Business Day following acceptance by the Prime Broker of a Principal Transaction Request the Prime Broker may send a confirmation to the Counterparty by facsimile or email. Such confirmation shall not be deemed to be a binding acceptance by the Prime Broker of the Principal Transaction Request and the Prime Broker may reject any Principal Transaction Request by giving oral or written notice to that effect to the Counterparty at any time up to and including the Contractual Settlement Date. The Prime Broker shall be deemed to have accepted the terms of such a Principal Transaction only on settling such Principal Transaction.

2.4 Subject to the provisions of Clause 6 and unless the parties otherwise agree, securities or cash which would otherwise fall to be delivered or paid by one party to the other on the Contractual Settlement Date of a Principal Transaction shall not be delivered or paid but shall:

- (a) be credited to, (in the case of cash payable to the Counterparty), or be debited from, (in the case of cash payable to the Prime Broker), the relevant Cash Account; or
- (b) be debited to, (in the case of securities deliverable to the Counterparty), or be credited to, (in the case of securities deliverable to the Prime Broker), the relevant Securities Account.

2.5 Securities debited or cash credited to an account pursuant to Paragraph 2.4 shall, for the purposes of Clause 6, be treated for accounting purposes as having been delivered or paid by the Counterparty to the Prime Broker.

### 3. DELIVERIES AND PAYMENTS TO THE PRIME BROKER

3.1 Subject to the provisions of Clause 5, whenever the Counterparty wishes to deliver securities or pay cash to the Prime Broker it shall notify the Prime Broker of its intention to do so. Upon receipt of such securities or cash the Prime Broker shall, if such securities are of a type acceptable to the Prime Broker or such cash is of a currency acceptable to the Prime Broker, debit such securities to the relevant Securities Account or credit such cash to the relevant Cash Account.

### 4. DELIVERIES AND PAYMENTS TO THE COUNTERPARTY

4.1 Whenever the Counterparty wishes the Prime Broker to deliver securities or pay cash to it or to its order, the Counterparty shall request the Prime Broker to do so in the form notified to the Counterparty by the Prime Broker from time to time.

4.2 The Prime Broker may, at any time before delivery or payment and in its absolute discretion reject any delivery or payment request by giving written or oral notice to that effect to the Counterparty. The Prime Broker shall be deemed to have accepted a delivery or payment request only on making the relevant delivery or payment. The Prime Broker shall not be obliged to accept or give effect to any delivery or payment request which would result in the creation of, or an increase in, a Margin Deficit.

4.3 Unless a delivery request is rejected, the Prime Broker shall deliver the requested securities or cash in accordance with the delivery request, except that the Prime Broker may deliver the securities or cash at the earliest time it is reasonably practicable for the Prime Broker to make the requested delivery or payment, having regard to customary market practice and the time and date on which the delivery request is received, if that date is later than the settlement date requested by the Counterparty.

4.4 Securities and cash delivered to the Counterparty pursuant to Paragraph 4.3 shall, except to the extent securities of the amount and description in question or, as appropriate, cash of the amount and currency in question, are for the time being debited to a Securities Account or, as the case may be, credited to a Cash Account and available for the purpose, be treated as having been advanced or loaned by the Prime Broker to the Counterparty. The Counterparty shall, subject to the terms of this Agreement, be obliged to deliver to the Prime Broker, on demand, Equivalent Securities in respect of any securities advanced to the Counterparty and to repay on demand cash loaned to the Counterparty.

### 5. MISCELLANEOUS

5.1 The Counterparty warrants to and for the benefit of the Prime Broker that it will not make any payments of cash to the Prime Broker under this Schedule other than pursuant to or for the purpose of or in connection with Transactions made or to be made with or through the Prime Broker.

## SCHEDULE 2

### CUSTODY

#### 1. POWERS AND DUTIES OF THE PRIME BROKER

1.1 The Prime Broker shall receive, hold, release and deliver (or instruct any Sub-Custodian to receive, hold, release and deliver) securities to or from the Securities Accounts (as appropriate) only on receipt of Instructions. The Counterparty authorises the Prime Broker to (or to instruct any Sub-Custodian to) allocate and deliver securities to the Securities Accounts and to transfer securities from the Securities Accounts to the Counterparty, only in accordance with such Instructions. The Prime Broker shall have full authority to do whatever it reasonably deems necessary in order to effect such Instructions. In addition, the Counterparty hereby authorises the Prime Broker to do whatever the Prime Broker deems necessary in its absolute discretion to effect such transfers of securities to and from the Securities Accounts as are required pursuant to the terms of this Agreement.

1.2 The Prime Broker shall be under no duty to take or omit to take any action with respect to any of the securities except in accordance with this Agreement.

1.3 The Prime Broker does not make any warranties, representations or other statements whatsoever in respect of the validity or sufficiency of the securities, the enforceability of any rights or interests relating thereto or whether it is appropriate, necessary or desirable to take or omit to take any action in relation thereto, and these matters shall be the exclusive concern of the Counterparty.

1.4 The Prime Broker shall have no duty to advise or make recommendations to the Counterparty in connection with the securities and the Prime Broker shall not be responsible for advising the Counterparty as to the investment merits of such securities.

#### 2. SEGREGATION OF ASSETS

2.1 The Prime Broker will identify in its books and records that the securities belong to the Counterparty.

2.2 The Prime Broker will require that any Sub-Custodian or nominee appointed by it, or any Securities Depository which it uses to hold the securities pursuant to this Agreement, will identify in its books and records that the securities belong to the customers of the Prime Broker (to the extent permitted by applicable mandatory law, regulation, or market practice) so that it is readily apparent that such securities do not belong to the Prime Broker.

#### 3. SHORT POSITIONS

3.1 The Prime Broker is not obliged to process transactions which will result in a short position on the Cash Accounts or the Securities Accounts. The Counterparty agrees that delivery Instructions will not be issued and acknowledges that the Prime Broker is not obligated to deliver any securities unless the Prime Broker has received evidence satisfactory to it that the relevant securities will have been received by the Prime Broker in time for delivery in accordance with the Counterparty's Instructions.

#### 4. CONFIRMATION OF ORAL INSTRUCTIONS/SECURITY DEVICES

Any Instructions delivered to the Prime Broker by telephone shall promptly thereafter be confirmed in writing by an Authorised Person (which confirmation may bear the facsimile signature of such person). The Prime Broker is authorised to follow such Instructions notwithstanding the failure of an Authorised Person to send such confirmation in writing or the failure of such confirmation to conform to the telephone Instructions received and the Prime Broker shall be indemnified by the Counterparty accordingly. The Counterparty shall be responsible for safeguarding any testkeys, identification codes or other security devices which the Prime Broker shall make available to the Counterparty or any Authorised Person.

#### 5. ACTING ON INSTRUCTIONS/UNCLEAR INSTRUCTIONS

The Counterparty authorises the Prime Broker to accept and act upon any Instructions received by it without enquiry. The Prime Broker may (without prejudice to the foregoing) seek clarification or confirmation of an Instruction from an Authorised Person and may decline to act upon an Instruction if it does not receive clarification or confirmation satisfactory to it. The Prime Broker shall not be liable for any loss arising from any delay whilst it obtains such clarification or confirmation or from exercising its right to decline to act in the absence of such clarification or confirmation.

#### 6. INSTRUCTIONS CONTRARY TO LAW/MARKET PRACTICE

The Prime Broker need not act upon Instructions which it reasonably believes to be contrary to law, regulation or market practice but is under no duty to investigate whether any Instructions comply with any applicable law, regulation or market practice, which, for the avoidance of doubt, shall be the sole responsibility for the Counterparty. The Prime Broker shall be entitled (but not bound), if it deems possible to do so to amend an Instruction in such a manner to comply with what the Prime Broker reasonably believes to be applicable law, regulation or market practice.

#### 7. SUB-CUSTODIANS AND SECURITIES DEPOSITORIES

##### Appointment

7.1 The Prime Broker is authorised under this Agreement to act through and hold the securities with Sub-Custodians being such other entities as the Prime Broker may appoint as sub-custodian (each a "*Sub-Custodian*"). In addition, the Prime Broker and each Sub-Custodian appointed by it may deposit securities with, and hold securities in any Securities Depository on such terms as such systems customarily operate. References in this Agreement to other Sub-Custodians which the Prime Broker may appoint shall include Affiliates of the Prime Broker but not Securities Depositories. The Prime Broker reserves the right to add, replace or remove other Sub-Custodians and the Prime Broker shall give notice to the Counterparty of any such act as soon as reasonably practicable thereafter.

7.2 The Prime Broker will use reasonable skill, care and diligence in the selection of any Sub-Custodian appointed by it pursuant to this Agreement and shall be responsible to the Counterparty for satisfying itself as to the ongoing suitability of such Sub-Custodian, for the maintenance of an appropriate level of supervision over such Sub-Custodian and



for making periodic enquiries to confirm that the obligations of such Sub-Custodian to the Prime Broker are discharged in a satisfactory manner.

7.3 The Customer acknowledges and agrees that Prime Broker may grant to any Sub-Custodian or Securities Depository a lien, right of retention or sale over any securities held by, or deposited with, that Sub-Custodian or Securities Depository in respect of amounts owing to that Sub-Custodian or Depository.

#### **Liability for Other Sub-Custodians**

7.4 The Prime Broker shall be liable for losses arising out of the insolvency, acts or omissions of any Sub-Custodian that is an Affiliate of the Prime Broker but not of any other Sub-Custodian or of any Securities Depository.

### **8. HOLDING OF REGISTERED AND BEARER SECURITIES**

8.1 The Prime Broker is authorised to hold:

- (a) in bearer form, such securities as are customarily held in bearer form; and
- (b) registered in the name of (at the Prime Broker's discretion) the Counterparty or the Prime Broker or another Sub-Custodian appointed by the Prime Broker or any nominee of the Prime Broker or another Sub-Custodian appointed by the Prime Broker, such securities as are customarily held in registered form.

8.2 The Prime Broker shall not be liable for any loss suffered howsoever caused as a result of an Instruction to hold securities with, or have them registered in the name of, any person not chosen by the Prime Broker.

### **9. OMNIBUS ACCOUNTS**

9.1 The Counterparty authorises the Prime Broker to hold securities in fungible accounts holding securities of other customers of the Prime Broker (but not securities of the Prime Broker), such accounts being designated as customer accounts. The Counterparty authorises the Prime Broker to hold securities in accounts with Sub-Custodians appointed by the Prime Broker on the basis that such accounts are fungible accounts which hold securities of other customers of the relevant Sub-Custodian (but not securities of such Sub-Custodians). The Counterparty will accept delivery of securities of the same class and denomination as those deposited with the Prime Broker or any other Sub-Custodian appointed by the Prime Broker.

### **10. UNITED KINGDOM REGULATORY MATTERS**

10.1 The Rules require the Prime Broker to inform the Counterparty that:

- (a) where securities are held overseas there may be different settlement, legal and regulatory requirements in those jurisdictions from those applying in the United Kingdom, together with different practices for the separate identification of securities;

- (b) in providing the services described in this Agreement, the Prime Broker may hold securities with other Sub-Custodians who are in the same group as the Prime Broker;
- (c) although securities will ordinarily be registered in the name of a nominee, the Prime Broker may from time to time (where, due to the nature of the law or market practice of an overseas jurisdiction, it is in the Counterparty's best interests or it is not feasible to do otherwise) register or record securities in the name of a Sub-Custodian, or the Prime Broker itself subject always to Paragraph 2. Securities may also be registered in the name of the Counterparty. Subject always to Paragraph 2, if securities are registered in the name of the Prime Broker, such securities may not be segregated from assets of the Prime Broker, and, in the event of insolvency of the Prime Broker, such securities may not be as well protected. Arrangements with Sub-Custodians are such that securities held with them shall be in a separate account containing assets belonging only to customers of the Prime Broker and not the Prime Broker's proprietary assets. In any event, the Prime Broker will notify the Counterparty of the registration name used in respect of securities which are registrable securities;
- (d) the Prime Broker accepts the same level of-liability for any nominee company controlled by the Prime Broker or by an Affiliate as for itself;
- (e) the omnibus accounts referred to in Paragraph 8 are a form of pooling;
- (f) if the Counterparty instructs the Prime Broker to hold securities with or register or record securities in the name of a person not chosen by the Prime Broker, the consequences of doing so are at the Counterparty's own risk and the Prime Broker shall not be liable therefore.

#### 11. FRACTIONS/REDEMPTIONS BY LOT

The Counterparty shall not be entitled to any fraction or other entitlement arising as a result of the Prime Broker holding securities in omnibus accounts, which is not directly referable solely to the holding of the Counterparty and such fractions or entitlements shall be at the disposal of the Prime Broker. On partial redemptions, the Prime Broker shall use whatever method it deems fair to determine how shares will be redeemed.

#### 12. STATEMENTS

12.1 The Prime Broker will issue statements to the Counterparty at times mutually agreed identifying the amounts of cash in the Cash Accounts and identifying the securities in the Securities Accounts, and otherwise on request. A certificate or statement by the Prime Broker as to any cash or any securities held in a Cash Account or a Securities Account shall be conclusive in the absence of manifest error. Prices and other information contained in any statement sent to the Prime Broker have been obtained from sources the Prime Broker believes in good faith to be reliable. The Prime Broker does not, however, make any representation as to the accuracy of such information, nor that the prices specified necessarily reflect the proceeds that would be received on a disposal of the relevant securities.

12.2 References in this Agreement to statements include any statements in electronic form.

12.3 Where the Counterparty is ordinarily resident outside the United Kingdom, the Prime Broker may, at the Counterparty's request, arrange for custody statements to be retained by the Prime Broker.

12.4 The Counterparty agrees that the information, statements and other communications provided to it pursuant to the terms of this Agreement shall be in satisfaction of any obligation of the Prime Broker to deliver a confirmation, contract note or statement.

### 13. DISCLOSURE OF INFORMATION

The Prime Broker shall be entitled to disclose any information relating to the Counterparty or the securities and/or cash held for the Counterparty as is required by any law, court, legal process, professional adviser or banking or other regulatory or examining authorities (whether governmental or otherwise).

### SCHEDULE 3

#### DEFINITIONS

“*Act of Insolvency*” occurs in respect of a party upon:

- (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, examiner, receiver or liquidator or analogous officer of it or any material part of its property; or
- (d) except in the case of the Prime Broker, the presentation or filing in any jurisdiction of a petition in respect of it 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) not having been stayed or dismissed within 15 days of its filing; or
- (e) except where such appointment is made in respect of the Prime Broker whilst the Prime Broker remains solvent, the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such party or over all or any material part of such party’s property; or
- (f) the convening of any meeting of its creditors for the purposes of considering a voluntary arrangement as referred to in section 3 of the Insolvency Act 1986 (or any analogous proceeding); or
- (g) except in the case of the Prime Broker, any act preparatory or analogous to any of (a) - (f) above; or
- (h) the occurrence of any procedure equivalent or analogous to the foregoing (a) to (g) in any other jurisdiction.; or
- (i) in respect of the Counterparty which is a limited partnership or limited liability company, the occurrence of any event or procedure referred to in paragraphs (a) to (h) above in relation to the general partner or any limited partner or, as the case may be, managing member.

“*Advanced Securities*” means securities advanced or treated as advanced to the Counterparty by the Prime Broker under Clause 4.1 including, for the avoidance of doubt, Hong Kong securities advanced by the Prime Broker under the Stock Lending Agreement;

“*Affiliate*” of the Prime Broker means an entity that is a subsidiary or holding company, or a subsidiary of a holding company, of the Prime Broker and the terms “subsidiary” and

“holding company” have the meanings given them in Section 736 of the Companies Act 1985 (or any statutory modification or re-enactment thereof);

“*Authorised Persons*” has the meaning in Clause 24.1;

“*Base Currency*” means the currency agreed as the base currency or, in the absence of such agreement, US dollars;

“*Business Day*” means a day on which the Prime Broker and a day on which commercial banks are generally open for business in London;

“*Cash Account*” means an account for the payment of cash made and received (or deemed to have been made and received) pursuant to this Agreement and all Transactions relating thereto and such other payments as the Prime Broker and the Counterparty may from time to time agree;

“*Charged Assets*” means securities and other assets which are charged to the Prime Broker under Clause 10.1;

“*Collateral*” means cash or securities in which the Counterparty is not prohibited from investing by its investment guidelines, as notified to the Prime Broker from time to time;

“*Collateral Contract*” means a contract between the Prime Broker and the Counterparty, on identical terms to the Novated Third Party Contract to which it relates, except that:

- (a) the rights and obligations of the Prime Broker and the Counterparty under the Collateral Contract shall be equivalent to the rights and obligations of the third party and the Prime Broker respectively under the related Novated Third Party Contract; and
- (b) the Prime Broker shall be obliged to perform its obligations under the Collateral Contract only if and to the extent that the third party performs its obligations under the related Novated Third Party Contract;

“*Consequential loss or damage*” means loss or damage of a kind or extent which was or was not reasonably foreseeable at the time this Agreement was entered into as a serious possibility in the event of the breach of obligation in question, including without limitation, any breach of agreements entered into between the Counterparty and third parties, loss of profits or loss of business resulting from the breach of obligation in question;

“*Contractual Settlement Date*” means the date specified as the settlement date in the relevant confirmation sent by the Prime Broker to the Counterparty;

“*Customer Agreement*” means any contract for differences agreement or ISDA Master Agreement, or Master Institutional Futures Customer Agreement entered into between the Counterparty and the Prime Broker or between the Counterparty and any Affiliate, the Stock Lending Agreement and such other agreement between the Counterparty and the Prime Broker or the Counterparty and any Affiliate as the Prime Broker and the Counterparty may from time to time agree;