

# Form 604

Corporations Law  
Section 671B

## Notice of change of interests of substantial holder

To: Company Name/Scheme West Australian Newspapers Holdings Limited  
ACN/ARSN 053 480 845

### 1. Details of substantial holder

Name UBS AG and its related bodies corporate

ACN/ARSN (if applicable): \_\_\_\_\_

There was a change in the interests of the substantial holder on **23 February 2011**

The previous notice was given to the company on **22 February 2011**

### 2. Previous and present voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in when last required, and when now required, to give a substantial holding notice to the company or scheme, are as follows:

Class of securities (4)	Previous Notice		Present Notice	
	Person's Votes	Voting Power (5)	Person's Votes	Voting Power (5)
Ordinary	55,244,858	25.15%	28,547,618	13.00%

### 3. Changes in relevant interests

Particulars of each change in, or change in the nature of, a relevant interest of the substantial holder or an associate in voting securities of the company or scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

Date of change	Person whose relevant interest changed	Nature of Change (6)	Consideration given in relation to change (7)	Class and Number of securities affected	Person's votes affected
Please see Annexure B.					

### 4. Present relevant interests

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered holder (8)	Nature of relevant interest (6)	Class and number of securities	Person's votes
UBS AG, Australia Branch	Seven (WAN) Pty Ltd	N/A	Relevant interest in shares held by Seven (WAN) Pty Ltd, a subsidiary of SGH, to the extent arising under the terms of the Block Trade Agreement pursuant to section 608(8) of the Act.	26,712,134 Ordinary	26,712,134

UBS AG, Australia Branch	UBS Nominees Pty Ltd	UBS AG, Australia Branch	Prime Broker with power to control the exercise of the power to dispose of shares pursuant to a Prime Broking Agreement (see attached)	64,306 Ordinary	64,306
UBS AG	Various custodians	UBS AG	Fund Manager with power to exercise control over voting shares	6,497 Ordinary	6,497
UBS Global Asset Management Life Limited	Various custodians	UBS Global Asset Management Life Limited	Fund Manager with power to exercise control over voting shares	7,251 Ordinary	7,251
UBS AG, London Branch	Various custodians	UBS AG, London Branch	Power to control disposal over shares pursuant to stock borrowing and lending activities (see attached)	217,024 Ordinary	217,024
UBS AG, London Branch	Various custodians	UBS AG, London Branch	Beneficial owner	39,149 Ordinary	39,149
UBS Securities Australia Ltd	Warbont Nominees Pty Ltd	UBS Securities Australia Ltd	Power to control disposal over shares pursuant to stock borrowing and lending activities (see attached)	690,000 Ordinary	690,000
UBS Securities Australia Ltd	Brispot Nominees Pty Ltd	UBS Securities Australia Ltd	Beneficial owner	254,406 Ordinary	254,406
UBS Securities Australia Ltd	Various custodians	UBS Securities Australia Ltd	Beneficial owner	100,000 Options	100,000
UBS Securities LLC	Various custodians	UBS Securities LLC	Power to control disposal over shares pursuant to stock borrowing and lending activities (see attached)	455,256 Ordinary	455,256
UBS Wealth Management Australia Ltd	UBS Wealth Management Australia Nominees Pty Ltd	UBS Wealth Management Australia Ltd	Broker with power to exercise discretion over account (see attached)	1,595 Ordinary	1,595

## 5. Changes in association

The persons who have become associates (2) of, ceased to be associates of, or have changed the nature of their association (9) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

Name and ACN/ ARSN (if applicable)	Nature of association
J.P. Morgan Australia Limited	Upon allocation of shares to investors under the Block Trade Agreement, J.P. Morgan and UBS ceased to be associates of each other pursuant to section 12(2) and 53 of the Act

## 6. Addresses

The addresses of persons named in this form are as follows:

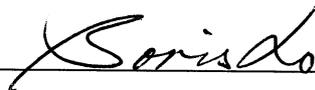
Name	Address
Details of all UBS offices can be found through the following link: <a href="http://apps.ubs.com/locationfinder">http://apps.ubs.com/locationfinder</a>	

**SIGNATURE**

Print Name: Boris Lo

Capacity: Authorised signatory

Sign Here:



Date: 24 February 2011

Print Name: So Young Kim

Capacity: Authorised signatory

Sign Here:



Date: 24 February 2011

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Contact details for this notice:

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Tiffany Leung  
Legal & Compliance  
(T) +852 2971 8042  
(F) +852 2971 7895  
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**SGH**

Media, Industrial Services and Investments

COMMERCIAL-IN CONFIDENCE

21 February 2011

J.P. Morgan Australia Limited	UBS AG, Australia Branch
Level 32	Level 16
Grosvenor Place	Chifley Tower
225 George Street	2 Chifley Square
Sydney NSW 2000	Sydney NSW 2000
Attention: Richard Galvin	Attention: Andrew Stevens

Dear Richard and Andrew

**Sale of Shares in West Australian Newspapers Holdings Limited (ACN 053 480 845) (the "Company")****1. Introduction**

This agreement sets out the terms and conditions upon which Seven (WAN) Pty Limited ("Seller") engages J.P. Morgan Australia Limited and UBS AG, Australia Branch (together, the "Underwriters") to conduct, manage and severally underwrite the Sale. The Seller is a wholly owned subsidiary of Seven Group Holdings Limited ("SGH").

**2. Appointment****2.1 Appointment**

The Seller agrees to appoint the Underwriters on an exclusive basis and each Underwriter accepts its appointment and severally agrees to:

- (a) as the Seller's agent, conduct and manage the Sale; and
- (b) underwrite the Sale in its Respective Proportion,

in accordance with the terms and conditions of this agreement.

**Westrac**

Seven Group Holdings Limited | ABN 46 142 003 469

38-42 Pirrama Road | Pyrmont NSW 2009 Australia | Postal Address: PO Box 777 | Pyrmont NSW 2009 Australia

## 2.2 Sub-underwriters, co-managers and brokers

The Underwriters:

- (a) may appoint sub-underwriters at their own cost to sub-underwrite subscriptions for Sale Shares; and
- (b) may appoint co-managers and brokers to all or part of the Sale at their own cost.

## 3. Conditions precedent

### 3.1 Conditions precedent - managing

The obligations of each Underwriter under clauses 2.1(a) and 4.3 are conditional on:

- (a) **(announcements)** ASX announcements having been made by SGH in accordance with clauses 4.1(b) and by the Company in connection with the Offer and Sale by 9.30am on the Announcement Date;
- (b) **(trading halt)** ASX granting the Company a trading halt pursuant to ASX Listing Rule 17.1 in respect of the Company's ordinary shares before 9.30am on the Announcement Date which operates for a period of two business days from the Announcement Date;
- (c) **(Offer Underwriting Agreement)** the Company entering into the Offer Underwriting Agreement;
- (d) **(Prospectus and Explanatory Memorandum)** the Company lodging the Prospectus and Explanatory Memorandum with ASIC by 9.30am on the Announcement Date; and
- (e) **(SMG Acquisition Agreements)** the Company, the Seller, SGH and each other person named in the SMG Acquisition Agreements as a party to the SMG Acquisition Agreements executing the SMG Acquisition Agreements by 9.30am on the Announcement Date.

### 3.2 Conditions precedent - underwriting

The obligations of each Underwriter under clauses 2.1(b) and 4.5 are conditional on:

- (a) satisfaction or waiver in writing of each of the conditions precedent in clause 3.1 by the date for satisfaction referred to in the relevant condition precedent;
- (b) the Company allotting and issuing the ordinary shares in the Company under the Public Offer and CULS under the Entitlement Offer, in accordance with the Offer Underwriting Agreement;
- (c) all conditions precedent to the SMG Acquisition Agreements having been satisfied or waived, and those agreements not having been terminated by 9.00am on the Selldown Settlement Date;
- (d) the Offer Underwriting Agreement not having been terminated by 9.00am on the Selldown Settlement Date;
- (e) the Underwriters receiving a Certificate from both the Seller and SGH by 9:00am on the Selldown Settlement Date in accordance with clause 4.5(a); and

- (f) by the Selldown Settlement Date, the shareholders of the Company approving (by the requisite majorities) resolutions relating to the SMG Acquisition and all requisite matters relating to the Offer and the Sale, as set out in the Explanatory Memorandum.

### 3.3 Conditions precedent - FIRB

- (a) The obligations of each Underwriter to underwrite the Sale under clauses 2.1(b) and 4.5 of this agreement by an amount which would exceed the Relevant Percentage (as defined in clause 3.4) are conditional on either:
  - (i) the Treasurer of the Commonwealth of Australia (or his delegate) providing written advice that there are no objections under Australia's foreign investment policy to the proposed underwriting arrangements contemplated in this agreement; or
  - (ii) following notice of the proposed underwriting arrangements contemplated in this agreement having been given by the Underwriters to the Treasurer under the *Foreign Acquisitions and Takeovers Act 1975 (Cwlth)*, the Treasurer ceases to be empowered to make any order under Part II of that Act because of lapse of time.

### 3.4 FIRB approval

- (a) Notwithstanding any other provision of this agreement, if the sale of Sale Shares to an Underwriter pursuant to this agreement would result in that Underwriter ("**Relevant Underwriter**") holding an interest (including an interest in CULS as if those CULS had converted to Shares) in excess of 4.99 per cent of the total issued capital of the Company on a fully-diluted basis taking into account the number of Shares then held by the Relevant Underwriter and/or its Affiliates ("**Relevant Percentage**"), then where the Relevant Underwriter has not received a statement from the Treasurer of no objections to the acquisition of Excess Sale Shares (defined below) under Australia's foreign investment policy ("**FIRB Approval**"), the Relevant Underwriter shall give advance written notice thereof to the Company no later than the Selldown Settlement Date.
- (b) The Relevant Underwriter shall specify in such notice whether, as a result of the failure to obtain FIRB Approval, the Relevant Underwriter elects not to take delivery of Sale Shares to the extent (as a result of the delivery of such Sale Shares) its interest in the Company would be in excess of the Relevant Percentage ("**Excess Sale Shares**").
- (c) If such notice specifies that the Relevant Underwriter elects not to take delivery of the Excess Sale Shares, the Relevant Underwriter and the Company shall promptly consult together and the Relevant Underwriter shall use its best endeavours to procure sub-underwriters to purchase some or all of the Excess Sale Shares on or before the Selldown Settlement Date. If the Relevant Underwriter is not able to procure sub-underwriters to purchase all Excess Sale Shares and has not received FIRB Approval by the Selldown Settlement Date, then the following shall take place:

- (i) the Seller must sell and transfer the Excess Sale Shares on the Selldown Settlement Date to an independent trustee, nominated by the Relevant Underwriter, to be held by that trustee for the benefit of a charitable organisation selected by the Relevant Underwriter, provided that:
  - (A) the trustee will appoint the Relevant Underwriter as agent to sell the Excess Sale Shares on behalf of the trustee in the ordinary course of the Relevant Underwriter's business;
  - (B) the Relevant Underwriter is entitled to retain any proceeds received on the disposal of the Excess Sale Shares and must apply those proceeds in accordance with clause (v);
  - (C) if the trustee receives any dividend or other distribution on the Excess Sale Shares prior to disposal of the Excess Sale Shares then the trustee must pay an amount equivalent to the after-tax amount of the receipt to the Relevant Underwriter, subject to the receipt of any necessary regulatory approvals required to do so; and
  - (D) the trustee can exercise any voting rights attaching to the Excess Sale Shares it holds at its sole discretion, and for the avoidance of doubt, the Relevant Underwriter cannot exercise any voting rights attaching to those Excess Sale Shares.
- (ii) the Relevant Underwriter will use its best endeavours, as agent for the trustee, to procure purchasers for and to sell all of the Excess Sale Shares as soon as practicable and within 12 months after the Selldown Settlement Date. The parties acknowledge that the Relevant Underwriter does not acquire any interest in the Excess Sale Shares, or any rights (by way of security or otherwise) in respect of them to act as agent for sale;
- (iii) the sale of the Excess Sale Shares will be effected in accordance with the ASX Settlement Operating Rules, with settlement to follow on a T+3 basis;
- (iv) the Relevant Underwriter must advance to the trustee an amount equal to the number of Excess Sale Shares multiplied by the Sale Price ("**Advance Amount**") and the trustee will direct the Relevant Underwriter to pay that Advance Amount to the Seller on the Selldown Settlement Date. No interest will be payable on the Advance Amount. The trustee must only repay the Advance Amount from and to the extent the Relevant Underwriter, as agent of the trustee, receives the proceeds of sale of the Excess Sale Shares. The outstanding Advance Amount will not be repayable in any circumstances in respect of Excess Sale Shares not sold within 12 months after the Selldown Settlement Date and the agency will terminate at that time; and
- (v) the Relevant Underwriter will automatically apply any proceeds of sale of the Excess Offer Securities as agent against repayment of the Advance Amount by the trustee, immediately upon receipt of those proceeds. The Relevant Underwriter can retain for its own account those proceeds of sale of any Excess Sale Shares that are in excess of the Sale Price per Excess Offer Share.

### **3.5 Conditions not satisfied and waiver**

- (a) Each of the Seller and SGH must use their best endeavours to ensure or procure that the conditions precedent in clauses 3.1(a), 3.1(e), 3.2(c) and 3.2(e) are satisfied insofar as each relates to the conduct of the Seller or SGH.
- (b) Each Underwriter must use its best endeavours to ensure or procure that the condition precedent in clause 3.3 is satisfied.
- (c) If any of the conditions precedent in clause 3 are not satisfied by their respective deadlines or waived by the Underwriters then each Underwriter (in its absolute and unfettered discretion) may terminate this agreement by notice in writing to each other party.
- (d) If any of the conditions precedent in clauses 3.2(b), 3.2(f) and 3.3 are not satisfied by the deadline then each of the Seller and SGH (in its absolute and unfettered discretion) may terminate this agreement by notice in writing to the Underwriters.
- (e) The Underwriters may waive any or all of the conditions referred to in this clause 3 by giving notice to the Seller and SGH to that effect.

## **4. Conduct of Sale**

### **4.1 Announcement**

SGH must release an announcement regarding the Sale to ASX by 9.30am on the Announcement Date and such announcement must be substantially in the form approved by the Underwriters (acting reasonably).

### **4.2 Timetable**

Any item in the Timetable relating to the Sale which is marked with an (\*) may be amended by agreement between the Underwriters and SGH (each acting reasonably).

### **4.3 Bookbuild**

- (a) The Underwriters will invite Institutional Investors (which may include Institutional Investors that are shareholders of the Company or SGH) to bid for Sale Shares via the Bookbuild in accordance with the Timetable.
- (b) The Underwriters (or their Related Bodies Corporate) and any sub-underwriters may bid into the Bookbuild for Sale Shares.
- (c) The sale price payable to the Seller per Sale Share will be the Sale Price. Accordingly, the Bookbuild will be a bookbuild as to volume only and will not affect the Sale Price.
- (d) The allocation of Sale Shares to and between Institutional Investors will be determined by the Underwriters. The Underwriters expressly reserve the right to allocate a lower number of Sale Shares than bid for by an Institutional Investor, or no Sale Shares at all,

if that bidding Institutional Investor does not have credit approval from the Underwriters for the amount bid for.

#### 4.4 Manner of Sale

The Underwriters will conduct the Sale by way of an offer only to Institutional Investors.

Any investor that purchases Sale Shares will be required to execute a Selldown Confirmation Letter as soon as practicable following the Bookbuild confirming, among other things:

- (a) its status as an Institutional Investor meeting the requirements of this clause 4.4; and
- (b) its compliance with all relevant laws and regulations (including the *Corporations Act 2001 (Cth)* and the *Foreign Acquisitions and Takeovers Act 1975 (Cth)* and associated media investment policy).

#### 4.5 Settlement

- (a) No later than 9:00am on the Selldown Settlement Date, the Seller and SGH must give the Underwriters a Certificate.
- (b) Subject to clause 12, and provided that:
  - (i) the conditions precedent in clause 3 have been satisfied or waived in accordance with clause 3; and
  - (ii) the Seller and SGH have validly given the Certificate in clause 4.5(a) above in accordance with that clause,the Underwriters must in their Respective Proportions:
  - (iii) purchase or procure purchases by Institutional Investors (at the Sale Price) for the Sale Shares; and
  - (iv) pay, or procure payment of, to the Seller the Sale Proceeds by 5:00pm on the Selldown Settlement Date;
- (c) The Seller and SGH must take all steps reasonably required to effect the transfer of the Sale Shares in accordance with the directions of the Underwriters provided they are given in accordance with this agreement;
- (d) The Seller appoints each Underwriter (or their nominee) as its agent in relation to the settlement of all transfers of Sale Shares in accordance with this agreement;
- (e) The Seller irrevocably assigns to the Underwriters all contractual rights and recourse that it may have (if any) against any intended allottee that has not settled on the Selldown Settlement Date in accordance with the Underwriters' settlement instructions. If the Seller is unable to assign to the Underwriters all such contractual rights and recourse, the Seller undertakes that it will, and SGH undertakes to procure that the Seller will, assign such rights and any relevant recourse when and to the extent that it is legally able to; and

- (f) Upon clause 4.5(b) being complied with by the Underwriters, the liability of the Underwriters under this agreement with respect to the underwriting of the Sale ceases and is extinguished.

## **5. Fees**

In consideration of performing their obligations under this agreement, the Underwriters shall be entitled to such fees as the parties agree.

## **6. GST**

### **6.1 Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 6 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 6.
- (c) Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 6.

### **6.2 Reimbursements and similar payments**

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a Cost, expense, or other amount paid or incurred will be limited to the total Cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the Cost, expense or amount relates.

### **6.3 GST payable**

- (a) If GST is payable in relation to a supply made under or in connection with this agreement then any party (Recipient) that is required to provide consideration to another party (Supplier) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (b) The Supplier must provide a tax invoice to the Recipient no later than 14 days after the day on which any consideration is to be first provided for that supply.

### **6.4 Variation of GST**

If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 6.3 such that:

- (a) a further amount of GST is payable in relation to the supply; or
- (b) a refund or credit of GST is obtained in relation to the supply,

then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause

6.4 is deemed to be a payment, credit or refund of the additional amount payable under clause 6.3.

## **6.5 No merger**

This clause will not merge on termination or expiration of this agreement.

## **7. Undertakings**

Each of the Seller and SGH undertakes to:

- (i) not, prior to settlement on the Selldown Settlement Date in connection with the Sale commit, be involved in or acquiesce in any activity which breaches:
  - (A) the Corporations Act and any other applicable laws;
  - (B) its constitution;
  - (C) the Listing Rules or ASX Settlement Operating Rules; or
  - (D) any legally binding requirement of ASIC or the ASX;
- (ii) immediately notify the Underwriters of any breach of any warranty or undertaking given by it under this agreement;
- (iii) cooperate fully with the Underwriters in connection with the Sale;
- (iv) accept any offer to purchase Sale Shares if the Underwriters direct it to do so (provided such purchase is in accordance with the terms of this agreement); and
- (v) immediately notify the Underwriters if it becomes aware of any misleading or deceptive statement (including by omission) in the SMG Information.

## **8. Representations and Warranties**

### **8.1 Representations and warranties by the Seller and SGH**

As at the date of this agreement and on each day until and including the Selldown Settlement Date, each of the Seller and SGH represents and warrants to each Underwriter that each of the following statements is true and correct and not misleading by reference to the facts and circumstances existing at such times.

- (a) **(body corporate)** it is a body corporate validly existing and duly established under the laws of its place of incorporation;
- (b) **(capacity)** it has full legal capacity and power to enter into this agreement and the SMG Acquisition Agreements (to the extent to which it is a party to those agreements) and to perform its obligations under, and to carry out the transactions contemplated by, these agreements;

- (c) (**authority**) it has taken, or will have taken by the time required, all corporate action that is necessary or desirable to authorise its entry into this agreement and the SMG Acquisition Agreements to which it is a party (to the extent to which it is a party to those agreements) and its carrying out of the transactions that these agreements contemplate;
- (d) (**validity of obligations**) this agreement and the SMG Acquisition Agreements to which it is a party (to the extent to which it is a party to those agreements) are legal, valid and binding obligation on it, enforceable against it in accordance with their terms;
- (e) (**ownership, encumbrances**) the Seller is the registered holder and sole legal owner of the Sale Shares. The Seller will transfer the full legal and beneficial ownership of the Sale Shares free and clear of all liens, charges, security interests, claims, equities and pre-emptive rights, subject to registration of the transferee(s) in the register of shareholders of the Company;
- (f) (**Sale Shares**) following sale by the Seller, the Sale Shares will rank equally in all respects with all other outstanding ordinary shares of the Company, including their entitlement to dividends, and may be offered for sale on the financial market operated by ASX without disclosure to investors under Part 6D.2 of the Corporations Act;
- (g) (**no relief**) other than the ASIC relief which has been obtained by the Underwriters, no modifications, exemptions or waivers are required of or from the Listing Rules or the Corporations Act in order to carry out and complete the Sale;
- (h) (**announcement**) all public announcements made by or on behalf of the Seller or SGH in connection with the Sale are true and correct, and not misleading or deceptive;
- (i) (**power to sell**) the Seller has the corporate authority and power to sell the Sale Shares under this agreement and no person has a conflicting right, whether contingent or otherwise, to purchase or to be offered for purchase the Sale Shares;
- (j) (**no insider trading offence**) the sale of the Sale Shares will not constitute a violation by the Seller, SGH (or their Affiliates) of Division 3 of Part 7.10 of the Corporations Act;
- (k) (**ASX listing**) the Sale Shares are quoted on the financial market operated by ASX;
- (l) (**Control**) at the time when the Bookbuild is conducted it does not control the Company within the meaning of section 50AA of the Corporations Act;
- (m) (**compliance**) the Sale conducted in accordance with this agreement will comply with the Corporations Act, the Listing Rules, regulations, licence conditions and all other applicable laws in all material respects;
- (n) (**Certificate**) the contents of the Certificate given under this agreement will be true and correct, not misleading or deceptive and contain no omissions of required information;
- (o) (**information**) none of the information supplied to the Underwriters by or on behalf of the Seller or SGH in connection with the Sale is misleading or deceptive in a material respect or contains any material omissions;
- (p) (**disclosure**) it is not aware that any information disclosed by the Company to its shareholders, ASX or ASIC, or otherwise made publicly available by the Company

(including without limitation, the Explanatory Memorandum and the Prospectus) is misleading or deceptive in any material respect or contains any material omissions;

- (r) **(no US registration)** it is not necessary in connection with the initial offer and sale of the Sale Shares to purchasers in the manner contemplated by this agreement to register such initial offer of the Sale Shares under the US Securities Act 1933, as amended (the **Securities Act**);
- (s) **(directed selling efforts)** neither the Seller, SGH, their Affiliates, nor any person acting on behalf of the Seller, SGH or any of their Affiliates (other than the Underwriters or their Affiliates or any person acting on behalf of any of them, as to whom no representation or warranty is made), has, directly or indirectly, engaged or will engage in any "directed selling efforts" within the meaning of Rule 902(c) under the Securities Act with respect to the Sale Shares;
- (t) **(offshore transactions)** it will only offer and sell the Sale Shares in "offshore transactions" (as defined in Rule 902(h) under the US Securities Act 1933, as amended) in accordance with Regulation S;
- (u) **(foreign private issuer)** to the best of its knowledge, the Company is a "foreign private issuer" as defined in Rule 405 under the US Securities Act 1933, as amended; and
- (v) **(no substantial U.S. market interest)** to the best of its knowledge, there is no "substantial U.S. market interest" (as defined in Rule 902(j) under the US Securities Act 1933, as amended) in the Sale Shares or any security of the same class or series as the Sale Shares.

## 8.2 Representations and warranties of Underwriters

As at the date of this agreement and on each day until and including the Selldown Settlement Date, each Underwriter represents to each of the Seller and SGH that each of the following statements is true and correct and not misleading by reference to the facts and circumstances existing at such times.

- (a) **(body corporate)** it is a body corporate validly existing under the laws of its place of incorporation;
- (b) **(capacity)** it has the power to enter into, comply with and perform its obligations under this agreement;
- (c) **(authorisations)** all corporate authorisations and other consents, licences, approvals and authorities that may be required to permit it to enter into this agreement and to perform its obligations under this agreement in accordance with its terms have been obtained and remain valid and subsisting;
- (d) **(validity of obligations)** this agreement is a legal, valid and binding obligation on it;
- (e) **(directed selling efforts)** neither it nor its Affiliates, nor any person acting on behalf of it or any of its Affiliates, has, directly or indirectly, engaged or will engage in any "directed selling efforts" within the meaning of Rule 902(c) under the Securities Act with respect to the Sale Shares;

- (f) **(no registration)** it acknowledges that the Sale Shares have not been and will not be registered under the Securities Act, and that it and its Affiliates may not in respect of such shares, offer them for sale in the United States or to, or for the account or benefit of, U.S. Persons (as defined in Rule 902(k) under the Securities Act) except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of that Act; and
- (g) **(offshore transactions)** it will only offer and sell the Sale Shares in "offshore transactions" (as defined in Rule 902(h) under the US Securities Act 1933, as amended) in accordance with Regulation S.

### **8.3 Reliance**

Each party giving a representation and warranty acknowledges that the other parties have relied on the above representations and warranties in entering into this agreement and will continue to rely on these representations and warranties in performing their obligations under this agreement. The above representations and warranties continue in full force and effect notwithstanding completion of this agreement.

## **9. Indemnities**

### **9.1 Indemnity**

Subject to clause 9.2, and to the extent permitted by law, SGH unconditionally and irrevocably undertakes to indemnify and keep indemnified each Indemnified Party from and against, and to hold them harmless from and against, all Losses incurred in respect of the Sale, whether directly or indirectly, by an Indemnified Party as a result of:

- (a) a breach by the Seller or SGH of this agreement (including any breach of any of the above representations or warranties given by the Seller or SGH (as applicable) or any applicable laws in respect of the Sale;
- (b) a breach by SGH of the SMG Acquisition Agreements or of any applicable laws in respect of the SMG Acquisition;
- (c) the making, conduct and settlement of the Sale;
- (d) the transfer of the Sale Shares;
- (e) any claims that an Indemnified Party has any liability under the Corporations Act in respect of the Sale (including sections 1308, 1309 and 1041H) or any other applicable law including because of any alleged defect in the SMG Information;
- (f) any review, inquiry or investigation undertaken by ASIC, ASX, the Australian Taxation Office, any state or territory regulatory office or any other regulatory or government agency in relation to the Sale including because of any alleged defect in the SMG Information; or
- (g) reliance by any Indemnified Party for the purpose of the Sale on information supplied by SMG or by its authorised officers or employees, including the SMG Information.

### **9.2 Exception**

The obligations of SGH to indemnify, hold harmless, reimburse and release under clause 9.1 do not apply in relation to an Indemnified Party if and to the extent that any Loss suffered by that Indemnified Party is finally and judicially determined by a court of competent jurisdiction to have been caused by:

- (a) any penalty or fine which that Indemnified Party is required to pay for any contravention by it of the Corporations Act or any other applicable law;
- (b) the wilful misconduct, negligence, recklessness or fraud of that Indemnified Party or of the Underwriter associated with that Indemnified Party (except to the extent contributed to by the Company or its officers or employees). For the purposes of this agreement, an Indemnified Party is associated with an Underwriter if that Indemnified Party is:
  - (i) a Related Body Corporate of that Underwriter; or
  - (ii) an officer, director, employee, advisor, representative or agent of that Underwriter or a Related Body Corporate of that Underwriter; or
- (c) any amount in respect of which this indemnity would be illegal, void or unenforceable under any law.

### **9.3 Costs of Claim**

SGH will reimburse each Underwriter for all reasonable out of pocket Costs which it may pay or incur in connection with investigating, disputing or defending any action, demand or Claim for which it is indemnified under this agreement.

### **9.4 Conduct of Claims**

- (a) On receipt of notice by an Indemnified Party that a Claim may arise or is being brought against them, the Underwriters will notify SGH of that Claim. If, following receipt of that notice SGH promptly acknowledges that the indemnity applies to those circumstances SGH is entitled, but not obliged, to defend or to institute legal or other proceedings in the name of that Indemnified Party in respect of that Claim and to conduct those proceedings at its sole cost. If a conflict arises between the interest of SGH and the interests of the relevant Indemnified Party, the Indemnified Party shall be entitled, at its election, without prejudice to its right of indemnity under this clause 9.4 to be separately represented in such proceedings.
- (b) If SGH assumes the conduct of any Claim pursuant to this clause 9.4:
  - (i) SGH must:
    - (A) diligently pursue that Claim; and
    - (B) consult with the Underwriters and the relevant Indemnified Party about the appointment of counsel;
    - (C) keep the Underwriters and the relevant Indemnified Party fully informed of the progress of the Claim; and
    - (D) not make any admission of liability, settlement, compromise or consent to judgement whatsoever in connection with the Claim without the prior

written consent of the Underwriters and the relevant Indemnified Party (such consent not to be unreasonably withheld or delayed), unless the admission, settlement, compromise or consent:

- (1) includes an unconditional release of the relevant Indemnified Party from all liability arising out of such Claim; and
  - (2) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of the relevant Indemnified Party;
- (ii) the relevant Indemnified Party:
- (A) must promptly render all reasonable assistance and cooperation to SGH in the conduct of the Claim including, without limitation, providing SGH with any documents in its possession and signing all documents, authorities and directions, each in a form acceptable to the Indemnified Party, which SGH may reasonably require for the prosecution or advancement of the Claim;
  - (B) must do all things reasonably necessary or desirable to ensure SGH is subrogated to and enjoys the benefit of the rights of the Indemnified Party in relation to any cross claim (other than a claim against another Indemnified Party or against the issuer of any Indemnified Party) and to render such assistance as may be requested by SGH (acting reasonably) for that purpose,

provided always that an Indemnified Party is under no obligation to take or refrain from taking action under this clause if to do so would in the reasonable opinion of the Indemnified Party, lead to a risk of damage to its reputation or standing; and

- (iii) the relevant Indemnified Party has the right at any time to reassume the conduct of the Claim and, if it reassumes the conduct of the Claim ("**Reassumed Claim**"):
- (A) it will have the right to conduct the Reassumed Claim under its sole management and control and will have absolute discretion with regard to the conduct of the Reassumed Claim including any decision to settle, compromise or consent to the entry of any judgement in relation to any such proceeding, but in doing so, will act reasonably and consult with and take account of the views of SGH so far as is reasonably possible; and
  - (B) the indemnity given by SGH under this clause 9 will not apply in respect of any Losses directly or indirectly suffered by that Indemnified Party in respect of the Reassumed Claim to the extent those Losses are suffered by that Indemnified Party as a direct result of the reassumption by the Indemnified Person of the defence of that claim or proceeding.

## 9.5 Continuing obligation

The indemnity in clause 9.1 is a continuing obligation, separate and independent from the other obligations of the parties under this agreement and survives termination or completion of this agreement. It is not necessary for an Underwriter to incur expense or make payment before enforcing that indemnity.

#### **9.6 Benefit of indemnity**

The indemnity in clause 9.1 is granted to each Underwriter both for itself and on trust for each of its associated Indemnified Parties.

#### **9.7 Proportional contribution**

Subject to clause 9.8, the parties agree that if for any reason the indemnity in clause 9.1 is unavailable or insufficient to hold harmless any Indemnified Party against any Losses against which the Indemnified Party is stated to be indemnified (other than as expressly excluded under clause 9.2), the respective proportional contributions of SGH and the Indemnified Party or the Indemnified Parties in relation to the relevant Losses will be as agreed, or failing agreement as determined by a court of competent jurisdiction, having regard to the participation in, instigation of or other involvement of the Seller or SGH and the Indemnified Party or the Indemnified Parties in the act complained of, having particular regard to relative intent, knowledge, access to information and opportunity to correct any untrue statement or omission.

#### **9.8 No excess contribution**

SGH agrees with each of the Indemnified Parties that in no event will an Underwriter and its associated Indemnified Parties be required to contribute under clause 9.7 to any Losses in an aggregate amount that exceeds the aggregate of the fees paid to that Underwriter under this agreement.

#### **9.9 Indemnified Party reimbursement**

If an Indemnified Party pays an amount in relation to Losses where it is entitled to contribution from SGH under clause 9.7, SGH agrees promptly to reimburse the Indemnified Party for that amount.

#### **9.10 SGH reimbursement**

If SGH pays an amount to the Indemnified Parties in relation to Losses where it is entitled to contribution from the Indemnified Parties under clause 9.7, the Indemnified Parties must promptly reimburse SGH for that amount.

#### **9.11 Release**

The Seller and SGH agree that:

- (a) no Claim may be made by it or any Seven Group Member against an Indemnified Party and the Seller and SGH unconditionally and irrevocably release and discharge each Indemnified Party from any Claim that may be made by it, to recover from that Indemnified Party any Losses suffered or incurred by the Seller or SGH arising directly

or indirectly as a result of the participation of that Indemnified Party in relation to the Sale, except in relation to matters where those Losses are finally and judicially determined by a Court of competent jurisdiction, to have been caused by a matter referred to in clause 9.2(b);

- (b) the Indemnified Party is not liable in any circumstance for any indirect or consequential loss or damage; and
- (c) in any event, no proceedings may be taken against any director, officer, employee, agent or advisor of an Underwriter arising out of or in connection with the Sale, except in relation to Losses that result from a matter referred to in clause 9.2(b).

## **10. Announcements**

### **10.1 Consultation**

The Seller, SGH and the Underwriters will consult with each other in respect of any material public releases by any of them concerning the Sale or the SMG Acquisition. The prior written consent of the Underwriters must be obtained prior to either the Seller or SGH making any release or announcement or engaging in publicity in relation to the Sale or the SMG Acquisition and such release, announcement or engagement must be in compliance with all applicable laws, including the securities laws of Australia and any other jurisdiction.

### **10.2 Advertisements**

Each Underwriter may, after completion of their other obligations under this agreement, place advertisements in financial and other newspapers and journals at its own expense describing their service to the Seller and SGH provided such advertisements are in compliance with all applicable laws, including the securities laws of Australia and any other jurisdiction.

## **11. Confidentiality**

Each party agrees to keep the terms and subject matter of this agreement confidential, except:

- (a) where disclosure is required by applicable law, a legal or regulatory authority or the Listing Rules;
- (b) disclosure is made to an adviser or to a person who must know for the purposes of this agreement, on the basis that the adviser or person keeps the information confidential; and
- (c) to a person to the extent reasonably necessary in connection with any actual or potential claim or judicial or administrative process involving that party in relation to the Sale.

## **12. Events of Termination**

### **12.1 Right of termination**

An Underwriter may, by written notice given to the Seller, SGH and the other Underwriter, and without Cost or liability to that Underwriter, immediately terminate this agreement if any one or more of the events listed in Schedule 3 occurs or has occurred after the date of this agreement and on or before 5:00pm on the Selldown Settlement Date (unless otherwise stated).

### **12.2 Materiality**

No event in Schedule 3 which is marked with an “\*” entitles an Underwriter to exercise its termination rights unless that Underwriter has reasonable grounds to believe, and does reasonably believe, that the event:

- (a) has or is likely to have a material adverse effect on the outcome, success or settlement of the Sale;
- (b) could give to a liability of that Underwriter under any law or regulation; or
- (c) leads (or is likely to lead) to a contravention by that Underwriter of (or involvement of that Underwriter in a contravention of) any law or regulation.

### **12.3 Effect of termination**

Where, in accordance with this clause 12, an Underwriter terminates its obligations under this agreement:

- (a) the obligations of that Underwriter under this agreement immediately end and it will have no obligations to purchase Sale Shares; and
- (b) any rights or entitlements of that Underwriter accrued under this agreement, including the right to be indemnified, up to the date of termination survive.

### **12.4 Termination by one Underwriter only**

Any rights or powers of the Underwriters to terminate may be exercised severally. If one Underwriter terminates, the remaining Underwriter may elect to take up the rights and obligations of that Underwriter under this agreement (in which case, the Respective Proportion applicable to that Underwriter will be 100% for rights and obligations accruing after the date of such termination). Notice of any election must be given to the Seller and SGH by the earlier of within 2 Business Days of the relevant Underwriter becoming aware of termination by the other Underwriter and 5.00pm on the Selldown Settlement Date. If the remaining Underwriter fails to give notice in accordance with this clause 12.4, it shall be treated as having also terminated this agreement.

## **13. Relationship of the Underwriters**

### **13.1 Underwriters' relationship**

In relation to the Underwriters:

- (a) where the consent or approval of the Underwriters is required under this agreement, that consent or approval must be obtained from each of the Underwriters;
- (b) subject to clause 12.4, when the Underwriters have any rights or powers under this agreement, those rights or powers must be exercised by unanimous agreement of the Underwriters;
- (c) all obligations of the Underwriters under this agreement are several obligations only; and
- (d) any reference to the Underwriters in this agreement is a reference to each Underwriter separately so that, for example, a representation, warranty or undertaking is given by each of them separately.

### **13.2 No fiduciary**

The parties acknowledge and agree that:

- (a) this agreement and the performance of this agreement;
- (b) any prior relationship between the parties; and
- (c) any services provided or representations made by the Underwriters to the Seller and SGH in connection with the Sale prior to the date of this agreement,

do not represent or imply any fiduciary relationship in relation to the Sale or any other category of commercial relationship recognised at law or in equity as giving rise to forms of specific rights and obligations in relation to the Sale, except those rights expressly set out in this agreement. In providing the services under this agreement, each Underwriter will be acting solely pursuant to a contractual relationship with SGH on an arm's length basis and will not be acting as fiduciary to either the Seller or SGH or any other person. By entering into this agreement the Seller and SGH will be deemed to have provided their informed consent to the exclusion of any such fiduciary relationship or duty.

The Seller and SGH acknowledge that the Underwriters are not advising the Seller, SGH or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Seller and SGH will consult with their own advisors concerning such matters and will be responsible for making their own independent investigation and appraisal of those matters, and the Underwriters will have no responsibility or liability to either the Seller or SGH with respect to those matters. The Seller and SGH further acknowledge and agree that any review by an Underwriter of a Seven Group Member, the Sale, the Sale Shares and other related matters will be performed solely for the benefit of that Underwriter and will not be on behalf of the Seller, SGH or any other person.

## **14. Miscellaneous**

### **14.1 Entire agreement**

Except as expressly stated, this agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that matter.

### **14.2 Governing law**

This agreement is governed by the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and waives any right to claim that those courts are an inconvenient forum.

### **14.3 Severability**

Any provision of this agreement which is prohibited or unenforceable in any jurisdiction will be ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

### **14.4 Waiver and variation**

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

#### **14.5 No merger**

The rights and obligations of the parties will not merge on the termination or expiration of this agreement. Any provision of this agreement remaining to be performed or observed by a party, or having effect after the termination of this agreement for whatever reason remains in full force and effect and is binding on that party.

#### **14.6 No assignment**

No party may assign its rights or obligations under this agreement without the prior written consent of the other parties.

#### **14.7 Notices**

Any notice, approval, consent, agreement, waiver or other communication in connection with this agreement must be in writing.

#### **14.8 Continuing obligations**

Each representation and warranty and indemnity (and associated contribution provisions) in this agreement is a continuing obligation, separate and independent from other representation, warranties and obligations of the parties, and survives withdrawal of the Sale, completion of the Sale or termination of this agreement or termination by an Underwriter or purchase of or acceptance of and payment for any of the Sale Shares.

#### **14.9 Enforceability**

For the purpose of this agreement, each Underwriter is taken to be acting as agent and trustee on behalf of and for the benefit of all of its Indemnified Parties and all of those persons are to this extent taken to be parties to this agreement.

#### **14.10 Conflict of interest**

The parties' rights and remedies under this agreement may be exercised even if this involves a conflict of duty or a party has a personal interest in their exercise.

#### **14.11 Interpretation**

In this agreement:

- (a) capitalised terms have the meaning given in Schedule 1, unless defined elsewhere;
- (b) headings and sub-headings are for convenience only and do not affect interpretation;
- (c) reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment or any statutory provision substituted for it, and ordinances, by laws, regulations, and other statutory instruments issued under any legislation;
- (d) a reference to conduct includes an omission, statement and undertaking, whether or not in writing;

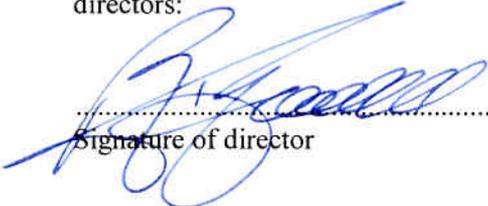
- (e) a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- (f) a reference to this agreement or to any other agreement, deed or document includes, respectively, this agreement or that other agreement, deed or document as amended, novated, supplemented, varied or replaced from time to time;
- (g) references to parties, clauses or schedules are references to parties, clauses and schedules to or of this agreement, and a reference to this agreement includes any schedule;
- (h) if any day appointed or specified by this agreement for the payment of any money or doing of any thing falls on a day which, in the jurisdiction in which it is to be paid or done, is not a Business Day, the day so appointed or specified will be deemed to be the next Business Day;
- (i) references to payments to any party to this agreement will be construed to include payments to another person upon the direction of such party;
- (j) references to currency are references to Australian currency unless otherwise indicated;
- (k) all payments to be made under this agreement must be made by unendorsed bank cheque or other immediately available funds and in Australian currency; and
- (l) all references to time are to Sydney Time unless otherwise indicated.

#### **14.12 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one agreement.

Yours sincerely,

EXECUTED by SEVEN GROUP )  
HOLDINGS LIMITED in accordance )  
with section 127(1) of the Corporations )  
Act 2001 (Cth) by authority of its )  
directors: )

  
.....  
Signature of director )

  
.....  
Name of director (block letters) )

EXECUTED by SEVEN (WAN) PTY )  
LIMITED in accordance with section )  
127(1) of the Corporations Act 2001 )  
(Cth) by authority of its directors: )

  
.....  
Signature of director )

  
.....  
Name of director (block letters) )

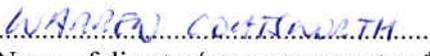
  
.....  
Signature of director/company )  
secretary\* )

\*delete whichever is not applicable )

  
.....  
Name of director/company secretary\* )  
(block letters) )  
\*delete whichever is not applicable )

  
.....  
Signature of director/company )  
secretary\* )

\*delete whichever is not applicable )

  
.....  
Name of director/company secretary\* )  
(block letters) )  
\*delete whichever is not applicable )

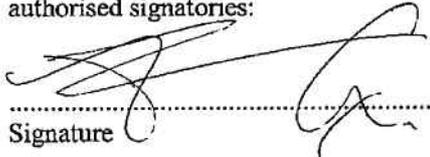


Accepted and agreed to as of the date of this agreement:

**SIGNED** by )  
)  
as attorney for **J.P. MORGAN** )  
**AUSTRALIA LIMITED** under power )  
of attorney dated 18 September 2007 in )  
the presence of: )

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

.....  
By executing this agreement the  
attorney states that the attorney has  
received no notice of revocation of the  
power of attorney  
.....  
Name of attorney (block letters)

**SIGNED** on behalf of **UBS AG,** )  
**AUSTRALIA BRANCH** by its duly )  
authorised signatories: )  
 )  
..... )  
Signature )  
SIMON COX )  
Name (block letters) )

 )  
..... )  
Signature )  
Merran Edwards )  
Name (block letters)

## Schedule 1

### Definitions

**Affiliate** of any person means, in respect of any person, any other person that is a Related Body Corporate of the person or who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, and control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of securities, by contract or agency or otherwise.

**Announcement Date** means the date referred to as the Announcement Date in the Timetable.

**ASTC** means ASX Settlement Pty Limited (ABN 49 008 504 532), the body which administers CHESSE systems in Australia.

**ASX** means ASX Limited (ABN 98 008 624 691).

**ASX Settlement Operating Rules** means the settlement rules of the ASTC and any other rules of ASX which apply while the Sale Shares are CHESSE Approved Securities.

**Bookbuild** means the volume bookbuild for the Sale.

**Bookbuild Closing Date** means the date referred to as the Bookbuild Closing Date in the Timetable.

**Business Day** has the same meaning as in the Listing Rules.

**Certificate** means a certificate signed on behalf of the Seller and SGH by 2 directors or a director and the company secretary of each of them, which certifies to the Underwriters as at the date of the certificate that to the best of those persons' knowledge and information after due enquiry, except as set out in the certificate (on the basis that any qualification set out in the certificate will be without prejudice to an Underwriter's right of termination under this agreement):

- (a) the Seller and SGH have complied with all obligations on their part to be performed as at the date of the certificate:
  - (i) under this agreement; and
  - (ii) in respect of the Sale under statute or otherwise;
- (b) none of the termination events set out in Schedule 3 has occurred; and
- (c) the representations and warranties set out in clause 8 are true and correct.

**CHESSE Approved Securities** means securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely ASTC) in accordance with the ASX Settlement Operating Rules.

**Claim** means, in relation to any person, any allegation, debt, cause of action, liability, claim, investigation or proceeding, suit or demand of any nature made against the person howsoever arising and

whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Costs** means any costs, charges or expenses.

**CULS** means the convertible unsecured loan securities to be issued by the Company under the Entitlement Offer as described in the Prospectus.

**Due Diligence Planning Memorandum** means the memorandum (in the form adopted by the Due Diligence Committee) including its schedules and annexures setting out the responsibilities and purpose of the Due Diligence Committee.

**Due Diligence Committee** means the due diligence committee formed by the Company in connection with the Offer.

**Entitlement Offer** means the accelerated non-renounceable pro rata entitlement offer to the Company's institutional and retail shareholders as at the Entitlement Offer record date to subscribe for CULS, each part thereof and related matters including the conduct and marketing of the Entitlement Offer (whether before or after the date of this agreement), the issue of any CULS under the Offer Underwriting Agreement and the grant of entitlements.

**Explanatory Memorandum** means the explanatory memorandum prepared by the Company and provided to its shareholders for the purposes of approving the SMG Acquisition and related matters.

**Group** means the Company and each Subsidiary of the Company (and **Group Member** means any one or more of them).

**Indemnified Parties** means the Underwriters and any of their Affiliates, successors or Related Bodies Corporate, the directors, officers, agents, employees, representatives or advisers of the Underwriters or any of their Affiliates, successors or Related Bodies Corporate.

**Institutional Investor** means a person who warrants or represents to the Underwriters that they are, (and who the Underwriters do not believe is not), a person:

- (a) if in Australia, who is a sophisticated investor or professional investor (within the meaning of sections 708(8) and (11) of the Corporations Act); or
- (b) in any other case, to whom sales of Sale Shares may lawfully be made in New Zealand, the United Kingdom, Belgium, Denmark, Germany, Luxembourg, Netherlands, Ireland, France, Norway, Sweden, Switzerland, Hong Kong, Singapore, Malaysia and United Arab Emirates (or other jurisdiction that the parties may agree) without the need for a lodged prospectus or other disclosure document or other lodgement, registration, filing with or approval by a government agency.

**Listing Rules** means the listing rules of ASX, except as waived or modified in respect of the Company or the Sale from time to time.

**Losses** means mean any Costs, Claims, damages, liabilities or other losses or expenses of any kind (including actions or proceedings in respect thereof) and reasonable legal costs and expenses however arising, including penalties, Claims, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**Meeting Date** means the date referred to as the Meeting Date in the Timetable.

**Offer** means the Entitlement Offer (including the related bookbuild) and the Public Offer (each as described in the Prospectus).

**Offer Documents** means:

- (a) the Prospectus; and
- (b) all announcements released to ASX by the Company in connection with the Offer.

**Offer Underwriting Agreement** means the agreement between the Underwriters and the Company regarding the underwriting of the Offer, dated on or about the date of this agreement.

**Prospectus** means the prospectus issued or published by or on behalf of the Company in respect of the Offer which is lodged or to be lodged with ASIC by the Company under section 718 of the Corporations Act on the Announcement Date.

**Public Information** means any press releases, presentation materials, or public or media statement made (on or after the Announcement Date and up to and including the Selldown Settlement Date) in relation to the Group, the SMG Acquisition or the Offer (including the Explanatory Memorandum) or in relation to bids or applications received under the Offer or the progress or results of the Offer, in each case by the Company (or, with its prior consent, on its behalf).

**Public Offer** means the offer to subscribe for ordinary shares of the Company as described in the Prospectus.

**Related Body Corporate** means a "related body corporate" as that expression is defined in the Corporations Act except that the term "subsidiary" used therein shall have the meaning ascribed to "Subsidiary" in this agreement.

**Respective Proportion** means, for each Underwriter, 50%.

**Sale** means the sale of the Sale Shares at the Sale Price.

**Sale Price** means A\$5.60 per Sale Share.

**Sale Proceeds** means the amount which is the Sale Price multiplied by the number of Sale Shares.

**Sale Shares** means 53,424,268 existing fully paid ordinary shares in the Company held by the Seller as evidenced by the holding statement in Annexure A.

**Selldown Confirmation Letter** means a letter substantially in the form agreed by the Seller, SGH and the Underwriters (each acting reasonably) prior to the closing of the Bookbuild (and as may be amended by mutual agreement) whereby investors confirm, among other things, the items noted in clause 4.4.

**Selldown Settlement Date** means the date referred to as the Selldown Settlement Date in the Timetable.

**Seven Group** means SGH and each Subsidiary of SGH (and **Seven Group Member** means any one or more of them).

**Share** means an ordinary share in the Company.

**SMG** means Seven Media Group Pty Limited (ACN 116 850 607).

**SMG Acquisition** means the acquisition of SMG by the Company (including the subscription by Kohlberg Kravis Roberts & Co. LP for ordinary shares in the Company) in the manner described in the Explanatory Memorandum.

**SMG Acquisition Agreements** means:

- (a) the share sale agreement between SGH (as vendor) and the Company in relation to the sale and purchase of SMG dated on or about the date of this agreement;
- (b) the subscription agreement between Kohlberg Kravis Roberts & Co. LP or one or more of its Affiliates and the Company dated on or about the date of this agreement in relation to the subscription of shares in the Company; and
- (c) the share sale agreement between Seven Group Holdings Ltd (ACN 142 003 469) and Kohlberg Kravis Roberts & Co. LP or one or more other parties dated on or about the date of this agreement.

**SMG Information** means the factual and historical information regarding SMG contained in section 5 of the Prospectus and relating to matters, events and circumstances in existence on or before the date on which SGH gave its consent to the form and context in which that information appears in the Prospectus. For the avoidance of doubt, the SMG Information does not include information relating to a financial period, including the half year or year to 25 June 2011, which commences before, but ends after, the date on which this consent was given.

**Subsidiary** in relation to an entity, has the meaning given to that term in section 9 of the Corporations Act.

**Timetable** means the timetable set out in Schedule 2 as varied if at all in accordance with clause 4.2.

**Trading Day** has the meaning given to “Trading Day” in the Listing Rules.

**Underwriter** means each of JPM and UBS.

## Schedule 2

### Timetable

<b>Event</b>	<b>Date</b>
<b>Announcement Date</b> - ASX announcement and commencement of 2-day trading halt	21 February 2011
<b>(*) Bookbuild Opening Date</b>	21 February 2011
<b>(*) Bookbuild Closing Date</b>	22 February 2011
Re-commencement of trading in ordinary shares of the Company on an ex-entitlement basis	23 February 2011
<b>Meeting Date</b> - Company meeting to approve SMG Acquisition	11 April 2011
<b>(*) Selldown Settlement Date</b> - settlement and transfer of Sale Shares	18 April 2011

### Schedule 3

#### Termination Events

- (a) The SMG Acquisition Agreements or the Offer Underwriting Agreement are terminated, rescinded or repudiated or amended in a material particular (without the prior written consent of the Underwriters, such consent not unreasonably withheld or delayed);
- (b) SGH makes a public statement that it cannot or does not intend to complete the sale of SMG to the Company or either the Seller or SGH is advised that an approval or consent required to complete the SMG Acquisition will not be provided;
- (c) The S&P/ASX 200 index of ASX:
  - (i) at any time between the date of this agreement and 12.00pm on the Business Day following the Bookbuild Closing Date falls to a level that is 10% or more below the level at market close on the Trading Day immediately preceding the date of this agreement (*Starting Level*); or
  - (ii) closes, on any 3 consecutive Business Days, at a level that is 15% or more below the Starting Level, during the period from the date of this agreement until the Selldown Settlement Date,and the parties to this agreement do not agree on a new Sale Price for the Sale following good faith discussions and the parties acting reasonably;
- (d) There is a material adverse change in relation to the business, operations, financial condition or performance, results of operations, assets, liabilities or prospects of the Company, provided however, that the following shall not be taken into account in determining whether there has been a material adverse change:
  - (i) any such effect, change or circumstance relating to or resulting from, directly or indirectly, the announcement or implementation of the transactions contemplated by the acquisition of SMG;
  - (ii) any such effects attributable to any new equity plans implemented, or to be implemented, in respect of SMG management;
  - (iii) fees and expenses, severances and other bonus, benefit or compensation costs paid or to be paid by the Company or any Group Member in connection with the transactions contemplated in the SMG Acquisition Agreements;
  - (iv) any action required to be taken under any law or order or any existing contract by which the Company or any Group Member is bound;
  - (v) any failure by the Company to meet any internal projections or forecasts;
  - (vi) any such effect, change in circumstance attributable to general conditions affecting the economy, nationally or regionally which does not affect the Company materially disproportionately relative to other participants in the same industry or market; and

- (vii) any action taken by any competitor of the Company or SMG or any owner of any competitor of the Company or SMG, including, without limitation the sale or initial public offering of any media business in competition with the Company or SMG;
- (e) SGH fails to publicly announce the Sale on or before the Announcement Date;
- (f) ASIC commences a hearing under the *Australian Securities and Investments Commission Act 2001* (Cth) in relation to the Sale and any such hearing becomes public or is not withdrawn within 2 Business Days after it is commenced, or where it is commenced less than 2 Business Days before the Selldown Settlement Date it has not been withdrawn before the Selldown Settlement Date;
- (g) Either the Seller or SGH withdraws the Sale or indicates that it does not intend to proceed with all or any part of the Sale;
- (h) The Company ceases to be admitted to the official list of ASX or its shares are suspended from official quotation on ASX (other than a voluntary suspension required by the Company or consented to by the Underwriters to facilitate the Sale);
- (i) A public announcement made by or on behalf of the Seller or SGH in connection with the Sale is or becomes misleading or deceptive, or a matter required to be included is omitted;
- (j) Any Certificate which is required to be provided to the Underwriters under this agreement is not provided when required;
- (k) An event specified in the Timetable is delayed for more than 3 Business Days, in each case without the prior written approval of the Underwriters (such approval not having been unreasonably withheld or delayed);
- (l) The Seller, SGH or any material Seven Group Member becomes insolvent, commences winding up, has a receiver or receiver and manager appointed, or is placed into voluntary administration;
- (m) \* There is any change of law, which is likely to prohibit or regulate the Sale, capital issues or stock markets or affect the taxation treatment of the Sale;
- (n) \* Either the Seller or SGH contravenes the Corporations Act, its constitution, any of the Listing Rules, or any other applicable law or regulation;
- (o) \* The public announcements by or on behalf of the Seller or SGH in connection with the Sale do not comply with the Corporations Act, the Listing Rules or any other applicable law or regulation;
- (p) \* Either the Seller or SGH defaults in the performance of any of its obligations under this agreement;
- (q) \* A representation provided by either the Seller or SGH is not true or correct, or is misleading or deceptive;
- (r) \*Any Certificate given to the Underwriters under this agreement is false, misleading or deceptive, or inaccurate;

- (s) \*Between the date of this agreement and the Selldown Settlement Date, hostilities not presently existing commence or a major escalation in existing hostilities commences involving any one of Australia, the United States, the United Kingdom, or a member of the European Union, or there is a declaration of war, or a major terrorist act is perpetrated in any of those countries; and
- (t) \*There is a general moratorium on commercial banking activities in Australia, the United States or the United Kingdom, or there is a material disruption in commercial banking or settlement services in any of those countries; or trading in all securities quoted or listed on ASX, the London Stock Exchange or the New York Stock Exchange is suspended or limited in a material respect for one Business Day or substantially all of one Business Day.

## Annexure B

Date of change	Person whose relevant interest changed	Nature of Change	Consideration given in relation to change	Number of securities	Class
22-Feb-11	UBS Securities Australia Ltd	Stock Returned	N/A	(1,144)	Ordinary
23-Feb-11	UBS Securities Australia Ltd	Buy	10,780	2,000	Ordinary
23-Feb-11	UBS Securities Australia Ltd	Buy	1,342	249	Ordinary
23-Feb-11	UBS Securities Australia Ltd	Buy	2,587	480	Ordinary
23-Feb-11	UBS Securities Australia Ltd	Buy	4,555	845	Ordinary
23-Feb-11	UBS Securities Australia Ltd	Buy	34,636	6,426	Ordinary
23-Feb-11	UBS Securities Australia Ltd	Buy	120,354	21,299	Ordinary
23-Feb-11	UBS Securities Australia Ltd	Buy	10,840	2,000	Ordinary
23-Feb-11	UBS AG, London Branch	Sell	88,598	(16,366)	Ordinary
23-Feb-11	UBS AG, Australia Branch	Reduction in relevant interest in shares held by Seven (WAN) Pty Ltd, a subsidiary of Seven Group Holdings Limited ("SGH"), to the extent which arose under the terms of the Block Trade Agreement between J.P. Morgan Australia Limited ("J.P. Morgan"), UBS AG, Australia Branch ("UBS"), Seven (WAN) Pty Ltd and SGH dated 21 February 2011 (See Annexure [A]) ("Block Trade Agreement"), pursuant to sections 608(8), 12(2) and 53 of the Corporations Act 2001 (Cth) (the "Act") due to J.P. Morgan and UBS no longer being associates of each other pursuant to sections 12(2) and 53 of the Act.	N/A – See Block Trade Agreement attached as Annexure [A].	(26,712,134)	Ordinary

**UBS AG**

\_\_\_\_\_  
**AND**  
\_\_\_\_\_

*[INSERT COUNTERPARTY NAME]*

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**MASTER PRIME BROKERAGE  
AGREEMENT**

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- (b) if UBS considers it desirable (i) in order to facilitate Transactions or (ii) that UBS has collateral (or additional collateral) in relation to your obligations to UBS under this Agreement and the Customer Agreements, credit the Assets to the Transferred Assets Account.

6.3 UBS will credit all Cash to the Banking Account, and hold the Cash as banker and not as trustee, and so will not hold the Cash in accordance with the FSA's client money rules.

6.4 Assets are delivered to UBS at your risk. In the case of registrable Assets, you must deliver, together with the Assets, transfers duly executed in blank in the manner and form UBS requires.

6.5 UBS may in its absolute discretion decline to accept (in whole or in part) any securities, cash or other property tendered to it for credit to the Custody Account, Transferred Assets Account or Banking Account. UBS is not obliged to give any reason for its refusal.

6.6 If, on the relevant settlement or income payment date, UBS credits the Custody Account, Transferred Assets Account or Banking Account with Assets, Income or the proceeds of a sale, purchase or exchange of any Assets, or debits the Custody Account, Transferred Assets Account or Banking Account with the Assets or cost of any Assets, UBS may reverse any credit or debit if the relevant transaction fails to settle, or the Income is not received, on a timely basis.

6.7 Subject to the terms of this Agreement, UBS is authorised and agrees to act on all Instructions. UBS acts upon Instructions at your sole risk. UBS may for any reason refuse to act on any Instructions, including to deliver any Assets from the Custody Account or Transferred Assets Account or make any payments of Cash from the Banking Account.

## 7. TRANSFERRED ASSETS ACCOUNT

7.1 If UBS credits Assets to the Transferred Assets Account, all right, title and interest in those Assets passes to UBS free of all liens, charges, encumbrances and all third-party interests and rights, and UBS is obliged to deliver to you Equivalent Assets in accordance with, and subject to, the terms of this Agreement. UBS may retain for its own account all fees, profits and other benefits received in connection with any Assets credited to the Transferred Assets Account. Equivalent Assets will be delivered to you, pursuant to clause 10.1 or, at UBS's discretion, earlier, by crediting them to the Custody Account, and this Agreement applies to those assets as if they were

Assets credited to the Custody Account pursuant to clause 6.2, and UBS will debit the Transferred Assets Account accordingly.

7.2 Following any record date for payment or distribution of Income on any Assets credited to the Transferred Assets Account, UBS will credit an amount equal to or securities equivalent to the Income, after deduction of any taxes and duties payable, to either the Banking Account or Custody Account, as appropriate, as soon as reasonably practical after UBS receives the Income.

## 8. CUSTODY ACCOUNT

8.1 Subject to the terms of this Agreement, in relation to Assets credited by UBS to the Custody Account, UBS will:

- (a) on your behalf, hold or procure to be held to UBS's order those Assets; and
- (b) as soon as practicable after receipt of any necessary documents, procure registration of any registrable Assets in a manner permitted by the FSA Rules, which may include registration in the name of (i) due to the law or market practice of particular jurisdictions, UBS or a sub-custodian, (ii) UBS's or a sub-custodian's nominee, or (iii) any other person as you notify to UBS in writing.

At your request, UBS will notify you of those jurisdictions where registrable Assets credited to the Custody Account are currently registered in the name of UBS or a sub-custodian, and, in relation to the latter, of the name of the sub-custodian.

8.2 Subject to this Agreement, Assets credited to the Custody Account are held by UBS at your risk. Where Assets credited to the Custody Account are registered in the name of UBS, those Assets might not be segregated from UBS's own assets and, if UBS defaults, may not be as well protected from claims made on behalf of the general creditors of UBS. The consequences of you instructing UBS regarding the registration of Assets credited to the Custody Account are at your risk. You may instruct UBS in writing to hold documents of title for Assets credited to the Custody Account other than in UBS's physical possession or with an eligible custodian and you acknowledge that the consequences of doing so or of instructing UBS pursuant to clause 8.1(b)(iii) are at your risk.

8.3 In respect of Assets credited to the Custody Account which are held by a sub-custodian, UBS will, wherever possible, require that sub-custodian to record

them in its books to an account the title of which makes it clear that those Assets belong to a client of UBS.

8.4 Unless UBS has received contrary Instructions in sufficient time for UBS to act on them, UBS will, subject to this Agreement, in relation to Assets credited to the Custody Account and on your behalf:

- (a) collect, as they become payable, all interest, cash dividends and securities dividends and all other cash and securities income and cash and securities payments, with respect to such Assets, and credit the Banking Account or Custody Account on receipt, as appropriate, and, for this purpose, execute in your name any declarations of ownership or other documentation as may be required;
- (b) present for payment all such Assets which are called, redeemed or otherwise become payable and all coupons and other income items which call for payment upon presentation, in any case provided that UBS is actually aware of the opportunities, and credit the Cash, when received, to the Banking Account;
- (c) credit, on receipt, to the Custody Account all Assets received by UBS as a result of a share sub-division or re-organisation, capitalisation of reserves or otherwise with respect to Assets credited to the Custody Account; and
- (d) to the extent the issuer of the relevant assets permits, exchange interim or temporary receipts or certificates for definitive certificates, and old or overstamped certificates for new certificates.

8.5 In accordance with Instructions, UBS will, subject to this Agreement, execute and deliver, or procure to be executed and delivered, to you or as you may direct, any powers of attorney or proxies as may reasonably be required, authorising those attorneys or proxies to exercise any rights conferred by, or otherwise act in respect of, any Assets credited to the Custody Account.

8.6 UBS will use its reasonable efforts to notify you, as soon as reasonably practicable after receipt, of any notice relating to any of the Assets credited to the Custody Account, including, without limitation, notice of a tender or exchange offer or of a rights entitlement or a fractional interest resulting from a rights issue, stock dividend or stock split, but excluding notice of any general meeting of holders of securities. Unless

agreed otherwise with you, UBS is not responsible for taking any action with respect to any such notice, or for the exchange of any Asset credited to the Custody Account even if purely administrative, or for the exercise of any rights to subscribe for securities, conversion rights, voting rights or any other rights relating to those Assets or for dealing with any takeover, other offer or capital re-organisation affecting those Assets. However, for the avoidance of doubt, you have no right to vote in respect of Assets credited to the Custody Account to the extent that they are Settlement Securities that have not yet been delivered to third parties.

8.7 You authorise UBS to transfer Assets credited to the Custody Account from such account to the Transferred Assets Account (so that UBS may borrow, lend, charge, sell, transfer or otherwise use those Assets for its own purposes or the purposes of its other clients) without giving notice of this to you, and clause 7.1 applies accordingly.

8.8 You authorise UBS and UBS's sub-custodians, agents and other delegates to hold Assets credited to the Custody Account in accounts in which those Assets are commingled with assets of the same class held by the relevant person for its other clients. Where Assets are held in such an account, your rights to those Assets is not in relation to any separately identifiable securities, but rather is in relation to the same number, class, denomination and issue as those delivered to UBS, and you confirm you accept this. Where Assets credited to the Custody Account are pooled on this basis, UBS:

- (a) acknowledges that you have an equitable interest in that pool of assets (or in UBS' interest in respect of that pool) equal to the proportion which from time to time the number of Assets credited to the Custody Account (or which should have been credited) which have been pooled bears to the total number of assets in the pool (or in that part of the pool in respect of which UBS has an interest); and
- (b) may, if those Assets are called for partial redemption by their issuer, and subject to the rules or regulations pertaining to allocation of any Securities System in which those Assets have been deposited, allot or procure to be allotted the called portion to the respective beneficial holders of that class of investment in any manner UBS considers fair and equitable.

For the purposes of this clause 8.8, assets are of the same class as other assets if they are (i) of the same

light or which UBS may suffer or incur in respect of past Transactions.

## **PART D: SECURITY**

### **11. CHARGE**

11.1 The charge created by this clause 11 is given by you to UBS as continuing security for the payment and discharge of all your Liabilities. As security for your Liabilities, you charge to UBS by way of first fixed charge, with full title guarantee and free from any adverse interest:

- (a) all your right, title and interest in respect of the Assets (other than assets falling within paragraph (c) below) for the time being credited to the Custody Account, including without limitation any rights against any custodian, banker or other person;
- (b) all your right, title and interest in respect of assets which, or the certificates or documents of title to which, are from time to time deposited with or held by a member of UBS Group, including without limitation any rights against any custodian, banker or other person;
- (c) all your rights under this Agreement and the Customer Agreements including without limitation all rights that you have to the delivery of Equivalent Assets; and
- (d) all of your rights and interest in any amount payable to you by UBS under a Customer Agreement following termination of that Customer Agreement.

11.2 The Charge is a continuing security and is not affected in any way by any settlement of account (whether or not any Liabilities remain outstanding thereafter) or other matter and is in addition to any other current or future security, guarantee or indemnity held by UBS or any other person in respect of any or all of the Liabilities.

11.3 You acknowledge that UBS may file or register details of the Charge in appropriate jurisdictions. You must do everything commercially reasonable requested by UBS to perfect the Charge, including without limitation executing and signing promptly all documents required to vest the Charged Property in UBS or a nominee of UBS.

11.4 You undertake not to allow to continue or to create any encumbrance or security interest over the Charged Property, other than any security interests arising by operation of law, the Charge and any

interests created in favour of parties appointed under clause 23.

11.5 You by way of security irrevocably appoint UBS as your attorney on your behalf and in your name or otherwise to execute all transfers, assignments, further assurances or other documents as may reasonably be required to vest any of the Charged Property in UBS or in a person acting as nominee or otherwise on behalf of UBS or to perfect or preserve the rights and interests in respect of the Charge (including, without limitation, the institution and conduct of legal proceedings) or for the exercise by UBS of all or any of the powers, authorities and discretions conferred on UBS by this Agreement.

11.6 For all purposes, including any legal proceedings, a certificate by any officer of UBS as to the sums or Liabilities for the time being due to or incurred by UBS is conclusive in the absence of fraud or manifest error.

11.7 Sections 93 (restriction on consolidation of mortgages) and 103 (regulation of exercise of power of sale) of the Law Property Act 1925 shall not apply to this Agreement. The Liabilities shall become due for the purposes of section 101 (mortgagee powers) of the Law of Property Act 1925, and the statutory power of sale and of appointing a receiver conferred under that Act (as varied or extended under this Agreement) and all other powers shall be deemed to arise immediately after execution of this Agreement.

11.8 All rights charged by you to UBS shall secure your obligations to UBS under this Agreement and your obligations to UBS under the relevant Customer Agreements between you and UBS and under any other agreement or transaction between you and UBS. In the event of an enforcement of the Charge, UBS shall have absolute discretion to determine the order and manner in which the proceeds of sale are applied to discharge Liabilities under Customer Agreements and any other agreement or transaction between you and UBS

## **PART E: MARGIN**

### **12. MARGIN REQUIREMENT**

12.1 You must at all times maintain with UBS Margin equal to or greater than the aggregate of the Liabilities and any applicable Initial Margin.

12.2 Where the Margin Requirement exists and is greater than the Minimum Call amount specified in the Schedule, UBS may require you to deliver to it Acceptable Collateral of a Value (in aggregate) at least equal to or greater than the Margin Requirement by giving notice in writing to you at the address specified

**INTERNATIONAL SECURITIES LENDERS ASSOCIATION**

**ISLA**

**GLOBAL MASTER SECURITIES LENDING AGREEMENT**

**CLIFFORD CHANCE**

another as provided for in this Agreement, the Party obtaining such title being obliged to redeliver Equivalent Securities or Equivalent Collateral as the case may be.

#### **2.4 Currency conversions**

For the purposes of determining any prices, sums or values (including Market Value, Required Collateral Value, Relevant Value, Bid Value and Offer Value for the purposes of paragraphs 5 and 10 of this Agreement) prices, sums or values stated in currencies other than the Base Currency shall be converted into the Base Currency at the latest available spot rate of exchange quoted by a bank selected by Lender (or if an Event of Default has occurred in relation to Lender, by Borrower) in the London interbank market for the purchase of the Base Currency with the currency concerned on the day on which the calculation is to be made or, if that day is not a Business Day the spot rate of exchange quoted at Close of Business on the immediately preceding Business Day.

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

#### **2.6 Modifications etc to legislation**

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

### **3. LOANS OF SECURITIES**

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

### **4. DELIVERY**

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

Lender shall procure the delivery of Securities to Borrower or deliver such Securities in accordance with this Agreement and the terms of the relevant Loan. Such Securities shall be deemed to have been delivered by Lender to Borrower on delivery to Borrower or as it shall direct of the relevant instruments of transfer, or in the case of Securities held by an agent or within a clearing or settlement system on the effective instructions to such

agent or the operator of such system which result in such Securities being held by the operator of the clearing system for the account of the Borrower or as it shall direct, or by such other means as may be agreed.

#### **4.2 Requirements to effect delivery**

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

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

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

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

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

#### **4.4 Deliveries of Income**

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

Loaned Securities or to Borrower, irrespective of whether Lender received the same in respect of any Collateral.

## **5. COLLATERAL**

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

Subject to the other provisions of this paragraph 5, Borrower undertakes to deliver to or deposit with Lender (or in accordance with Lender's instructions) Collateral simultaneously with delivery of the Securities to which the Loan relates and in any event no later than Close of Business on the Settlement Date. In respect of Collateral comprising securities, such Collateral shall be deemed to have been delivered by Borrower to Lender on delivery to Lender or as it shall direct of the relevant instruments of transfer, or in the case of such securities being held by an agent or within a clearing or settlement system, on the effective instructions to such agent or the operator of such system, which result in such securities being held by the operator of the clearing system for the account of the Lender or as it shall direct, or by such other means as may be agreed.

### **5.2 Deliveries through payment systems generating automatic payments**

Unless otherwise agreed between the Parties, where any Securities, Equivalent Securities, Collateral or Equivalent Collateral (in the form of securities) are transferred through a book entry transfer or settlement system which automatically generates a payment or delivery, or obligation to pay or deliver, against the transfer of such securities, then:-

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

### **5.3 Substitutions of Collateral**

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

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

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

- (i) the aggregate Market Value of the Collateral delivered to or deposited with Lender (excluding any Equivalent Collateral repaid or redelivered under Paragraphs 5.4(ii) or 5.5(ii) (as the case may be) ("**Posted Collateral**") in respect of all Loans outstanding under this Agreement shall equal the aggregate of the Market Value of the Loaned Securities and the applicable Margin (the "**Required Collateral Value**") in respect of such Loans;
- (ii) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement exceeds the aggregate of the Required Collateral Values in respect of such Loans, Lender shall (on demand) repay and/or redeliver, as the case may be, to Borrower such Equivalent Collateral as will eliminate the excess;
- (iii) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such Loans, Borrower shall (on demand) provide such further Collateral to Lender as will eliminate the deficiency.

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

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

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

## 5.6 Requirements to redeliver excess Collateral

Where paragraph 5.4 applies, unless paragraph 1.4 of the Schedule indicates that this paragraph 5.6 does not apply, if a Party (the "**first Party**") would, but for this paragraph 5.6, be required under paragraph 5.4 to provide further Collateral or redeliver Equivalent Collateral in circumstances where the other Party (the "**second Party**") would, but for this paragraph 5.6, also be required to or provide Collateral or redeliver Equivalent Collateral under paragraph 5.4, then the Market Value of the Collateral or Equivalent Collateral deliverable by the first Party ("**X**") shall be set-off against the Market Value of the Collateral or Equivalent Collateral deliverable by the second Party ("**Y**") and the only obligation of the Parties under paragraph 5.4 shall be, where X exceeds Y, an obligation of the first Party, or where Y exceeds X, an obligation of the second Party to repay and/or (as the case may be) redeliver Equivalent Collateral or to deliver further Collateral having a Market Value equal to the difference between X and Y.

5.7 Where Equivalent Collateral is repaid or redelivered (as the case may be) or further Collateral is provided by a Party under paragraph 5.6, the Parties shall agree to which Loan or Loans such repayment, redelivery or further provision is to be attributed and failing agreement it shall be attributed, as determined by the Party making such repayment, redelivery or further provision to the earliest outstanding Loan and, in the case of a repayment or redelivery up to the point at which the Market Value of Collateral in respect of such Loan equals the Required Collateral Value in respect of such Loan, and then to the next earliest outstanding Loan up to the similar point and so on.

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

Where any Equivalent Collateral falls to be repaid or redelivered (as the case may be) or further Collateral is to be provided under this paragraph 5, unless otherwise agreed between the Parties, it shall be delivered on the same Business Day as the relevant demand. Equivalent Collateral comprising securities shall be deemed to have been delivered by Lender to Borrower on delivery to Borrower or as it shall direct of the relevant instruments of transfer, or in the case of such securities being held by an agent or within a clearing or settlement system on the effective instructions to such agent or the operator of such system which result in such securities being held by the operator of the clearing system for the account of the Borrower or as it shall direct or by such other means as may be agreed.

## 5.9 Substitutions and extensions of Letters of Credit

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

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

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

In respect of each Loan, Borrower shall pay to Lender, in the manner prescribed in subparagraph 7.3, sums calculated by applying such rate as shall be agreed between the Parties from time to time to the daily Market Value of the Loaned Securities.

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

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

### **7.3 Payment of rates**

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

## **8. REDELIVERY OF EQUIVALENT SECURITIES**

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

Borrower shall procure the redelivery of Equivalent Securities to Lender or redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Loan on termination of the Loan. Such Equivalent Securities shall be deemed to have been delivered by Borrower to Lender on delivery to Lender or as it shall direct of the relevant instruments of transfer, or in the case of Equivalent Securities held by an agent or within a clearing or settlement system on the effective instructions to such agent or the operator of such system which result in such Equivalent Securities being held by the operator of the clearing system for the account of the Lender or as it shall direct, or by such other means as may be agreed. For the avoidance of doubt any reference in this Agreement or in any other agreement or communication between the Parties (howsoever expressed) to an obligation to redeliver or account for or act in relation to Loaned Securities shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Securities.

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

Subject to paragraph 10 and the terms of the relevant Loan, Lender shall be entitled to terminate a Loan and to call for the redelivery of all or any Equivalent Securities at any time by giving notice on any Business Day of not less than the standard settlement time for such Equivalent Securities on the exchange or in the clearing organisation through

which the Loaned Securities were originally delivered. Borrower shall redeliver such Equivalent Securities not later than the expiry of such notice in accordance with Lender's instructions.

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

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

### **8.4 Redelivery of Equivalent Collateral on termination of a Loan**

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

### **8.5 Redelivery of Letters of Credit**

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

### **8.6 Redelivery obligations to be reciprocal**

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

## **9. FAILURE TO REDELIVER**

### **9.1 Borrower's failure to redeliver Equivalent Securities**

- (i) If Borrower does not redeliver Equivalent Securities in accordance with paragraph 8.1 or 8.2, Lender may elect to continue the Loan (which Loan, for the avoidance of doubt, shall continue to be taken into account for the purposes of paragraph 5.4 or 5.5 as applicable) provided that if Lender does not elect to continue the Loan, Lender may either by written notice to Borrower terminate

"Offer Price" in relation to Equivalent Securities or Equivalent Collateral means the best available offer price on the most appropriate market in a standard size;

"Offer Value" subject to paragraph 10.5 means:-

- (a) in relation to Collateral equivalent to Collateral in the form of a Letter of Credit zero and in relation to Cash Collateral the amount of the currency concerned; and
- (b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price at Close of Business on the relevant Business Day together with all costs, fees and expenses that would be incurred in connection therewith, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction and adding thereto the amount of any interest, dividends, distributions or other amounts, in the case of Equivalent Securities, paid to Borrower and in respect of which equivalent amounts have not been paid to Lender and in the case of Equivalent Collateral, paid to Lender and in respect of which equivalent amounts have not been paid to Borrower, in accordance with paragraph 6.1 prior to such time in respect of such Equivalent Securities, Equivalent Collateral or the original Securities or Collateral held, gross of all and any tax deducted or paid in respect thereof;

#### 10.2 Termination of delivery obligations upon Event of Default

Subject to paragraph 9, if an Event of Default occurs in relation to either Party, the Parties' delivery and payment obligations (and any other obligations they have under this Agreement) shall be accelerated so as to require performance thereof at the time such Event of Default occurs (the date of which shall be the "**Termination Date**" for the purposes of this clause) so that performance of such delivery and payment obligations shall be effected only in accordance with the following provisions:

- (i) the Relevant Value of the securities which would have been required to be delivered but for such termination (or payment to be made, as the case may be) by each Party shall be established in accordance with paragraph 10.3; and
- (ii) on the basis of the Relevant Values so established, an account shall be taken (as at the Termination Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) the sums due from one Party shall be set-off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the Termination Date.

If the Bid Value is greater than the Offer Value, and the Non-Defaulting Party had delivered to the Defaulting Party a Letter of Credit, the Defaulting Party shall draw on

the Letter of Credit to the extent of the balance due and shall subsequently redeliver for cancellation the Letter of Credit so provided.

If the Offer Value is greater than the Bid Value, and the Defaulting Party had delivered to the Non-Defaulting Party a Letter of Credit, the Non-Defaulting Party shall draw on the Letter of Credit to the extent of the balance due and shall subsequently redeliver for cancellation the Letter of Credit so provided.

In all other circumstances, where a Letter of Credit has been provided to a Party, such Party shall redeliver for cancellation the Letter of Credit so provided.

**10.3 Determination of delivery values upon Event of Default**

For the purposes of paragraph 10.2 the "**Relevant Value**";-

- (i) of any securities to be delivered by the Defaulting Party shall, subject to paragraph 10.5 below, equal the Offer Value of such securities; and
- (ii) of any securities to be delivered to the Defaulting Party shall, subject to paragraph 10.5 below, equal the Bid Value of such securities.

10.4 For the purposes of paragraph 10.3, but subject to paragraph 10.5, the Bid Value and Offer Value of any securities shall be calculated for securities of the relevant description (as determined by the Non-Defaulting Party) as of the first Business Day following the Termination Date, or if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Termination Date (the "**Default Valuation Time**");

10.5 Where the Non-Defaulting Party has following the occurrence of an Event of Default but prior to the close of business on the fifth Business Day following the Termination Date purchased securities forming part of the same issue and being of an identical type and description to those to be delivered by the Defaulting Party or sold securities forming part of the same issue and being of an identical type and description to those to be delivered by him to the Defaulting Party, the cost of such purchase or the proceeds of such sale, as the case may be, (taking into account all reasonable costs, fees and expenses that would be incurred in connection therewith) shall (together with any amounts owing pursuant to paragraph 6.1) be treated as the Offer Value or Bid Value, as the case may be, of the amount of securities to be delivered which is equivalent to the amount of the securities so bought or sold, as the case may be, for the purposes of this paragraph 10, so that where the amount of securities to be delivered is more than the amount so bought or sold as the case may be, the Offer Value or Bid Value as the case may be, of the balance shall be valued in accordance with paragraph 10.4.

10.6 Any reference in this paragraph 10 to securities shall include any asset other than cash provided by way of Collateral.

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

The Defaulting Party shall be liable to the Non-Defaulting Party for the amount of all reasonable legal and other professional expenses incurred by the Non-Defaulting Party in

connection with or as a consequence of an Event of Default, together with interest thereon at the one-month London Inter Bank Offered Rate as quoted on a reputable financial information service ("**LIBOR**") as of 11.00 am, London Time, on the date on which it is to be determined or, in the case of an expense attributable to a particular transaction and where the parties have previously agreed a rate of interest for the transaction, that rate of interest if it is greater than LIBOR. The rate of LIBOR applicable to each month or part thereof that any sum payable pursuant to this paragraph 10.7 remains outstanding is the rate of LIBOR determined on the first Business Day of any such period of one month or any part thereof. Interest will accrue daily on a compound basis and will be calculated according to the actual number of days elapsed.

**11. TRANSFER TAXES**

Borrower hereby undertakes promptly to pay and account for any transfer or similar duties or taxes chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement, and shall indemnify and keep indemnified Lender against any liability arising as a result of Borrower's failure to do so.

**12. LENDER'S WARRANTIES**

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

- (a) it is duly authorised and empowered to perform its duties and obligations under this Agreement;
- (b) it is not restricted under the terms of its constitution or in any other manner from lending Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it hereunder to Borrower free from all liens, charges and encumbrances; and
- (d) it is acting as principal in respect of this Agreement or, subject to paragraph 16, as agent and the conditions referred to in paragraph 16.2 will be fulfilled in respect of any Loan which it makes as agent.

**13. BORROWER'S WARRANTIES**

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

- (a) it has all necessary licenses and approvals, and is duly authorised and empowered, to perform its duties and obligations under this Agreement and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;

- (b) it is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it hereunder to Lender free from all liens, charges and encumbrances; and
- (d) it is acting as principal in respect of this Agreement.

#### 14. EVENTS OF DEFAULT

14.1 Each of the following events occurring in relation to either Party (the "**Defaulting Party**", the other Party being the "**Non-Defaulting Party**") shall be an Event of Default for the purpose of paragraph 10 but only (subject to sub-paragraph (v) below) where the Non-Defaulting Party serves written notice on the Defaulting Party:-

- (i) Borrower or Lender failing to pay or repay Cash Collateral or deliver Collateral or redeliver Equivalent Collateral or Lender failing to deliver Securities upon the due date;
- (ii) Lender or Borrower failing to comply with its obligations under paragraph 5;
- (iii) Lender or Borrower failing to comply with its obligations under paragraph 6.1;
- (iv) Borrower failing to comply with its obligations to deliver Equivalent Securities in accordance with paragraph 8;
- (v) an Act of Insolvency occurring with respect to Lender or Borrower, an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party not requiring the Non-Defaulting Party to serve written notice on the Defaulting Party;
- (vi) any representation or warranty made by Lender or Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated;
- (vii) Lender or Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations under this Agreement and/or in respect of any Loan;
- (viii) Lender (if applicable) or Borrower being declared in default or being suspended or expelled from membership of or participation in, any securities exchange or association or suspended or prohibited from dealing in securities by any regulatory authority;
- (ix) any of the assets of Lender or Borrower or the assets of investors held by or to the order of Lender or Borrower being transferred or ordered to be transferred to a trustee (or a person exercising similar functions) by a regulatory authority pursuant to any securities regulating legislation, or

- (x) Lender or Borrower failing to perform any other of its obligations under this Agreement and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure.
- 14.2 Each Party shall notify the other (in writing) if an Event of Default or an event which, with the passage of time and/or upon the serving of a written notice as referred to above, would be an Event of Default, occurs in relation to it.
- 14.3 The provisions of this Agreement constitute a complete statement of the remedies available to each Party in respect of any Event of Default.
- 14.4 Subject to paragraph 9.3 and 10.7, neither Party may claim any sum by way of consequential loss or damage in the event of failure by the other party to perform any of its obligations under this Agreement.

15. **INTEREST ON OUTSTANDING PAYMENTS**

In the event of either Party failing to remit sums in accordance with this Agreement such Party hereby undertakes to pay to the other Party upon demand interest (before as well as after judgment) on the net balance due and outstanding, for the period commencing on and inclusive of the original due date for payment to (but excluding) the date of actual payment, in the same currency as the principal sum and at the rate referred to in paragraph 10.7. Interest will accrue daily on a compound basis and will be calculated according to the actual number of days elapsed.

16. **TRANSACTIONS ENTERED INTO AS AGENT**

16.1 **Power for Lender to enter into Loans as agent**

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

16.2 **Conditions for agency loan**

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

- (i) it specifies that Loan as an Agency Transaction at the time when it enters into it;
- (ii) it enters into that Loan on behalf of a single Principal whose identity is disclosed to Borrower (whether by name or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) at the time when it enters into the Loan or as otherwise agreed between the Parties; and
- (iii) it has at the time when the Loan is entered into actual authority to enter into the Loan and to perform on behalf of that Principal all of that Principal's obligations under the agreement referred to in paragraph 16.4(ii).



# Australian Securities Lending Association Limited

(ACN 054 944 482)  
[www.asla.com.au](http://www.asla.com.au)  
Registered Office  
Level 50, MLC Centre  
19-29 Martin Place  
Sydney NSW 2000

## AUSTRALIAN MASTER SECURITIES LENDING AGREEMENT \*

(Version: December 2002)

Dated as of: .....

**Between:** (1) *(Name of Company)* UBS Securities Australia Ltd  
*(ACN or ARBN (as applicable))* 62 008 586 481  
a company incorporated under the laws of the ACT, Australia  
*of (Business address)* Level 16 Chifley Tower, 2 Chifley Square,  
Sydney, NSW, 2000

**And:** (2) *(Name of Company)* \_\_\_\_\_  
*(ACN or ARBN (as applicable))* \_\_\_\_\_  
a company incorporated under the laws of \_\_\_\_\_  
*of (Business address)* \_\_\_\_\_

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

\* *The original and updated versions of this agreement are both also subject to the "Warning and Disclaimer" on the coversheet to the original (Version: 4 April 1997) and updated (Version: December 2002) "User's Guide" relating to this agreement.*

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("title") shall pass from one Party to the other free and clear of any liens, claims, charges or encumbrances or any other interest of the Transferring Party or of any third party (other than a lien routinely imposed on all securities in a relevant clearance system), the Party obtaining such title being obliged to redeliver Equivalent Securities or Equivalent Collateral, as the case may be. Each Transfer under this Agreement will be made so as to constitute or result in a valid and legally effective transfer of the Transferring Party's legal and beneficial title to the recipient.

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

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

## 2 Loans of Securities

- 2.1 **[Borrowing Request and acceptance thereof]** The Lender will lend Securities to the Borrower, and the Borrower will borrow Securities from the Lender, in accordance with the terms and conditions of this Agreement and with the Rules. The terms of each Loan should be agreed prior to the commencement of the relevant Loan, either orally or in writing (including any agreed form of electronic communication) and confirmed in such form and on such basis as is agreed between the Parties. Any confirmation produced by a Party shall not supersede or prevail over the prior oral, written or electronic communication (as the case may be).
- 2.2 **[Changes to a Borrowing Request]** The Borrower has the right to reduce the amount of Securities referred to in, or otherwise vary, a Borrowing Request **provided that:**
- (a) the Borrower has notified the Lender of such reduction or variation no later than midday Australian Eastern standard or summer (as appropriate) time on

the day which is two Business Days prior to the Settlement Date, unless otherwise agreed between the Parties, and

- (b) the Lender shall have accepted such reduction or variation (by whatever means).

### 3 Delivery of Securities

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

### 4 Title, Distributions and Voting

4.1 **[Passing of title]** The Parties shall execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:

- (a) any Securities borrowed pursuant to clause 2;
- (b) any Equivalent Securities redelivered pursuant to clause 7;
- (c) any Collateral delivered pursuant to clause 6;
- (d) any Equivalent Collateral redelivered pursuant to clauses 6 or 7,

shall pass from one Party to the other, free from all liens, charges, equities and encumbrances, on delivery or redelivery of the same in accordance with this Agreement. In the case of Securities, Collateral, Equivalent Securities or Equivalent Collateral title to which is registered in a computer based system which provides for the recording and transfer of title to the same by way of electronic entries, delivery and transfer of title shall take place in accordance with the rules and procedures of such system as in force from time to time.

4.2 **[Distributions]**

- (a) **[Cash distributions]** Unless otherwise agreed, where Income is paid by the issuer in relation to any Securities on or by reference to an Income Payment Date on which such Securities are the subject of a loan under this Agreement, the Borrower shall, on the date of the payment of such Income, or on such other date as the Parties may from time to time agree, (the “**Relevant Payment Date**”) pay to the Lender a sum of money (a “**Substitute payment**”) equivalent to the amount that the Lender would have been entitled to receive (after any deduction, withholding or payment for or on account of any tax made by the relevant issuer (or on its behalf) in respect of such Income) had such Securities not been loaned to the Borrower and been held by the Lender on the Income Payment Date, irrespective of whether the Borrower received the same.

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

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

## 5 Fees

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

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

## 6 Collateral

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

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- (iii) If at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such loans, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.
- (b) **[Netting of Collateral obligations where a Party is both Lender and Borrower]** Unless otherwise agreed between the Parties, subject to clause 6.4 and paragraph 1.5 in Schedule 1, where paragraph (a) applies, if a Party (the “**first Party**”) would, but for this paragraph, be required under paragraph (a) to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral in circumstances where the other Party (the “**second Party**”) would, but for this paragraph, also be required to repay Cash Collateral, redeliver Equivalent Collateral or provide further Collateral under paragraph (a), then the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the first Party (“**X**”) shall be set-off against the Value of the Cash Collateral, Equivalent Collateral or further Collateral deliverable by the second Party (“**Y**”) and the only obligation of the Parties under paragraph (a) shall be, where X exceeds Y, an obligation of the first Party, or where Y exceed X, an obligation of the second Party, (on demand) to repay Cash Collateral, redeliver Equivalent Collateral or deliver further Collateral having a Value equal to the difference between X and Y.
- 6.3 **[Required Collateral Value]** For the purposes of clause 6.2(a), the Value of the Posted Collateral to be delivered or deposited in respect of any loan of Securities, while the loan of Securities continues, shall be equal to the aggregate of the Value of the borrowed Securities and the Margin applicable thereto (the “**Required Collateral Value**”).
- 6.4 **[Time for payment/repayment of Collateral]** Except as provided in clause 6.1 or clause 6.6 or as otherwise agreed, where any Cash Collateral is to be repaid, Equivalent Collateral is to be redelivered or further Collateral is to be provided under this clause 6, it shall be paid or delivered as stated in paragraph 1.4 in Schedule 1.
- 6.5 **[Substitution of Alternative Collateral]** The Borrower may from time to time call for the repayment of Cash Collateral or the redelivery of Equivalent Collateral prior to the date on which the same would otherwise have been repayable or redeliverable, provided that, at the time of such repayment or redelivery, the Borrower shall have delivered or delivers Alternative Collateral acceptable to the Lender.
- 6.6 **[Return of Collateral/Equivalent Collateral on redelivery of Equivalent Securities]**
- (a) Cash Collateral shall be repaid and Equivalent Collateral shall be redelivered at the same time as Equivalent Securities in respect of the Securities borrowed are redelivered.
- (b) Where Collateral is provided through a book entry transfer system (such as Austraclear or RITS), the obligation of the Lender shall be to redeliver Equivalent Collateral through such book entry transfer system in accordance with this Agreement. If the loan of Securities in respect of which Collateral was provided has not been discharged when the Equivalent Collateral is redelivered, any payment obligation generated within the book entry transfer system on such redelivery shall, until the loan of Securities is discharged or further Collateral is provided, be deemed to constitute an obligation to pay Cash Collateral.

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- 6.7 **[Receipt by Lender of Income on Collateral]** Where Collateral (other than Cash Collateral) is delivered in respect of which any Income may become payable and an Income Payment Date in respect of that Collateral occurs prior to the redelivery of Equivalent Collateral, then, unless such Income is paid directly to the Borrower, the Lender shall, on the date on which such Income is paid or on such other date as the Parties may from time to time agree, pay to the Borrower a sum of money (a “**Substitute payment**”) equivalent to the amount of such Income that (after any deduction, withholding or payment for or on account of any tax made by the relevant issuer (or on its behalf) in respect of such Income) the Lender either actually received, or would have been entitled to receive had such Collateral been held by the Lender on the Income Payment Date, irrespective of whether the Lender received the same. If the Lender is required by law, as modified by the practice of any relevant taxing authority, to make any deduction or withholding from any Substitute payment to be made under the preceding sentence, then the Lender must:
- (a) promptly pay to the relevant taxing authority the full amount of the deduction or withholding; and
  - (b) forward to the Borrower on request a copy of any official receipt or other evidence showing that the full amount of any such deduction or withholding has been paid over to the relevant taxing authority.
- 6.8 **[Borrower’s rights re Collateral are not assignable]** The Borrower may not assign, transfer or otherwise dispose of, or mortgage, charge or otherwise encumber, or otherwise deal with its rights in respect of any Collateral without the prior written consent of the Lender.
- 6.9 **[Lender may set off obligation to repay or return Equivalent Collateral]** If the Borrower fails to comply with its obligation to redeliver Equivalent Securities, the obligation of the Lender in respect of any Collateral may be the subject of a set-off in accordance with clause 8.
- 6.10 **[Collateral provided to Lender’s Nominee]** Without limiting clause 1.8, where Collateral is provided to the Lender’s nominee, any obligation under this Agreement to repay or redeliver or otherwise account for Equivalent Collateral shall be an obligation of the Lender, notwithstanding that any such repayment or redelivery may be effected in any particular case by the nominee.
- 6.11 **[Letters of Credit]** If the Collateral in respect of one or more loans of Securities is or includes a letter of credit, the Lender may only draw down under that letter of credit when an Event of Default occurs in relation to the Borrower and, upon the Lender drawing down, whether or not permitted under this clause 6.11, the Collateral (or that part of it represented by the letter of credit) becomes cash Collateral.
- 6.12 **[Non-Cash Collateral]** If the Collateral in respect of one or more loans of Securities is or includes other Securities and either the Borrower is a taxpayer to whom the Tax Act applies in respect of the disposal of those other Securities or in any other case the Parties so agree:
- (a) The Parties acknowledge that the provision of those other Securities is by way of a loan of Securities under this Agreement, to which section 26BC(3)(a) of the 1936 Tax Act may apply (subject to the re-acquisition time being less than 12 months after the original disposal time).
  - (b) For the purposes of section 26BC(3)(d) of the 1936 Tax Act, the notifiable consideration in respect of the provision of those Securities by way of loan is specified as follows:

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- (i) There is no fee.
  - (ii) There is no adjustment for variations in the market value of the Collateral or Equivalent Collateral.
  - (iii) There is other consideration: see the obligations of the recipient of the Collateral under clauses 4.2(b), 4.2(c), 4.3 and 6.7.
- (c) For the avoidance of doubt, this clause 6.12 is directed solely at clarifying either or both of the following issues: that the provision of the other Securities as Collateral is eligible for the application of first section 26BC and secondly, where applicable, the successor to sections 160AQUA and 160AQUD of the 1936 Tax Act. Accordingly, clauses 2, 4.2(a), 5, 6.1 to 6.11, 7, 8, 9.1, 9.2 (unless otherwise agreed), 9.4 and 12 do not apply to any loan of Securities under paragraph (a). Instead, those Securities are simply to be regarded as Collateral for the purposes of those clauses.

## **7 Redelivery of Equivalent Securities**

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- 7.1 **[Borrower's obligation to redeliver Equivalent Securities]** The Borrower undertakes to redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Borrowing Request.
- 7.2 **[Lender may call for redelivery of Equivalent Securities]** Subject to clause 8 and the terms of the relevant Borrowing Request, the Lender may call for the redelivery of all or any Equivalent Securities at any time by giving notice on any Business Day of not less than the Standard Settlement Time for such Equivalent Securities or the equivalent time on the exchange or in the clearing organisation through which the relevant borrowed Securities were originally delivered. The Borrower shall as hereinafter provided redeliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions.
- 7.3 **[Lender may terminate loan if Borrower defaults]** If the Borrower does not redeliver Equivalent Securities in accordance with such call, the Lender may elect to continue the loan of Securities ; **provided that**, if the Lender does not elect to continue the loan, the Lender may by written notice to the Borrower elect to terminate the relevant loan. Upon the expiry of such notice the provisions of clauses 8.2 to 8.5 shall apply as if upon the expiry of such notice an Event of Default had occurred in relation to the Borrower (who shall thus be the Defaulting Party for the purposes of this Agreement) and as if the relevant loan were the only loan outstanding.
- 7.4 **[Consequence of exercise of "buy-in" against Lender, as a result of Borrower default]** In the event that, as a result of the failure of the Borrower to redeliver Equivalent Securities to the Lender in accordance with this Agreement, a "buy-in" is exercised against the Lender, then, provided that reasonable notice has been given to the Borrower of the likelihood of such a "buy-in", the Borrower shall account to the Lender for the total costs and expenses reasonably incurred by the Lender as a result of such "buy-in".
- 7.5 **[Right of Borrower to terminate loan early]** Subject to the terms of the relevant Borrowing Request, the Borrower shall be entitled at any time to terminate a particular loan of Securities and to redeliver all and any Equivalent Securities due and outstanding to the Lender in accordance with the Lender's instructions.



# Master Securities Loan Agreement

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2000 Version

Dated as of: \_\_\_\_\_

Between: \_\_\_\_\_

and \_\_\_\_\_

## 1. Applicability.

From time to time the parties hereto may enter into transactions in which one party (“Lender”) will lend to the other party (“Borrower”) certain Securities (as defined herein) against a transfer of Collateral (as defined herein). Each such transaction shall be referred to herein as a “Loan” and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions contained in an Annex or Schedule hereto and in any other annexes identified herein or therein as applicable hereunder. Capitalized terms not otherwise defined herein shall have the meanings provided in Section 25.

## 2. Loans of Securities.

2.1 Subject to the terms and conditions of this Agreement, Borrower or Lender may, from time to time, seek to initiate a transaction in which Lender will lend Securities to Borrower. Borrower and Lender shall agree on the terms of each Loan (which terms may be amended during the Loan), including the issuer of the Securities, the amount of Securities to be lent, the basis of compensation, the amount of Collateral to be transferred by Borrower, and any additional terms. Such agreement shall be confirmed (a) by a schedule and receipt listing the Loaned Securities provided by Borrower to Lender in accordance with Section 3.2, (b) through any system that compares Loans and in which Borrower and Lender are participants, or (c) in such other manner as may be agreed by Borrower and Lender in writing. Such confirmation (the “Confirmation”), together with the Agreement, shall constitute conclusive evidence of the terms agreed between Borrower and Lender with respect to the Loan to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any inconsistency between the terms of such Confirmation and this Agreement, this Agreement shall prevail unless each party has executed such Confirmation.

2.2 Notwithstanding any other provision in this Agreement regarding when a Loan commences, unless otherwise agreed, a Loan hereunder shall not occur until the Loaned Securities and the Collateral therefor have been transferred in accordance with Section 15.

### **3. Transfer of Loaned Securities.**

- 3.1 Unless otherwise agreed, Lender shall transfer Loaned Securities to Borrower hereunder on or before the Cutoff Time on the date agreed to by Borrower and Lender for the commencement of the Loan.
- 3.2 Unless otherwise agreed, Borrower shall provide Lender, for each Loan in which Lender is a Customer, with a schedule and receipt listing the Loaned Securities. Such schedule and receipt may consist of (a) a schedule provided to Borrower by Lender and executed and returned by Borrower when the Loaned Securities are received, (b) in the case of Securities transferred through a Clearing Organization which provides transferors with a notice evidencing such transfer, such notice, or (c) a confirmation or other document provided to Lender by Borrower.
- 3.3 Notwithstanding any other provision in this Agreement, the parties hereto agree that they intend the Loans hereunder to be loans of Securities. If, however, any Loan is deemed to be a loan of money by Borrower to Lender, then Borrower shall have, and Lender shall be deemed to have granted, a security interest in the Loaned Securities and the proceeds thereof.

### **4. Collateral.**

- 4.1 Unless otherwise agreed, Borrower shall, prior to or concurrently with the transfer of the Loaned Securities to Borrower, but in no case later than the Close of Business on the day of such transfer, transfer to Lender Collateral with a Market Value at least equal to the Margin Percentage of the Market Value of the Loaned Securities.
- 4.2 The Collateral transferred by Borrower to Lender, as adjusted pursuant to Section 9, shall be security for Borrower's obligations in respect of such Loan and for any other obligations of Borrower to Lender hereunder. Borrower hereby pledges with, assigns to, and grants Lender a continuing first priority security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Securities by Lender to Borrower and which shall cease upon the transfer of the Loaned Securities by Borrower to Lender. In addition to the rights and remedies given to Lender hereunder, Lender shall have all the rights and remedies of a secured party under the UCC. It is understood that Lender may use or invest the Collateral, if such consists of cash, at its own risk, but that (unless Lender is a Broker-Dealer) Lender shall, during the term of any Loan hereunder, segregate Collateral from all securities or other assets in its possession. Lender may Retransfer Collateral only (a) if Lender is a Broker-Dealer or (b) in the event of a Default by Borrower. Segregation of Collateral may be accomplished by appropriate identification on the books and records of Lender if it is a "securities intermediary" within the meaning of the UCC.
- 4.3 Except as otherwise provided herein, upon transfer to Lender of the Loaned Securities on the day a Loan is terminated pursuant to Section 6, Lender shall be obligated to transfer the Collateral (as adjusted pursuant to Section 9) to Borrower no later than the Cutoff Time on such day or, if such day is not a day on which a transfer of such Collateral may be effected under Section 15, the next day on which such a transfer may be effected.
- 4.4 If Borrower transfers Collateral to Lender, as provided in Section 4.1, and Lender does not transfer the Loaned Securities to Borrower, Borrower shall have the absolute right to the return of the Collateral; and if Lender transfers Loaned Securities to Borrower and

Borrower does not transfer Collateral to Lender as provided in Section 4.1, Lender shall have the absolute right to the return of the Loaned Securities.

- 4.5 Borrower may, upon reasonable notice to Lender (taking into account all relevant factors, including industry practice, the type of Collateral to be substituted, and the applicable method of transfer), substitute Collateral for Collateral securing any Loan or Loans; provided, however, that such substituted Collateral shall (a) consist only of cash, securities or other property that Borrower and Lender agreed would be acceptable Collateral prior to the Loan or Loans and (b) have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral for Loans in which the party substituting such Collateral is acting as Borrower, shall equal or exceed the agreed upon Margin Percentage of the Market Value of the Loaned Securities.
- 4.6 Prior to the expiration of any letter of credit supporting Borrower's obligations hereunder, Borrower shall, no later than the Extension Deadline, (a) obtain an extension of the expiration of such letter of credit, (b) replace such letter of credit by providing Lender with a substitute letter of credit in an amount at least equal to the amount of the letter of credit for which it is substituted, or (c) transfer such other Collateral to Lender as may be acceptable to Lender.

## **5. Fees for Loan.**

- 5.1 Unless otherwise agreed, (a) Borrower agrees to pay Lender a loan fee (a "Loan Fee"), computed daily on each Loan to the extent such Loan is secured by Collateral other than cash, based on the aggregate Market Value of the Loaned Securities on the day for which such Loan Fee is being computed, and (b) Lender agrees to pay Borrower a fee or rebate (a "Cash Collateral Fee") on Collateral consisting of cash, computed daily based on the amount of cash held by Lender as Collateral, in the case of each of the Loan Fee and the Cash Collateral Fee at such rates as Borrower and Lender may agree. Except as Borrower and Lender may otherwise agree (in the event that cash Collateral is transferred by clearing house funds or otherwise), Loan Fees shall accrue from and including the date on which the Loaned Securities are transferred to Borrower to, but excluding, the date on which such Loaned Securities are returned to Lender, and Cash Collateral Fees shall accrue from and including the date on which the cash Collateral is transferred to Lender to, but excluding, the date on which such cash Collateral is returned to Borrower.
- 5.2 Unless otherwise agreed, any Loan Fee or Cash Collateral Fee payable hereunder shall be payable:
- (a) in the case of any Loan of Securities other than Government Securities, upon the earlier of (i) the fifteenth day of the month following the calendar month in which such fee was incurred and (ii) the termination of all Loans hereunder (or, if a transfer of cash in accordance with Section 15 may not be effected on such fifteenth day or the day of such termination, as the case may be, the next day on which such a transfer may be effected); and
  - (b) in the case of any Loan of Government Securities, upon the termination of such Loan and at such other times, if any, as may be customary in accordance with market practice.

Notwithstanding the foregoing, all Loan Fees shall be payable by Borrower immediately in the event of a Default hereunder by Borrower and all Cash Collateral Fees shall be payable immediately by Lender in the event of a Default by Lender.

## **6. Termination of the Loan.**

- 6.1 (a) Unless otherwise agreed, either party may terminate a Loan on a termination date established by notice given to the other party prior to the Close of Business on a Business Day. The termination date established by a termination notice shall be a date no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Securities (in the case of a notice given by Lender) or the non-cash Collateral securing the Loan (in the case of a notice given by Borrower) entered into at the time of such notice, which date shall, unless Borrower and Lender agree to the contrary, be (i) in the case of Government Securities, the next Business Day following such notice and (ii) in the case of all other Securities, the third Business Day following such notice.
- (b) Notwithstanding paragraph (a) and unless otherwise agreed, Borrower may terminate a Loan on any Business Day by giving notice to Lender and transferring the Loaned Securities to Lender before the Cutoff Time on such Business Day if (i) the Collateral for such Loan consists of cash or Government Securities or (ii) Lender is not permitted, pursuant to Section 4.2, to Retransfer Collateral.
- 6.2 Unless otherwise agreed, Borrower shall, on or before the Cutoff Time on the termination date of a Loan, transfer the Loaned Securities to Lender; provided, however, that upon such transfer by Borrower, Lender shall transfer the Collateral (as adjusted pursuant to Section 9) to Borrower in accordance with Section 4.3.

## **7. Rights in Respect of Loaned Securities and Collateral.**

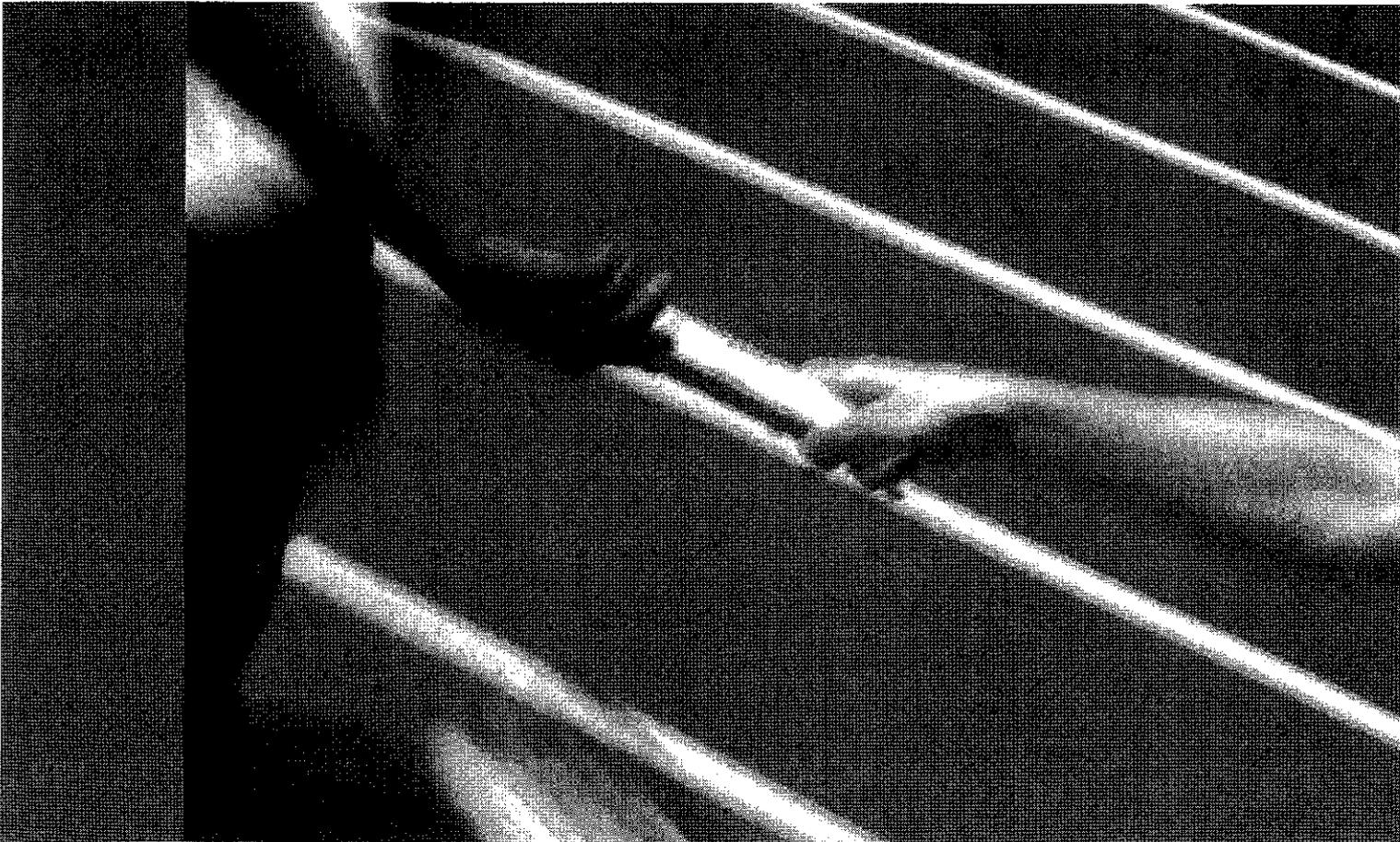
- 7.1 Except as set forth in Sections 8.1 and 8.2 and as otherwise agreed by Borrower and Lender, until Loaned Securities are required to be redelivered to Lender upon termination of a Loan hereunder, Borrower shall have all of the incidents of ownership of the Loaned Securities, including the right to transfer the Loaned Securities to others. Lender hereby waives the right to vote, or to provide any consent or to take any similar action with respect to, the Loaned Securities in the event that the record date or deadline for such vote, consent or other action falls during the term of the Loan.
- 7.2 Except as set forth in Sections 8.3 and 8.4 and as otherwise agreed by Borrower and Lender, if Lender may, pursuant to Section 4.2, Retransfer Collateral, Borrower hereby waives the right to vote, or to provide any consent or take any similar action with respect to, any such Collateral in the event that the record date or deadline for such vote, consent or other action falls during the term of a Loan and such Collateral is not required to be returned to Borrower pursuant to Section 4.5 or Section 9.

## **8. Distributions.**

- 8.1 Lender shall be entitled to receive all Distributions made on or in respect of the Loaned Securities which are not otherwise received by Lender, to the full extent it would be so entitled if the Loaned Securities had not been lent to Borrower.

# Opening a New Account

Terms and Conditions



## Terms and Conditions

55. In respect of your credit facilities secured by the Portfolio or any part thereof, you acknowledge and accept the requirement to maintain sufficient collateral in respect of such credit facilities.

### Discretionary Management Agreement

This Discretionary Management Agreement applies in addition to the General Terms and Conditions, the Sponsorship Terms (as applicable) and the Terms and Conditions for Safe Custody (as applicable). In the event of any inconsistency between the General Terms and Conditions, the Terms and Conditions for Safe Custody and this Discretionary Management Agreement, this Discretionary Management Agreement will prevail to the extent of the inconsistency.

### 56. Appointment and Function of UBS Wealth Management

56.1 You appoint UBS Wealth Management to manage the Portfolio on your behalf with full authority, subject to any special written instructions which you may from time to time give to UBS Wealth Management and which are accepted by UBS Wealth Management, to deal with all or part of the Portfolio (including acquire, realise, sell, subscribe for, purchase, withdraw or otherwise dispose of the Portfolio's assets), exercise (or not exercise) any rights attached to the Portfolio, establish, operate or access any accounts in connection with the Portfolio, reinvest distributions received in connection with the Portfolio and do anything else in connection with the Portfolio which UBS Wealth Management considers proper, necessary or convenient.

56.2 You agree to pay the fees and charges determined in accordance with clause 3 in relation to the services UBS Wealth Management provides under this Discretionary Management Agreement, and UBS Wealth Management may debit any of your accounts, apply any cash held in the Portfolio or sell or dispose of any assets in the Portfolio to raise the necessary funds to pay the fees and charges.

56.3 In performing its obligations under this Discretionary Management Agreement, UBS Wealth Management will provide the service in accordance with the criteria laid down in the description of the Offered Portfolio and Investment Strategy selected by you (referred to as the **Investment Program**).

56.4 Without limiting the discretion or authority of UBS Wealth Management under clause 56.1, but having regard to the Investment Program under clause 56.3, you authorise UBS Wealth Management to:

- (a) place, subject to the Relief, funds in a current account and/or deposits of any kind with any financial institution including itself and its branches, subsidiaries, affiliates and associates in any jurisdiction and on such terms as UBS Wealth Management deems appropriate including to place any such funds on any account jointly with the moneys of any other client or clients and to enter into any transaction jointly on your behalf for your account and for any other account of any other client or clients for UBS Wealth Management, provided that the same will be recorded in UBS Wealth Management's books in such manner as to distinguish the portion attributable to the Portfolio and provided also that all interests on such deposits and all moneys, rights or property which may at any time accrue or be offered (whether by way of bonus, redemption, dividends, conversion, preference, option or otherwise) in respect of such property will be apportioned proportionally amongst you and such other client or clients of UBS Wealth Management;
- (b) arrange on your behalf for UBS Securities to execute ASX Transactions in relation to the Portfolio;
- (c) deposit for safe custody any certificate, scrip or other documents of title in relation to any investments in the Portfolio with such persons or institutions including UBS Wealth Management and UBS Wealth Management's subsidiaries, affiliates and associates in any jurisdiction and on such terms as UBS Wealth Management deems appropriate;
- (d) enforce rights in or in connection with the Portfolio with full power to instigate or discontinue any such proceedings, make any settlement and comply with or submit to arbitration any matter in dispute or doubt and recover any expenses in enforcing such rights from any cash held in the Portfolio or by selling or disposing of any assets in the Portfolio to fund the payment of these expenses;
- (e) apply for short term bridging finance in the form of temporary overdrafts not exceeding 30 days at UBS Wealth Management's prevailing rates and upon terms and conditions acceptable to UBS Wealth Management. UBS Wealth Management may create a security interest over or in respect of all or part of the Portfolio to secure such overdrafts and you will execute any document UBS Wealth Management may require to give effect to that security interest; and
- (f) in its sole discretion appoint a person as an Asset Adviser to advise it on the investments in the Portfolio. UBS Wealth Management is not bound to follow the advice of any Asset Adviser and may in its sole discretion terminate an appointment of an Asset Adviser under this clause 56.4(e) and will notify you of such a termination and alternative arrangements.

### 57. Credit Facilities

57.1 If UBS Wealth Management provides you with a credit facility to fund the Portfolio, you acknowledge that:

- (a) the credit facility will be subject to separate documentation; and
- (b) the provision of any collateral in connection with the credit facility may affect investment decisions of UBS Wealth Management under this Discretionary Management Agreement. If UBS Wealth Management, in its absolute discretion, determines that there is insufficient collateral, UBS Wealth Management may, without notice to or consent from you, liquidate the Portfolio to the extent UBS Wealth Management considers appropriate and apply the proceeds to reduce your liability to UBS Wealth Management.

57.2 Without limiting clause 57.1, if you choose to gear your portfolio through Geared DPM (ie using funds drawn under a margin loan facility with UBS AG), then you agree that:

- (a) you will establish a margin loan facility with UBS AG using UBS AG's standard margin lending documents; and
- (b) you authorise UBS Wealth Management in its absolute discretion to exercise your rights and perform on your behalf your obligations under that loan facility in whatever way UBS Wealth Management considers appropriate.

You acknowledge that the terms of the Geared DPM, as well as some additional risks associated with it, are described in the Investment Program. Your agree to be bound by those terms.

If you choose to gear your portfolio through Geared DPM, the nominee who holds Financial Products under the Terms and Conditions for Safe Custody will enter into a sponsorship arrangement with a Controlling Participant on substantially same terms as those set out in UBS AG's standard margin lending documents. The Sponsorship Terms will not apply to