

Disclosure of movement of 1% or more in substantial holding or change in nature of relevant interest or both

Sections 277 and 278, Financial Markets Conduct Act 2013

To NZX Limited

and

To Kathmandu Holdings Limited (KMD)

Relevant event being disclosed: Movement of 1% or more in the substantial holding

Date of relevant event: 19 May 2015

Date this disclosure made: 22 May 2015

Date last disclosure made: 20 February 2015

Substantial product holder(s) giving disclosure

Full name(s): The Goldman Sachs Group, Inc. ("GSGI") on behalf of itself and its subsidiaries ("Goldman Sachs Group") including its significant subsidiaries listed in Annexure A.

Summary of substantial holding

Class of quoted voting Products: Ordinary shares

Summary for GSGI on behalf of itself and the Goldman Sachs Group.

For **this** disclosure,—

- (a) total number held in class: 25,264,190
- (b) total in class: 201,484,583
- (c) total percentage held in class: 12.5390%

For **last** disclosure,—

- (a) total number held in class: 21,039,972
- (b) total in class: 201,484,583
- (c) total percentage held in class: 10.4425%

Details of transactions and events giving rise to relevant event

Details of the transactions or other events requiring disclosure: Please see Annexure B.

Details after relevant event

Details for **Goldman, Sachs & Co. (GSCO)**

Nature of relevant interest(s): Beneficial holder

For that relevant interest, -

- (a) number held in class: 90,000
- (b) percentage held in class: 0.0447%
- (c) current registered holder(s): HSBC Custody Nominees (New Zealand) Limited
- (d) registered holder(s) once transfers are registered: NA

Details for **Goldman Sachs International (GSI)**

Nature of relevant interest(s): Beneficial holder subject to a qualification to its ability to exercise voting rights as set out in Overseas Securities Lender's Agreements and Overseas Securities Borrowing Agreement. Forms of the Overseas Securities Lender's Agreements under which certain ordinary shares in KMD have been borrowed by GSI were attached as relevant agreements to the disclosure made on 12 February 2015. In addition, a form of Overseas Securities Borrowing Agreement and Overseas Securities Lender's Agreement under which GSI has also recently borrowed ordinary shares in KMD are attached as relevant agreements in Annexure C (82 Pages).

For that relevant interest, -

(a) number held in class: 687,542

(b) percentage held in class: 0.3412%

(c) current registered holder(s) of securities: HSBC Custody Nominees (New Zealand) Limited, HSBC Custody Nominees Australia Limited, Bank of New York Mellon

(d) registered holder(s) once transfers are registered: NA

Details for **Goldman Sachs International (GSI)**

Nature of relevant interest(s): Beneficial holder

For that relevant interest, -

(a) number held in class: 121,416

(b) percentage held in class: 0.0603%

(c) current registered holder(s) of securities: HSBC Custody Nominees Australia Limited, Bank of New York Mellon

(d) registered holder(s) once transfers are registered: NA

Details for **Goldman Sachs Australia Managed Funds Limited (GSAMF)**

Nature of relevant interest(s): GSAMF has a relevant interest in the ordinary shares only in their capacity as responsible entity for a range of Goldman Sachs Australia registered managed investment schemes.

For that relevant interest, -

(a) number held in class: 2,031,580

(b) percentage held in class: 1.0083%

(c) current registered holder(s) of securities: RBC Dexia Investor Services Australia Pty Limited

(d) registered holder(s) once transfers registered: NA

Details for **Goldman Sachs Asset Management Australia Pty Ltd (GSAMA)**

Nature of relevant interest(s): GSAMA has a relevant interest in the ordinary shares only in their capacity as investment managers for managers for a range of Goldman Sachs Australia registered managed investment schemes. GSAMA's relevant interests arise under investment management contract(s) and only from the powers of investment contained in those contract(s), including the power to exercise, or to control the exercise of, a right to vote attached to KMD shares, or to acquire or dispose of, or to control the acquisition or disposal of, the KMD shares.

For that relevant interest,

(a) number held in class: 2,031,580

(b) percentage held in class: 1.0083%

(c) current registered holder(s) of securities: RBC Dexia Investor Services Australia Pty Limited

(d) registered holder(s) once transfers registered: NA

Details for Goldman Sachs Asset Management Australia Pty Ltd (GSAMA)

Nature of relevant interest(s): GSAMA has a relevant interest in the ordinary shares only in their capacity as investment managers for client portfolio(s). GSAMA's relevant interests arise under investment management contract(s) and only from the powers of investment contained in those contract(s), including the power to exercise, or to control the exercise of, a right to vote attached to KMD shares, or to acquire or dispose of, or to control the acquisition or disposal of, the KMD shares.

For that relevant interest,

(a) number held in class: 22,333,652

(b) percentage held in class: 11.0845%

(c) current registered holder(s) of securities: JP Morgan Chase Bank, Sydney, National Australia Bank Limited

(d) registered holder(s) of securities once transfers registered: NA

Additional information

Address(es) of substantial product holder(s):

The Goldman Sachs Group, Inc. - Corporation Trust Center, 1209 Orange Street, Wilmington DE 19801, U.S.A.

Goldman, Sachs & Co. - 200 West Street, New York, NY 10282, U.S.A.

Goldman Sachs International - Peterborough Court, 133 Fleet Street, London EC4A 2BB, United Kingdom

Goldman Sachs Australia Managed Funds Limited - Level 17, 101 Collins Street, Melbourne, Victoria 3000, Australia

Goldman Sachs Asset Management Australia Pty Ltd - Level 17, 101 Collins Street, Melbourne, Victoria 3000, Australia

Contact details:

Contact person – Raymond Chow

Contact number - 852 2978 7696

Email - gs-reg-ops-hk-posn@gs.com

Nature of connection between substantial product holders:

The Goldman Sachs Group, Inc. owns, directly or indirectly, at least 99% of the voting securities of each of:

- Goldman, Sachs & Co.;
- Goldman Sachs International;
- Goldman Sachs Australia Managed Funds Limited;
- Goldman Sachs Asset Management Australia Pty Ltd.

Certification

I, Raymond Chow, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.

Signature

Print name: Raymond Chow
(signing under power of
attorney)

Capacity: Attorney

Sign here:



Date: 22 May 2015

Annexure A

Significant Subsidiaries of The Goldman Sachs Group, Inc.

The following are significant subsidiaries of The Goldman Sachs Group, Inc. as of December 31, 2014 and the states or jurisdictions in which they are organized. Indentation indicates the principal parent of each subsidiary. The Goldman Sachs Group, Inc. owns, directly or indirectly, at least 99% of the voting securities of substantially all of the subsidiaries included below. The names of particular subsidiaries have been omitted because, considered in the aggregate as a single subsidiary, they would not constitute, as of the end of the year covered by this report, a “significant subsidiary” as that term is defined in Rule 1-02(w) of Regulation S-X under the Securities Exchange Act of 1934.

Name	State or Jurisdiction of Organization of Entity
The Goldman Sachs Group, Inc.	Delaware
Goldman, Sachs & Co.	New York
Goldman Sachs Paris Inc. Et Cie	France
Goldman Sachs (UK) L.L.C.	Delaware
Goldman Sachs Group UK Limited	United Kingdom
Goldman Sachs International Bank	United Kingdom
Goldman Sachs International	United Kingdom
Goldman Sachs Asset Management International	United Kingdom
Goldman Sachs Group Holdings (U.K.) Limited	United Kingdom
KPL Finance Limited	Cayman Islands
GS Funding Investments Limited	Cayman Islands
Rothesay Life (Cayman) Limited	Cayman Islands
GS Liquid Trading Platform II Limited	Jersey
Forres LLC	Delaware
Forres Investments Limited	Cayman Islands
Goldman Sachs Global Holdings L.L.C.	Delaware
GS Asian Venture (Delaware) L.L.C.	Delaware
GS Hony Holdings I Ltd.	Cayman Islands
GS (Asia) L.P.	Delaware
Goldman Sachs (Japan) Ltd.	British Virgin Islands
Goldman Sachs Japan Co., Ltd.	Japan
J. Aron Holdings, L.P.	Delaware
J. Aron & Company	New York
Goldman Sachs Asset Management, L.P.	Delaware
Goldman Sachs Hedge Fund Strategies LLC	Delaware
Goldman Sachs (Cayman) Holding Company	Cayman Islands
Goldman Sachs (Asia) Corporate Holdings L.P.	Delaware
Goldman Sachs Holdings (Hong Kong) Limited	Hong Kong
Goldman Sachs (Asia) Finance	Mauritius
Goldman Sachs (Asia) L.L.C.	Delaware
GS EMEA Funding Limited Partnership	United Kingdom
Goldman Sachs Holdings (Singapore) PTE. Ltd.	Singapore
J. Aron & Company (Singapore) PTE.	Singapore
Goldman Sachs (Singapore) PTE.	Singapore
Goldman Sachs Holdings ANZ Pty Limited	Australia
Goldman Sachs Financial Markets Pty Ltd	Australia
GS HLDGS ANZ II Pty Ltd	Australia
Goldman Sachs Australia Group Holdings Pty Ltd	Australia
Goldman Sachs Australia Capital Markets Limited	Australia
Goldman Sachs Australia Pty Ltd	Australia
GS Holdings (Delaware) L.L.C. II	Delaware
GS Lending Partners Holdings LLC	Delaware
Goldman Sachs Lending Partners LLC	Delaware
Goldman Sachs Bank USA	New York
Goldman Sachs Mortgage Company	New York
Goldman Sachs Execution & Clearing, L.P.	New York
GS Financial Services II, LLC	Delaware
GS Funding Europe	United Kingdom
GS Funding Europe I Ltd.	Cayman Islands
GS Funding Europe II Ltd.	Cayman Islands
GS Investment Strategies, LLC	Delaware

Name	State or Jurisdiction of Organization of Entity
MLQ Investors, L.P.	Delaware
Goldman Sachs Realty Japan Ltd.	Japan
Blue Daisy Co., Ltd.	Japan
GS PIA Holdings GK	Japan
Crane Holdings Ltd.	Japan
ELQ Holdings (Del) LLC	Delaware
ELQ Holdings (UK) Ltd	United Kingdom
ELQ Investors VII Limited	United Kingdom
ELQ Investors II Ltd	United Kingdom
Goldman Sachs Specialty Lending Holdings, Inc.	Delaware
GS Fund Holdings, L.L.C.	Delaware
Shoelane, L.P.	Delaware
GS Financial Services L.P. (Del)	Delaware
JLQ LLC	Cayman Islands
Jupiter Investment Co., Ltd.	Japan
AR Holdings GK	Japan
SH White Flower	Japan
GK Frangipani	Japan
Goldman Sachs Global Commodities (Canada) Holdings, LP	Delaware
Goldman Sachs Global Commodities (Canada) Corporation	Canada
GS Direct, L.L.C.	Delaware
GSIP Holdco A LLC	Delaware
Special Situations Investing Group II, LLC	Delaware
MTGRP, L.L.C.	Delaware
Archon International, Inc.	Delaware
Archon Group Europe GMBH	Germany
Archon Group Deutschland GMBH	Germany
Broad Street Principal Investments, L.L.C.	Delaware
Broad Street Credit Holdings LLC	Delaware
GSFS Investments I Corp.	Delaware
GS India Holdings L.P.	Delaware
Goldman Sachs Investments (Mauritius) I Limited	Mauritius
GS Diversified Funding LLC	Delaware
Hull Trading Asia Limited	Hong Kong
Goldman Sachs LLC	Mauritius
Goldman Sachs Venture LLC	Mauritius

THE GOLDMAN SACHS GROUP, INC AND ITS SUBSIDIARIES

Signature

Print name: Raymond Chow
(signing under power of attorney)

Capacity: Attorney

Sign here:



Date: 22 May 2015

Annexure B

Date of change	Person whose relevant interest changed	Nature of Change	Consideration given in relation to change (NZD)	Number of Securities
02/19/2015	GSAMA	Buy	224,965	156,371
02/19/2015	GSAMA	Buy	1,854,340	1,288,934
02/26/2015	GSI	Return of borrowed securities	N/A	49,000
03/05/2015	GSI	Return of borrowed securities	N/A	55,000
03/11/2015	GSAMF	Sell	50,305	32,364
03/11/2015	GSI	Return of borrowed securities	N/A	75,399
03/12/2015	GSI	Return of borrowed securities	N/A	66,742
03/19/2015	GSI	Buy	20,271	11,491
04/16/2015	GSI	Buy	7,398	5,488
04/17/2015	GSI	Buy	7,940	5,886
04/21/2015	GSAMF	Sell	32,078	23,884
04/22/2015	GSAMF	Sell	527	390
05/04/2015	GSI	Borrow of securities	N/A	350,000
05/05/2015	GSI	Borrow of securities	N/A	77,542
05/14/2015	GSI	Borrow of securities	N/A	40,000
05/15/2015	GSAMF	Sell	20,024	13,404
05/15/2015	GSI	Sell	49,927	33,518
05/18/2015	GSAMF	Sell	5,841	3,943
05/19/2015	GSAMA	Buy	3,897,791	2,642,150

Signature

Print name: Raymond Chow
(signing under power of
attorney)

Capacity: Attorney

Sign here:

A handwritten signature in black ink, appearing to be 'R. Chow', written over a horizontal line.

Date: 22 May 2015

**THIS IS ANNEXURE C REFERRED TO IN FORM 1 DISCLOSURE OF
MOVEMENT OF 1% OR MORE IN SUBSTANTIAL HOLDING OR CHANGE IN
NATURE OF RELEVANT INTEREST OF BOTH**

PLEASE NOTE THIS DOCUMENT IS FOR PERSONAL USE ONLY

**THE GOLDMAN SACHS GROUP, INC. ("GSGI") ON BEHALF OF ITSELF
AND
ITS SUBSIDIARIES ("GOLDMAN SACHS GROUP") INCLUDING ITS
SIGNIFICANT SUBSIDIARIES LISTED IN ANNEXURE A ("SIGNIFICANT
SUBSIDIARIES") AND GOLDMAN SACHS HOLDINGS ANZ PTY
LIMITED AND
ITS SUBSIDIARIES ("GOLDMAN SACHS AUSTRALIA GROUP")**



Raymond Chow

Signing under power of attorney,

22 May 2015

OSL1

DATED _____

THE CHASE MANHATTAN BANK, LONDON BRANCH (1)

AND

GOLDMAN SACHS INTERNATIONAL (2)

OVERSEAS SECURITIES LENDER'S AGREEMENT

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THIS AGREEMENT is made the 2nd day of May, 2001

BETWEEN:-

- (1) **THE CHASE MANHATTAN BANK** (London branch) incorporated with limited liability as a New York State chartered bank registered in England as a branch; and whose registered branch address is 125 London Wall, London, EC2Y 5AJ.
- (2) **GOLDMAN SACHS INTERNATIONAL** a company incorporated under the laws of England and Wales whose registered office is at Peterborough Court, 133 Fleet Street, London EC4A 2BB.

WHEREAS:-

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

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

1. **INTERPRETATION**

(A) In this Agreement:-

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

- (i) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors, or

- (ii) its admitting in writing that it is unable to pay its debts as they become due, or
- (iii) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property, or;
- (iv) the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for winding-up or any analogous proceeding in respect of which no such 30 day period shall apply) not having been stayed or dismissed within 30 days of its filing;
- (v) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property; or
- (vi) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding);

"Agent"

shall have the same meaning given in Clause 14;

"Alternative Collateral"

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

"Appropriate Tax Vouchers" means:-

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

"Approved UK Collecting Agent"

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

"Approved Intermediary"

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

"Assured Payment"

means a payment obligation of a Settlement Bank arising (under the Assured Payment Agreement) as a result of a transfer of stock or other securities to a CGO stock account

of a member of the CGO for whom that Settlement Bank is acting;

"Assured Payment Agreement"

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

"Base Currency"

has the meaning given in the Schedule hereto;

"Bid Price"

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

"Bid Value"

Subject to Clause 8(E) means:-

(a) in relation to Equivalent Collateral at a particular time:-

(i) in relation to Collateral Types B(x) and C (more specifically referred to in the Schedule) the Value thereof as calculated in accordance with such Schedule;

(ii) in relation to all other types of Collateral (more specifically referred to in the Schedule) the amount which would be received on a sale of such Collateral at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection with selling or otherwise realising such Equivalent Collateral, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out such sale or

realisation and adding thereto the amount of any interest, dividends, distributions or other amounts paid to the Lender and in respect of which equivalent amounts have not been paid to the Borrower in accordance with Clause 6(G) prior to such time in respect of such Equivalent Collateral or the original Collateral held gross of all and any tax deducted or paid in respect thereof;

and

- (b) in relation to Equivalent Securities at a particular time the amount which would be received on a sale of such Equivalent Securities at the Bid Price thereof at such time less all costs, fees and expenses that would be incurred in connection therewith, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction;

"Borrower"

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

"Borrowing Request"

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

"Business Day"

means a day on which banks and securities markets are open for business generally in London and, in relation to the delivery or redelivery of any of the following in relation to

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

redeemed, made the subject of a takeover, capitalisation issue, rights issue or event similar to any of the foregoing, the expression shall have the following meaning:

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

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

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

"Equivalent Securities"

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

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

securities or a certificate which may at a future date be exchanged for securities, notice has been given to the Borrower in accordance with Clause 4(B)(vi) the borrowed Securities **TOGETHER WITH** securities or a certificate equivalent to those allotted;

- (h) in the case of any event similar to any of the foregoing, the borrowed Securities **TOGETHER WITH** or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event;
For the purposes of this definition, securities are equivalent to other securities where they are of an identical type, nominal value, description and amount and such term shall include the certificate and other documents of or evidencing title and transfer in respect of the foregoing (as appropriate);

"Event of Default"

has the meaning given in Clause 12;

"Income"

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

"Income Payment Date",

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

"Lender"

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

"Manufactured Dividend"

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

"Margin"

shall have the meaning specified in the Schedule hereto;

"Nominee"	means an agent or a nominee appointed by either Party and approved (if appropriate) as such by the Inland Revenue to accept delivery of, hold or deliver Securities, Equivalent Securities, Collateral and/or Equivalent Collateral on its behalf whose appointment has been notified to the other Party;
"Non-Defaulting Party"	shall have the meaning given in Clause 12;
"Offer Price"	in relation to Equivalent Securities or Equivalent Collateral means the best available offer price thereof on the most appropriate market in a standard size;
"Offer Value"	Subject to Clause 8(E) means:- (a) in relation to Collateral equivalent to Collateral types B (ix) and C (more specifically referred to in the Schedule hereto) the Value thereof as calculated in accordance with such Schedule; and (b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral (more specifically referred to in the Schedule hereto) the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price thereof at such time together with all costs, fees and expenses that would be incurred in connection therewith, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction;
"Parties"	means the Lender and the Borrower and "Party" shall be construed accordingly;
"Performance Date"	shall have the meaning given in Clause 8;

"Principal"

shall have the meaning given in Clause 14;

"Reference Price"

means:

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

"Relevant Payment Date"

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

"Rules"

means the rules for the time being of the Stock Exchange (where either Party is a member of the Stock Exchange) and/or any other regulatory authority whose rules and regulations shall from time to time affect the activities of the Parties pursuant to this Agreement including but not limited to the stocklending regulations and guidance notes relating to both stocklending and manufactured interest and dividends for the time being in force of the Commissioners of the Inland Revenue and any associated procedures required pursuant thereto (**PROVIDED THAT** in an Event of Default, where either Party is a member of the Stock Exchange, the Rules and Regulations of the Stock Exchange shall prevail);

"Securities"

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

"Settlement Bank"

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

"Settlement Date"

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

"Stock Exchange"

means the London Stock Exchange Limited;

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

- (B) All headings appear for convenience only and shall not affect the interpretation hereof.
- (C) Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "Margin", "redeliver" etc. which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, title to Securities "borrowed" or "lent" and "Collateral" provided in accordance with this Agreement shall pass from one Party to another as provided for in this Agreement, the Party obtaining such title being obliged to redeliver Equivalent Securities or Equivalent Collateral as the case may be.
- (D) For the purposes of Clauses 6(H)-6(K) and 8(C)-8(E) of this Agreement or otherwise where a conversion into the Base Currency is required, all prices, sums or values (including any Value, Offer Value and Bid Value) of Securities, Equivalent Securities, Collateral or Equivalent Collateral (including Cash Collateral) stated in currencies other than the Base Currency shall be converted into the Base Currency at the spot rate of exchange at the relevant time in the London interbank market for the purchase of the Base Currency with the currency concerned.
- (E) Where at any time there is in existence any other agreement between the Parties the terms of which make provision for the lending of Securities (as defined in this Agreement) as well as other securities the terms of this Agreement shall apply to the lending of such Securities to the exclusion of any other such agreement.

2. LOANS OF SECURITIES

- (A) The Lender will lend Securities to the Borrower, and the Borrower will borrow Securities from the Lender in accordance with the terms and conditions of this Agreement and with the Rules **PROVIDED ALWAYS THAT** the Lender shall have received from the Borrower and accepted (by whatever means) a Borrowing Request.
- (B) The Borrower has the right to reduce the amount of Securities referred to in a Borrowing Request **PROVIDED THAT** the Borrower has notified the Lender of such reduction no

later than midday London time on the day which is two Business Days prior to the Settlement Date unless otherwise agreed between the Parties and the Lender shall have accepted such reduction (by whatever means).

3. DELIVERY OF SECURITIES

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

4. RIGHTS AND TITLE

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

- (i) any Securities borrowed pursuant to Clause 2;
- (ii) any Equivalent Securities redelivered pursuant to Clause 7;
- (iii) any Collateral delivered pursuant to Clause 6;
- (iv) any Equivalent Collateral redelivered pursuant to Clauses 6 or 7;

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

delivered to such Party, such Party shall be obliged, subject to the terms of this Agreement, to redeliver Equivalent Securities or Equivalent Collateral as appropriate.

- (B) (i) Where Income is paid in relation to any Securities on or by reference to an Income Payment Date on which such Securities are the subject of a loan hereunder, the Borrower shall, on the date of the payment of such Income, or on such other date as the Parties may from time to time agree, (the "**Relevant Payment Date**") pay and deliver a sum of money or property equivalent to the same (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Lender or its Nominee, irrespective of whether the Borrower received the same. The provisions of sub-paragraphs (ii) to (v) below shall apply in relation thereto.
- (ii) Subject to sub-paragraph (iii) below, in the case of any Income comprising a payment, the amount (the "**Manufactured Dividend**") payable by the Borrower shall be equal to the amount of the relevant Income together with an amount equivalent to any deduction, withholding or payment for or on account of tax made by the relevant issuer (or on its behalf) in respect of such Income together with an amount equal to any other tax credit associated with such Income unless a lesser amount is agreed between the Parties or an Appropriate Tax Voucher (together with any further amount which may be agreed between the Parties to be paid) is provided in lieu of such deduction, withholding tax credit or payment.
- (iii) Where either the Borrower, or any person to whom the Borrower has on-lent the Securities, is unable to make payment of the Manufactured Dividend to the Lender without accounting to the Inland Revenue for any amount of relevant tax (as required by Schedule 23A to the Income and Corporation Taxes Act 1988) the Borrower shall pay to the Lender or its Nominee, in cash, the Manufactured Dividend less amounts equal to such tax. The Borrower shall at the same time if requested supply Appropriate Tax Vouchers to the Lender.
- (iv) If at any time any Manufactured Dividend falls to be paid and neither of the Parties is an Approved UK Intermediary or an Approved UK Collecting Agent, the Borrower shall procure that the payment is paid through an Approved UK Intermediary or an Approved UK Collecting Agent agreed by the Parties for

this purpose, unless the rate of relevant withholding tax in respect of any Income that would have been payable to the Lender but for the loan of the Securities would have been zero and no income tax liability under Section 123 of the Income and Corporation Taxes Act 1988 would have arisen in respect thereof.

- (v) In the event of the Borrower failing to remit either directly or by its Nominee any sum payable pursuant to this Clause, the Borrower hereby undertakes to pay a rate to the Lender (upon demand) on the amount due and outstanding at the rate provided for in Clause 13 hereof. Interest on such sum shall accrue daily commencing on and inclusive of the third Business Day after the Relevant Payment Date, unless otherwise agreed between the Parties.
- (vi) Each Party undertakes that where it holds securities of the same description as any securities borrowed by it or transferred to it by way of collateral at a time when a right to vote arises in respect of such securities, it will use its best endeavours to arrange for the voting rights attached to such securities to be exercised in accordance with the instructions of the Lender or Borrower (as the case may be) **PROVIDED ALWAYS THAT** each Party shall use its best endeavours to notify the other of its instructions in writing no later than seven Business Days prior to the date upon which such votes are exercisable or as otherwise agreed between the Parties and that the Party concerned shall not be obliged so to exercise the votes in respect of a number of Securities greater than the number so lent or transferred to it. For the avoidance of doubt the Parties agree that subject as hereinbefore provided any voting rights attaching to the relevant Securities, Equivalent Securities, Collateral and/or Equivalent Collateral shall be exercisable by the persons in whose name they are registered or in the case of Securities, Equivalent Securities, Collateral and/or Equivalent Collateral in bearer form, the persons by or on behalf of whom they are held, and not necessarily by the Borrower or the Lender (as the case may be).
- (vii) Where, in respect of any borrowed Securities or any Collateral, any rights relating to conversion, sub-division, consolidation, pre-emption, rights arising under a takeover offer or other rights, including those requiring election by the

holder for the time being of such Securities or Collateral, become exercisable prior to the redelivery of Equivalent Securities or Equivalent Collateral, then the Lender or Borrower, as the case may be, may, within a reasonable time before the latest time for the exercise of the right or option give written notice to the other Party that on redelivery of Equivalent Securities or Equivalent Collateral, as the case may be, it wishes to receive Equivalent Securities or Equivalent Collateral in such form as will arise if the right is exercised or, in the case of a right which may be exercised in more than one manner, is exercised as is specified in such written notice.

- (viii) Any payment to be made by the Borrower under this Clause shall be made in a manner to be agreed between the Parties.

5. RATES

- (A) In respect of each loan of Securities, the Borrower shall pay to the Lender, in the manner prescribed in sub-Clause (C), sums calculated by applying such rate as shall be agreed between the Parties from time to time to the daily Value of the relevant Securities.
- (B) Where Cash Collateral is deposited with the Lender in respect of any loan of Securities in circumstances where:
- (i) interest is earned by the Lender in respect of such Cash Collateral and that interest is paid to the Lender without deduction of tax, the Lender shall pay to the Borrower, in the manner prescribed in sub-Clause (C), an amount equal to the gross amount of such interest earned. Any such payment due to the Borrower may be set-off against any payment due to the Lender pursuant to sub-Clause (A) hereof if either the Borrower has warranted to the Lender in this Agreement that it is subject to tax in the United Kingdom under Case I of Schedule D in respect of any income arising pursuant to or in connection with the borrowing of Securities hereunder or the Lender has notified the Borrower of the gross amount of such interest or income; and
- (ii) sub-Clause (B)(i) above does not apply, the Lender shall pay to the Borrower, in the manner presented in sub-Clause (C), sums calculated by applying such rates as shall be agreed between the Parties from time to time to the amount of such

Cash Collateral. Any such payment due to the Borrower may be set-off against any payment due to the Lender pursuant to sub-Clause (A) hereof.

- (C) In respect of each loan of Securities, the payments referred to in sub-Clauses (A) and (B) of this Clause shall accrue daily in respect of the period commencing on and inclusive of the Settlement Day and terminating on and exclusive of the Business Day upon which Equivalent Securities are redelivered or Cash Collateral is repaid. Unless otherwise agreed, the sums so accruing in respect of each calendar month shall be paid in arrears by the Borrower to the Lender or to the Borrower by the Lender (as the case may be) not later than the Business Day which is one week after the last Business Day of the calendar month to which such payments relate or such other date as the Parties shall from time to time agree. Any payment made pursuant to sub-Clauses (A) and (B) hereof shall be in such currency and shall be paid in such manner and at such place as shall be agreed between the Parties.

6. COLLATERAL

- (A) (i) Subject to sub-Clauses (B), (C) and (E) below the Borrower undertakes to deliver Collateral to the Lender (or in accordance with the Lender's instructions) **TOGETHER WITH** appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the Lender simultaneously with delivery of the borrowed Securities and in any event no later than Close of Business on the Settlement Date. Collateral may be provided in any of the forms specified in the Schedule hereto (as agreed between the Parties);
- (ii) where Collateral is delivered to the Lender's Nominee any obligation under this Agreement to redeliver or otherwise account for Equivalent Collateral shall be an obligation of the Lender notwithstanding that any such redelivery may be effected in any particular case by the Nominee.
- (B) Where CGO Collateral is provided to the Lender or its Nominee by member-to-member delivery or delivery-by-value in accordance with the provisions of the CGO Rules from time to time in force, the obligation of the Lender shall be to redeliver Equivalent Collateral through the CGO to the Borrower in accordance with this Agreement. Any references, (howsoever expressed) in this Agreement, the Rules, and/or any other agreement or communication between the Parties to an obligation to redeliver such

Equivalent Collateral shall be construed accordingly. If the loan of Securities in respect of which such Collateral was provided has not been discharged when the Collateral is redelivered, the Assured Payment obligation generated on such redelivery shall be deemed to constitute a payment of money which shall be treated as Cash Collateral until the loan is discharged, or further Equivalent Collateral is provided later during that Business Day. This procedure shall continue daily where CGO Collateral is delivered-by-value for as long as the relevant loan remains outstanding.

- (C) Where CGO Collateral or other collateral is provided by delivery-by-value to a Lender or its Nominee the Borrower may consolidate such Collateral with other Collateral provided by the same delivery to a third party for whom the Lender or its Nominee is acting.
- (D) Where Collateral is provided by delivery-by-value through an alternative book entry transfer system, not being the CGO, the obligation of the Lender shall be to redeliver Equivalent Collateral through such book entry transfer system in accordance with this Agreement. If the loan of Securities in respect of which such Collateral was provided has not been discharged when the Collateral is redelivered, any payment obligation generated within the book entry transfer system on such redelivery shall be deemed to constitute a payment of money which shall be treated as Cash Collateral until the loan is discharged, or further Equivalent Collateral is provided later during that Business Day. This procedure shall continue when Collateral is delivered-by-value for as long as the relevant loan remains outstanding;
- (E) Where Cash Collateral is provided the sum of money so deposited may be adjusted in accordance with Clause 6(H). Subject to Clause 6(H)(ii), the Cash Collateral shall be repaid at the same time as Equivalent Securities in respect of the Securities borrowed are redelivered, and the Borrower shall not assign, charge, dispose of or otherwise deal with its rights in respect of the Cash Collateral. If the Borrower fails to comply with its obligations for such redelivery of Equivalent Securities the Lender shall have the right to apply the Cash Collateral by way of set-off in accordance with Clause 8.
- (F) The Borrower may from time to time call for the repayment of Cash Collateral or the redelivery of Collateral equivalent to any Collateral delivered to the Lender prior to the date on which the same would otherwise have been repayable or redeliverable **PROVIDED**

THAT at the time of such repayment or redelivery the Borrower shall have delivered or delivers Alternative Collateral acceptable to the Lender.

- (G) (i) Where Collateral (other than Cash Collateral) is delivered in respect of which any Income may become payable, the Borrower shall call for the redelivery of Collateral equivalent to such Collateral in good time to ensure that such Equivalent Collateral may be delivered prior to any such Income becoming payable to the Lender, unless in relation to such Collateral the Parties are satisfied before the relevant Collateral is transferred that no tax will be payable to the UK Inland Revenue under Schedule 23A of the Income and Corporation Taxes Act 1988. At the time of such redelivery the Borrower shall deliver Alternative Collateral acceptable to the Lender.
- (ii) Where the Lender receives any Income in circumstances where the Parties are satisfied as set out in Clause 6(G)(i) above, then the Lender shall on the date on which the Lender receives such Income or on such date as the Parties may from time to time agree, pay and deliver a sum of money or property equivalent to such Income (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Borrower and shall supply Appropriate Tax Vouchers (if any) to the Borrower.
- (H) Unless the Schedule to this Agreement indicates that Clause 6(I) shall apply in lieu of this Clause 6(H), or unless otherwise agreed between the Parties, the Value of the Collateral delivered to or deposited with the Lender or its nominated bank or depositary (excluding any Collateral repaid or redelivered under sub-Clauses (H)(ii) or (I)(ii) below (as the case may be) ("**Posted Collateral**")) in respect of any loan of Securities shall bear from day to day and at any time the same proportion to the Value of the Securities borrowed under such loan as the Posted Collateral bore at the commencement of such loan. Accordingly:
 - (i) the Value of the Posted Collateral to be delivered or deposited while the loan of Securities continues shall be equal to the Value of the borrowed Securities and the Margin applicable thereto (the "**Required Collateral Value**");
 - (ii) if on any Business Day the Value of the Posted Collateral in respect of any loan of Securities exceeds the Required Collateral Value in respect of such loan, the Lender

shall (on demand) repay such Cash Collateral and/or redeliver to the Borrower such Equivalent Collateral as will eliminate the excess; and

- (iii) if on any Business Day the Value of the Posted Collateral falls below the Required Collateral Value, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.
- (I) Subject to Clause 6(J), unless the Schedule to this Agreement indicates that Clause 6(H) shall apply in lieu of this Clause 6(I), or unless otherwise agreed between the Parties:-
- (i) the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement shall equal the aggregate of the Required Collateral Values in respect of such loans;
 - (ii) if at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement exceeds the aggregate of the Required Collateral Values in respect of such loans, the Lender shall (on demand) repay such Cash Collateral and/or redeliver to the Borrower such Equivalent Collateral as will eliminate the excess;
 - (iii) if at any time the aggregate Value of the Posted Collateral in respect of all loans of Securities outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such loans, the Borrower shall (on demand) provide such further Collateral to the Lender as will eliminate the deficiency.
- (J) Where Clause 6(I) applies, unless the Schedule to this Agreement indicates that this Clause 6(J) does not apply, if a Party (the "**first Party**") would, but for this Clause 6(J), be required under Clause 6(I) to repay Cash Collateral, redeliver Equivalent Securities or provide further Collateral in circumstances where the other Party (the "**second Party**") would, but for this Clause 6(J), also be required to repay Cash Collateral or provide or redeliver Equivalent Collateral under Clause 6(I), then the Value of the Cash Collateral or Equivalent Collateral deliverable by the first Party ("**X**") shall be set-off against the Value of the Cash Collateral, or Equivalent Collateral or further Collateral deliverable by the second Party ("**Y**") and the only obligation of the Parties under Clause 6(I) shall be, where X exceeds Y, an obligation of the first Party, or where Y exceeds X, an obligation of the

second Party, to repay Cash Collateral, redeliver Equivalent Collateral or to deliver further Collateral having a Value equal to the difference between X and Y.

- (K) Where Cash Collateral is repaid, Equivalent Collateral is redelivered or further Collateral is provided by a Party under Clause 6(I), the Parties shall agree to which loan or loans of Securities such repayment, redelivery or further provision is to be attributed and failing agreement it shall be attributed, as determined by the Party making such repayment, redelivery or further provision to the earliest outstanding loan and, in the case of a repayment or redelivery up to the point at which the Value of Collateral in respect of such loan is reduced to zero and, in the case of a further provision up to the point at which the Value of the Collateral in respect of such loan equals the Required Collateral Value in respect of such loan, and then to the next earliest outstanding loan up to the similar point and so on.
- (L) Where any Cash Collateral falls to be repaid or Equivalent Collateral to be redelivered or further Collateral to be provided under this Clause 6, it shall be delivered within the minimum period after demand specified in the Schedule or if no appropriate period is there specified within the standard settlement time for delivery of the relevant type of Cash Collateral, Equivalent Collateral or Collateral, as the case may be.

7. REDELIVERY OF EQUIVALENT SECURITIES

- (A) The Borrower undertakes to redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Borrowing Request. For the avoidance of doubt any reference herein or in any other agreement or communication between the Parties (howsoever expressed) to an obligation to redeliver or account for or act in relation to borrowed Securities shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Securities.
- (B) Subject to Clause 8 hereof and the terms of the relevant Borrowing Request the Lender may call for the redelivery of all or any Equivalent Securities at any time by giving notice on any Business Day of not less than the standard settlement time for such Equivalent Securities on the exchange or in the clearing organisation through which the relevant borrowed Securities were originally delivered. The Borrower shall as hereinafter provided redeliver such Equivalent Securities not later than the expiry of such notice in accordance with the Lender's instructions. Simultaneously with the redelivery of the Equivalent

Securities in accordance with such call, the Lender shall (subject to Clause 6(I), if applicable) repay any Cash Collateral and redeliver to the Borrower Collateral equivalent to the Collateral delivered pursuant to Clause 6 in respect of the borrowed Securities. For the avoidance of doubt any reference herein or in any other agreement or communication between the Parties (however expressed) to an obligation to redeliver or account for or act in relation to Collateral shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Collateral.

- (C) If the Borrower does not redeliver Equivalent Securities in accordance with such call, the Lender may elect to continue the loan of Securities **PROVIDED THAT** if the Lender does not elect to continue the loan the Lender may by written notice to the Borrower elect to terminate the relevant loan. Upon the expiry of such notice the provisions of Clauses (8) (B) to (F) shall apply as if upon the expiry of such notice an Event of Default had occurred in relation to the Borrower (who shall thus be the Defaulting Party for the purposes of this Agreement) and as if the relevant loan were the only loan outstanding.
- (D) In the event that as a result of the failure of the Borrower to redeliver Equivalent Securities to the Lender in accordance with this Agreement a "buy-in" is exercised against the Lender then provided that reasonable notice has been given to the Borrower of the likelihood of such a "buy-in", the Borrower shall account to the Lender for the total costs and expenses reasonably incurred by the Lender as a result of such "buy-in".
- (E) Subject to the terms of the relevant Borrowing Request, the Borrower shall be entitled at any time to terminate a particular loan of Securities and to redeliver all and any Equivalent Securities due and outstanding to the Lender in accordance with the Lender's instructions. The Lender shall accept such redelivery and simultaneously therewith (subject to Clause 6(I) if applicable) shall repay to the Borrower any Cash Collateral or, as the case may be, redeliver Collateral equivalent to the Collateral provided by the Borrower pursuant to Clause 6 in respect thereof.
- (F) Where a TALISMAN short term certificate (as described in paragraph C of the Schedule) is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by the redelivery of the certificate to the Borrower or its expiry as provided for in the Rules applying to such certificate.
- (G) Where a Letter of Credit is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by the Lender redelivering for cancellation the Letter of

Credit so provided, or where the Letter of Credit is provided in respect of more than one loan, by the Lender consenting to a reduction in the value of the Letter of Credit.

8. SET-OFF ETC.

- (A) On the date and time (the "**Performance Date**") that Equivalent Securities are required to be redelivered by the Borrower in accordance with the provisions of this Agreement the Lender shall simultaneously redeliver the Equivalent Collateral and repay any Cash Collateral held (in respect of the Equivalent Securities to be redelivered) to the Borrower. Neither Party shall be obliged to make delivery (or make a payment as the case may be) to the other unless it is satisfied that the other Party will make such delivery (or make an appropriate payment as the case may be) to it simultaneously. If it is not so satisfied (whether because an Event of Default has occurred in respect of the other Party or otherwise) it shall notify the other party and unless that other Party has made arrangements which are sufficient to assure full delivery (or the appropriate payment as the case may be) to the notifying Party, the notifying Party shall (provided it is itself in a position, and willing, to perform its own obligations) be entitled to withhold delivery (or payment, as the case may be) to the other Party.
- (B) If an Event of Default occurs in relation to either Party, the Parties' delivery and payment obligations (and any other obligations they have under this Agreement) shall be accelerated so as to require performance thereof at the time such Event of Default occurs (the date of which shall be the "**Performance Date**" for the purposes of this clause) and in such event:
- (i) the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each Party shall be established in accordance with Clause 8(C); and
 - (ii) on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) the sums due from one Party shall be set-off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the Performance Date.
- (C) For the purposes of Clause 8(B) the Relevant Value:-

- (i) of any cash payment obligation shall equal its par value (disregarding any amount taken into account under (ii) or (iii) below);
 - (ii) of any securities to be delivered by the Defaulting Party shall, subject to Clause 8(E) below, equal the Offer Value thereof; and
 - (iii) of any securities to be delivered to the Defaulting Party shall, subject to Clause 8(E) below, equal the Bid Value thereof.
- (D) For the purposes of Clause 8(C), but subject to Clause 8(E) below, the Bid Value and Offer Value of any securities shall be calculated as at the Close of Business in the most appropriate market for securities of the relevant description (as determined by the Non-Defaulting Party) on the first Business Day following the Performance Date, or if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Performance Date (the "**Default Valuation Time**");
- (E)
 - (i) Where the Non-Defaulting Party has following the occurrence of an Event of Default but prior to the Default Valuation Time purchased securities forming part of the same issue and being of an identical type and description to those to be delivered by the Defaulting Party and in substantially the same amount as those securities or sold securities forming part of the same issue and being of an identical type and description to those to be delivered by him to the Defaulting Party and in substantially the same amount as those securities, the cost of such purchase or the proceeds of such sale, as the case may be, (taking into account all reasonable costs, fees and expenses that would be incurred in connection therewith) shall be treated as the Offer Value or Bid Value, as the case may be, of the relevant securities for the purposes of this Clause 8.
 - (ii) Where the amount of any securities sold or purchased as mentioned in (E)(i) above is not in substantially the same amount as those securities to be valued for the purposes Clause 8(C) the Offer Value or the Bid Value (as the case may be) of those securities shall be ascertained by dividing the net proceeds of sale or cost of purchase by the amount of the securities sold or purchased so as to obtain a net unit price and multiplying that net unit price by the amount of the securities to be valued.
- (F) Any reference in this Clause 8 to securities shall include any asset other than cash provided by way of Collateral.

- (G) If the Borrower or the Lender for any reason fail to comply with their respective obligations under Clauses 6(F) or 6(G) in respect of redelivery of Equivalent Collateral or repayment of Cash Collateral such failure shall be an Event of Default for the purposes of this Clause 8, and the person failing to comply shall thus be the Defaulting Party.
- (H) Subject to and without prejudice to its rights under Clause 8(A) either Party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities, Collateral and cash transfers waive its right under this Agreement in respect of simultaneous delivery and/or payment **PROVIDED THAT** no such waiver in respect of one transaction shall bind it in respect of any other transaction.

9. TAXATION

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

10. LENDER'S WARRANTIES

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

- (A) it is duly authorised and empowered to perform its duties and obligations under this Agreement;

- (B) it is not restricted under the terms of its constitution or in any other manner from lending Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (C) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it hereunder to the Borrower free from all liens, charges and encumbrances;
- (D) where the Schedule to this Agreement specifies that this Clause 10(D) applies, it is not resident in the United Kingdom for tax purposes and either is not carrying on a trade in the United Kingdom through a branch or agency or if it is carrying on such a trade the loan is not entered into in the course of the business of such branch or agency, and it has (i) delivered or caused to be delivered to the Borrower a duly completed and certified Certificate (MOD2) or a photocopy thereof bearing an Inland Revenue acknowledgement and unique number and such Certificate or photocopy remains valid or (ii) has taken all necessary steps to enable a specific authorisation to make gross payment of the Manufactured Dividend to be issued by the Inland Revenue;

11. BORROWER'S WARRANTIES

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

- (A) it has all necessary licenses and approvals, and is duly authorised and empowered, to perform its duties and obligations under this Agreement and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;
- (B) it is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (C) it is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it hereunder to the Lender free from all liens, charges and encumbrances;
- (D) it is acting as principal in respect of this Agreement;

- (E) where the Schedule to this Agreement specifies this Clause 11(E) applies, it is subject to tax in the United Kingdom under Case I of Schedule D in respect of any income arising pursuant to or in connection with the borrowing of Securities hereunder.

12. EVENTS OF DEFAULT

Each of the following events occurring in relation to either Party (the "**Defaulting Party**", the other Party being the "**Non-Defaulting Party**") shall be an Event of Default for the purpose of Clause 8:-

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

- (H) any of the assets of the Lender or the Borrower or the assets of investors held by or to the order of the Lender or the Borrower being transferred or ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the Non-Defaulting Party serves written notice on the Defaulting Party, or
- (I) the Lender or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure, and the Non-Defaulting Party serves a further written notice on the Defaulting Party.

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

13. OUTSTANDING PAYMENTS

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

14. TRANSACTIONS ENTERED INTO AS AGENT

- (A) Subject to the following provisions of this Clause, the Lender may enter into loans as agent (in such capacity, the "**Agent**") for a third person (a "**Principal**"), whether as custodian or investment manager or otherwise (a loan so entered into being referred to in this clause as an "Agency Transaction").
- (B) A Lender may enter into an Agency Transaction if, but only if:-
 - (i) if specifies that loan as an Agency Transaction at the time when it enters into it;
 - (ii) it enters into that loan on behalf of a single Principal whose identity is disclosed to the Borrower (whether by name or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) at the time when it enters into the loan; and

- (iii) it has at the time when the loan is entered into actual authority to enter into the loan and to perform on behalf of that Principal all of that Principal's obligations under the agreement referred to in (D)(ii) below.
- (C) The Lender undertakes that, if it enters as agent into an Agency Transaction, forthwith upon becoming aware:-
- (i) of any event which constitutes an Act of Insolvency with respect to the relevant Principal; or
- (ii) of any breach of any of the warranties given in Clause 14(E) below or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the current facts;
- it will inform the Borrower of that fact and will, if so required by the Borrower, furnish it with such additional information as it may reasonably request.
- (D) (i) Each Agency Transaction shall be a transaction between the relevant Principal and the Borrower and no person other than the relevant Principal and the Borrower shall be a party to or have any rights or obligations under an Agency Transaction. Without limiting the foregoing, the Lender shall not be liable as principal for the performance of an Agency Transaction or for breach of any warranty contained in Clause 10(D) or 11(E) of this Agreement, but this is without prejudice to any liability of the Lender under any other provision of this Clause.
- (ii) All the provisions of the Agreement shall apply separately as between the Borrower and each Principal for whom the Agent has entered into an Agency transaction or Agency Transactions as if each such Principal were a party to a separate agreement with the Borrower in all respects identical with this Agreement other than this paragraph and as if the Principal were Lender in respect of that agreement.

PROVIDED THAT

if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if the Borrower served written notice under any sub-Clause of Clause 12, the Borrower shall be entitled by giving written

notice to the Principal (which notice shall be validly given if given to the Lender in accordance with Clause 20) to declare that by reason of that event an Event of Default is to be treated as occurring in relation to the Principal. If the Borrower gives such a notice then an Event of Default shall be treated as occurring in relation to the Principal at the time when the notice is deemed to be given; and

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

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

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

15. TERMINATION OF COURSE OF DEALINGS BY NOTICE

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

16. GOVERNING PRACTICES

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

17. OBSERVANCE OF PROCEDURES

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

18. SEVERANCE

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

19. SPECIFIC PERFORMANCE

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

20. NOTICES

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

21. ASSIGNMENT

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

22. NON-WAIVER

No failure or delay by either Party to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege as herein provided.

23. ARBITRATION AND JURISDICTION

- (A) All claims, disputes and matters of conflict between the Parties arising hereunder shall be referred to or submitted for arbitration in London in accordance with English Law before a sole arbitrator to be agreed between the Parties or in default of agreement by an arbitrator to be nominated by the Chairman of The Stock Exchange on the application of either Party, and this Agreement shall be deemed for this purpose to be a submission to arbitration within the Arbitration Acts 1950 and 1979, or any statutory modification or re-enactment thereof for the time being in force.
- (B) This Clause shall take effect notwithstanding the frustration or other termination of this Agreement.
- (C) No action shall be brought upon any issue between the Parties under or in connection with this Agreement until the same has been submitted to arbitration pursuant hereto and an award made.

24. TIME

Time shall be of the essence of the Agreement.

25. RECORDING

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

26. GOVERNING LAW

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

SCHEDULE

COLLATERAL

Types

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

- A. British Government Stock and other stock registered at the Bank of England which is transferable through the CGO to the Lender or its Nominee against an Assured Payment, hereinbefore referred to as CGO Collateral.

- B.
 - (i) British Government Stock and Sterling Issues by foreign governments (transferable through the CGO), in the form of an enfaced transfer deed or a long term collateral certificate or overnight collateral chit issued by the CGO accompanied (in each case) by an executed unenfaced transfer deed;
 - (ii) Corporation and Commonwealth Stock in the form of registered stock or allotment letters duly renounced;
 - (iii) UK Government Treasury Bills;
 - (iv) U.S. Government Treasury Bills;
 - (v) Bankers' Acceptances;
 - (vi) Sterling Certificates of Deposit;
 - (vii) Foreign Currency Certificates of Deposit;
 - (viii) Local Authority Bonds;
 - (ix) Local Authority Bills;
 - (x) Letters of Credit;
 - (xi) Bonds or Equities in registrable form or allotment letters duly renounced;

- (xii) Bonds or Equities in bearer form.
- C. Unexpired TALISMAN short-term certificates issued by The Stock Exchange; and
- D. Cash Collateral.

Valuation of Collateral

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

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

Margin

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

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

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

Basis of Margin Maintenance

Clause 6(H) (transaction by transaction margining)*/Clause 6 (I)(global margining)* shall apply.

Clause 6(J) (netting of margin where one party both a Borrower and Lender) shall/shall not* apply,

Minimum period after demand for transferring Cash Collateral or Equivalent Collateral:

BASE CURRENCY

The Base Currency applicable to this Agreement is

LENDER'S WARRANTIES

Clause 10(D) shall/shall not* apply.

BORROWER'S WARRANTIES

Clause 11/(E) shall/shall not* apply.

[NB* Delete as appropriate.]

CHASE OVERSEAS SECURITIES LENDER'S AGREEMENT

APPENDIX - GOLDMAN SACHS INTERNATIONAL

The terms of this Appendix amend various of the provisions of the Overseas Securities Lender's Agreement entered into between the Parties (the "Agreement").

This Appendix supplements and forms part of the Agreement and accordingly the Appendix and Agreement shall be treated as one single agreement between the Parties.

Capitalised words in this Appendix bear the same meaning (save as otherwise amended herein) as in the Agreement.

1. Recital 1 on page 1 shall be replaced with the following:-

"From time to time the Parties hereto may enter into transactions in which one (the "Lender") agrees to lend to the other (the "Borrower") from time to time Securities (as hereinafter defined), subject to any Inland Revenue provisions then in force."

2. The following shall be inserted as Recital 3:-

"Where Chase acts as Lender, the Lender shall enter into loans of Securities as agent on behalf of third party beneficial owners and clause 14 shall take effect in accordance therewith."

3. The following shall be inserted as clause 1(A)(vii):

"Without limiting any other provision of clause 1(A) "Act of Insolvency" or Clause 12 of the Agreement, in the case of a party incorporated in Germany:

- (i) *the references to an analogous officer in clause 1(A) "Act of Insolvency", sub-paragraph (iii) and (v) shall include an Insolvenzverwalter,*
- (ii) *the reference to any analogous proceeding in Clause 1(A) "Act of Insolvency", sub-paragraph (iv) shall include an Insolvenzverfahren;*

and for the purpose of this Clause 1(A) "Act of Insolvency", sub-paragraph (vii) and Clause 12(J)

"Insolvenzordnung" means the Insolvency Act which came into force in Germany on 1 January 1999, "Insolvenzverfahren" means insolvency proceedings instituted under that Act and Insolvenzverwalter means an Insolvenzverwalter appointed under that Act."

4. In the definitions of "Approved UK Collecting Agent" and "Approved UK Intermediary", the words "interest and" shall be deleted and the word "overseas" substituted.
5. The definition of "Collateral" shall be replaced with the following:-

"Collateral" shall mean, collectively, all cash, Approved Securities and Letters of Credit from time to time paid or delivered by the Borrower to the Lender pursuant to clause 6 and shall include the certificates and other documents of or evidencing in title and transfer with respect to the foregoing (as appropriate) and shall include Alternative Collateral. For the purposes of this definition a Letter of Credit shall mean an irrevocable letter of credit issued by a bank acceptable to the Lender for the account of the Borrower or any other person acceptable to the Lender and which contains such terms and provisions as are required by or acceptable to the Lender in its discretion. Approved Securities shall mean securities of such class or classes falling within the Schedule hereto but only in so far as any such class has been designated by notice in writing given by the Lender to the Borrower from time to time hereafter as capable of being Approved Securities for the purposes of this Agreement and which are acceptable to the Lender for the purposes hereof in its sole discretion and such term shall include the certificates and other documents of or evidencing title and transfer with respect to such securities."

6. In the definitions of "Equivalent Collateral" and "Equivalent Securities", the references to clause 4(B)(vi) shall be replaced with references to clause 4(B)(vii).

7. The definition of "**Securities**" shall be replaced with the following:-

"Securities means Overseas Securities as defined in paragraph 1(1) of Schedule 23A to the Income and Corporation Taxes Act 1988 which the Borrower is entitled to borrow from the Lender in accordance with the Rules and which are the subject of a loan pursuant to this Agreement and such term shall include the certificates and other documents of title in respect of the foregoing".

8. The following definitions shall be added to Clause 1 of the Agreement:-

"Relevant Bank" shall mean, with respect to any Loan, a bank which has issued a Letter of Credit which, or a portion of which, is for the time being allocated as Collateral for such Loan;

"Relevant Organisation" shall mean any governmental agency, bureau, commission or department and any self-regulatory or other organisation concerned with dealings, and any association of dealers, in securities of any description;

9. A new clause 1(F) shall be added as follows:

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

10. The existing wording of Clause 4(B)(iv) shall be deleted and the following substituted:

"(iv) Unless otherwise agreed between the Parties as indicated in the Schedule to this Agreement, if any time any Manufactured Dividend falls to be paid and neither of the Parties is an Approved UK Intermediary or an Approved UK Collecting Agent, the Borrower shall procure that the payment is paid through an Approved UK Intermediary or an Approved UK Collecting Agent agreed by the Parties for this purpose, unless the rate of relevant withholding tax in respect of any Income that would have been payable to the Lender but for the loan of the Securities would have

been zero and no income tax liability under Chapter VIIA of Part IV of the Income and Corporation Taxes Act 1988 would have arisen in respect thereof."

11. Clause 4(B)(viii) shall be replaced by the following provisions (which shall take effect as sub-clauses (viii), (ix) and (x) respectively) and existing sub-clause (viii) of the Agreement shall be renumbered as sub-clause (xi):-

"(viii) any distribution of securities made in exchange for loaned securities shall be considered as substituted for such loaned securities and need not be delivered to the Agent until the relevant loan of securities is terminated hereunder, unless otherwise agreed;

(ix) any distribution solely in the form of securities with respect to any loaned securities shall be added to such loaned securities (and shall constitute loaned securities, and be part of the relevant loan of securities, for all purposes hereof) and need not be delivered to the Agent until the relevant loan of securities is terminated hereunder, if at or before the making of such distribution the Borrower shall have delivered such additional Collateral for the relevant loan to the Agent for the account of the relevant Lender as shall be necessary to make the aggregate of the Collateral for such Loan, determined on the date of such distribution, at least equal to the Margin with respect to such Loan (after giving effect to the addition of the securities being distributed) determined on such date, unless otherwise agreed; and

(x) any distributions of warrants or rights to purchase shares made with respect to any loaned securities shall be deemed to be, and shall be, a new loan of securities made to the Borrower by the Lender which loaned to the Borrower the loaned securities with respect to which such distribution is made (and shall be treated as Loaned Securities, and as a separate loan, for all purposes hereof) and need not be delivered to the Lender until such new loan is terminated in accordance herewith, if at or before the making of such distribution the Borrower and the Lender shall have agreed upon the Margin for such new loan and the Borrower shall have delivered to the Lender Collateral for such new Loan having a value acceptable to the Lender unless otherwise agreed.

12. The following shall be substituted for clause 6(A)(i):-

"(A)(i) Unless the Parties agree otherwise and subject to sub-clauses (B), (C) and (E) below the Borrower agrees that, as a condition precedent to the delivery of any Securities pursuant to the making of any Loan, it shall deliver Collateral to the Lender (or in accordance with the Lender's instructions) TOGETHER WITH appropriate instruments of transfer duly stamped where necessary and such other instruments as may be requisite to vest title thereto in the Lender."

13. The words commencing "... **unless in relation to** ..." in the fifth line down in clause 6(G)(i) to the end of that clause shall be deleted and the whole of clause 6(G)(ii) shall be deleted.

14. In clause 6(K), the reference to clause 6(I) shall be replaced by a reference to clause 6(H).

15. The following shall be inserted as clause 6(M):-

"(M) The delivery of a Letter of Credit shall be effected for the purposes of this Agreement by physical delivery of the original executed Letter of Credit by the

issuing, confirming or advising bank to the Lender at its address for delivery of notices or as the Lender may otherwise agree, provided, however, that no such delivery shall be effective until one Business Day after the receipt of a Letter of Credit by the Lender (or, if the relevant Letter of Credit is received by the Agent prior to 3 p.m. (London time) on a Business Day, until 5.30 p.m. (London time) on such Business Day), during which period the Lender may reject such Letter of Credit, by oral notice to the Borrower, if such Letter of Credit is not in the form required by or acceptable to the Lender."

16. Clause 7B shall be amended as follows:-

(i) by the insertion of the following words at the end of the first sentence:-

"(and where there is a difference between the settlement time for sales and purchases on the relevant exchange or clearing organisation, the standard settlement time shall be the shorter of the two times)."

(ii) in the third sentence, by the insertion of the following words after "Simultaneously with the redelivery of the Equivalent Securities in accordance with such call,":-

"or at such other time as may be agreed by the Parties,"

17. The requirements pursuant to clause 9(B) shall not apply as between the Parties.

18. The following shall be inserted as clause 11(F):-

"(F) The Borrower has heretofore delivered to the Lender a copy of the annual financial statements of the Borrower for its financial year ended November 30, 2000 duly audited by independent certified public accountants/internationally recognised auditors, including a balance sheet as at the end of such financial year, and the said statements and related notes thereto give a true and fair view of the state of affairs of the Borrower as at the end of such financial year and are prepared using appropriate accounting principles consistently applied;"

19. The following shall be inserted as Clause 11(G):-

"(G) it is an Approved Intermediary."

20. Clause 12 shall be amended as follows:-

(i) by the deletion of "or" at the end of Sub-clause (H);

(ii) in Sub-clause (I) by the deletion of all the words after "hereunder" and the substitution therefor of *"and the Non-Defaulting Party serves written notice on the Defaulting Party"*;

(iii) by the addition of the following Sub-clauses:-

"(J) a violation by the Borrower in connection with any Securities the subject of a loan hereunder or the holding or disposition thereof by the Borrower, of any applicable law, regulation or rule of any jurisdiction, or of any Relevant Organisation to the requirements of which the Borrower may be subject;

- (K) *the occurrence of any other event which the Borrower is required to notify to the Lender pursuant to Clause 27(B) hereof; or*
- (L) *unless otherwise agreed by the parties an Act of Insolvency occurring with respect to any Relevant Bank and (except in the case of an Act of Insolvency which is the presentation of a petition for winding up or the appointment of a liquidator or any analogous officer of the Relevant Bank in which case no such notice shall be required) whereby the Lender had given the Borrower by notice an opportunity to substitute the Letter of Credit issued by such Relevant Bank with cash or other acceptable Collateral (where such cash or other acceptable Collateral is acceptable Collateral for those Lenders participating in the affected loans) and the Borrower has failed to provide alternative Collateral to the Lender and the Lender serves written notice on the Borrower.*
- (M) *Without limiting any other provision of Clause 12 of the Agreement, in the case of a party incorporated in Germany an Event of Default shall occur immediately, and without the need for the service of a Default Notice, if an application is made for the institution of an Insolvenzverfahren ^{for} if measures are taken pursuant to §§ 46 or 46a para. 1 of the German Banking Act (Kreditwesengesetz) or pursuant to § 89 para. 1 of the German Insurance Supervision Act (Versicherungsaufsichtsgesetz).*

21. The following shall take effect as clause 27 of the Agreement:-

"27 Covenants of the Borrower:

The Borrower hereby covenants and agrees with the Lender as follows:

- (A) *The Borrower will furnish to the Lender (i) within a reasonable time of any request from the Lender, a copy of the annual financial statements of the Borrower duly audited by independent certified public accountants/internationally recognised auditors, including a balance sheet as at the end of such financial year, prepared in accordance with generally accepted accounting principles consistently applied, (ii) promptly after the occurrence of any default under this Agreement, a written notice setting forth the nature of such default and the steps being taken by the Borrower to remedy such default, and (iii) from time to time such public information (whether or not of the kind mentioned above) regarding the business, affairs and financial condition of the Borrower as the Lender may reasonably request on behalf of a Principal.*
- (B) *The Borrower will give the Lender immediate notice if at any time any order, decree, determination or instruction is issued on the authority of any rule, regulation or proceeding of any Relevant Organisation in relation to the Borrower, or any litigation, arbitration or similar proceeding against or affecting the Borrower is commenced, which in any such case could reasonably be expected to have a material adverse effect on the ability of the Borrower to perform its obligations under this Agreement or to carry on its business as conducted as at the date of this Agreement or which might adversely affect the borrowing of securities by the Borrower. Any such notice shall set forth in reasonable detail a description of the event which has occurred and of the action, if any which the Borrower proposes to take with respect thereto."*

22. The following shall be inserted as additional Clause 28 of the Agreement:

"28. Automatic assignment provision

The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned, charged or otherwise dealt with by either party without the prior written consent of the other party and any purported assignment, charge or dealing absent such consent shall be null and void except for an assignment by Goldman Sachs International (the "Borrower") of its rights and obligations hereunder (in whatever form the Borrower determines may be appropriate) to a "Successor Entity". For the purposes of this paragraph, a "Successor Entity" means a partnership, corporation, trust or other organisation in whatever form that succeeds to all or substantially all of the Borrower's assets and business and that assumes such obligations by contract, operation of law or otherwise; provided that:

- (i) if the creditworthiness of the Successor Entity is materially weaker than the creditworthiness of the Borrower (taking into account any credit support) immediately prior to such assignment, the Successor Entity shall provide, upon the Lender's request, a parent company guaranty from The Goldman Sachs Group, Inc. or its successor;*
- (ii) if the Successor Entity is a corporation, not less than 50% of the voting common stock of the Successor Entity shall be held by individuals or entities who were partners or employees of the Borrower immediately prior to the time of the assumption, and (ii) if the Successor Entity is a partnership, the Successor Entity shall be directly or indirectly controlled by individuals or entities who controlled the Borrower immediately prior to the time of the assumption.*
- (iii) an Event of Default does not occur as a result of such assignment;*
- (iv) the assignment will not lead to the imposition of any such withholding or deduction of tax;*
- (v) the Successor Entity is organised in a G-10 country.*
- (vi) The Lender will not be required to gross up its payments to the Successor Entity or receive payments from the Successor Entity net of withholding or deduction that would not otherwise be required hereunder or under applicable law in the absence of such transfer;*
- (vii) the proposed transfer would not adversely affect the non-assigning party's netting rights hereunder of under applicable law.*

Upon any such assignment the Borrower shall be relieved of and fully discharged from all obligations whether such obligations arose before or after such assignment."

23. The Schedule shall be deleted and replaced by the following:-

"1. Types

The following types of collateral shall unless otherwise agreed constitute Collateral acceptable under this Agreement;

- (i) *US Government securities which shall mean book-entry securities issued by the U.S. Treasury (as defined in Subpart O of Treasury Department Circular No. 300 and any successor provisions) and any other securities issued or fully guaranteed by the United States government or any agent, instrumentality or establishment of the U.S. government, including without limitation, securities commonly known as "Ginnie Maes", Sally Maes" and "Freddie Maes".*
- (ii) *Letters of Credit;*
- (iii) *Cash Collateral.*
- (iv) *Securities issued by governments of the member states of the European Union which have adopted a single currency in accordance with the Treaty establishing the European Communities, as amended by the Treaty on European Union.*

2. Valuation of Collateral

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

- (a) *in respect of Collateral type (i) above, the Reference Price thereof;*
- (b) *in respect of Collateral type (ii) above, the value specified therein.*
- (c) *in respect of Collateral type (iv) above, the price agreed between the parties from time to time and in the absence of such agreement, the price shall be that derived from a generally recognised source for such securities.*

3. Margin

The Value of the Collateral delivered pursuant to Clause 6 by the Borrower to the Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than 100% of the Value of the Borrowed Securities, and otherwise as agreed between the Parties with respect to each Loan.

4. Basis of Margin Maintenance

Clause 6(H) (transaction by transaction margining) shall apply in lieu of Clause 6(I); however, the Lender shall have the right at its sole election, at any time from time to time, to allocate and/or reallocate any Collateral held by it hereunder to or among any outstanding Loans.

The minimum period after demand for transferring Cash Collateral or Equivalent Collateral shall be the same business day if demand is made before 11.00 am, and otherwise as agreed between the parties".

5. Base Currency

The Base Currency applicable to this Agreement is United States Dollars (US\$).

6. Lenders' Warranties

Clause 10(D) shall apply.

7. Borrowers' Warranties

Clause 11(E) shall apply."

OSL1

DATED 9TH FEBRUARY 1996

APPROVED - JA

(1) BANK OF NEW YORK

(2) GOLDMAN SACHS INTERNATIONAL

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OVERSEAS SECURITIES BORROWING AGREEMENT
(FOR NON-US BORROWERS)

Clifford Chance,
200 Aldersgate Street
London, EC1A 4JJ.

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THIS AGREEMENT is made the 9th day of FEBRUARY 1996

BETWEEN:-

- (1) **THE BANK OF NEW YORK** a company incorporated under the laws of the state of New York, United States of America whose principal place of business in the United Kingdom is at 46 Berkeley Street, London W1X 6AA (the "Agent") and
- (2) **GOLDMAN SACHS INTERNATIONAL** a company incorporated under the laws of England and Wales whose registered office is at Peterborough Court, 133 Fleet Street, London EC4A 2BB (the "Borrower")

WHEREAS:-

- (A) The Agent wishes to enter this Agreement, and to make available to the Borrower Securities (as hereinafter defined) in accordance with the terms and conditions hereof, as agent for certain of its clients, whose identities may at the discretion of the Agent from time to time be disclosed in writing to the Borrower, and who are Beneficial Owners of the Securities which are the subject of this Agreement (the "Beneficial Owners").
- (B) The Parties hereto are desirous of agreeing a procedure whereby the Agent on behalf of the Beneficial Owners will make available to the Borrower from time to time Securities (as hereinafter defined) to enable the Borrower to fulfil a contract to sell such Securities or to replace an existing loan of Securities to a third party or to on lend such Securities as part of a chain of arrangements to enable the final party in such chain to fulfil a contract to sell such Securities.
- (C) All transactions carried out under this Agreement will be effected in accordance with the Rules (as hereinafter defined) **TOGETHER WITH** current market practices, customs and conventions.

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

1. INTERPRETATION

- (A) In this Agreement:-

"Act of Insolvency"

means in relation to either Party:

- (i) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors, or
- (ii) its admitting in writing its inability to pay its debts as they become due, or
- (iii) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property, except in relation to a voluntary liquidation for the purpose of reconstruction or amalgamation on terms previously approved in writing by the other Party, or
- (iv) the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or other insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for winding-up or any analogous proceeding) not having been stayed or dismissed within 30 days of its filing, or
- (v) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property;

"Alternative Collateral"

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

"Appropriate Tax Vouchers"

means:-

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

"Assured Payment"

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

"Assured Payment Agreement"

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

"Base Currency"

has the meaning given in the Schedule hereto;

"Bid Price"

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

"Bid Value"

means:-

- (a) in relation to Equivalent Collateral at a particular time:-
 - (i) in relation to Collateral Type A (ix) (more specifically referred to in the Schedule) the Value thereof as calculated in accordance with such Schedule;
 - (ii) in relation to all other types of Collateral (more specifically referred to in the Schedule) the amount which would be received on a sale of such Collateral at the Bid Price thereof at such time less all brokers fees and commissions and all other costs, fees and expenses that would be incurred in connection with selling or otherwise realising such Equivalent Collateral, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out such sale or realisation and adding thereto the amount of any interest, dividends, distributions or other amounts paid to the Agent prior to such time in respect of such Equivalent Collateral or the original Collateral held gross of all and any tax deducted or paid in respect thereof;

and

- (b) in relation to Equivalent Securities at a particular time the amount which would be received on a sale of such Equivalent Securities at the Bid Price thereof at such time less all brokers fees and commissions and all other 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;

"Borrowing Request"

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

"Business Day"

means a day on which banks and securities markets are open for business in the place(s) where the relevant loaned Securities and Collateral are to be delivered, and on which the Agent and Borrower are open for business.

"Cash Collateral"

means Collateral that takes the form of a deposit of currency;

**"Central Gilts Office" or
"CGO"**

means the computer based system managed by the Bank of England to facilitate the book-entry transfer of gilt-edged securities;

"CGO Collateral"

shall have the meaning specified in paragraph B of the Schedule;

"CGO Rules"

means the requirements of the CGO for the time being in force as defined in the membership agreement regulating membership of the CGO;

"Close of Business"

means the time at which banks close in the business centre in which payment is to be made or Collateral is to be delivered;

"Collateral"

means such securities or financial instruments or deposits of currency as are referred to in the Schedule hereto or any combination thereof which are delivered by the Borrower to the Agent in accordance with this Agreement and shall include the certificates and other documents of or evidencing title and

transfer in respect of the foregoing (as appropriate), and shall include Alternative Collateral;

**"Equivalent Collateral" or
"Collateral equivalent to"**

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

- (a) in the case of conversion, subdivision or consolidation the securities into which the relevant Collateral has been converted, subdivided or consolidated;
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of a takeover, a sum of money or securities, being the consideration or alternative consideration which the Borrower has directed the Agent to accept in accordance with Clause 4(B)(iii);
- (d) in the case of a call on partly paid securities, the paid-up securities **PROVIDED THAT** the Borrower shall have paid to the Agent the sum due;
- (e) in the case of a capitalisation issue, the relevant Collateral **TOGETHER WITH** the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the relevant Collateral **TOGETHER WITH** the securities allotted thereon, which the Borrower has directed the Agent to take up in accordance with Clause 4(B)(iii), **PROVIDED**

THAT the Borrower shall have paid to the Agent all and any sum due in respect thereof;

- (g) In the event that a Distribution (as defined in Clause 4(B)(i)) is made in respect of the relevant Collateral in the form of securities or a certificate which may at a future date be exchanged for securities or where an option is exercised in accordance with Clause 4(B)(iii) to take a Distribution in the form of securities or a certificate which may at a future date be exchanged for securities, the relevant Collateral **TOGETHER WITH** securities or a certificate equivalent to those allotted;
- (h) in the case of any event similar to any of the foregoing, the relevant collateral **TOGETHER WITH** or replaced by a sum of money or securities equivalent to that received in respect of such collateral resulting from such event;

"Equivalent Securities"

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

- (a) in the case of conversion, subdivision or consolidation the securities into which the borrowed Securities have been converted, subdivided or consolidated;
- (b) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (c) in the case of takeover, a sum of money or securities, being the consideration or alternative consideration

which the Agent has directed the Borrower to accept in accordance with Clause 4(B)(iii);

- (d) in the case of a call on partly paid securities, the paid-up securities **PROVIDED THAT** the Agent shall have paid to the Borrower the sum due;
- (e) in the case of a capitalisation issue, the borrowed Securities **TOGETHER WITH** the securities allotted by way of a bonus thereon;
- (f) in the case of a rights issue, the borrowed Securities **TOGETHER WITH** the securities allotted thereon, which the Agent has directed the Borrower to take up in accordance with Clause 4(B)(iii), **PROVIDED THAT** the Agent shall have paid to the Borrower all and any sum due in respect thereof;
- (g) In the event that a Distribution (as defined in Clause 4(B)(i)) is made in respect of the borrowed Securities in the form of securities or a certificate which may at a future date be exchanged for securities or where an option is exercised in accordance with Clause 4(B)(iii) to take a Distribution in the form of securities or a certificate which may at a future date be exchanged for securities, the borrowed Securities **TOGETHER WITH** securities or a certificate equivalent to those allotted;
- (h) in the case of any event similar to any of the foregoing, the borrowed Securities **TOGETHER WITH** or replaced by a sum of money or securities equivalent to that received in respect of such borrowed Securities resulting from such event;

"Event of Default"

has the meaning given in Clause 13;

"Margin"

shall have the meaning specified in the Schedule hereto;

"Nominee"

means an agent appointed by either Party and approved (if appropriate) as such by the Inland Revenue to accept delivery of, hold or deliver Securities, Equivalent Securities, Collateral and/or Equivalent Collateral on its behalf whose appointment has been notified to the other Party;

"Offer Price"

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

"Offer Value"

means:-

- (a) in relation to Collateral equivalent to Collateral type A (ix) (more specifically referred to in the Schedule hereto) the Value thereof as calculated in accordance with such Schedule; and
- (b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral (more specifically referred to in the Schedule hereto) the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price thereof at such time together with all brokers fees and commissions, transfer taxes and all other 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;

"Parties"

means the Agent (which term shall, for the purposes of the definition of "Act of Insolvency" and Clauses 4 (A) and 8 where the context so requires, include any Relevant Beneficial Owner) and the Borrower and "Party" shall be construed accordingly;

"Reference Price"

means:

- (a) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral equivalent to types A (iii), (iv), (v) and (viii) (more specifically referred to in the Schedule hereto) such price as is equal to the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service (such as the services provided by Reuters, Extel Statistical Services and Telerate) reasonably chosen in good faith by the Agent or if unavailable the market value thereof as derived from the prices or rates bid by a reputable dealer for the relevant instrument reasonably chosen in good faith by Agent, in each case at Close of Business on the previous Business Day.
- (b) in relation to the valuation of Collateral and/or Collateral equivalent to Collateral types A(ii), (vi) and (vii), (more specifically referred to in the Schedule hereto), the market value thereof as derived from the rates bid by Barclays Bank PLC for such instruments or, in the absence of such a bid, the bid rate established by the London Discount Market Association for such instruments at Close of Business on the previous Business Day;

"Relevant Beneficial Owners"

means all and any Beneficial Owners whose Securities are being borrowed in accordance with this Agreement. For the avoidance of doubt this term shall not include such Beneficial Owners whose Securities are not currently the subject of a loan;

"Rules"

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

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

"Securities"

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

"Settlement Bank"

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

"Settlement Date"

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

"The Stock Exchange"

means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

"Value"

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

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

(C) Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "redeliver" etc. which are used to reflect terminology used in the market for transactions of the kind provided

for in this Agreement, title to Securities "borrowed" or "lent" and "Collateral" provided in accordance with this Agreement shall pass from one Party to another as provided for in this Agreement, the Party obtaining such title being obliged to redeliver Equivalent Securities or Equivalent Collateral as the case may be.

- (D) For the purposes of determining any prices or values of Securities, Equivalent Securities, Collateral or Equivalent Collateral (including Cash Collateral) under this Agreement prices, values or amounts stated in currencies other than the Base Currency shall be converted into the Base Currency at the spot rate on the London market for the purchase of the Base Currency with the currency concerned, at or about 11.00 a.m. London time on the day on which the calculation is to be made or, if that day is not a Business Day or the calculation needs to be made before 11.00 a.m., on that day, the immediately preceding Business Day.
- (E) Where at any time there is in existence any other agreement between the Parties the terms of which make provision for the lending of Securities (as defined in this Agreement) as well as other securities the terms of this Agreement shall apply to the lending of such Securities to the exclusion of any other such agreement.

2. LOANS OF SECURITIES

- (A) The Agent will lend Securities to the Borrower, and the Borrower will borrow Securities from the Agent in accordance with the terms and conditions of this Agreement and with the Rules **PROVIDED ALWAYS THAT** the Agent shall have received from the Borrower and accepted (by whatever means) a Borrowing Request.
- (B) The Borrower has the right to reduce the amount of Securities referred to in a Borrowing Request **PROVIDED THAT** the Borrower has notified the Agent of such reduction in good time to enable the revised request to be implemented on the Settlement Date, and the Agent shall have accepted such reduction (by whatever means).
- (C) In the event of the Agent being unable to lend such Securities on the date requested by the Borrower, the Agent shall advise the Borrower accordingly and may notify the Borrower of the amount and type of Securities available and/or an alternative date on which it is able to lend such Securities and the Borrower shall notify the Agent of its acceptance or refusal thereof as soon as reasonably practicable.

3. DELIVERY OF SECURITIES

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

4. RIGHTS AND TITLE

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

- (i) any Securities borrowed pursuant to Clause 2;
- (ii) any Equivalent Securities redelivered pursuant to Clause 7;
- (iii) any Collateral delivered pursuant to Clause 6;
- (iv) any Equivalent Collateral redelivered pursuant to Clauses 6 or 7;

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

(B) (i) The Borrower shall, on the date of the payment or distribution of any interest, dividends or other distribution of any kind whatsoever (each a "Distribution") on or with respect to any borrowed Securities, or on such other date as the Parties may from time to time

agree (the "Relevant Payment Date") pay and deliver a sum of money or property equivalent to the same (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Agent or its Nominee, irrespective of whether the Borrower received the same. In the case of any Distribution comprising a payment, the amount (the "Manufactured Dividend") payable by the Borrower shall be equal to the amount of the relevant Distribution together with an amount equivalent to any deduction, withholding or payment for or on account of tax made by the relevant issuer (or on its behalf) in respect of such Distribution together with an amount equal to any other tax credit associated with such Distribution (including for the avoidance of doubt, a tax credit in respect of *avoir fiscal*) unless a lesser amount is agreed between the Parties or an Appropriate Tax Voucher (together with any further amount which may be agreed between the Parties to be paid) is provided in lieu of such deduction, withholding, payment or tax credit **PROVIDED THAT** where either the Borrower or any person to whom the Borrower has on-lent the Securities, is unable to make payment of the Manufactured Dividend to the Agent without accounting to the Inland Revenue for any amount of relevant withholding tax (as defined in paragraph 4(5)(a) of Schedule 23A to the Income and Corporation Taxes Act 1988 and at the rate prescribed by Regulation 3 SI 1993/2004)) and/or any amount of UK tax, (if appropriate) the Borrower shall pay to the Agent or its Nominee, in cash, the Manufactured Dividend less amounts equal to such relevant withholding tax and UK tax. The Borrower shall at the same time if requested supply Appropriate Tax Vouchers to the Agent. In the event of the Borrower failing to remit either directly or by its Nominee the said sum, the Borrower hereby undertakes to pay a rate to the Agent (upon demand) on the amount due and outstanding at the rate provided for in Clause 15 hereof. Interest on such sum shall accrue daily commencing on and inclusive of the third Business Day after the Relevant Payment Date, unless otherwise agreed between the Parties.

- (ii) Each Party hereby undertakes to arrange, to the extent practicable, for any voting rights attached to any borrowed Securities and/or Equivalent Securities held in respect thereof, or any Collateral and/or Equivalent Collateral held, to be exercised in accordance with the instructions of the Agent or Borrower (as the case may be) **PROVIDED ALWAYS THAT** each Party shall use its best endeavours to notify the other of its instructions in writing no later than seven Business Days prior to the date upon which such votes are exercisable or as otherwise agreed between the Parties. For the avoidance of doubt the Parties agree that subject as hereinbefore provided any voting rights attaching to such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral shall be exercisable by the persons in whose name they are registered or in the case of Securities, Equivalent Securities, Collateral and/or Equivalent Collateral in bearer form,

the persons by or on behalf of whom they are held, unless otherwise agreed between the Parties.

- (iii) Each Party hereby undertakes to procure, to the extent practicable, that all reasonable instructions received from the other Party in respect of conversions, subdivisions, consolidations, redemptions, takeovers, pre-emptions, options (including an option to take a Distribution in the form of Securities or a certificate which may at a future date be exchanged for Securities) or other rights, are complied with in respect of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral **PROVIDED** **THAT** each Party shall use its best endeavours to notify the other of its instructions in writing no later than ~~three~~ **Seven** Business Days prior to the date upon which such action is to be taken, unless otherwise agreed between the Parties.

- (iv) Any payment to be made by the Borrower under this Clause shall be made in a manner to be agreed between the Parties.

5. RATES

- (A) The Borrower shall pay to the Agent, in respect of each loan of Securities, such rate as shall be agreed between the Parties from time to time on the daily Value of Securities borrowed pursuant to this Agreement and in respect of which Equivalent Securities are not for the time being redelivered or otherwise accounted for to the Agent.
- (B) The Agent shall pay to the Borrower such rates as shall be agreed between the Parties from time to time on any Cash Collateral deposited with the Agent pursuant to this Agreement.
- (C) The payments referred to in sub-clauses (A) and (B) hereof shall (subject to sub-Clause (D) below) be payable in the Base Currency and 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 repaid or otherwise accounted for to the Agent in accordance with this Agreement. The sums so accruing and payable shall be paid in the case of a fixed term loan, at the maturity of such loan and, in the case of other loans, at such times as are mutually agreed. Any payments due under this Clause may be set off against one another.
- (D) Any monies paid pursuant to sub-clauses (A) and (B) hereof may be in the form of currency other than the Base Currency paid in a manner and at a place to be agreed between the parties.

6. COLLATERAL

- (A) (i) Subject to sub-clauses (B) and (C) below the Borrower undertakes to deliver Collateral to the Agent (or in accordance with the Agent's instructions) **TOGETHER WITH** appropriate instruments of transfer duly stamped and such other instruments as may be requisite to vest title thereto in the Agent. Deliveries of Collateral shall occur simultaneously with the delivery of the borrowed Securities (in the case of Securities where the arrangements for delivery are such that simultaneous delivery is possible) and on or before delivery of the borrowed Securities (in the case of other Securities) as the Parties shall agree. Collateral may be provided in any of the forms in the Schedule hereto (as agreed between the Parties);
 - (ii) where Collateral is delivered to the Agent's Nominee any obligation under this Agreement to redeliver or otherwise account for Equivalent Collateral shall be an obligation of the Agent notwithstanding that any such redelivery may be effected in any particular case by the Nominee.
- (B) Where CGO Collateral is provided to the Agent or its Nominee:-
- (i) if such CGO Collateral is provided by member-to-member delivery or delivery-by-value in accordance with the provisions of the CGO Rules from time to time in force, the obligation of the Agent shall be to redeliver Equivalent Collateral through the CGO to the Borrower in accordance with this Agreement. Any references, (howsoever expressed) in this Agreement, the Rules, and/or any other agreement or communication between the Parties to an obligation to redeliver such Equivalent Collateral shall be construed accordingly. If the loan of Securities in respect of which such Collateral was provided has not been discharged when the Collateral is redelivered, the Assured Payment obligation generated on such redelivery shall be deemed to constitute a payment of money which shall be treated as Cash Collateral until the loan is discharged, or further Equivalent Collateral is provided later during that Business Day. This procedure shall continue daily where CGO Collateral is delivered-by-value for as long as the relevant loan remains outstanding;

- (ii) where CGO Collateral is provided by delivery-by-value to a Agent or its Nominee the Borrower may consolidate such Collateral with other CGO Collateral provided by the same delivery to a third party for whom the Agent or its Nominee is acting.
- (C) Where Cash Collateral is provided the sum of money so deposited as such sum may be adjusted in accordance with Clause 6(F) shall be held by the Agent until Equivalent Securities (in respect of the Securities borrowed) are redelivered. Subject to Clause 6(F)(ii), the Cash Collateral shall be repaid at the same time as such delivery to the Lender of Equivalent Securities. If the Borrower fails to comply with its obligations for such redelivery of Equivalent Securities the Agent shall have the right to apply the Cash Collateral by way of set-off in accordance with Clause 8.
- (D) The Borrower may from time to time call for the repayment of any Cash Collateral or the redelivery of Collateral equivalent to any Collateral delivered **PROVIDED THAT** at the time of such repayment or redelivery the Borrower delivers Alternative Collateral acceptable to the Agent.
- (E) Where Collateral is delivered in respect of which any interest, dividend or other distribution may become payable, the Borrower shall call for the redelivery of Collateral equivalent to such Collateral in good time to ensure that such Equivalent Collateral may be delivered prior to any such interest, dividend or other distribution becoming payable to the Agent, unless in relation to such Collateral the Parties are satisfied before the relevant Collateral is transferred that the condition set out in paragraph 5(1) of Schedule 23A of the Income and Corporation Taxes Act 1988 will be met. At the time of such redelivery the Borrower shall deliver Alternative Collateral acceptable to the Agent. Where the Agent receives any interest, dividend or other distribution in respect of Collateral in circumstances where the Parties are satisfied that the condition in paragraph 5(1) of Schedule 23A of the Income and Corporation Taxes Act 1988 will be satisfied, then the Agent shall on the date on which the Agent receives such payment pay and deliver a sum of money or property equivalent to the amount of such payment (with any such endorsements or assignments as shall be customary and appropriate to effect the delivery) to the Borrower and shall supply Appropriate Tax Vouchers (if any) to the Borrower.
- (F) The Value of the Collateral delivered to or deposited with the Agent or its nominated bank or depositary shall bear from day to day the same proportion to the Value of the borrowed Securities as the Collateral represented when it was originally provided. Accordingly unless otherwise agreed between the Parties:

- (i) the Collateral to be delivered or deposited while the loan of Securities continues shall be equivalent in Value to the aggregate of the Value of the borrowed Securities and the Margin applicable thereto;
- (ii) if on any Business Day the Value of the Collateral exceeds the aggregate of the Value of the borrowed Securities and the Margin applicable thereto, the Agent shall (on demand) repay such Cash Collateral or redeliver to the Borrower such Equivalent Collateral as is required to maintain the agreed Margin at Close of Business on the said Business Day;
- (iii) if on any Business Day the Value of the Collateral falls below the aggregate of the Value of the borrowed Securities and the Margin applicable thereto, the Borrower shall (on demand) provide such further Collateral to the Agent as is required to maintain the agreed Margin at Close of Business on the said Business Day.

7. REDELIVERY OF EQUIVALENT SECURITIES

- (A) The Borrower undertakes to redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Borrowing Request. For the avoidance of doubt any reference herein or in any other agreement or communication between the Parties (howsoever expressed) to an obligation to redeliver or account for or act in relation to borrowed Securities shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Securities.
- (B) Subject to Clause 8 hereof and the terms of the relevant Borrowing Request the Agent may call for the redelivery of all or any Equivalent Securities at any time in the ordinary course of business upon notice of not less than the standard settlement time for such Equivalent Securities on the exchange 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 Agent's instructions (in the case of Securities where the arrangements for delivery are such that simultaneous delivery is possible) simultaneously with the redelivery of Collateral equivalent to the Collateral delivered pursuant to Clause 6 in respect of the relevant borrowed Securities or (in the case of other Securities) as the parties shall agree. Upon tender to the Lender of the Equivalent Securities in accordance with such call, the Agent shall repay any Cash Collateral, redeliver to the Borrower Collateral equivalent to the Collateral delivered pursuant to

Clause 6 in respect of the borrowed Securities and pay any rates then due and payable to the Borrower. For the avoidance of doubt any reference herein or in any other agreement or communication between the Parties (however expressed) to an obligation to redeliver or account for or act in relation to Collateral shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Collateral.

- (C) If the Borrower does not redeliver Equivalent Securities in accordance with such call, the Agent may elect to continue the loan of Securities **PROVIDED THAT** if the Agent does not elect to continue the loan the Agent may by notice to the Borrower elect to terminate the loan. Upon the expiry of such notice the provisions of Clause 8 shall apply.
- (D) In the event that as a result of the failure of the Borrower to redeliver Equivalent Securities to the Agent in accordance with this Agreement a "buy-in" is exercised against the Agent 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 Agent for the total costs and expenses reasonably incurred by the Agent as a result of such "buy-in".
- (E) The Borrower shall, except in the case of fixed term loans where specific terms to the contrary are included in the relevant Borrowing Request, 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 Agent in accordance with the Agent's instructions. The Agent shall accept such redelivery and simultaneously therewith shall repay to the Borrower any Cash Collateral or, as the case may be, redeliver Collateral equivalent to the Collateral provided by the Borrower pursuant to Clause 6 in respect thereof.
- (F) Where a Letter of Credit is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by the Agent redelivering for cancellation the Letter of Credit so provided, or where the Letter of Credit is provided in respect of more than one loan, by the Lender consenting to a reduction in the value of the Letter of Credit.

8. SET-OFF ETC.

- (A) On the date (the "Performance Date") that Equivalent Securities are redelivered by the Borrower in accordance with the provisions of this Agreement the Agent shall redeliver the Equivalent Collateral (in the case of Securities where the arrangements for delivery are such that simultaneous delivery is possible) simultaneously with the redelivery of Collateral equivalent to the Collateral delivered pursuant to Clause 6 in respect of the

relevant borrowed Securities or (in the case of other Securities) as the parties shall agree and repay any Cash Collateral held (in respect of the Equivalent Securities to be redelivered) to the Borrower. Neither Party shall be obliged to make delivery (or make a payment as the case may be) to the other unless it is satisfied that the other Party will make such delivery (or make an appropriate payment as the case may be) to it in accordance with the terms of this Agreement. 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 (the "Defaulting Party") and in this event:-

- (i) the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each party shall be established in accordance with Clause 8(B); and
- (ii) on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) the sums due from one Party shall be set-off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the Performance Date.

(B) For the purposes of Clause 8(A) the Relevant Value:-

- (i) of any cash payment obligation shall equal its par value in the Base Currency (any conversion required in respect of any obligation in another currency to be made in accordance with the provisions of Clause 1(D) hereof);
- (ii) of any Securities to be delivered by the Defaulting Party shall, subject to paragraph (iv) below, equal the Offer Value thereof;
- (iii) of any Securities to be delivered to the Defaulting Party shall, subject to paragraph (iv) below, equal the Bid Value thereof; and

- (iv) of any Securities to be delivered, if an Event of Default has occurred (in respect of either Party) or if either Party has breached any of its warranties or obligations under any of Clauses 10, 11, 12 and 15 and (in the case of any such breach) the other Party has served written notice on it thereof, shall equal the Value thereof calculated at the time such Event of Default occurs or such notice is served (as the case may be) **TOGETHER WITH** any other sums then owing by such Party.
- (C) For the purposes of Clause 8(B) the Bid Value and Offer Value of any Securities shall be calculated at the close of business in the relevant market for such Securities on the Performance Date.
- (D) Any reference in this Clause 8 to Securities shall include any asset other than cash provided by way of Collateral.
- (E) If an Event of Default occurs and/or where requisite notice has been served in accordance with Clause 13 in respect of any Party (or if any Party has breached any of its warranties or obligations under any of Clauses 10, 11, 12 and 15 and the other Party has served written notice on it thereof), that Party's delivery and payment obligations (and any other obligations it has under this Agreement) shall be accelerated so as to require performance thereof at the time an Event of Default occurs or such notice is served (as the case may be).
- (F) If the Borrower or the Agent for any reason fail to comply with their respective obligations under Clauses 6(D) or 6(E) to call for the redelivery of or redeliver Equivalent Collateral or repay Cash Collateral the provisions of sub-paragraphs (i) and (ii) of Clause 8(A) and Clauses 8(B) and 8(C) shall apply and the Party who has failed to comply with its obligations shall be treated as the Defaulting Party for the purpose of such provisions.
- (G) Where, pursuant to the provisions of this Agreement, a Party performs an obligation in respect of the delivery of Securities or Collateral or the payment or transfer of money (by way of deposit or otherwise) at a time when the other Party, in accordance with this Agreement, is required to perform a similar obligation but, nevertheless, the second Party's obligation has not yet been performed, the second Party shall hold on trust for the first Party any assets (including cash) that it receives from the first Party prior to the performance of its own obligation being completed **PROVIDED ALWAYS THAT** the second Party shall be at liberty to dispose of any such assets to the extent such disposal occurs in the ordinary course of its business for the settlement of bargains and

relevant borrowed Securities or (in the case of other Securities) as the parties shall and repay any Cash Collateral held (in respect of the Equivalent Securities redelivered) to the Borrower. Neither Party shall be obliged to make delivery (or a payment as the case may be) to the other unless it is satisfied that the other Party make such delivery (or make an appropriate payment as the case may be) to in accordance with the terms of this Agreement. 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 (the "Defaulting Party") and in this event:-

- (i) the Relevant Value of the Securities to be delivered (or payment to be made, as the case may be) by each party shall be established in accordance with Clause 8(B); and
- (ii) on the basis of the Relevant Values so established, an account shall be taken (as at the Performance Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) the sums due from one Party shall be set-off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the Performance Date.

(B) For the purposes of Clause 8(A) the Relevant Value:-

- (i) of any cash payment obligation shall equal its par value in the Base Currency (any conversion required in respect of any obligation in another currency to be made in accordance with the provisions of Clause 1(D) hereof);
- (ii) of any Securities to be delivered by the Defaulting Party shall, subject to paragraph (iv) below, equal the Offer Value thereof;
- (iii) of any Securities to be delivered to the Defaulting Party shall, subject to paragraph (iv) below, equal the Bid Value thereof; and

- (iv) of any Securities to be delivered, if an Event of Default has occurred (in respect of either Party) or if either Party has breached any of its warranties or obligations under any of Clauses 10, 11, 12 and 15 and (in the case of any such breach) the other Party has served written notice on it thereof, shall equal the Value thereof calculated at the time such Event of Default occurs or such notice is served (as the case may be) **TOGETHER WITH** any other sums then owing by such Party.
- (C) For the purposes of Clause 8(B) the Bid Value and Offer Value of any Securities shall be calculated at the close of business in the relevant market for such Securities on the Performance Date.
- (D) Any reference in this Clause 8 to Securities shall include any asset other than cash provided by way of Collateral.
- (E) If an Event of Default occurs and/or where requisite notice has been served in accordance with Clause 13 in respect of any Party (or if any Party has breached any of its warranties or obligations under any of Clauses 10, 11, 12 and 15 and the other Party has served written notice on it thereof), that Party's delivery and payment obligations (and any other obligations it has under this Agreement) shall be accelerated so as to require performance thereof at the time an Event of Default occurs or such notice is served (as the case may be).
- (F) If the Borrower or the Agent for any reason fail to comply with their respective obligations under Clauses 6(D) or 6(E) to call for the redelivery of or redeliver Equivalent Collateral or repay Cash Collateral the provisions of sub-paragraphs (i) and (ii) of Clause 8(A) and Clauses 8(B) and 8(C) shall apply and the Party who has failed to comply with its obligations shall be treated as the Defaulting Party for the purpose of such provisions.
- (G) Where, pursuant to the provisions of this Agreement, a Party performs an obligation in respect of the delivery of Securities or Collateral or the payment or transfer of money (by way of deposit or otherwise) at a time when the other Party, in accordance with this Agreement, is required to perform a similar obligation but, nevertheless, the second Party's obligation has not yet been performed, the second Party shall hold on trust for the first Party any assets (including cash) that it receives from the first Party prior to the performance of its own obligation being completed **PROVIDED ALWAYS THAT** the second Party shall be at liberty to dispose of any such assets to the extent such disposal occurs in the ordinary course of its business for the settlement of bargains and

PROVIDED FURTHER THAT any such trust shall terminate upon the completion of the performance of the aforesaid obligations of the second Party or disposal of such assets whichever shall first occur.

- (H) Subject to and without prejudice to its rights under Clause 8(A) either Party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities, Collateral and cash transfers waive its right under this Agreement in respect of simultaneous delivery and/or payment **PROVIDED THAT** no such waiver in respect of one transaction shall bind it in respect of any other transaction.
- (I) The provisions of Clause 8(A) shall apply mutatis mutandis where either Party fails for any reason to comply with its respective obligations under Clause 6(F) for a period of two days or, where a Letter of Credit is provided as Collateral the Borrower fails to procure delivery to the Lender of a Letter of Credit to the requisite value which is effective as from the day after expiry of the existing letter of credit no later than one Business Day prior to the expiry of the existing Letter of Credit, and following notification of such failure the relevant Party has failed to make arrangements which are sufficient to assure full delivery to the other Party.

9. TAXATION

- (A) The Borrower hereby undertakes promptly to pay and account for any transfer or similar duties or taxes chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement, and shall indemnify and keep indemnified the Relevant Beneficial Owners against any liability arising in respect thereof as a result of the Borrower's failure to do so.
- (B) For the avoidance of doubt, in an event other than the redelivery of securities and/or collateral of the same kind and amount as the Securities borrowed and/or the Collateral provided (as the case may be), the related loan of Securities and/or the provision of such Collateral may not be subject to the provisions of section 129 of the Income and Corporation Taxes Act 1988 or any statutory modification or re-enactment thereof for the time being in force.

10. BENEFICIAL OWNERS' WARRANTIES

The Agent hereby warrants and undertakes to the Borrower on behalf of the Beneficial Owners on a continuing basis to the intent that such warranties shall also be severally binding upon the Beneficial Owners and shall survive the completion of any transaction contemplated herein that:

- (A) the Beneficial Owners are duly authorised and empowered to perform their respective duties and obligations under this Agreement;
- (B) the Beneficial Owners are not restricted under the terms of their respective constitutions or in any other manner from lending Securities in accordance with this Agreement or from otherwise performing their respective obligations hereunder;
- (C) the Beneficial Owners are absolutely entitled to pass full beneficial ownership of all Securities respectively provided hereunder to the Borrower free from all liens, charges and encumbrances;
- (D) where a Beneficial Owner is not resident in the United Kingdom for tax purposes and is not carrying on a trade in the United Kingdom through a branch or agency, the Beneficial Owner has (i) delivered or caused to be delivered to the Agent a duly completed and certified Certificate (MOD2) or a photocopy thereof bearing an Inland Revenue acknowledgement and unique number and such Certificate or photocopy remains valid or (ii) has taken all necessary steps to enable a specific authorisation to make gross payment of the Manufactured Dividend to be issued by the Inland Revenue;

11. AGENT'S WARRANTIES

The Agent hereby warrants and undertakes to the Borrower on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that:

- (A) the Agent has been approved as an agent by the Inland Revenue for the purposes of the Rules and will do nothing to prejudice such approved status;
- (B) the Agent is duly authorised by the Beneficial Owners to enter into this Agreement on their respective behalf;
- (C) where a Beneficial Owner is not resident in the United Kingdom for tax purposes and is not carrying on a trade in the United Kingdom through a branch or agency, the Agent has delivered to the Borrower either a duly completed and valid Certificate MOD2 or

a photocopy thereof bearing an Inland Revenue acknowledgement and unique number or a specific authorisation issued by the Inland Revenue (either identifying the Relevant Beneficial Owner of the Securities or bearing a uniquely designated account number) to make gross payment of the Manufactured Dividend;

- (D) the Agent is an approved UK collecting agent;

12. BORROWER'S WARRANTIES

The Borrower hereby warrants and undertakes to the Beneficial Owners on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that:

- (A) the Borrower 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) the Borrower 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) the Borrower is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it hereunder to the Relevant Beneficial Owner free from all liens, charges and encumbrances; and
- (D) the Borrower is approved as such by the Inland Revenue and is an approved UK intermediary/approved UK collecting agent.

13. EVENTS OF DEFAULT

Each of the following events occurring in relation to either Party (the "Defaulting Party"), the other Party being the "Non-Defaulting Party") shall be an Event of Default for the purpose of Clause 8 (but, for the avoidance of doubt, only in relation to the Borrower or the Relevant Beneficial Owner concerned, as the case may be):-

- (A) an Act of Insolvency occurring with respect to any Relevant Beneficial Owner or to the Borrower and (except in the case of an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or any analogous

officer of the Defaulting Party in which case no such notice shall be required) the Non-Defaulting Party serves written notice on the Defaulting Party;

- (B) any representations made by the Agent, any Relevant Beneficial Owner or the Borrower shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (C) the Agent, any Relevant Beneficial Owner or the Borrower shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder and/or in respect of any loan and the Non-Defaulting Party serves written notice on the Defaulting Party;
- (D) the Borrower being declared in default by the appropriate authority under the Rules or being suspended or expelled from membership of or participation in any securities exchange or association or other self-regulatory organisation, or suspended from dealing in securities by any government agency;
- (E) any of the assets of any Relevant Beneficial Owner or the Borrower or the assets of investors held by or to the order of the Agent, any Relevant Beneficial Owner or the Borrower being transferred or ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the Non-Defaulting Party serves written notice on the Defaulting Party, or
- (F) the Agent, any Relevant Beneficial Owner or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice relating to such failure on it.

The Borrower shall notify the Agent if an Event of Default occurs in relation to the Borrower and the Agent shall notify the Borrower within one Business Day if it becomes aware of an Event of Default occurring in relation to itself or any Relevant Beneficial Owner.

14. AGENCY DISCLOSURE AND SEVERAL LIABILITY

- (A) Upon request, the Agent shall make available to the Borrower the names of the Relevant Beneficial Owners on whose behalf the Agent is making loans hereunder.
- (B) As the Agent enters into this Agreement as Agent for the Beneficial Owners the Agent shall not itself have any personal liability under this Agreement except in respect of any breach of the warranties set out in Clause 11. The liability of the Beneficial Owners

in respect of the duties and obligations accepted hereby by the Agent on their behalf shall be several.

15. OUTSTANDING PAYMENTS

In the event of either Party failing to remit either directly or by its Nominee sums in accordance with this Agreement such Party hereby undertakes to pay a rate to the other Party upon demand on the net balance due and outstanding of 1% above the average of the rates offered by Barclays Bank PLC, Lloyds Bank Plc, Midland Bank plc and National Westminster Bank PLC in the London interbank market for one month deposits in the Base Currency at the time the relevant payment is due.

16. FINANCIAL STATEMENTS

The Borrower agrees to furnish the Agent, upon request, with copies of its most recent available audited balance sheet.

17. TERMINATION OF COURSE OF DEALINGS BY NOTICE

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

18. GOVERNING PRACTICES

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

19. OBSERVANCE OF PROCEDURES

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

20. SEVERANCE

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

21. SPECIFIC PERFORMANCE

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

22. NOTICES

All notices issued under this Agreement shall be in writing (and shall include telex or facsimile messages) and shall be deemed validly delivered if sent by prepaid first class post to or left at the addresses or sent to the telex or facsimile number of the Parties respectively or such other addresses or telex or facsimile numbers as each Party may notify in writing to the other. The Borrower advises the Agent that it may record telephone conversations between the Parties and that such recording may take place without the use of a warning tone.

23. ASSIGNMENT

Neither Party may charge, assign or transfer all or any of its rights or obligations hereunder without the prior consent of the other Party and any purported assignment absent such consent is void, except for an assignment of all of the Borrower's rights and obligations hereunder in whatever form to a partnership, corporation, trust or organisation in whatever form that succeeds to all or substantially all of the Borrower's assets and business and that assumes such obligations by contract, operation of law or otherwise. Upon any such assumption of obligations, the Borrower shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such assumption.

24. NON-WAIVER

No failure or delay by either Party to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or

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

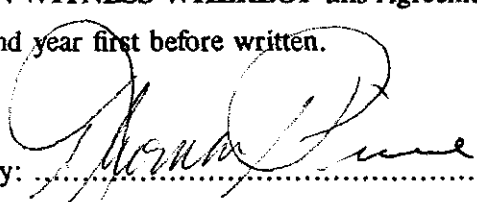
25. TIME

Time shall be of the essence of the Agreement.

26. GOVERNING LAW

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

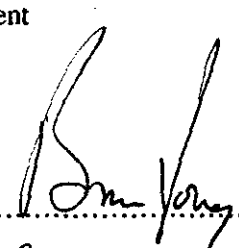
IN WITNESS WHEREOF this Agreement has been executed on behalf of the Parties hereto the day and year first before written.

By: 

THOMAS A. PRICE

Title: SENIOR VICE PRESIDENT

THE BANK OF NEW YORK,
as agent

By: 

BRICEBRIDGE H. YOUNG

Title: MANAGING DIRECTOR

GOLDMAN SACHS INTERNATIONAL

SCHEDULE

COLLATERAL

Types

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

- A.
- (i) British Government Stock and Sterling Issues by foreign governments (transferable through the CGO), in the form of an enfaced transfer deed or a long term collateral certificate or overnight collateral chit issued by the CGO accompanied (in each case) by an executed unenfaced transfer deed;
 - (ii) UK Government Treasury Bills;
 - (iii) U.S. Treasury securities, (i.e. bills, bonds and notes) and any other securities issued or fully guaranteed by the United States government or any agency, instrumentality or establishment of the United States government;
 - (iv) debt securities issued and sold primarily outside the United States by the central government of any OECD country or any agency or instrumentality thereof;
 - (v) debt securities issued by any supra-national organisation and which are rated AAA by a reputable rating agency;
 - (vi) Eligible Bank Bills;
 - (vii) Sterling Certificates of Deposit;
 - (viii) Foreign Currency Certificates of Deposit;
 - (ix) Letters of Credit;
- B. British Government Stock and other stock registered at the Bank of England which is transferable through the CGO to the Agent or its Nominee against an Assured Payment, hereinbefore referred to as CGO Collateral; and
- C. Cash Collateral.

Valuation of Collateral

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

- (A) in respect of Collateral types A (i) and B, the current CGO value calculated by reference to the middle market price of each stock as determined daily by the Government Broker, adjusted to include the accumulated interest thereon, and rounded up or down to the nearest number (the CGO Reference Price);
- (B) in respect of Collateral types A (ii), (iii), (iv), (v), (vi), (vii) and (viii) the Reference Price of those Securities;
- (C) in respect of Collateral type A (ix) the value specified therein.

Margin

The Value of the Collateral delivered by the Borrower to the Agent under the terms and conditions of this Agreement shall on each Business Day represent not less than the Value of the borrowed Securities together with a sum equal to 5% of such value or such other percentage (being not less than 2%) as may be agreed between the Parties ("the Margin").

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

BASE CURRENCY

The Base Currency applicable to this Agreement is US Dollars.