



**DISCLOSURE**  
**FULLY-PAID SECURITIES LENDING PROGRAM**

Please read these important disclosures carefully before deciding whether to participate in Apex Clearing's Fully-Paid Securities Lending Program and before signing a Master Securities Lending Agreement for the Apex Clearing's Fully-Paid Securities Lending Program. These disclosures describe important characteristics of, and risks associated with engaging in, securities lending transactions.

**I. INTRODUCTION**

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Apex Clearing offers eligible customers the ability to lend out certain of their fully paid and excess margin securities to Apex Clearing, which Apex Clearing may then lend to other customers of Apex Clearing or to other market participants who wish to use these shares for short selling or other purposes. "Fully-paid securities" are securities in a customer's account that have been completely paid for. "Excess-margin securities" are securities that have not been completely paid for, but whose market value exceeds 140% of the customer's margin debit balance. In this disclosure and in the relevant agreements, Apex Clearing collectively refers to fully-paid and excess margin securities as "Fully-Paid Securities" or "Fully-Paid Shares." Lending out your Fully-Paid Shares may be a way to increase the yield on your portfolio, because some shares are in high demand in the securities lending market and borrowers are willing to pay a loan fee for the use of your shares.

In the Fully-Paid Securities Lending Program (the "Program"), you permit Apex Clearing to borrow from you any Fully-Paid Securities in your portfolio and loan these securities out in the securities lending market. Apex Clearing will have the discretion to initiate loans of your securities. You will not be asked to approve each loan before it is initiated, but you can sell your shares at any time or terminate your participation in the program. Apex Clearing will pay you a loan fee for the shares that it borrows from you. Ordinarily Apex Clearing will pay you a percentage of the net loan fee received by Apex Clearing for lending your securities. Apex Clearing's net loan fee used to calculate your loan fees may be less than the gross fees received by Apex Clearing for relending your securities because of certain deductions and charges.

**II. BASIC MECHANICS OF A FULLY-PAID LENDING TRANSACTION**

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When the lending transaction takes place, your securities will be designated as on loan. In return, Apex Clearing will hold collateral for you to secure the amount of the loan. The current industry convention for the collateral calculation with respect to U.S. stocks is to multiply the security price by 102%, then round up to the nearest dollar, times the number of shares. Apex Clearing marks-to-market all positions daily

to reflect changes in security prices. Apex Clearing reserves the right to adjust to US industry convention should that change or to raise or lower the collateral amount based on local laws or market custom outside the US; however, Apex Clearing will never collateralize the stock loan for less than 100% of the value. For example, Customer A has enrolled in the Program and Apex Clearing has borrowed 5000 shares of XYZ from Customer. XYZ's closing price is \$22.15. The mark-to-market is calculated by rounding  $\$22.15 * 1.02 = \$22.59$  rounded up nearest dollar which is \$23, making the collateral calculation  $\$23 * 5000 = \$115,000$ .

Apex Clearing will be the counterparty borrower to all of the loans you make. That is, as a customer, you are transacting with Apex Clearing, which may, in turn, then transact on any relevant market. For all transactions in which you are lending your Fully-Paid Shares, Apex Clearing will be the borrower and Apex Clearing will be the party providing the collateral for you on the securities loan and paying your loan fees to you.

### **III. SECURITIES LOANED OUT BY YOU MAY NOT BE PROTECTED BY SIPC**

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The provisions of the Securities Investor Protection Act of 1970 may not protect you with respect to your securities loan transactions in the Program. Therefore, the collateral held for you may constitute the only source of satisfaction of Apex Clearing's obligation in the event Apex Clearing fails to return the securities.

### **IV. LOSS OF VOTING RIGHTS**

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The borrower of securities (and not you, as lender) has the right to vote, or to provide any consent or to take any similar action with respect to the loaned securities if the record date or deadline for such vote, consent, or other action falls during the term of the loan.

### **V. YOU CAN SELL YOUR LOANED SHARES AT ANY TIME**

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Even though you have loaned your shares out, you can sell those shares at any time, just like any other shares in your account with Apex Clearing. You do not have to wait for the shares to be returned to sell them. Even if the shares are not returned on time to settle your sale of the shares, Apex Clearing will be responsible for settling the sale, not you, and you will receive the proceeds from the sale of the shares on the normal settlement date for the sale.

### **VI. YOU CONTINUE TO OWN LOANED SHARES AND HAVE MARKET RISK ON THOSE SHARES**

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When you lend your shares, you continue to own the shares and you continue to have the market exposure inherent in ownership of the shares (i.e., if the share price decreases while you own the shares but are lending them out, the value of your position will decrease).

## **VII. LACK OF INTEREST ON COLLATERAL**

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You generally will not receive a separate interest payment from Apex Clearing on the collateral that is held for your benefit when you lend Fully-Paid Shares to Apex Clearing. You will only receive the loan fee rate that is recorded for lending your shares. This is because when you lend shares against collateral, you are effectively borrowing the collateral (just as Apex Clearing is borrowing your shares). Ordinarily you would pay an interest rate on the collateral to the stock loan counterparty (Apex Clearing) and then you would receive interest if you then deposited that collateral with a third party. In this case, these two potential interest payments cancel each other out and the net rate for the lending transaction is the net payment you will receive from lending your shares (reduced by any commissions, management fees or other applicable charges). The interest treatment on collateral may change from the above depending on the securities lending market and the collateral method.

## **VIII. THE SECURITIES LOANED OUT BY YOU MAY BE “HARD-TO-BORROW” BECAUSE OF SHORT SELLING OR MAY BE USED TO SATISFY DELIVERY REQUIREMENTS RESULTING FROM SHORT SALES**

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The type of securities that are generally attractive to borrowers in the securities lending market, and which generate the highest loan fees, are “hard to borrow” securities. When you lend your Fully-Paid Securities, it is likely that such securities will be used to facilitate one or more short sales where the borrower is selling shares in hopes that the stock will decline in value (the short seller later re-purchases the stock to pay back the stock loan). Since you are holding the shares “long” in your account, the activity of short sellers potentially could affect the long-term value of your holdings.

## **IX. POTENTIAL TAX IMPLICATIONS, INCLUDING PAYMENTS DEEMED CASH-IN-LIEU OF DIVIDEND PAID ON SECURITIES WHILE ON LOAN**

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When you lend your Fully-Paid Securities, you are entitled to receive the amount of all dividends and distributions made on or in respect of the loaned securities. However, you may receive cash payments “in lieu of” dividends. If you are a U.S. taxpayer, cash payments in lieu of dividends are not the same as qualified dividends for tax purposes and are taxed as normal ordinary income (up to 39.6%) instead of the preferential qualified dividend rate of 20% (U.S. federal income tax rates quoted here are for 2013 and are subject to change). If you are not a U.S. taxpayer, Apex Clearing may be required to withhold tax on payments in lieu of dividends and loan fees to you at 30% unless an exception applies.

It is solely within Apex Clearing’s discretion whether to recall loaned shares from a borrower prior to a dividend, and Apex Clearing makes no guarantee to recall a loan prior to a dividend. With respect to other

corporate actions affecting loaned shares, non-cash distributions that you are entitled to receive in connection with ownership of loaned securities will be added to the loaned securities on the date of distribution and will be transferred to you at termination of the loan.

Other special tax considerations could arise, and you are encouraged to consult a tax advisor for further information.

**X. APEX CLEARING HAS A RIGHT TO TERMINATE ANY BORROW TRANSACTION IN THE EVENT OF A CONDITION OF THE KIND SPECIFIED IN FINRA RULE 4314(B)**

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Apex Clearing has a right to terminate any borrow transaction if you:

- (1) Apply for or consent to, or are the subject of an application for, the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of you or of all or a substantial part of your property
- (2) Admit in writing your inability, or become generally unable, to pay your debts as such debts become due
- (3) Make a general assignment for the benefit of its creditors; or
- (4) File, or have filed against you, a petition under Title 11 of the United States Code, or have filed against you an application for a protective decree under Section 5 of the Securities Investor Protection Act of 1970 ("SIPA"), unless the right to liquidate such transaction is stayed, avoided, or otherwise limited by an order authorized under the provisions of SIPA or any statute administered by the SEC

**XI. FACTORS THAT DETERMINE THE AMOUNT OF COMPENSATION RECEIVED BY APEX CLEARING AND AMOUNT OF COMPENSATION (E.G., INTEREST RATE) TO BE PAID TO YOU, AND THE ABILITY OF THOSE TO CHANGE**

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**1. Loan Rates (and therefore the Fees You Will Receive) are subject to frequent change and can go down (or up) by 50% or more**

Rates for "hard to borrow" and other shares change frequently, even daily, in the securities lending market and this can reduce (or increase) the loan fee that you receive for lending your shares out. Likewise, Apex Clearing may change the rate it pays you compared to the fees that Apex Clearing receives when it lends your securities to third parties. You will not have direct control over when to initiate or terminate loans of specific shares (including based on rate changes). However, you can always terminate your participation in the program (which will terminate all of your lending transactions) if you are unhappy with the rates you are receiving or

the nature or frequency of rate changes. Please note, though, that if you terminate your participation in the Program, you may not be permitted to re-join the program, or you may have to wait a certain length of time to re-join.

## **2. Apex Clearing is the counterparty to all Fully-Paid Lending Transactions with You**

**Apex Clearing may earn a spread in rates and may profit or lose in connection with the transaction or other transactions in the same securities**

**Apex Clearing may pay part of the loan fees to third parties, which will reduce the rate You receive**

Apex Clearing will be the counterparty (borrower) when you lend your shares. Any transactions that Apex Clearing may or may not do on any securities lending markets are completely independent of your loan transaction to Apex Clearing. Thus, after Apex Clearing borrows shares from you at a given rate, Apex Clearing may or may not then lend those shares to another party or to or through an affiliate or third party. Likewise, Apex Clearing may terminate a loan with you and return shares to you while at the same time Apex Clearing continues to lend shares of the same stock out to the marketplace. In short: Apex Clearing's obligation to you is to pay you the specified rate on ongoing loan transactions until such transactions are terminated by you or by Apex Clearing. Nothing in the Program restricts Apex Clearing's ability to conduct stock lending and borrowing transactions with third parties, who may profit or lose in connection with the transactions.

Apex Clearing may borrow shares from you and then lend those shares to one of its affiliates or other customers.

Apex Clearing may earn a "spread" on securities lending transactions with your stock. This means that the rate you receive from Apex Clearing for your loaned securities may be worse than the rate Apex Clearing receives from a third party on those same shares.

Apex Clearing may pay part of the net loan fees (for shares you lend) to third parties such as introducing broker(s) who may introduce your account to Apex Clearing. These payments may reduce the loan fees (rate) you receive.

## **3. There is no guarantee that You will receive the best loan rates for your shares**

The securities lending market is not a standardized and transparent market. Securities lending transactions generally take place "over the counter" rather than on organized exchanges where prices and transactions are transparent. There are no rules or mechanisms that guarantee or require that any given participant in the marketplace will receive the best rate for lending shares, and Apex Clearing cannot and does not guarantee that you will receive the most favorable rate for lending your shares. Apex Clearing may not have access to the markets or counterparties that are offering the most favorable rates or may be unaware of the most favorable rates. As noted previously, Apex Clearing may earn a "spread" on the rate, such that the rate you receive is worse than the rate Apex Clearing receives.

#### **4. Commissions and Other Charges**

You will receive a loan fee, which will be credited daily, and generally represents a certain percentage of the net loan fee received by Apex Clearing for relending your shares. The percentage may be changed by Apex in its sole discretion. Likewise, the loan fee may be varied by agreement between certain customers and Apex, depending on the size of the customers' loan portfolios, the types of Fully-Paid Securities available in the customers' accounts, and other factors.

As noted above, Apex Clearing or its affiliates or third parties may also earn a "spread" on the rate, such that the rate you receive will be based on a net fee after deduction for charges by Apex Clearing. Likewise, as noted, Apex Clearing may pay part of the net loan fees (for shares you lend) to third parties such as introducing broker(s) who may introduce your account to Apex Clearing. These payments may reduce the loan fees (rate) you receive. You may always terminate your participation in the program if you are unhappy with the rates you are receiving.

#### **XII. LOANS MAY BE TERMINATED AT ANY TIME BY APEX CLEARING**

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When you lend your Fully-Paid Shares, the loan may be terminated and the shares returned to your account at any time. The loan may be terminated because a party that borrowed the shares from Apex Clearing (after Apex Clearing borrowed them from you) chose to return the shares, or because Apex Clearing received a reate request and rejected the reate request, or for other reasons. Apex Clearing also has the right to terminate its borrowing of shares from you even if Apex Clearing continues to lend the same stock through another market. When the loan is terminated, shares will no longer be designated as on loan, you will stop receiving the loan fees, and the collateral will no longer be held for your benefit. You will not have direct control over when to initiate or terminate loans of specific shares. Please note, however, that you can always terminate your participation in the program (which will terminate all of your lending transactions).

#### **XIII. SELLING YOUR SHARES OR BORROWING AGAINST THEM WILL TERMINATE THE LOAN TRANSACTION**

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If you sell the Fully-Paid Shares you have lent out, or if you borrow against the shares (such that the securities become margin securities and are no longer fully-paid or excess margin securities), the loan will terminate and you will stop receiving the loan fee.

#### **XIV. THERE IS NO GUARANTEE THAT YOUR FULLY-PAID SHARES WILL BE LOANED OUT**

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There is no guarantee that you will be able to lend (or that Apex Clearing will want to or be able to borrow) your Fully-Paid Shares. There may not be a market to lend your Fully-Paid Shares in a particular security

at a rate that is advantageous, or Apex Clearing may not have access to a market with willing borrowers. Apex Clearing, or other customers of Apex Clearing or Apex Clearing's affiliates, might have shares that may be loaned out that will satisfy available borrowing interest and, therefore, Apex Clearing may not borrow shares from you. There is no rule or requirement, nor is there anything in the applicable agreements between you and Apex Clearing, that requires Apex Clearing to borrow shares from you or requires Apex Clearing to place your interest in lending shares of a particular security ahead of Apex Clearing's own interests, or those of other customers of Apex Clearing or those of Apex Clearing's affiliates. Apex Clearing cannot and does not guarantee that all of your Fully-Paid Shares that possibly could be loaned out to generate loan fees will be loaned out.

## **Master Securities Lending Agreement for Apex Clearing Corporation Fully-Paid Securities Lending Program**

This Master Securities Lending Agreement ("Agreement") is entered into by and between Apex Clearing Corporation ("Apex") and the undersigned party or parties ("Counterparty").

THIS AGREEMENT SHOULD NOT BE SIGNED BY COUNTERPARTY UNTIL AFTER: (1) COUNTERPARTY HAS READ AND FULLY UNDERSTANDS THE SEPARATE DOCUMENT ENTITLED IMPORTANT DISCLOSURES REGARDING RISKS AND CHARACTERISTICS OF PARTICIPATING IN APEX CLEARING CORPORATION'S FULLY-PAID SECURITIES LENDING PROGRAM, WHICH DESCRIBES MANY OTHER RISKS AND CHARACTERISTICS OF THE PROGRAM; AND (2) COUNTERPARTY AND COUNTERPARTY'S BROKER HAVE DETERMINED THAT PARTICIPATION IN APEX'S FULLY-PAID SECURITIES LENDING PROGRAM IS APPROPRIATE FOR COUNTERPARTY AFTER CONSIDERING COUNTERPARTY'S FINANCIAL SITUATION AND NEEDS, TAX STATUS, INVESTMENT OBJECTIVES, INVESTMENT TIME HORIZON, LIQUIDITY NEEDS, RISK TOLERANCE, AND ANY OTHER RELEVANT INFORMATION. IN EXECUTING THIS AGREEMENT, COUNTERPARTY ACKNOWLEDGES THAT BOTH OF THESE CONDITIONS HAVE BEEN SATISFIED.

### **1. Applicability.**

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

### **2. Loans of Securities.**

2.1. Subject to the terms and conditions of this Agreement, Borrower or Lender may, from time to time, seek to initiate a transaction in which Lender will lend Securities to Borrower. Such transaction shall be documented by Borrower in accordance with Section 3.2. Such records, together with the Agreement, shall constitute conclusive evidence of the terms agreed between Borrower and Lender with respect to such Loans.

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



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

3.1. Loaned Securities shall be transferred as agreed to by Borrower and Lender.

3.2. Borrower shall provide to Lender at the time of transfer a schedule of the Loaned Securities. Such record may consist of data made available to Lender by Borrower or its designee.

3.3. Notwithstanding any other provision in this Agreement, the parties hereto agree that they intend the Loans hereunder to be loans of Securities. If, however, any Loan is deemed to be a loan of money by Borrower to Lender, then Borrower shall have, and Lender shall be deemed to have granted, a security interest in the Loaned Securities and the proceeds thereof.

### **4. Collateral.**

4.1. Unless otherwise agreed, Borrower shall, prior to or concurrently with the transfer of the Loaned Securities to Borrower, but in no case later than the Close of Business on the day of such transfer, deposit in a collateral custody account ("Custody Account") established at a bank, as that term is defined in Section 3(a)(6) of the Securities Exchange Act of 1934 (the "Exchange Act"), or at such other custodian as Borrower may choose (the "Custodian"), Collateral with a Market Value at least equal to the Margin Percentage of the Market Value of the Loaned Securities. The Custody Account may be an omnibus account established at the Custodian that holds Collateral in an aggregate amount at least equal to the amount required under this Paragraph 4.1 for all Lenders who have loaned Securities to Borrower. If the Collateral Account is an omnibus account, the Custody Bank or a third-party agent or trustee (the "Agent" or "Trustee") must maintain subledgers showing the amount of Collateral owed to each Lender with respect to the Securities that each such Lender has loaned to Borrower. The Custody Account must be established in the name of each Lender as an omnibus account, in the name of all Lenders, or in the name of Trustee for the benefit of all Lenders. By executing this Agreement, Lender hereby agrees that Borrower will deposit Collateral in a Custody Account in the name of Lender or all Lenders, or the Trustee for the benefit of all Lenders at the Custody Bank in accordance with Annex A hereto, which may be amended by Lender without notice. Further, Lender agrees that Agent or Trustee may instruct the movement of Collateral as set out in Annex A hereto.

4.2. The Collateral deposited in the Custody Account, as adjusted pursuant to Section 9, shall be security for Borrower's obligations in respect of Loaned Securities and for any other obligations of Borrower to Lender hereunder. Collateral deposited into the Custody Account must be allowable collateral as identified in Annex B to this Agreement. Lender will be deemed to have transferred Loaned Securities to Borrower on the date Borrower treats such securities as having been borrowed pursuant to Rule 15c3-3(b)(3) under the Exchange Act and therefore not subject to the general possession or control requirements of Exchange Act Rule 15c3-3(b). Borrower will be deemed to have transferred Loaned Securities to Lender on the date Borrower treats such securities as customer securities subject to the general possession or control requirements of Exchange Act Rule 15c3-3(b), without giving effect to Exchange Act rule 15c3-3(b)(3), without regard to whether such securities are thereby returned to Lender or continue to be borrowed by Borrower pursuant to any hypothecation agreement between Lender and Borrower.

4.3. Except as otherwise provided herein, upon transfer to Lender of the Loaned Securities on the day a Loan is terminated pursuant to Section 6, Borrower shall no longer be obligated to maintain Collateral in the Custody Account for Securities that are no longer Loaned Securities.

4.4. If Borrower has deposited Collateral in the Custody Account for Lender, as provided in Section 4.1, and Lender does not transfer the Loaned Securities to Borrower, Borrower shall have the absolute right to the return of the Collateral; and if Lender transfers Loaned Securities to Borrower and Borrower does not deposit Collateral in the Custody Account for Lender as provided in Section 4.1, Lender shall have the absolute right to the return of the Loaned Securities.

4.5. Borrower may, upon reasonable written notice to Lender (taking into account all relevant factors, including industry practice, the type of Collateral to be substituted, the applicable method of transfer and applicable regulations and regulatory guidance), substitute Collateral for Collateral securing any Loan or Loans; provided, however, that such substituted Collateral shall (a) consist only of cash, securities or other property that Borrower and Lender agreed would be acceptable Collateral prior to the Loan or Loans and as set out in Annex B to this Agreement, and (b) have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral for Loans in which the party substituting such Collateral is acting as Borrower, shall equal or exceed the agreed upon Margin Percentage of the Market Value of the Loaned Securities.

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

5.1. Borrower and Lender agree to a loan fee (a "Loan Fee"), computed daily on each Loan. For more information, see the attached Schedule of Basis of Compensation for Loan, which is fully incorporated herein.

5.2. Unless otherwise agreed, any Loan Fee payable hereunder shall be payable within fifteen (15) Business Days following the last Business Day of the calendar month in which such fee was incurred.

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

6.1. (a) Unless otherwise agreed, either party may terminate a Loan on a termination date established by notice given to the other party prior to the Close of Business on a Business Day. Unless Borrower and Lender agree to the contrary, the termination date established by a termination notice shall be a date no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Securities (in the case of a notice given by Lender) or the non-cash Collateral securing the Loan (in the case of a notice given by Borrower) entered into at the time of such notice. (b) Notwithstanding paragraph (a) and unless otherwise agreed, Borrower may terminate a Loan on any Business Day, effective as of such Business Day, by transferring the Loaned Securities to Lender on such Business Day. Borrower will be deemed to have transferred Loaned Securities by the end of a Business Day if it treats such securities as customer securities subject to the general possession or control requirements of Exchange Act Rule 15c3-3(b), without giving effect to Exchange Act rule 15c3-3(b)(3), without regard to

whether such securities are thereby returned to Lender or may continue to be borrowed by Borrower pursuant to any hypothecation agreement between Lender and Borrower.

(c) The execution by Borrower of an order to sell the Loaned Securities by Lender shall constitute notice of termination by Lender to Borrower. The termination date established by such a sale of the Loaned Securities shall be the settlement date of such sale of the Loaned Securities or any earlier date on which Borrower is deemed to have transferred Loaned Securities to Lender under paragraph (b) of this Section.

6.2. Unless otherwise agreed, Borrower shall, on or before the Cutoff Time on the termination date of a Loan, transfer the Loaned Securities to Lender; provided, however, that upon such transfer by Borrower, Borrower shall no longer be obligated to maintain Collateral in a Custody Account for Lender (as adjusted pursuant to Section 9) to Borrower in accordance with Section 4.3.

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

7.1. Except as set forth in Sections 8.1 and 8.2 and as otherwise agreed by Borrower and Lender, until Loaned Securities are required to be redelivered to Lender upon termination of a Loan hereunder, Borrower shall have all of the incidents of ownership of the Loaned Securities, including the right to transfer the Loaned Securities to others. LENDER HEREBY WAIVES THE RIGHT TO VOTE, OR TO PROVIDE ANY CONSENT OR TO TAKE ANY SIMILAR ACTION WITH RESPECT TO, THE LOANED SECURITIES IN THE EVENT THAT THE RECORD DATE OR DEADLINE FOR SUCH VOTE, CONSENT OR OTHER ACTION FALLS DURING THE TERM OF THE LOAN.

## **8. Distributions.**

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

8.2. Any cash Distributions made on or in respect of the Loaned Securities, which Lender is entitled to receive pursuant to Section 8.1, shall be paid by the transfer of cash to Lender by Borrower, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Lender is not in Default at the time of such payment. Non-cash Distributions that Lender is entitled to receive pursuant to Section 8.1 shall be added to the Loaned Securities on the date of Distribution and shall be considered such for all purposes, except that if the Loan has terminated, Borrower shall forthwith transfer the same to Lender.

8.3. Borrower shall be entitled to receive all Distributions made on or in respect of non-cash Collateral which are not otherwise received by Borrower, to the full extent it would be so entitled if the Collateral had not been transferred to Lender.

8.4. Any cash Distributions made on or in respect of such Collateral, which Borrower is entitled to receive pursuant to Section 8.3, shall be paid by the transfer of cash to Borrower by Lender,

on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Borrower is not in Default at the time of such payment. Non-cash Distributions that Borrower is entitled to receive pursuant to Section 8.3 shall be added to the Collateral on the date of Distribution and shall be considered such for all purposes, except that if each Loan secured by such Collateral has terminated, Lender shall forthwith transfer the same to Borrower.

8.5. Unless otherwise agreed by the parties:

(a) If (i) Borrower is required to make a payment (a "Borrower Payment") with respect to cash Distributions on Loaned Securities under Sections 8.1 and 8.2 ("Securities Distributions"), or (ii) Lender is required to make a payment (a "Lender Payment") with respect to cash Distributions on Collateral under Sections 8.3 and 8.4 ("Collateral Distributions"), and (iii) Borrower or Lender, as the case may be ("Payor"), shall be required by law to collect any withholding or other tax, duty, fee, levy or charge required to be deducted or withheld from such Borrower Payment or Lender Payment ("Tax"), then Payor shall (subject to subsections (b) and (c) below or Section 28.1), pay such additional amounts as may be necessary in order that the net amount of the Borrower Payment or Lender Payment received by the Lender or Borrower, as the case may be ("Payee"), after payment of such Tax equals the net amount of the Securities Distribution or Collateral Distribution that would have been received if such Securities Distribution or Collateral Distribution had been paid directly to the Payee.

(b) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that Tax would have been imposed on a Securities Distribution or Collateral Distribution paid directly to the Payee.

(c) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that such Payee is entitled to an exemption from, or reduction in the rate of, Tax on a Borrower Payment or Lender Payment subject to the provision of a certificate or other documentation, but has failed timely to provide such certificate or other documentation.

(d) Each party hereto shall be deemed to represent that, as of the commencement of any Loan hereunder, no Tax would be imposed on any cash Distribution paid to it with respect to (i) Loaned Securities subject to a Loan in which it is acting as Lender or (ii) Collateral for any Loan in which it is acting as Borrower, unless such party has given notice to the contrary to the other party hereto (which notice shall specify the rate at which such Tax would be imposed). Each party agrees to notify the other of any change that occurs during the term of a Loan in the rate of any Tax that would be imposed on any such cash Distributions payable to it.

8.6. To the extent that, under the provisions of Sections 8.1 through 8.5, (a) a transfer of cash or other property by Borrower would give rise to a Margin Excess or (b) a transfer of cash or other property by Lender would give rise to a Margin Deficit, Borrower or Lender (as the case may be) shall not be obligated to make such transfer of cash or other property in accordance with such Sections, but shall in lieu of such transfer immediately credit the amounts that would

have been transferable under such Sections to the account of Lender or Borrower (as the case may be).

## **9. Mark to Market.**

9.1. Borrower shall daily mark to market any Loan hereunder and in the event that at the Close of Trading on any Business Day the Market Value of the Collateral for any Loan to Borrower shall be less than 100% of the Market Value of all the outstanding Loaned Securities subject to such Loan, Borrower shall deposit additional Collateral into the Custody Account no later than the Close of Business on the next Business Day so that the Market Value of such additional Collateral, when added to the Market Value of the other Collateral for such Loan, shall equal at least 100% of the Market Value of the Loaned Securities. If the movement of Collateral is subject to the instruction of an Agent or Trustee, as set out Section 4.1 of this Agreement, Borrower may deposit the Collateral under this Section upon the instruction of such Agent or Trustee. As agreed by the parties or if Borrower determines in its discretion that applicable laws or market custom so require, Borrower will hold additional collateral greater than 100% of the market value of the Loaned Securities.

9.2. In addition to any rights of Lender under Section 9.1 of this Agreement, if at any time the aggregate Market Value of all Collateral for Loans by Lender shall be less than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Deficit"), Borrower shall deposit additional Collateral in the Custody Account no later than the Close of Business on the next Business Day so that the Market Value of such additional Collateral, when added to the Market Value of the other Collateral for such Loan, shall equal or exceed the Margin Percentage of the Market Value of the Loaned Securities. If the movement of Collateral is subject to the instruction of an Agent or Trustee, as set out Section 4.1 of this Agreement, Borrower may deposit the Collateral under this Section upon the instruction of such Agent or Trustee.

9.3. Subject to Borrower's obligations under Section 9.1, if at any time the Market Value of all Collateral for Loans to Borrower shall be greater than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Excess"), Lender hereby authorizes the Custodian to reduce the amount of Collateral deposited in the Custody Account for Lender and to pay the Margin Excess to Lender so that the Market Value of the Collateral for such Loans, after deduction of such amounts, shall thereupon not exceed the Margin Percentage of the Market Value of the Loaned Securities. If the movement of Collateral is subject to the instruction of an Agent or Trustee, as set out Section 4.1 of this Agreement, Custodian shall transfer the Margin Excess under this Section upon the instruction of such Agent or Trustee as soon as reasonably practicable.

9.4. Borrower and Lender may agree, with respect to one or more Loans hereunder, to mark the values to market pursuant to Sections 9.2 and 9.3 by separately valuing the Loaned Securities lent and the Collateral held in respect thereof on a Loan-by-Loan basis.

9.5. Borrower and Lender may agree, with respect to any or all Loans hereunder, that the respective rights of Lender and Borrower under Sections 9.2 and 9.3 may be exercised only where a Margin Excess or Margin Deficit exceeds a specified dollar amount or a specified

percentage of the Market Value of the Loaned Securities under such Loans (which amount or percentage shall be agreed to by Borrower and Lender prior to entering into any such Loans).

## **10. Representations.**

The parties to this Agreement hereby make the following representations and warranties, which shall continue during the term of any Loan hereunder.

10.1. Each party hereto represents and warrants that (a) it has the power to execute and deliver this Agreement, to enter into the Loans contemplated hereby and to perform its obligations hereunder, (b) it has taken all necessary action to authorize such execution, delivery and performance, and (c) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.

10.2. Each party hereto represents and warrants that it has not relied on the other for any tax or accounting advice concerning this Agreement and that it has made its own determination as to the tax and accounting treatment of any Loan and any dividends, remuneration or other funds received hereunder.

10.3. Each party hereto represents and warrants that it is acting for its own account unless it expressly specifies otherwise in writing and complies with Section 11.1(b).

10.4. Lender represents and warrants that it has, or will have at the time of transfer of any Loaned Securities, the right to transfer the Loaned Securities subject to the terms and conditions hereof.

## **11. Covenants.**

11.1. Each party agrees either to be liable as principal with respect to its obligations hereunder.

## **12. Events of Default.**

All Loans hereunder may, at the option of the non-defaulting party (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), be terminated immediately upon the occurrence of any one or more of the following events (individually, a "Default"):

12.1. if any Loaned Securities shall not be transferred to Lender upon termination of the Loan as required by Section 6;

12.2. if Borrower shall fail to deposit Collateral into the Custody Account as required by Section 9;

12.3. if either party (a) shall fail to transfer to the other party amounts in respect of Distributions required to be transferred by Section 8, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected;

12.4. if an Act of Insolvency occurs with respect to either party;

12.5. if any representation made by either party in respect of this Agreement or any Loan or Loans hereunder shall be incorrect or untrue in any material respect during the term of any Loan hereunder;

12.6. if either party notifies the other of its inability to or its intention not to perform its obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder; or

12.7. if either party (a) shall fail to perform any material obligation under this Agreement not specifically set forth in clauses 12.1 through 12.7, above, including but not limited to the payment of fees as required by Section 5, and the payment of transfer taxes as required by Section 13, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected.

The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice as promptly as practicable to the defaulting party of the exercise of its option to terminate all Loans hereunder pursuant to this Section 12.

### **13. Remedies.**

Upon the occurrence of a Default under Section 12 entitling Lender to terminate all Loans hereunder, Lender shall have the right (which, upon the occurrence of an Act of Insolvency, may be exercised following the termination of any applicable stay) (a) to purchase a like amount of Loaned Securities ("Replacement Securities") in the principal market for such Loaned Securities in a commercially reasonable manner, (b) to sell any Collateral in the principal market for such Collateral in a commercially reasonable manner and (c) to apply and set off the Collateral and any proceeds thereof (including any amounts drawn under a letter of credit supporting any Loan) against the payment of the purchase price for such Replacement Securities and any amounts due to Lender under Sections 5, 8, 14 and 15. In the event that Lender shall exercise such rights, Borrower's obligation to return a like amount of the Loaned Securities shall terminate. Lender may similarly apply the Collateral and any proceeds thereof to any other obligation of Borrower under this Agreement, including Borrower's obligations with respect to Distributions paid to Borrower (and not forwarded to Lender) in respect of Loaned Securities. In the event that (i) the purchase price of Replacement Securities (plus all other amounts, if any, due to Lender hereunder) exceeds (ii) the amount of the Collateral, Borrower shall be liable to Lender for the amount of such excess together with interest thereon at a rate equal to (A) in the case of purchases of Foreign Securities, LIBOR, (B) in the case of purchases of any other Securities (or other amounts, if any, due to Lender hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such purchase until the date of payment of such excess. As security for Borrower's obligation to pay such excess, Lender shall have, and Borrower hereby grants, a security interest in any property of Borrower then held by or for Lender and a right of setoff with respect to such property and any other amount payable by Lender to Borrower. The purchase price of Replacement Securities purchased under this Section 13 shall include, and the proceeds of any sale of Collateral shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Lender exercises its rights under this Section 13, Lender may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement

Securities or selling all or a portion of the Collateral, to be deemed to have made, respectively, such purchase of Replacement Securities or sale of Collateral for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 19, upon the satisfaction of all obligations hereunder, any remaining Collateral shall be returned to Borrower.

#### **14. Transfer Taxes.**

All transfer taxes with respect to the transfer of the Loaned Securities by Lender to Borrower and by Borrower to Lender upon termination of the Loan and with respect to the transfer of Collateral by Borrower to Lender pursuant to Section 4.5 or Section 9 shall be paid by Borrower.

#### **15. Contractual Currency.**

15.1. Borrower and Lender agree that (a) any payment in respect of a Distribution under Section 8 shall be made in the currency in which the underlying Distribution of cash was made, (b) any return of cash shall be made in the currency in which the underlying transfer of cash was made, and (c) any other payment of cash in connection with a Loan under this Agreement shall be in the currency agreed upon by Borrower and Lender in connection with such Loan (the currency established under clause (a), (b) or (c) hereinafter referred to as the "Contractual Currency"). Notwithstanding the foregoing, the payee of any such payment may, at its option, accept tender thereof in any other currency; provided, however, that, to the extent permitted by applicable law, the obligation of the payor to make such payment will be discharged only to the extent of the amount of Contractual Currency that such payee may, consistent with normal banking procedures, purchase with such other currency (after deduction of any premium and costs of exchange) on the banking day next succeeding its receipt of such currency.

15.2. If for any reason the amount in the Contractual Currency received under Section 14.1, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due in respect of this Agreement, the party required to make the payment will (unless a Default has occurred and such party is the non-defaulting party) as a separate and independent obligation and to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.

15.3. If for any reason the amount in the Contractual Currency received under Section 14.1 exceeds the amount in the Contractual Currency due in respect of this Agreement, then the party receiving the payment will (unless a Default has occurred and such party is the non-defaulting party) refund promptly the amount of such excess.

#### **16. ERISA.**

Lender shall, if any of the Securities transferred to the Borrower hereunder for any Loan have been or shall be obtained, directly or indirectly, from or using the assets of any Plan, so notify Borrower in writing upon the execution of this Agreement or upon initiation of such Loan under Section 2.1. If Lender so notifies Borrower, then Borrower and Lender shall conduct the Loan in



accordance with the terms and conditions of Department of Labor Prohibited Transaction Exemption 81-6 (46 Fed. Reg. 7527, Jan. 23, 1981; as amended, 52 Fed. Reg. 18754, May 19, 1987), or any successor thereto (unless Borrower and Lender have agreed prior to entering into a Loan that such Loan will be conducted in reliance on another exemption, or without relying on any exemption, from the prohibited transaction provisions of Section 406 of the Employee Retirement Income Security Act of 1974, as amended, and Section 4975 of the Internal Revenue Code of 1986, as amended). Without limiting the foregoing and notwithstanding any other provision of this Agreement, if the Loan will be conducted in accordance with Prohibited Transaction Exemption 81-6, then:

16.1. Borrower represents and warrants to Lender that it is either (a) a bank subject to federal or state supervision, (b) a broker-dealer registered under the Exchange Act or (c) exempt from registration under Section 15(a)(1) of the Exchange Act as a dealer in Government Securities.

16.2. Borrower represents and warrants that, during the term of any Loan hereunder, neither Borrower nor any affiliate of Borrower has any discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or renders investment advice (within the meaning of 29 C.F.R. Section 2510.3-21(c)) with respect to the assets of the Plan involved in the Loan. Lender agrees that, prior to or at the commencement of any Loan hereunder, it will communicate to Borrower information regarding the Plan sufficient to identify to Borrower any person or persons that have discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or that render investment advice (as defined in the preceding sentence) with respect to the assets of the Plan involved in the Loan. In the event Lender fails to communicate and keep current during the term of any Loan such information, Lender rather than Borrower shall be deemed to have made the representation and warranty in the first sentence of this Section 15.2.

16.3. Borrower shall mark to market daily each Loan hereunder pursuant to Section 9.1 as is required if Lender is a Customer.

16.4. Borrower and Lender agree that:

(a) the term "Collateral" shall mean cash, securities issued or guaranteed by the United States government or its agencies or instrumentalities;

(b) prior to the making of any Loans hereunder, Borrower shall provide Lender with (i) the most recent available audited statement of Borrower's financial condition and (ii) the most recent available unaudited statement of Borrower's financial condition (if more recent than the most recent audited statement), and each Loan made hereunder shall be deemed a representation by Borrower that there has been no material adverse change in Borrower's financial condition subsequent to the date of the latest financial statements or information furnished in accordance herewith;

(c) the Loan may be terminated by Lender at any time, whereupon Borrower shall deliver the Loaned Securities to Lender within the lesser of (i) the customary delivery period for such Loaned Securities, (ii) five Business Days, and (iii) the time negotiated for such delivery between Borrower and Lender; provided, however, that Borrower and Lender may agree to a longer period only if permitted by Prohibited Transaction Exemption 81-6; and

(d) the Collateral held for Lender shall be security only for obligations of Borrower to the Plan with respect to Loans, and shall not be security for any obligation of Borrower to any agent or affiliate of the Plan.

## **17. Single Agreement.**

Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder constitute a single business and contractual relationship and have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted. In addition, Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that (a) each shall perform all of its obligations in respect of each Loan hereunder, and that a default in the performance of any such obligation by Borrower or by Lender (the "Defaulting Party") in any Loan hereunder shall constitute a default by the Defaulting Party under all such Loans hereunder, and (b) the non-defaulting party shall be entitled to set off claims and apply property held by it in respect of any Loan hereunder against obligations owing to it in respect of any other Loan with the Defaulting Party.

## **18. APPLICABLE LAW.**

THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

## **19. Waiver.**

The failure of a party to this Agreement to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. All waivers in respect of a Default must be in writing.

## **20. Survival of Remedies.**

All remedies hereunder and all obligations with respect to any Loan shall survive the termination of the relevant Loan, return of Loaned Securities or release of Collateral and termination of this Agreement.

## **21. Notices and Other Communications.**

Any and all notices, statements, demands or other communications hereunder may be given by Apex Clearing Corporation to the undersigned Counterparty by telephone, mail, facsimile, e-mail, electronic message, telegraph, messenger or otherwise at the phone and facsimile

numbers provided by the undersigned party and maintained by Apex Clearing Corporation in its books and records for such party. Any and all notices, statements, demands or other communications hereunder may be given by the undersigned Counterparty to Apex Clearing Corporation in writing to Apex Clearing Corporation, 350 N. St Paul, Suite 1300, Dallas, TX 75201, Attention Legal. Any notice, statement, demand or other communication hereunder will be deemed effective on the day and at the time on which it is received or, if not received, on the day and at the time on which its delivery was in good faith attempted; provided, however, that any notice by a party to the other party by telephone shall be deemed effective only if (a) such notice is followed by written confirmation thereof and (b) at least one of the other means of providing notice that are specifically listed above has previously been attempted in good faith by the notifying party.

## **22. MANDATORY ARBITRATION.**

THE PARTIES HEREBY AGREE THAT ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN THE PARTIES ARISING OUT OF THIS AGREEMENT OR ANY LOAN HEREUNDER SHALL BE SUBJECT TO THE MANDATORY ARBITRATION PROVISION CONTAINED IN ANY CUSTOMER ACCOUNT OR SIMILAR AGREEMENT ENTERED INTO BETWEEN SUCH PARTIES.

## **23. Miscellaneous.**

23.1. Except as specified in Section 1 or as otherwise agreed by the parties, this Agreement supersedes any other agreement between the parties hereto concerning loans of Securities between Borrower and Lender. This Agreement shall not be assigned by either party without the prior written consent of the other party and any attempted assignment without such consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective heirs, representatives, successors and assigns. This Agreement may be terminated by either party upon notice to the other, subject only to fulfillment of any obligations then outstanding. This Agreement shall not be modified, except by an instrument in writing signed by the party against whom enforcement is sought. The parties hereto acknowledge and agree that, in connection with this Agreement and each Loan hereunder, time is of the essence. Each provision and agreement herein shall be treated as separate and independent from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

23.2. Any agreement between Borrower and Lender pursuant to Section 23.37 shall be made (a) in writing, (b) orally, if confirmed promptly in writing or through any system that compares Loans and in which Borrower and Lender are participants, or (c) in such other manner as may be agreed by Borrower and Lender in writing.

## **24. Definitions.**

For the purposes hereof:

24.1. "Act of Insolvency" shall mean, with respect to any party, (a) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party's

seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (b) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (i) is consented to or not timely contested by such party, (ii) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (iii) is not dismissed within 15 days, (c) the making by such party of a general assignment for the benefit of creditors, or (d) the admission in writing by such party of such party's inability to pay such party's debts as they become due.

24.2. "Bankruptcy Code" shall have the meaning assigned in Section 25.1.

24.3. "Borrower" shall have the meaning assigned in Section 1.

24.4. "Borrower Payment" shall have the meaning assigned in Section 8.5(a).

24.5. "Broker-Dealer" shall mean any person that is a broker (including a municipal securities broker), dealer, municipal securities dealer, government securities broker or government securities dealer as defined in the Exchange Act, regardless of whether the activities of such person are conducted in the United States or otherwise require such person to register with the U.S. Securities and Exchange Commission or other regulatory body.

24.6. "Business Day" shall mean, with respect to any Loan hereunder, a day on which regular trading occurs in the principal market for the Loaned Securities subject to such Loan, provided, however, that for purposes of determining the Market Value of any Securities hereunder, such term shall mean a day on which regular trading occurs in the principal market for the Securities whose value is being determined. Notwithstanding the foregoing, (a) for purposes of Section 9, "Business Day" shall mean any day on which regular trading occurs in the principal market for any Loaned Securities or for any Collateral consisting of Securities under any outstanding Loan hereunder and "next Business Day" shall mean the next day on which a transfer of Collateral may be effected in accordance with Section 15, and (b) in no event shall a Saturday or Sunday be considered a Business Day.

24.7. "Cash Collateral Fee" shall have the meaning assigned in Section 5.1.

24.8. "Clearing Organization" shall mean (a) The Depository Trust Company, or, if agreed to by Borrower and Lender, such other "securities intermediary" (within the meaning of the UCC) at which Borrower (or Borrower's agent) and Lender (or Lender's agent) maintain accounts, or (b) a Federal Reserve Bank, to the extent that it maintains a book-entry system.

24.9. "Close of Business" shall mean 4:00 p.m. (New York City time) on a Business Day.

24.10. "Close of Trading" shall mean, with respect to any Security, the end of the primary trading session established by the principal market for such Security on a Business Day, unless otherwise agreed by the parties.

24.11. "Collateral" shall mean, whether now owned or hereafter acquired and to the extent permitted by applicable law, (a) any property which Borrower and Lender agree prior to the Loan shall be acceptable collateral and which is deposited in a Custody Account for Lender pursuant to Sections 4 or 9, (b) any property substituted therefor pursuant to Section 4.5, (c) all accounts in which such property is deposited and all securities and the like in which any cash collateral is invested or reinvested, and (d) any proceeds of any of the foregoing; provided, however, that if

Lender is a Customer, "Collateral" shall (subject to Section 15.4(a), if applicable) be limited to cash, U.S. Treasury bills and notes, and any other property permitted to serve as collateral securing a loan of customers' fully-paid securities pursuant to paragraph (b)(3) of Rule 15c3-3 under the Exchange Act, including Interpretation /05 to paragraph (b)(3) of Rule 15c3-3 under the Exchange Act, as set out in the FINRA Guide to Rule Interpretations and as may be amended from time to time, and such other guidance as the U.S. Securities and Exchange Commission or its staff may provide from time to time; or any comparable regulation of the Secretary of the Treasury under Section 15C of the Exchange Act (to the extent that Borrower is subject to such Rule or comparable regulation) pursuant to exemptive, interpretive or no-action relief or otherwise. If any new or different Security shall be exchanged for any Collateral by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become Collateral in substitution for the former Collateral for which such exchange is made.

24.12. "Collateral Distributions" shall have the meaning assigned in Section 8.5(a).

24.13. [intentionally omitted]

24.14. "Contractual Currency" shall have the meaning assigned in Section 14.1.

24.15. "Customer" shall mean any person that is a customer of Borrower pursuant to paragraph (a)(1) of Rule 15c3-3 under the Exchange Act or any comparable regulation of the Secretary of the Treasury under Section 15C of the Exchange Act (to the extent that Borrower is subject to such Rule or comparable regulation).

24.16. "Cutoff Time" shall mean a time on a Business Day by which a transfer of cash, securities or other property must be made by Borrower or Lender to the other, as shall be agreed by Borrower and Lender in Schedule B, or shall be as specified in the policies and procedures described on Apex's website or as agreed otherwise orally or in writing or, in the absence of the above, as shall be determined in accordance with market practice.

24.17. "Default" shall have the meaning assigned in Section 12.

24.18. "Defaulting Party" shall have the meaning assigned in Section 16.

24.19. "Distribution" shall mean, with respect to any Security at any time, any distribution made on or in respect of such Security, including, but not limited to: (a) cash and all other property, (b) stock dividends, (c) Securities received as a result of split ups of such Security and distributions in respect thereof, (d) interest payments, (e) all rights to purchase additional Securities, and (f) any cash or other consideration paid or provided by the issuer of such Security in exchange for any vote, consent or the taking of any similar action in respect of such Security (regardless of whether the record date for such vote, consent or other action falls during the term of the Loan). In the event that the holder of a Security is entitled to elect the type of distribution to be received from two or more alternatives, such election shall be made by Lender, in the case of a Distribution in respect of the Loaned Securities, and by Borrower, in the case of a Distribution in respect of Collateral.

24.20. "Equity Security" shall mean any security (as defined in the Exchange Act) other than a "nonequity security," as defined in Regulation T.

24.21. "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

24.22. "Extension Deadline" shall mean, with respect to a letter of credit, the Cutoff Time on the Business Day preceding the day on which the letter of credit expires.

24.23. "FDIA" shall have the meaning assigned in Section 24.4.

24.24. "FDICIA" shall have the meaning assigned in Section 24.5.

24.25. "Federal Funds Rate" shall mean the rate of interest (expressed as an annual rate), as published in Federal Reserve Statistical Release H.15 (519) or any publication substituted therefor, charged for federal funds (dollars in immediately available funds borrowed by banks on an overnight unsecured basis) on that day or, if that day is not a banking day in New York City, on the next preceding banking day.

24.26. "Foreign Securities" shall mean, unless otherwise agreed, Securities that are principally cleared and settled outside the United States.

24.27. "Government Securities" shall mean government securities as defined in Section 3(a)(42)(A)-(C) of the Exchange Act.

24.28. "Lender" shall have the meaning assigned in Section 1.

24.29. "Lender Payment" shall have the meaning assigned in Section 8.5(a).

24.30. "LIBOR" shall mean for any date, the offered rate for deposits in U.S. dollars for a period of three months which appears on the Reuters Screen LIBO page as of 11:00 a.m., London time, on such date (or, if at least two such rates appear, the arithmetic mean of such rates).

24.31. "Loan" shall have the meaning assigned in Section 1.

24.32. "Loan Fee" shall have the meaning assigned in Section 5.1.

24.33. "Loaned Security" shall mean any Security transferred in a Loan hereunder until such Security (or an identical Security) is transferred back to Lender hereunder, except that, if any new or different Security shall be exchanged for any Loaned Security by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become a Loaned Security in substitution for the former Loaned Security for which such exchange is made. For purposes of return of Loaned Securities by Borrower or purchase or sale of Securities pursuant to Section 13, such term shall include Securities of the same issuer, class and quantity as the Loaned Securities, as adjusted pursuant to the preceding sentence.

24.34. "Margin Deficit" shall have the meaning assigned in Section 9.2.

24.35. "Margin Excess" shall have the meaning assigned in Section 9.3.

24.36. "Margin Notice Deadline" shall mean the time agreed to by the parties in Schedule B hereto or otherwise as the deadline for giving notice requiring same-day satisfaction of mark-to-market obligations as provided in Section 9 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice).

24.37. "Margin Percentage" shall mean, with respect to any Loan as of any date, at least 100%, unless (a) Borrower and Lender agree otherwise, as provided in Section 22.2, or Borrower in its discretion determines that applicable laws or market custom require greater THAN 100% and (b) Lender is not a Customer. Notwithstanding the previous sentence, in the event that the writing or other confirmation evidencing the agreement described in clause (a) does not set out such percentage with respect to any such Loan, the Margin Percentage shall not be a percentage less than the percentage obtained by dividing (i) the Market Value of the Collateral required to be held by Borrower for Lender with respect to such Loan at the commencement of the Loan by (ii) the Market Value of the Loaned Securities required to be transferred by Lender to Borrower at the commencement of the Loan.

24.38. "Payee" shall have the meaning assigned in Section 8.5(a).

24.39. "Payor" shall have the meaning assigned in Section 8.5(a).

24.40. "Plan" shall mean: (a) any "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 which is subject to Part 4 of Subtitle B of Title I of such Act; (b) any "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986; or (c) any entity the assets of which are deemed to be assets of any such "employee benefit plan" or "plan" by reason of the Department of Labor's plan asset regulation, 29 C.F.R. Section 2510.3-101.

24.41. "Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System, as in effect from time to time.

24.42. "Retransfer" shall mean, with respect to any Collateral, to pledge, repledge, hypothecate, rehypothecate, lend, relend, sell or otherwise transfer such Collateral, or to re-register any such Collateral evidenced by physical certificates in any name other than Borrower's.

24.43. "Securities" shall mean securities or, if agreed by the parties in writing, other assets.

24.44. "Securities Distributions" shall have the meaning assigned in Section 8.5(a).

24.45. "Tax" shall have the meaning assigned in Section 8.5(a).

24.46. "UCC" shall mean the New York Uniform Commercial Code.

## **25. Intent.**

25.1. The parties recognize that each Loan hereunder is a "securities contract," as such term is defined in Section 741 of Title 11 of the United States Code (the "Bankruptcy Code"), as amended (except insofar as the type of assets subject to the Loan would render such definition inapplicable).

25.2. It is understood that each and every transfer of funds, securities and other property under this Agreement and each Loan hereunder is a "settlement payment" or a "margin payment," as such terms are used in Sections 362(b)(6) and 546(e) of the Bankruptcy Code.

25.3. It is understood that the rights given to Borrower and Lender hereunder upon a Default by the other constitute the right to cause the liquidation of a securities contract and the right to set off mutual debts and claims in connection with a securities contract, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code.

25.4. The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Loan hereunder is a "securities contract" and "qualified financial contract," as such terms are defined in the FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to the Loan would render such definitions inapplicable).

25.5. It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment obligation under any Loan hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation," respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

25.6. Except to the extent required by applicable law or regulation or as otherwise agreed, Borrower and Lender agree that Loans hereunder shall in no event be "exchange contracts" for purposes of the rules of any securities exchange and that Loans hereunder shall not be

governed by the buy-in or similar rules of any such exchange, registered national securities association or other self-regulatory organization.

## **26. DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS.**

26.1. WITHOUT WAIVING ANY RIGHTS GIVEN TO LENDER HEREUNDER, IT IS UNDERSTOOD AND AGREED THAT THE PROVISIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970 MAY NOT PROTECT LENDER WITH RESPECT TO LOANED SECURITIES HEREUNDER AND THAT, THEREFORE, THE COLLATERAL HELD FOR LENDER MAY CONSTITUTE THE ONLY SOURCE OF SATISFACTION OF BORROWER'S OBLIGATIONS IN THE EVENT BORROWER FAILS TO RETURN THE LOANED SECURITIES.

26.2. LENDER ACKNOWLEDGES THAT, IN CONNECTION WITH LOANS OF GOVERNMENT SECURITIES AND AS OTHERWISE PERMITTED BY APPLICABLE LAW, SOME SECURITIES HELD BY BORROWER AS COLLATERAL UNDER THIS AGREEMENT MAY NOT BE GUARANTEED BY THE UNITED STATES.

## **27. OTHER IMPORTANT DISCLOSURES.**

27.1. BY SIGNING BELOW, COUNTERPARTY AGREES AND ACKNOWLEDGES THAT HE, SHE, OR IT HAS READ AND FULLY UNDERSTANDS THE SEPARATE DOCUMENT ENTITLED IMPORTANT DISCLOSURES REGARDING RISKS AND CHARACTERISTICS OF PARTICIPATING IN APEX CLEARING CORPORATION'S FULLY-PAID SECURITIES LENDING PROGRAM, WHICH DESCRIBES MANY OTHER RISKS AND CHARACTERISTICS OF THE PROGRAM, INCLUDING, BUT NOT LIMITED TO POTENTIAL LACK OF SIPC PROTECTION, LOSS OF VOTING RIGHTS, APEX'S ABILITY TO USE THE LOAN SECURITIES FOR ADDITIONAL LOANS AND APEX'S ABILITY TO EARN A SPREAD OR AND/OR OTHER PROFIT, LACK OF GUARANTEE OF RECEIVING BEST RATES, RISKS ASSOCIATED WITH EACH TYPE OF COLLATERAL, THAT THE SECURITIES MAY BE "HARD-TO-BORROW" BECAUSE OF SHORT-SELLING OR MAY BE USED TO SATISFY DELIVERY REQUIREMENTS RESULTING FROM SHORT SALES, POTENTIAL ADVERSE TAX CONSEQUENCES, INCLUDING PAYMENTS DEEMED CASH-IN-LIEU OF DIVIDEND PAID ON SECURITIES WHILE ON LOAN, APEX'S RIGHT TO LIQUIDATE THE TRANSACTION BECAUSE OF A CONDITION OF THE KIND SPECIFIED IN FINRA RULE 4314(B), AND THE FACTORS THAT DETERMINE THE AMOUNT OF COMPENSATION RECEIVED BY APEX OR PAID TO CUSTOMER IN CONNECTION WITH THE USE OF THE SECURITIES BORROWED FROM THE CUSTOMER LACK OF INTEREST ON CASH COLLATERAL, AMONG OTHER THINGS.

27.2. BY SIGNING BELOW, COUNTERPARTY AFFIRMS THAT HE, SHE, OR IT HAS DETERMINED THAT PARTICIPATION IN APEX CLEARING CORPORATION'S FULLY-PAID SECURITIES LENDING PROGRAM IS APPROPRIATE FOR COUNTERPARTY AND THAT IN MAKING SUCH DETERMINATION COUNTERPARTY HAS CONSIDERED COUNTERPARTY'S FINANCIAL SITUATION AND NEEDS, TAX STATUS, INVESTMENT OBJECTIVES, INVESTMENT TIME HORIZON, LIQUIDITY NEEDS, RISK TOLERANCE, AND ANY OTHER RELEVANT INFORMATION. COUNTERPARTY UNDERSTANDS THAT COUNTERPARTY SHOULD DISCUSS WITH COUNTERPARTY'S BROKER WHETHER PARTICIPATION IN THE FULLY-PAID SECURITIES LENDING PROGRAM IS APPROPRIATE



FOR COUNTERPARTY, AND THAT APEX IS NOT COUNTERPARTY'S BROKER. APEX CAN ONLY RELY ON REPRESENTATIONS OF COUNTERPARTY AND COUNTERPARTY'S BROKER AS TO WHETHER THE PROGRAM IS APPROPRIATE FOR COUNTERPARTY, AND APEX ITSELF HAS MADE NO DETERMINATION AS TO THE SUITABILITY OR APPROPRIATENESS OF THE PROGRAM FOR COUNTERPARTY.

Executed and Agreed By:

Apex Clearing Corporation

By providing this Agreement to eligible Apex Customers who are applying to participate in Apex's Fully Paid Lending Program, Apex agrees to the terms and conditions specified herein.

COUNTERPARTY:

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#### **Schedule of Basis of Compensation for Loan**

The compensation paid to Counterparty will be in the form of a Loan Fee, which will be accrued on a daily basis. The Loan Fee is calculated as 15% of the net proceeds earned and received by Apex for relending Counterparty's shares. The remaining 85% of the net proceeds earned and received by Apex for relending the shares will be kept by Apex as its compensation as well as the compensation to the introducing broker. The percentages may be changed by Apex in Apex's sole discretion. Unless otherwise agreed, any Loan Fee payable hereunder shall be payable within fifteen (15) Business Days following the last Business Day of the calendar month in which such fee was incurred. For more information, Counterparty should refer to the document entitled Important Disclosures Regarding Risks and Characteristics of Participating in Apex Clearing Corporation's Fully-Paid Securities Lending Program.

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Annex A

Lender hereby authorizes Borrower to establish a Custody Account at a Custodian in the name of Lender for the deposit of Collateral, as an omnibus Collateral Account established in the name of all Lenders, or as a Collateral Account in the name of a Trustee for the benefit of all Lenders in accordance with Section 4.1 of this Agreement. Lender further authorizes Borrower

to maintain Collateral in the Custody Account to secure Loans in accordance with the terms of this Agreement.

Lender understands that the attached Fully Paid Lending Trust Agreement (the "Collateral Trust Agreement") or Fully Paid Agency Agreement (the "Collateral Agency Agreement," collectively referred to as a "Collateral Control Agreement") describes the obligations and rights of Borrower, Trustee or Agent and Custodian with respect to the maintenance of Collateral in the Collateral Account and rights of Lenders with respect to such Collateral, among other things. Lender further understands that pursuant to the Collateral Control Agreement, the Trustee or Agent will act for the benefit of Lender and other similarly-situated Lenders, under certain circumstances and subject to certain conditions. Lender acknowledges receipt of a copy of the Collateral Control Agreement and understands that it contains legal terms directly applicable to whether, and to what extent, Lender will be protected upon the occurrence of an Event of Default by the Borrower, as set out in this Agreement. Lender acknowledges that the Collateral Control Agreement contains rights, obligations and limitations directly relevant to Lender including instances in which Lender's recourse will be determined by the vote of the Majority Lenders (as defined in the Collateral Trust Agreement).

Lender understands that, among other things, Lender authorizes the Trustee or Agent under the Collateral Control Agreement to instruct Borrower to pay additional Collateral into the Collateral Account to maintain sufficient Collateral to secure a Loan, and to instruct Custodian to pay Margin Excess held in the Custody Account to Borrower in accordance with Sections 9.1, 9.2 and 9.3 of this Agreement. Upon the occurrence of an Event of Default on the part of the Borrower as set out in Section 12 of this Agreement, Lender has the right to instruct the Trustee or Agent to return Collateral to such Lender as and to the extent set forth in, and subject to the conditions and limitations contained in, the Collateral Control Agreement.

Lender hereby consents to the terms of, agrees to be bound by, and hereby adopts as fully as though it had manually executed the same, the Collateral Control Agreement, such that from and after the date hereof shall, Lender shall be and become a party thereto for all purposes. Lender may access the Collateral Control Agreement at any time on Borrower's website.

**Custodian Bank: JP Morgan Chase Bank, N.A.**

**Trustee or Agent: Wilmington Trust, National Association**

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## **Annex B**

Cash

United States Government-Backed Securities

