

## **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, and Securities borrowed by Apex from Counterparty in Counterparty’s margin account, pursuant to a margin account agreement between Apex and Counterparty 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.** Unless otherwise agreed, Borrower shall make available to Lender a record of the Loaned Securities. Such record may consist of an account statement or other 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, hold for Lender's benefit Collateral with a Market Value at least equal to the Margin Percentage of the Market Value of the Loaned Securities.
- 4.2.** The Collateral held by Borrower for Lender, as adjusted pursuant to Section 9, shall be security for Borrower's obligations in respect of such Loan and for any other obligations of Borrower to Lender hereunder. Borrower hereby pledges with, assigns to, and grants Lender a continuing first priority security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Securities by Lender to Borrower and which shall cease upon the transfer of the Loaned Securities by Borrower to Lender. Lender will be deemed to have transferred Loaned Securities to Borrower on the date Borrower treats such securities as having been borrowed pursuant to Exchange Act rule 15c3-3(b)(3) 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 hold Collateral on behalf of Lender.
- 4.4.** If Borrower holds Collateral 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 release the Collateral; and if Lender transfers Loaned Securities to Borrower and Borrower does not hold Collateral 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 notice to Lender (taking into account all relevant factors,

including industry practice, the type of Collateral to be substituted, and the applicable method of transfer), substitute Collateral for Collateral securing any Loan or Loans; provided, however, that such substituted Collateral shall (a) consist only of cash, securities or other property that Borrower and Lender agreed would be acceptable Collateral prior to the Loan or Loans and (b) have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral for Loans in which the party substituting such Collateral is acting as Borrower, shall equal or exceed the agreed upon Margin Percentage of the Market Value of the Loaned Securities.

## **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 an earlier date is agreed by the Parties, the termination date established by a termination notice shall be a date no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Securities (in the case of a notice given by Lender) or the non-cash Collateral securing the Loan (in the case of a notice given by Borrower) entered into at the time of such notice, which date shall, unless Borrower and Lender agree to the contrary, be (a) in the case of Government Securities, the next Business Day following such notice and (b) in the case of all other Securities, the third Business Day following such notice or such earlier date if required by applicable law or regulation.

(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 hold Collateral 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:

**8.5.1.** 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.

**8.5.2.** 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.

**8.5.3.** 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.

**8.5.4.** 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.** If Lender is a Customer, 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 hold additional Collateral 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. 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, 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 hold additional Collateral 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.
- 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 Borrower to reduce the amount of Collateral held by Borrower for 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.
- 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 (a) to be liable as principal with respect to its obligations hereunder or (b) to execute and comply fully with the provisions of Annex I (the terms and conditions of which Annex are incorporated herein and made a part hereof).

## **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 either party shall fail to hold Collateral 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 12.6, 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. 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 or pursuant to Section 4.5 or Section 9 shall be paid by Borrower.

### **14. Contractual Currency.**

**14.1.** 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.

**14.2.** 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.

**14.3.** 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.

### **15. 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:

**15.1.** 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.

**15.2.** 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.

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

**15.4.** Borrower and Lender agree that:

**15.4.1.** a. the term “Collateral” shall mean cash, securities issued or guaranteed by the United States government or its agencies or instrumentalities;

**15.4.2.** 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;

**15.4.3.** 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

15.4.4. 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.

## **16. 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.

## **17. 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.

## **18. 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.

## **19. 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.

## **20. 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.

## **21. MANDATORY ARBITRATION.**

**21.1.** 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.

## **22. Miscellaneous.**

**22.1.** 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.

**22.2.** 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.

## **23. Definitions.**

For the purposes hereof:

- 23.1.** “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.
- 23.2.** “Bankruptcy Code” shall have the meaning assigned in Section 24.1.
- 23.3.** “Borrower” shall have the meaning assigned in Section 1.
- 23.4.** “Borrower Payment” shall have the meaning assigned in Section 8.5(a).
- 23.5.** “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.
- 23.6.** “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.
- 23.7.** “Loan Fee” shall have the meaning assigned in Section 5.1.
- 23.8.** “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.

- 23.9.** “Close of Business” shall mean 4:00 p.m. (New York City time).
- 23.10.** “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.
- 23.11.** “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 held 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 securities under 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) 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.
- 23.12.** “Collateral Distributions” shall have the meaning assigned in Section 8.5(a).
- 23.13.** [intentionally omitted]
- 23.14.** “Contractual Currency” shall have the meaning assigned in Section 14.1.
- 23.15.** “Customer” shall mean any person that is a customer of Borrower under 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).
- 23.16.** “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.
- 23.17.** “Default” shall have the meaning assigned in Section 12.
- 23.18.** “Defaulting Party” shall have the meaning assigned in Section 16.
- 23.19.** “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.

- 23.20.** “Equity Security” shall mean any security (as defined in the Exchange Act) other than a “nonequity security,” as defined in Regulation T.
- 23.21.** “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.
- 23.22.** “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.
- 23.23.** “FDIA” shall have the meaning assigned in Section 24.4.
- 23.24.** “FDICIA” shall have the meaning assigned in Section 24.5.
- 23.25.** “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.
- 23.26.** “Foreign Securities” shall mean, unless otherwise agreed, Securities that are principally cleared and settled outside the United States.
- 23.27.** “Government Securities” shall mean government securities as defined in Section 3(a)(42)(A)-(C) of the Exchange Act.
- 23.28.** “Lender” shall have the meaning assigned in Section 1.
- 23.29.** “Lender Payment” shall have the meaning assigned in Section 8.5(a).
- 23.30.** “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).
- 23.31.** “Loan” shall have the meaning assigned in Section 1.
- 23.32.** “Loan Fee” shall have the meaning assigned in Section 5.1.
- 23.33.** “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.

- 23.34.** “Margin Deficit” shall have the meaning assigned in Section 9.2.
- 23.35.** “Margin Excess” shall have the meaning assigned in Section 9.3.
- 23.36.** “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).
- 23.37.** “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.
- 23.38.** “Market Value” shall have the meaning set forth in Annex II or otherwise agreed to by Borrower and Lender in writing. Notwithstanding the previous sentence, in the event that the meaning of Market Value has not been set forth in Annex II or in any other writing, as described in the previous sentence, Market Value shall be reasonably determined by Apex Clearing Corporation in accordance with its standard practices for valuing Securities. The determinations of Market Value provided for in Annex II or in any other writing described in this Section 23.38 shall apply for all purposes under this Agreement.
- 23.39.** “Payee” shall have the meaning assigned in Section 8.5(a).
- 23.40.** “Payor” shall have the meaning assigned in Section 8.5(a).
- 23.41.** “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.
- 23.42.** “Regulation T” shall mean Regulation T of the Board of Governors of the Federal

Reserve System, as in effect from time to time.

- 23.43. “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.
- 23.44. “Securities” shall mean securities or, if agreed by the parties in writing, other assets.
- 23.45. “Securities Distributions” shall have the meaning assigned in Section 8.5(a).
- 23.46. “Tax” shall have the meaning assigned in Section 8.5(a).
- 23.47. “UCC” shall mean the New York Uniform Commercial Code.

#### **24. Intent.**

- 24.1. 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).
- 24.2. 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.
- 24.3. 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.
- 24.4. 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).
- 24.5. 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).
- 24.6. 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.

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

**25.1.** 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.

**25.2.** 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.

## **26. OTHER IMPORTANT DISCLOSURES.**

**26.1.** 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.

**26.2.** 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:

---

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

Please contact your broker-dealer for information concerning calculation of the Loan Fee.

## 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**

**Annex B**

Cash

United States Government-Backed Securities