

# Form 603

Corporations Act 2001

Section 671B

## Notice of initial substantial holder

To Company Name/Scheme Northern Minerals Limited

ACN/ARSN 119 966 353

### 1. Details of substantial holder (1)

Name Credit Suisse Holdings (Australia) Limited (on behalf of Credit Suisse AG and its affiliates)

ACN/ARSN (if applicable) 008 496 713

The holder became a substantial holder on 18-April-2011

### 2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Persons' votes (5)	Voting power (6)
Common Stock	9,000,000	9,000,000	5.38%

### 3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Credit Suisse Securities (Europe) Limited (ARBN 099554131)	In its capacity as Prime Broker pursuant to a Prime Broking Agreement (see Annexure A of Notice )	9,000,000 Common Stock

### 4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Credit Suisse Securities (Europe) Limited (ARBN 099554131)	HSBC Custody Nominees (Australia) Limited	Credit Suisse Securities (Europe) Limited	9,000,000 Common Stock

### 5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the 4 months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
N/A, As these Holdings were held by Credit Suisse Securities (Europe) Limited on behalf of Prime Brokerage clients, there is no trading by Credit Suisse Securities (Europe) to be reported.				

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:


Name and ACN/ARSN (if applicable)	Nature of association
Credit Suisse Securities (Europe) Limited (ARBN 099554131)	Related Body Corporate

**7. Addresses**

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


Name	Address
Credit Suisse Securities (Europe) Limited (ARBN 099554131)	One Cabot Square, London E14 4QJ, UK

**Signature**

print name      Sarah Culham      capacity      Company Secretary  
sign here            date      21-Apr-2011

For personal use only

**This is the Annexure "A" referred to in Form 603**  
**"Notice of initial substantial holder"**



.....

**Date: 21 April 2011**

**Sarah Culham – Company Secretary**

**CREDIT SUISSE HOLDINGS (AUSTRALIA) LIMITED**  
**(ACN 008 496 713)**

For personal use only

For personal use only

**Credit Suisse Securities (Europe) Limited**

**And**

**Master Prime Brokerage Terms**

For personal use only

<b>1.</b>	<b>PRIME BROKERAGE.....</b>	<b>2</b>
1.1.	SERVICES PROVIDED BY CS.....	2
1.2.	TRANSACTIONS THROUGH EXECUTING BROKERS.....	2
1.3.	ADVANCES .....	2
1.4.	INTEREST.....	3
1.5.	CHARGES.....	3
<b>2.</b>	<b>MARGIN, CASH AND ASSETS.....</b>	<b>3</b>
2.1.	MARGIN .....	3
2.2.	TRANSFERS OF ASSETS .....	4
<b>3.</b>	<b>STATUS OF PROPERTY .....</b>	<b>4</b>
3.1.	CUSTODY .....	4
3.2.	OUTRIGHT TRANSFER OF SPECIFIED ASSETS.....	5
3.3.	USE OF PROPERTY .....	5
3.4.	RETURN OF EQUIVALENT ASSETS.....	5
3.5.	DISTRIBUTIONS AND CORPORATE EVENTS.....	5
<b>4.</b>	<b>LOANS OF SECURITIES.....</b>	<b>6</b>
<b>5.</b>	<b>FOREIGN EXCHANGE .....</b>	<b>7</b>
<b>6.</b>	<b>SECURITY INTEREST .....</b>	<b>7</b>
<b>7.</b>	<b>REPRESENTATIONS AND WARRANTIES .....</b>	<b>8</b>
<b>8.</b>	<b>ACKNOWLEDGEMENTS .....</b>	<b>8</b>
<b>9.</b>	<b>VALUATIONS, REPORTS AND SOFTWARE .....</b>	<b>9</b>
<b>10.</b>	<b>DEFAULT PROVISIONS.....</b>	<b>9</b>
<b>11.</b>	<b>GENERAL.....</b>	<b>11</b>
11.1.	INDEMNIFICATION AND DEFAULT INTEREST .....	11
11.2.	AGENCY .....	11
11.3.	INSTRUCTIONS AND MANAGERS .....	11
11.4.	TAXES .....	12
11.5.	MISCELLANEOUS .....	12
<b>12.</b>	<b>DEFINITIONS .....</b>	<b>15</b>

## 1. PRIME BROKERAGE

### 1.1. Services provided by CS

1.1.1. CS may provide the following services:

- (i) execution of Transactions;
- (ii) clearance and settlement (including the making and receiving of payments of cash and delivery of Assets);
- (iii) custody of Assets and cash ;
- (iv) customer reporting;
- (v) securities lending; and
- (vi) financing;

each on the terms and conditions set out in these Terms.

1.1.2. CS may vary from time to time the services it will provide to Customer and the charges associated with those services by prior notice in writing (which notices shall form part of these Terms). CS shall give reasonable notice to Customer of any refusal to provide a particular service (to the extent practicable in the circumstances) but shall, in any event, be entitled to refuse to settle a Transaction at any time in its absolute discretion.

### 1.2. Transactions through Executing Brokers

1.2.1 CS, where it has undertaken in its absolute discretion to do so, will settle Transactions on behalf of Customer executed by Customer with any Executing Broker in accordance with these Terms. For such purpose CS shall establish on its books and records one or more cash accounts and one or more securities accounts (the “Accounts”) designated with the name of Customer. Settlement of a Transaction by CS shall be subject to receipt by CS of a Trade Report from Customer, which Customer shall deliver to CS as soon as possible after execution of the Transaction and in any event no later than the close of business in London on the date of execution.

1.2.2 On the Business Day following receipt of the Trade Report by CS, CS shall report the Transaction to Customer based on the information in the Trade Report. However by so reporting, CS does not (expressly or impliedly) agree to settle such Transaction or represent that the details of the Transaction notified to Customer are accurate or correct.

1.2.3 Unless otherwise agreed from time to time, Customer shall make available for transfer from the Accounts, or provide to CS, any securities or cash (as the case may be) to be transferred by or on behalf of Customer to enable CS to settle the relevant Transaction. CS in its absolute discretion may agree to settle any Transaction by transferring cash or Securities on Customer’s behalf pursuant to sections 1.3 or 4 respectively (below), provided there is sufficient Margin in the relevant Account.

1.2.4 CS settles any Transaction only as agent for Customer and not as principal. CS has no control over, or responsibility for, the execution of Transactions with any Executing Broker (other than itself). Where a Transaction does not settle on the due date for settlement, CS may in its absolute discretion provisionally credit and debit the Accounts on such settlement date as if the Transaction had in fact settled. This contractual settlement may, however, at any time prior to actual settlement and at the absolute discretion of CS be reversed, and any interest accrued adjusted accordingly.

1.2.5 Notwithstanding any communication or undertaking which may be made or given from time to time by CS to attempt to resolve settlement of any Transaction, Customer shall be responsible for the ultimate resolution of discrepancies.

1.2.6 CS shall not be responsible or liable for:

- (i) confirming any Transaction to any Executing Broker;
- (ii) any acts or omission of any Executing Broker or its employees or agents; or

(iii) compliance with any regulatory requirement to report Transactions to an exchange or regulatory body (such action being the responsibility of Customer or Executing Broker) or any other regulatory reporting or notification requirements in respect of any Transaction or any Assets, unless CS is the Executing Broker and has regulatory obligations in that capacity pursuant to any applicable law.

1.2.7 Customer shall reimburse CS on demand, for all costs, liabilities, losses, fees and expenses (including but not limited to those associated with buy-ins and sell-outs and those resulting from an Executing Broker's inability to settle a Transaction) arising out of the orders placed by Customer with an Executing Broker or any action taken or not taken by an Executing Broker with respect to Customer or its Accounts.

1.2.8 Customer agrees that on reasonable prior notice to Customer, CS may decline to affirm and/or settle any Transaction or class of Transaction effected or to be effected by any Executing Broker or a particular Executing Broker or place a limit on the size of Transaction on Customer's behalf and CS shall, as soon as practicable upon so declining or placing a limit and so far as permitted by applicable laws and regulations, notify Customer thereof. In such circumstances, CS shall not be liable to Customer, any Executing Broker or any other third party for any costs, liabilities, damages or expenses incurred by any such person and Customer will settle outstanding Transactions with the Executing Broker directly.

### **1.3 Advances**

1.3.1. CS may, in its sole discretion, make Advances to Customer at request of Customer in accordance with these Terms.

1.3.2. Customer shall request Advances by such times as notified by CS from time to time, in order for such Advances to be made in the relevant currency.

1.3.3. CS (in its absolute discretion) may from time to time determine the total Advances it will make to Customer.

1.3.4. All Advances are repayable on the first Business Day following written demand (which may be by facsimile or electronic communication), such demand to be effective immediately. Customer may repay any Advance (in whole or part) at any time.

1.3.5. Customer hereby requests and authorises CS (without any further request being necessary) to repay Advances with any monies credited to Customer.

### **1.4 Interest**

1.4.1. Interest will accrue on Advances on a daily basis at such rates as CS notifies Customer in writing from time to time. CS will debit or credit interest, as appropriate, to Customer in accordance with CS policy. Debit interest will constitute further Advances.

1.4.2. In the event that any interest is due to Customer from any CS Entity, any such interest shall be paid after deduction of any applicable taxes.

### **1.5 Charges**

1.5.1. CS will charge Customer for its services under these Terms in accordance with its fee schedule provided to Customer, which may be revised by CS from time to time upon prior notice to Customer.

1.5.2. The charges of CS are exclusive of:

(i) any charges which may apply in relation to the execution of Transactions;

(ii) all applicable taxes and duties to which CS or any Transaction, cash or Assets may be subject (which Customer will reimburse CS on request); and

(iii) any applicable VAT.

1.5.3. CS may deduct any charges or costs (including those set out in section 1.5.2 above) from any account, monies or Assets of Customer held by or to the order of CS.

## **2. MARGIN, CASH AND ASSETS**

### **2.1. Margin**

2.1.1. CS (in its absolute discretion) may determine from time to time:

- (i) the amount of Margin (and the basis for calculating such Margin) required from Customer with respect to Obligations of Customer to any CS Entity;
- (ii) the types of cash and/or Assets which will be accepted as Margin; and
- (iii) for the purposes of determining the amount of Margin it requires, the discount (if any) to be applied to the current market value of any cash or Asset, whether paid or delivered to CS as Margin or otherwise.

2.1.2. In determining the basis on which it calculates the amount of Margin required in accordance with section 2.1.1, CS may identify and take into account certain related Obligations or Transactions between CS Entities and Customer under Covered Agreements, and in doing so may vary the usual calculation of Margin under such Covered Agreement for such Obligations and Transactions. CS shall notify Customer of any determinations it makes pursuant to this section.

2.1.3. Upon demand by CS, Customer shall pay or deliver such Margin to CS, in accordance with section 2.1.4, for credit to the Accounts or otherwise to be subject to the Security, as CS may in its sole discretion require.

2.1.4. In relation to a demand for Margin, subject to any requirements notified by CS from time to time, Customer will complete payment or transfer in accordance with section 2.2.1 and:

- (i) in the case of cash, if demand is made (a) prior to 2.00pm London time on any Business Day, not later than the close of business on the same Business Day, or (b) after 2.00pm London time on any Business Day, by close of business on the following Business Day.
- (ii) in the case of Assets, on the first Business Day after such demand is given on which delivery of the Assets would be made in accordance with the standard settlement time for the market, exchange or settlement organisation on, or through which, such Assets are principally traded or delivered.

2.1.5. Without prejudice to any other remedies of a CS Entity under these Terms (including, for the avoidance of doubt the right to declare an Event of Default and exercise any remedies in relation thereto), if Customer fails to complete a transfer of Margin in accordance with section 2.1.4, CS may at its discretion charge Customer interest at the Overdue Margin Rate from the time at which any such Margin should have been delivered until the time of actual delivery.

2.1.6. Upon CS determining that the total amount of Margin is in excess of its requirements under section 2.1.1, CS may, on request from Customer, transfer Equivalent Assets and/or release Margin to Customer in an amount equal to that excess.

### **2.2. Transfers of Assets**

2.2.1. Customer shall effect transfers to CS as follows:

- (i) in the case of cash, by transfer into one or more bank accounts specified by CS from time to time;
- (ii) in the case of Assets which cannot (or which CS has agreed) will not be delivered by book-entry, by delivery in appropriate physical form to CS accompanied by any duly executed instrument of transfer, transfer tax stamps and any other documents necessary to constitute a transfer to CS or an Account; or
- (iii) in the case of Assets which are securities which CS has agreed will be delivered by book-entry, by transfer to CS or an Account.

2.2.2. Customer will promptly execute all such transfers, powers of attorney, further assurances or other documents and take such further action as may reasonably be required to transfer any cash or Assets to CS or to an Account, or to enable CS to perfect or preserve its and any Affiliates' rights and interests in respect of any cash or Assets. Customer hereby appoints CS as its attorney to execute such documents and take such further action as CS sees fit for the purpose of enforcing its and any Affiliates' rights under these Terms.



### **3. STATUS OF PROPERTY**

#### **3.1. Custody**

- 3.1.1. Unless, and save to the extent that, any Assets are transferred to and held by CS in accordance with section 3.2, any Assets will be credited to an Account and held by CS as custodian in accordance with this section 3.1. The title of any Account will make it clear that any Assets credited to that Account belong to Customer (subject to the Security) and any such Account will be separate from any account in which CS holds its own assets. CS may in its discretion refuse to accept a delivery of any Assets.
- 3.1.2. CS intends to pool Customer's Assets and shall be entitled to treat them as fungible with Assets of the same description of other customers and at any time allocate Equivalent Assets to Customer. CS shall not be bound to return the original Assets transferred to it or its nominee or sub-custodian or other agents, but may return Equivalent Assets.
- 3.1.3. CS may hold Assets in registrable form in the name of a nominee controlled by it, or a nominee which is controlled by a recognised or designated investment exchange, or an eligible custodian, or in the name of a CS Entity, or in the name of Customer, or in the name of any other person in accordance with Customer's written instructions.
- 3.1.4. Customer is advised that, where due to the nature of the law or market practice of an overseas jurisdiction, it is in Customer's best interests, or it is not feasible to do otherwise, its Assets may be held in the name of CS or an eligible custodian. Any such Assets which are held in the name of CS, as a result, may not be segregated from CS's own investments and, in the event of default of CS, may not be as well protected from claims made on behalf of the general creditors of CS.
- 3.1.5. Where Customer has instructed CS regarding the holding, registration or recording of any Asset, Customer acknowledges that the consequences of so doing are at Customer's own risk.
- 3.1.6. Customer's Assets will, where appropriate, be held overseas. There may be different settlement, legal and regulatory requirements in overseas jurisdictions from those applying in the United Kingdom together with different practices for the separate identification of Assets.
- 3.1.7. CS may at any time or times delegate to any person(s) all or any of its rights, powers and discretions under these Terms on such terms (including power to subdelegate) as it sees fit, and may employ custodians, sub-custodians, nominees, securities depositories and others on such terms as it sees fit. CS will use reasonable care in the selection of, and will maintain what it in its sole discretion consider to be an appropriate level of supervision over, any custodian, sub-custodian, nominee or securities depository appointed by it. CS will be responsible and liable for the solvency, acts or omissions of any such party who is an Affiliate of, or nominee company controlled by, CS, but not of any other such party save to the extent that any loss arises directly from the negligence of a CS Entity in appointing any such custodian, sub custodian, nominee or securities depository. CS may hold Assets with a custodian which is in CS's group (as defined in the FSA Rules).

#### **3.2. Outright Transfer of Specified Assets**

- 3.2.1. In relation to any particular market or jurisdiction, where CS reasonably believes that the Security granted pursuant to section 6 may not be effective and Customer has requested, and CS has agreed to give, an Advance (pursuant to section 1.3) against the value of Assets held in that particular market or jurisdiction, then CS may require that such Assets will not be credited to an Account and held by CS in accordance with section 3.1, but will be transferred to CS in accordance with this section 3.2, any such Assets being "**Specified Assets**" for the purposes of these Terms.
- 3.2.2. In relation to any Specified Assets, all right, title and interest in any Specified Assets delivered or transferred to CS shall pass to CS free of all liens, charges and encumbrances and CS (or, in the case of Assets in respect of which the authority conferred by section 3.3 below is exercised, any other CS Entity) shall be obliged to return Equivalent Assets in accordance with these Terms. For the avoidance of doubt, any reference in these Terms or in any other communication with Customer (howsoever expressed) to an obligation to redeliver or account for or act in relation to any Specified Asset shall be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Assets.

#### **3.3. Use of property**

- 3.3.1. In respect of Assets held in an Account, Customer hereby authorises any CS Entity from time to time to sell, borrow, lend or otherwise transfer or use for its own purposes and account such Assets either for itself, or itself as broker for another person (including without limitation, any Affiliates) without giving any further notice of such

use to Customer. Such Assets shall then become legally and beneficially the property of the CS Entity or its transferee, subject to an obligation to transfer Equivalent Assets in relation thereto to Customer. For the purposes of this section:

- (i) any CS Entity may, without notice to Customer, re-transfer any such Assets (or Equivalent Assets in relation thereto) so used by delivering such Assets or Equivalent Assets into an Account whereupon any such Assets will become subject to these Terms, including, without limitation, the Security;
- (ii) any CS Entity may retain for its own account all fees, profits and other benefits received in connection with any such borrowing, loan, transfer or use; and
- (iii) the obligation to transfer or re-transfer Equivalent Assets shall be an obligation of CS.

3.3.2. Any CS Entities may (in their absolute discretion) at any time without prior notice to Customer transfer or allocate between them any cash or Assets held for Customer in discharge of any Obligation of Customer to any CS Entity. Such transfer or allocation shall extinguish any obligation on the part of that CS Entity to repay or redeliver cash or Equivalent Assets so transferred.

### **3.4. Return of Equivalent Assets**

3.4.1. Save and to the extent that Assets are held in an Account, whenever a CS Entity is obliged to return or redeliver Equivalent Assets pursuant to section 3.3.1 and cannot for any reason do so, the only obligation of that CS Entity in relation to Equivalent Assets shall be to pay or credit to Customer a cash sum equal to the market value of the Equivalent Assets, derived from rates offered by a dealer reasonably chosen by CS.

3.4.2. Any obligation of a CS Entity to repay cash or deliver Equivalent Assets is conditional upon that CS Entity being satisfied that all Obligations of Customer to CS Entities have been discharged in full.

### **3.5 Distributions and Corporate Events**

3.5.1 CS or the relevant Affiliate will (in its absolute discretion) either transfer or credit to Customer as soon as practicable following each distribution date:

- (i) in relation to any Assets held in an Account, any Distributions; or
- (ii) in relation to any Specified Assets, any cash, securities or other property of the same type, nominal value, description, currency and amount as any Distribution received in respect of any such Specified Assets;

in each case after deduction of any taxes and duties payable.

3.5.2 Customer will have no right to direct any CS Entity as to the exercise of voting or other rights conferred on any Assets, or to receive any originals or copies of proxies, notices, reports or other communications relating to any Assets.

## **4. LOANS OF SECURITIES**

4.1.1. Customer may request that CS lends securities to Customer to enable Customer to settle any existing or future transfer or delivery obligations in relation to those securities (a “**Securities Loan**”) with a third party. Any request for a Securities Loan will include details of the type and amount of securities in relation to which Customer requires CS to provide a Securities Loan (“**Loaned Securities**”). In the event that CS is willing to make a Securities Loan available to Customer (in whole or in part), CS will inform Customer of the type and amount of Loaned Securities available to settle any transfer or delivery obligations on behalf of Customer.

4.1.2. CS will only make a Securities Loan available to Customer if there is sufficient Margin available to CS in connection with Customer’s Obligations under any such Securities Loan or otherwise.

4.1.3. Any Loaned Securities lent to Customer will:

- (i) be used for the sole purpose of settling Customer’s transfer or delivery obligations in accordance with the request of Customer, by delivering or transferring the relevant number of Loaned Securities to Customer’s counterparty notified to CS; and
- (ii) will not, unless otherwise agreed, be available for transfer by Customer elsewhere.

- 4.1.4. Customer will pay CS such fee, based on any Loaned Securities made available to Customer from time to time under a Securities Loan, as is from time to time notified to it by CS.
- 4.1.5. In the event that CS makes a Securities Loan to Customer, CS may at any time thereafter require Customer to deliver Equivalent Securities in relation thereto to CS, by giving Customer notice of not less than the standard settlement time for such securities on the exchange or in the clearing or settlement organisation through which the Loaned Securities were originally delivered.
- 4.1.6. Notwithstanding any other provision herein, Customer agrees to indemnify CS for any losses, costs and expenses reasonably incurred by CS following a failure by Customer to deliver any Equivalent Securities to CS in accordance with section 4.1.5 or any further shares, bonus issues, rights or securities in accordance with section 4.1.7.. For the avoidance of doubt, such losses, costs and expenses will include such losses, costs and expenses that result from a buy-in required as a matter of regulation and/or CS exercising its right (which Customer hereby acknowledges) to buy in such Equivalent Securities or further shares, bonus issues, rights or securities required as a matter of regulation, to satisfy Customer's obligations, under section 4.1.5 or, as the case may be, section 4.1.7, or to meet its own contractual delivery obligations. The exercise of a buy in under this section by CS shall be in addition to any other rights or remedies available to CS.
- 4.1.7. Where, CS makes a Securities Loan to Customer (and prior to delivery by Customer of Equivalent Securities in relation thereto) and:
- (i) any Distribution is paid on any such Loaned Securities, Customer will pay to CS, on the payment date of any such Distribution, an amount of money equal to (and in the same currency as) the same together with an amount equal to any deduction, withholding or payment for or an account of any tax, together with an amount equal to any other tax credit associated with any such income, unless CS has agreed that an appropriate tax voucher, or payment of an agreed sum of money, may be provided or made in lieu of any such amount or a different amount is agreed between Customer and CS;
  - (ii) any further shares, bonus issues, rights or securities are issued or allotted in relation to any Loaned Securities, Customer will deliver the same to CS; or
  - (iii) any voting rights or other rights requiring election by the holder of such Loaned Securities become exercisable then Customer will exercise any such rights in accordance with CS's instructions.
- 4.1.8. CS shall have no responsibility for ensuring that any short sale effected by Customer in connection with any Securities Loan is in accordance with any applicable law and Customer acknowledges (and represents and warrants to CS) that, in connection with any such short sale, it will comply with any applicable laws to which it may be subject.
- 4.19. Expressions such as "loan", "lent" "lend" and "Securities Loan" are used to reflect terminology used in the market for transactions of the kind provided for in this section. All right title and interest to Loaned Securities shall pass from CS to Customer subject to an obligation of Customer to redeliver Equivalent Securities to CS in relation thereto. Each of Customer, and the relevant CS Entity shall procure the delivery of securities lent (or the redelivery of Equivalent Securities in relation thereto) free from all liens, charges and encumbrances in accordance with this section 4.

## **5. FOREIGN EXCHANGE**

- 5.1.1. If a CS Entity enters into any Foreign Exchange Transaction with Customer and at that time no Covered Agreement between that CS Entity and Customer applies to Foreign Exchange Transactions, then these Terms (including this section 5) shall apply to that Foreign Exchange Transaction.
- 5.1.2. If on any value date for any Foreign Exchange Transaction, more than one delivery of a particular currency is to be made between that CS Entity and Customer, then each party shall aggregate the amounts of such currency deliverable by it and (unless otherwise agreed) only the difference between the aggregate amounts shall be delivered by the party owing the larger aggregate amount to the other party (and, if the aggregate amounts are equal, no delivery of that currency shall be made).
- 5.1.3. CS may require Customer to provide Margin in relation to its Obligations under any Foreign Exchange Transaction.

## **6. SECURITY INTEREST**

- 6.1.1. As security for the payment and performance by Customer of all of its Obligations to any CS Entity (which

Obligations Customer hereby covenants to pay or perform as appropriate), Customer charges in favour of CS, on trust for itself and each CS Entity:

- (i) by way of first fixed charge, any and all right, title and interest of Customer to and in all cash held by a CS Entity (including cash held as Margin) and all Assets other than Specified Assets (whether or not held in an Account, and including Assets held as Margin); and
  - (ii) by way of first floating charge, any and all right title and interest of Customer in and to any Covered Agreement;
- (together, the "**Security Margin**").

- 6.1.2. The Obligations secured by the Security shall rank as among themselves in such order and manner as the CS Entities to whom such Obligations are for the time being owed may from time to time agree and, subject to and in default of any such agreement, as CS may from time to time in its absolute discretion determine.
- 6.1.3. CS shall hold the Security in the Security Margin, as trustee pursuant to these Terms, as an unallocated pool to which each CS Entity is beneficially entitled in such proportion as CS shall determine from time to time in its absolute discretion (subject to any agreement with Affiliates).
- 6.1.4. Each of Customer and each CS Entity acknowledges and consents to the Security, notwithstanding any provision to the contrary in any Covered Agreement.
- 6.1.5. The Security shall be a continuing security and shall not be satisfied by any intermediate payment or satisfaction of the whole or any part of any Obligations of Customer to any CS Entity, and shall not be affected by any other security interest now or subsequently held by any CS Entity for all or any Obligations of Customer to them.
- 6.1.6. Where any discharge is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be repaid on liquidation or otherwise without limitation, this Security and the liability of Customer under these Terms shall continue as if there had been no such discharge or arrangement.
- 6.1.7. Customer shall remain liable to observe and perform all the other conditions and obligations assumed by it in respect of any of the Assets secured by these Terms.
- 6.1.8. For the avoidance of doubt, where any Security Margin is located in or otherwise subject to the laws of a jurisdiction other than England, the Security is intended to be a grant of a security interest in such Security Margin which is valid according to the law of that other jurisdiction.
- 6.1.9. To the extent any Covered Agreement contains any provisions requiring the consent or agreement of Customer or any CS Entity in relation to the grant of the Security under, or any disposition for the purposes of, these Terms to the extent necessary to give effect to these Terms, Customer and any such CS Entity, as the case may be, so consents and agrees.
- 6.1.10. Customer (i) acknowledges that CS may file or register details of the Security in appropriate jurisdictions, and (ii) agrees that it shall, at its own expense, execute and/or file, or cause to be executed and/or filed, all such documents and notices (including, but not limited to, notice of the Security created pursuant to these Terms) in such manner and to such person and at such places as may reasonably be requested by CS to evidence and to establish and maintain the perfection and first priority of the Security.
- 6.1.11. CS may in its absolute discretion from time to time release any cash and Assets from the Security for the purposes of these Terms. Any such release on any particular occasion shall not act as a waiver of or affect CS's right to refuse to make any such release on any other occasion.
- 6.1.12. Customer undertakes not to create or have outstanding any encumbrance or security interest whatsoever over any Assets or Security Margin other than the Security or a lien routinely imposed on all securities in a relevant clearing system approved by CS.

## **7. REPRESENTATIONS AND WARRANTIES**

- 7.1 Customer represents and warrants to CS (which representations and warranties will be deemed repeated whenever it transfers cash or Assets to CS) that:

- (i) Customer is acting as principal in entering into and performing its obligations under these Terms and has the right to transfer cash and Assets and grant any Security according to these Terms;
- (ii) Customer is the sole legal and beneficial owner of all cash and Assets transferred or delivered to CS, free of all liens, charges, encumbrances and rights of any third party (other than those which arise under these Terms);
- (iii) no Event of Default, or event which upon a determination by CS would be an Event of Default, has occurred and is continuing;
- (iv) these Terms and Customer's obligations under these Terms and each Transaction constitute legal, valid and binding obligations of Customer enforceable in accordance with applicable law (subject to general insolvency, bankruptcy and equitable principles);
- (v) the execution, delivery and performance of these Terms and any Transaction does not and will not conflict with any applicable law to which Customer is subject or any constitutional documents, restriction or agreement affecting it or any of its assets;
- (vi) it has not created any encumbrance or security interest whatsoever over any cash, Assets or Security Margin other than as permitted by section 6.1.12;
- (vii) if Customer finances securities issued by any issuer organized or incorporated in the United States of America ("USA") or securities traded on a USA Exchange including NASDAQ ("US Securities"), it is not a U.S Person, or a foreign Person controlled by or acting on behalf of or in conjunction with a U.S Person as defined by, and Customer is not subject to, Regulation X of the board of Governors of the Federal Reserve System (12 C.F.R Section 224);
- (viii) Customer is organized outside the USA and is either not engaged in a trade or business in the USA for USA federal income tax purposes, or is an entity with substantially all of its voting securities owned by a non-USA person;
- (ix) Customer has a called up share capital or net assets of at least £5million or its equivalent in any other currency at any relevant time or can be classified as a "Professional Client" as defined by the FSA Rules; and
- (x) Customer's Assets shall not contain (i) plan assets subject to the provisions of Title I, Subtitle B, Part 4 of the U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA") or Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), (ii) assets of a governmental plan or other plan subject to restrictions similar or analogous to those contained in the foregoing provisions of ERISA or the Code or (iii) assets subject to restrictions that would otherwise be violated by the transactions and investments conducted by Customer under these Terms.

7.2 Customer shall notify CS promptly if any of the representations and warranties are incorrect or are likely to become incorrect at any time.

## 8. ACKNOWLEDGEMENTS

8.1 Customer acknowledges and agrees that:

- (i) it has made its own independent assessment (based on such advice from advisors as it deems appropriate) as to whether these Terms and any Transactions are, or will be, suitable for it and it is capable (on its own behalf, or through advice from its own advisors) of assessing the merits and risks of these Terms and any Transaction;
- (ii) the CS Entities are not acting as the fiduciary or advisor to Customer. In particular, no CS Entity is responsible for determining, and will not determine, whether these Terms or any Transaction is appropriate or suitable for Customer, or is consistent with and does not breach, Customer's investment guidelines, investment objectives, financial circumstances, or constitutional or other restrictions (even if a CS Entity has been advised of these or even if the same may be apparent from Customer's trading history or historic Assets);
- (iii) Customer is not relying on any communication, whether written or oral, at any time as investment, legal, tax or other advice in relation to these Terms, any Transaction or itself. No such communication will be deemed

- (iv) the CS Entities will not, at any time, monitor or review any of Customer's accounts, its Assets or its trading history or strategy in relation to, or for ensuring compliance with, Customer's investment guidelines, investment restrictions or overall objectives, or for compliance with any applicable law or restriction to which Customer may at any time be subject.

## 9. VALUATIONS, REPORTS AND SOFTWARE

9.1. Any CS Entity may from time to time provide Customer (by means of the Applications or otherwise) with various reports, valuations and confirmations in relation to Customer's Transactions, cash and Assets (together "**Reports**"). In relation to any such Reports, Customer acknowledges that:

- (i) any valuations included in the Reports represent an estimated, non-actionable, indicative valuation and are provided to Customer for information purposes only. In particular, the Reports, or any information or data included in them, are not intended for use for accounting, financial disclosure, or reporting purposes and do not represent a net asset value of the Assets;
- (ii) the Reports are for Customer's internal purposes only and are not for disclosure or publication to any other person;
- (iii) any Report does not represent an offer to enter into, transfer, terminate, buy or sell any Transaction or Asset or a commitment by any CS Entity to do so;
- (iv) any valuation or estimate included in any Report may not necessarily reflect any CS Entity's internal bookkeeping or valuation models and certain assumptions may have been made, and factors included, in any valuation for the purposes of the Report (e.g. market conditions, size of Assets);
- (v) any Report may incorporate, and be prepared on the basis of, positions, Assets and valuations held at or obtained for Customer from other brokers or institutions, or may incorporate valuations obtained from pricing sources a CS Entity believes to be reliable. No CS Entity makes any representations any such information is accurate or complete for any purpose; and
- (vi) CS may send Customer (or any Manager or other person authorised by Customer) unencrypted statements (including Margin statements) and other notices or notifications by e-mail, or other electronic means. Customer accepts all the risks of CS sending any such statements, notices or notifications by e-mail or other electronic means, including without limitation, any risks arising from the corruption, alteration, interception or disclosure of data and the risk of delayed or incomplete receipt. If CS sends a statement, notice or notification by e-mail or other electronic means, CS is, upon receipt of an answerback or receipt confirmation, entitled to treat any such message or document as received by, or on behalf of, Customer.

9.2. CS may, from time to time, provide Customer with certain proprietary and third party and other software and access to certain proprietary systems, including without limitation, PrimeView, (together, the "**Applications**") for use by Customer in connection with any services provided pursuant to these Terms. The Applications are the exclusive property of CS (or its Affiliates) or have been licensed for use by CS or its Affiliates and Customer is granted a non-exclusive, non-transferable, licence to use the Applications in accordance with these Terms and in accordance with the directions of CS at any time. CS may at any time terminate Customer's and any other party's access to and use of, the Applications. At the request of CS Customer will promptly return to CS copies of any software, materials or information relating to the Applications and delete the Applications from its systems.

9.3. Customer may request that CS provides Customer's Managers, auditors, administrators or others ("**requested parties**") with access to the Applications and any information relating to Customer, its Assets and Transactions through the Applications. Any requested parties are given access to the Applications at Customer's risk and subject to the terms of this section 9 and Customer shall be responsible for any use made of the Applications or any information by any requested parties. Customer acknowledges that CS shall not monitor, control or verify rights to the access to the Applications or any information obtained by any requested parties.

9.4. Any Applications are provided to Customer on the basis that Customer is solely responsible for ensuring the suitability or applicability of the Applications or any data produced by the Applications for Customer's (or any requested person's) purposes. CS does not represent or warrant that the Applications or any data produced by the Applications is error free, will be continuously available or will perform to any particular specification. No CS Entity and no third party provider referred to in section 9.2 above will have any liability for any losses or damages incurred as a result of any use made of the Applications.

9.5 Customer shall immediately notify CS of any unauthorized use of or access to any Applications. Following such notification, CS shall be entitled to take steps as it considers necessary to address such unauthorized access which steps may include terminating Customer's or any requested party's access to any or all of the Applications. Notwithstanding the foregoing, Customer shall remain responsible for any use made of the Applications.

## 10. DEFAULT PROVISIONS

10.1.1 On service of a Default Notice constituting an Event of Default, these Terms shall be terminated in accordance with this section 10 (the date of service of the Default Notice being the "**Termination Date**"), provided that in the case of an Event of Default under paragraphs (i), (ii), (iii) (v) or (vi) of the definition of Act of Insolvency with respect to a Customer that is governed by a system of law that does not permit termination to take place after the occurrence of such Event of Default, then these Terms will terminate as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition (in the case of paragraph (ii)) and, in such event, such date will be the "Termination Date". On the Termination Date, the following shall occur:

- (i) any Advance will immediately be repayable;
- (ii) any Securities Loan will be terminated and any Equivalent Securities due to be redelivered shall be immediately deliverable;
- (iii) in relation to any Specified Assets, Equivalent Assets in relation thereto shall be immediately deliverable;
- (iv) all outstanding Transactions will be terminated, and any obligation of any CS Entity to settle any outstanding Transaction (including for the avoidance of doubt a Foreign Exchange Transaction) under these Terms will cease);
- (v) the Security granted to CS by Customer under or pursuant to these Terms shall become immediately enforceable; and
- (vi) all Obligations and all other amounts due but unpaid under these Terms (other than any of Customer's Assets which CS is holding as custodian on behalf of Customer) will be immediately due and payable;

so that, in each case, each CS Entity's and Customer's obligations under these Terms and under each such Transaction shall be performed and effected in accordance with section 10.1.2

10.1.2 As at, or as soon as practicable after, the Termination Date, CS shall:

- (i) determine the amount of all Advances to be repaid by Customer;
- (ii) determine the Default Market Value of all Equivalent Assets (including Equivalent Securities under any Securities Loan and Specified Assets) due to be delivered by or to any CS Entity by or to Customer (as the case may be);
- (iii) determine any amount due to be paid by any CS Entity to Customer, or Customer to any CS Entity, in relation to any terminated Transactions or otherwise under these Terms (to the extent not already determined under this section 10.1.2);
- (iv) determine any amount due to be paid by one party to the other as a result of any termination and close-out of any Covered Agreement;
- (v) determine the amount of any Loss;
- (vi) without limiting the generality of the previous sub-sections, value an Asset (or Equivalent Asset due to be delivered in relation thereto) which is a convertible bond or other security which may be converted (whether into shares or otherwise) by reference to its value if such conversion were made (in any case, Customer agrees that such valuation is a reasonable pre-estimate of the value of any such Asset);
- (vii) to the extent that it has not already done so, allocate Margin and Security Margin or the proceeds thereof (following enforcement of the Security pursuant to 10.1.3) among any CS Entities in such manner as it deems appropriate and any such CS Entity may apply any Security Margin allocated to it in such manner as it deems appropriate in its sole discretion.

10.1.3 At any time after the Security has become enforceable, CS may put into force and exercise immediately or as and

when it may see fit, without further demand for payment, advertisement or other formality (all of which are hereby waived by Customer), any and every right, remedy and power possessed by CS by virtue of these Terms or available to a secured creditor (so that section 93 and section 103 of the Law of Property Act 1925 shall not apply to the Security) and in particular (but without limitation) CS shall have power to sell or dispose of or convert (where applicable) all or any of the Security Margin in any manner permitted by law upon such terms as CS shall in its discretion determine. Without limiting the generality of the foregoing, where CS exercises its power of sale, the timing of such sale shall be in CS' absolute discretion and CS may take into account the size, amount, liquidity and such other factors in respect of the Assets as CS in its absolute discretion thinks fit and may sell Assets over such period and by such method as CS in its absolute discretion thinks fit.

10.1.4 On the basis of the amounts established in accordance with section 10.1.2 (and in addition to any other right or remedy any CS Entity may have):

- (i) an account shall be taken of what is due from CS to Customer or Customer to CS and any such sums shall be set off against each other and only the balance of the account shall be payable (by the party having the claim valued at the lower amount pursuant to the foregoing);
- (ii) an account shall be taken of what is due from any Affiliate to Customer or Customer to any Affiliate and any Affiliate may set off any sums due from such (or any other) Affiliate to Customer against any sums due to such (or any other) Affiliate and only the balance of the account shall be payable (by the party having the claim valued at the lower amount pursuant to the foregoing);
- (iii) for the purposes of any account under this section 10.1.4, Customer's claim against any CS Entity in relation to the transfer to it of Equivalent Assets shall equal the Default Market Value thereof; and

any balances due from one party to the other following any set off under sub-sections (i) and (ii) above, shall be due and payable the next following Business Day (and provided always that any balance due from any CS Entity to Customer shall be subject to the Security).

10.1.5 If an Event of Default occurs, CS may (in its absolute discretion) by notice to Customer elect to constitute such Event of Default as an event of default under any or all Covered Agreements (and the Covered Agreements are hereby amended accordingly). Upon such notice being given:

- (i) an event of default shall have occurred under the Covered Agreements specified by CS in its notice and the relevant CS Entity shall have all of the rights and remedies available to it thereunder (as if such event of default had been specified therein and all notices and grace periods had been given or expired), including without limitation, any rights to terminate such Covered Agreements, close-out, terminate, liquidate and/or accelerate any transactions thereunder, and exercise any set-off or secured party rights and remedies thereunder; and
- (ii) for the avoidance of doubt, if any Transaction is documented under, or subject to, a Covered Agreement, any termination and close-out of that Transaction will be effected pursuant to that Covered Agreement (with any resulting payments or deliveries taken into account for the purposes of section 10.1.2).

10.1.6 If CS is satisfied that Obligations of Customer to any CS Entities have been irrevocably and unconditionally discharged and no further Obligations are capable of arising (but not otherwise), CS shall pay or deliver to Customer any remaining cash, Assets or Equivalent Assets and shall, at the request and cost of Customer, release the Security.

10.1.7 If any CS Entity takes any action under this section 10 or exercises any other remedy available to it, Customer will be liable to that CS Entity for any and all costs, losses penalties, fines, taxes and damages which that CS Entity may incur, including reasonable legal fees incurred in connection with such action or remedies and the recovery of any such costs, losses, penalties, fines, taxes and damages.

10.1.8 CS may, for the purposes of giving effect to the provisions of this section 10, convert any Obligation or currency held in one currency into another currency at CS's then prevailing rate of exchange.

10.1.9 Any rights and remedies available to any CS Entity under these Terms shall be in addition to any other rights or remedies available under the CS Terms and Conditions, any Covered Agreement or any applicable law.

10.1.10 Customer, by way of security, hereby irrevocably appoints any CS Entity as its attorney to execute any such transfers, powers, assurances or other documents and do such other acts for the purpose of perfecting or enforcing the Security. Customer ratifies and confirms and agrees to ratify and confirm whatever any CS Entity, as its attorney, shall do in the exercise or purported exercise of the power of attorney granted by this section 10.1.10



## **11. GENERAL**

### **11.1 Liability, Indemnification and default interest**

11.1.1 Customer indemnifies each CS Entity for any loss, claim, damage or expense (including legal fees, accountant's fees, special, direct and consequential damages, fines and penalties) incurred or suffered by, or asserted against, any such CS Entity arising out of:

- (i) any action or inaction by any Executing Broker or its agent or any other third person with respect to Customer or any Transaction;
- (ii) performance by any CS Entity of services for Customer under these Terms including, without limitation, the costs of settling Transactions;
- (iii) any breach by Customer of any provision of these Terms;
- (iv) any failure in whole or in part or delay in performing any duty or obligation under these Terms;
- (v) holding any cash or Assets on behalf of Customer (whether in an Account or otherwise); and
- (vi) any payment made or recovered in a currency other than that which is required to be paid.

11.1.2. Without limiting the generality of the foregoing, Customer specifically indemnifies each CS Entity in respect of any costs and legal fees incurred by them in connection with their defence of or participation in any action, claim, investigation, or administrative proceeding arising out of performance by any CS Entity of services for Customer under these Terms.

11.1.3 Except to the extent caused as the result of negligence, wilful default or fraud on the part of a CS Entity (or nominee with whom Securities are held which is itself controlled by any CS Entity) to whom CS's performance has been delegated, CS shall not be liable whether under contract, in tort or otherwise for any loss or damage that is caused to Customer, either directly or indirectly. CS shall not be liable whether under contract, in tort or otherwise for any losses that arise from any damage to Customer's business or reputation as a result of a breach of these Terms by CS. CS shall have no liability for any consequential loss or damage to Customer or any third party.

11.1.4 If Customer fails to pay any amount when due under these Terms, it will pay the relevant CS Entity interest on such amount (before as well as after judgment) from the date of demand until payment at a rate equal to the cost per annum if CS were to fund any such amount plus 2% per annum. Any such interest, to the extent due to CS, will constitute a further Advance.

### **11.2. Agency**

In agreeing to these Terms with Customer, CS also acts as the agent of each Affiliate in making them a party to these Terms. Any liability of any CS Entity under these Terms shall be several and not joint.

### **11.3. Instructions and Managers**

11.3.1. Any CS Entity may rely and act on any instruction, request or demand (whether received in written form, by facsimile, telephone, e-mail or other electronic form) which it reasonably believes to be from, or authorised by, Customer.

11.3.2 If Customer acts through a Manager, Customer authorises such Manager:

- (i) to place orders for Transactions with Executing Brokers in the name of Customer;
- (ii) to enter into any Transactions on Customers behalf with any CS Entity and to otherwise deal with any CS Entity on behalf of Customer in all matters relating to Transactions, Assets and these Terms; and

Customer ratifies and shall be bound by all actions taken by the Manager on behalf of Customer, including for the avoidance of doubt instructing CS to make cash transfers, withdrawals or payments from Accounts communicated by Manager to CS via Applications. Any CS Entity may rely on communications and instructions it reasonably believes to be from a Manager and Customer hereby indemnifies and hold harmless each CS Entity (and their respective directors, employees, officers and agents) on a continuing basis against any loss, claim, damage or expense sustained or incurred as a result of or in connection with the proper performance of that CS Entity's

obligations under these Terms or any Covered Agreement pursuant to communications or instructions received from any Manager prior to the close of business on the first Business Day following actual receipt by CS of a notice of cancellation or limitation of the Manager's authority, except to the extent that the loss, claim, damage or expense arises directly from the negligence, wilful default or fraud of a CS Entity.

#### **11.4. Taxes**

11.4.1 Customer has sole responsibility to:

- (i) pay any taxes in relation to its activities, including without limitation any capital gains taxes and tax on income, stamp, transfer or equivalent taxes or duties incurred in connection with any Transaction, cash, Assets or any Equivalent Assets, together with VAT if applicable;
- (ii) make any claims in relation to such taxes or duties, whether for exemption from withholding taxes, refunds or abatements from any taxes, or otherwise;
- (iii) file all returns in relation to any such taxes and provide any relevant tax authorities with all required information in respect of any Assets or Transactions.

11.4.2 All amounts payable to any CS Entity under these Terms are payable in full without set off or counterclaim and, except to the extent required by applicable law, free and clear of withholdings. If Customer is required by applicable law to make any deduction or withholding, it will pay the relevant CS Entity such additional amount as may be necessary to ensure that the net amount received by the CS Entity is the amount which would have been received had no such deduction or withholding been made.

#### **11.5. Miscellaneous**

11.5.1 Part I of the CS Terms and Conditions are incorporated by reference into these Terms. To the extent of any inconsistency, these Terms shall prevail over the CS Terms and Conditions. For the avoidance of doubt, Part II of the CS Terms and Conditions shall not apply to any services carried out pursuant to these Terms.

11.5.2 No provision of these Terms shall apply so as to exclude any liability of any CS Entity which by applicable law cannot be excluded by agreement with Customer.

11.5.3 Where a Covered Agreement allows Credit Support Documents or analogous documents to be specified, these Terms shall qualify as such with respect to such Covered Agreement.

11.5.4 Customer will promptly provide CS with its annual audited financial statements, quarterly unaudited financial statements, and monthly statements of its Net Asset Value.

11.5.5 CS or Customer may terminate these Terms upon seven Business Days written notice to the other. Upon such notice being effective, such date being the "Termination Date":

- (i) CS will not, unless otherwise agreed (and without affecting CS's right to refuse to settle a Transaction at any time), settle any Transaction or to provide other services under these Terms; and
- (ii) Customer shall, subject to the discharge of all Obligations due from Customer to any CS Entity, instruct CS to transfer all Equivalent Assets within the relevant delivery period for any such Assets plus seven Business Days.

Customer shall pay to CS all reasonable costs (including fees and taxes) incurred by it in transferring any Assets held by it under or in connection with the termination of this Agreement to Customer or its order. Without prejudice to any other rights CS may have under these Terms, if CS holds any Assets of Customer following the end of the delivery period specified above, CS may charge Customer such fees as are reasonable for continuing to hold such Assets.

11.5.6 Any termination of these Terms will not affect any CS Entity's continuing right to Margin or any other provisions of these Terms which is intended to survive termination (including without limitation indemnification of any CS Entity).

11.5.7 Notwithstanding that any Affiliate, or any other person, may have rights under these Terms, CS may amend, vary, terminate, enforce or otherwise deal with these Terms without the consent of, or notification to, any such Affiliate or other person.

- 11.5.8 No person other than CS, Customer and any Affiliate shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms.
- 11.5.9 CS may, at any time, transfer all or any part of its rights and obligations under these Terms to any Affiliate by delivering to Customer a written notice of transfer (a “**transfer notice**”) specifying the Affiliate to which any such transfer is to be made and the date of the transfer. On delivery of a transfer notice to Customer, and to the extent set out in any such transfer notice, CS and Customer shall be released from obligations to each other (and shall also be released from obligations to other CS Entities) and the Affiliate or Affiliates specified in the transfer notice and Customer shall assume all of the rights and obligations to each other (and to any other CS Entities) under these Terms (or that part of these Terms specified in the transfer notice) as were previously owed to or by CS.
- 11.5.10 These Terms and all Transactions under these Terms shall be construed in accordance with and governed by English law and Customer submits, for the benefit of any CS Entity, to the non-exclusive jurisdiction of the English courts and agrees that nothing in this section will affect the rights of any CS Entity to bring proceedings before any other courts of competent jurisdiction.
- 11.5.11 Customer hereby appoints the person identified as its Process Agent on the Execution Page of these Terms as its agent to receive on its behalf service of process in the English Courts. If such Process Agent ceases to be Customer’s agent, Customer will promptly appoint and notify CS of a new Process Agent in England.
- 11.5.12 Any notice (excluding any Default Notice given pursuant to section 10.1.1) to be given by a CS Entity shall be effective if sent:
- (i) to Customer at the address, facsimile number or electronic message address set out on the Execution Page of these Terms (or such other address details as Customer notifies to CS in writing) or, if no such address has been specified, the principal or registered office of Customer; and/or
  - (ii) to Manager at the address last notified in writing to CS; and
- any such notice will be effective upon receipt if delivered by courier; two Business Days after dispatch if sent by first class prepaid post; or on receipt of an appropriate answerback or system acknowledgement if sent by facsimile or electronic messaging system.
- 11.5.13 These Terms may be executed and delivered in counterparts each of which will be deemed an original.
- 11.5.14 No failure by any CS Entity to exercise, and no delay by an CS Entity in exercising any right, power or privilege hereunder shall operate as a waiver thereof or prejudice any other or further exercise by such party or any of its rights or remedies hereunder. The rights and remedies herein are cumulative and not exclusive of any right or remedies provided by law.
- 11.5.15 These Terms (save as expressly provided otherwise herein) represent the entire terms on which CS will provide to Customer the services set out in these Terms. The invalidity of any provision of these Terms and the agreements and documents referred to herein shall not affect the validity of any other provision.

## 12 DEFINITIONS

In these Terms, words and expressions defined below shall mean as follows (unless the context requires otherwise):

<b>Account</b>	has the meaning set out in section 1.2
<b>Act of Insolvency</b>	with respect to Customer: <ul style="list-style-type: none"><li>(i) the passing of a resolution for voluntary winding up, liquidation or administration (unless for the purposes of corporate reconstruction or amalgamation in respect of which CS has given its prior written approval);</li><li>(ii) the presentation or filing of a petition in respect of it in any court or before any agency alleging or for the bankruptcy, winding up or insolvency or seeking any re-organisation, arrangement, administration, liquidation, dissolution or similar relief under applicable law;</li><li>(iii) the appointment of an administrator, trustee, liquidator, or receiver, over it or any of its assets;</li><li>(iv) calling a meeting of creditors pursuant to Section 98 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof for the time being in force;</li><li>(v) making a general assignment for the benefit of its creditors;</li><li>(vi) the occurrence of similar or analogous procedures to the above, in any other jurisdiction;</li><li>(vii) its stating in writing that it is unable to pay its debts as they become due.</li></ul>
<b>Advance</b>	each amount of cash loaned by CS to Customer in accordance with these Terms (and includes any interest due thereon).
<b>Affiliate</b>	any entity controlled by CS (directly or indirectly), any entity that controls CS (directly or indirectly), or any entity under common control with CS (directly or indirectly). For this purpose, “ <b>control</b> ” of an entity means ownership of a majority of the voting power of the entity.
<b>Applications</b>	has the meaning set out in section 9.2.
<b>Asset</b>	any securities, financial instruments or other property transferred to any CS Entity or to its order pursuant to these Terms other than cash. For the avoidance of doubt any reference to Assets: (i) includes any non-cash Distributions; and (ii) where the context requires includes Specified Assets.
<b>Business Day</b>	unless otherwise specified means any day on which banks are open for business in London.
<b>Covered Agreements</b>	any agreement between: (a) Customer and CS or an Affiliate, being for the purchase, sale, exchange, swap, option or loan of securities, commodities, currencies, instruments, equity interests, money or other property, including, without limitation, all repurchase agreements, reverse repurchase agreements, buy/sell back and sell/buy back transactions, securities lending agreements, swap agreements, forward agreements, commodity agreements, futures agreements, foreign exchange agreements and option agreements, and all master agreements and confirmations with respect to any of the foregoing; and (b) any Affiliate and Customer (whether in writing or not) under which any Affiliate may hold any financial instruments, securities, cash or other property for or on behalf of Customer.
<b>Credit Support Document</b>	means a document, howsoever described, entered into by Customer and a CS Entity for the purposes of setting out the credit support, collateral or

	margin obligations of Customer.
<b>CS</b>	Credit Suisse Securities (Europe) Limited.
<b>CS Entity and CS Entities</b>	each and together, CS and any Affiliates.
<b>CS Terms and Conditions</b>	the Terms and Conditions (MiFID (1) September 2007 version) of CS, as amended or replaced from time to time.
<b>Customer</b>	the entity entering into these Terms and named as such on the Execution Page to these Terms.
<b>Default Market Value</b>	the amount which in the reasonable opinion of CS represents the fair market value of any Asset (or Equivalent Asset), having regard to such pricing sources and methods as CS considers appropriate, less all dealing and transaction costs which would be incurred in connection with a purchase or sale of such Assets.
<b>Default Notice</b>	a written notice, which notice may be immediate, served by CS on Customer stating that an event shall be treated as an Event of Default for the purposes of these Terms.
<b>Distribution</b>	any interest, dividends or other distribution (whether cash or another Asset) paid to or accruing for the benefit of the holder of an Asset.
<b>Equivalent Assets and Equivalent Securities</b>	Assets of an identical type, nominal value, description and amount as any Assets and Equivalent Securities shall be construed accordingly.
<b>Event of Default</b>	<p>the occurrence of any of the following with respect to Customer:</p> <ul style="list-style-type: none"><li>(i) an Act of Insolvency occurs or any enforcement action is taken with respect to Customer in respect of any security or arrangement having a similar effect to security;</li><li>(ii) Customer fails to make any payment or delivery to any CS Entity within one Business Day of the relevant due date;</li><li>(iii) Customer disaffirms or repudiates any Transaction with any CS Entity;</li><li>(iv) Customer fails in any way to perform any of its other material obligations promptly after receipt of written notice of such failure;</li><li>(v) any representation or warranty by Customer to CS is incorrect or was incorrect when given or repeated;</li><li>(vi) there is a material adverse change in the financial condition, operations or Net Asset Value of Customer;</li><li>(vii) in relation to Customer or any affiliate of Customer, a default, termination event or similar condition (howsoever described, which for the avoidance of doubt includes, without limitation, an Additional Termination Event under an ISDA Master Agreement) occurs under a Covered Agreement or any other agreement with any CS Entity;</li><li>(viii) in relation to Customer or any affiliate of Customer, any indebtedness or other financial obligation in an amount greater than USD 1,000,000 or its equivalent in any other currency is not paid when due or by reason of any default or event of default becomes due prior to its stated maturity or if payable or repayable on demand when so demanded; or</li><li>(ix) Customer is suspended or expelled from membership of, or participation in, any investment exchange, clearing house or association or self-regulatory organisation or suspended from dealings in any investments by any appropriate agency or Customer's assets are (or are ordered to be) transferred to a trustee by a regulatory</li></ul>

authority,

and CS serves a Default Notice on Customer.

<b>Executing Brokers</b>	any broker used by Customer, including any CS Entity.
<b>Foreign Exchange Transaction</b>	any transaction, for immediate delivery, for the purchase of an agreed amount of currency against the sale of an agreed amount of another currency.
<b>FSA</b>	the Financial Services Authority.
<b>FSA Rules</b>	the rules of the FSA from time to time.
<b>Loss</b>	in connection with any Transaction terminated in accordance with section 10.1.1 the amount determined by CS in good faith to be the total losses and costs (in addition to any amount determined in accordance with section 10.1.2) incurred by any CS Entity in connection with any such terminated Transaction including (without limitation) any loss of bargain, cost of funding, loss or cost incurred as a result of termination, liquidation, obtaining or re-establishing any hedge or related trading position.
<b>Manager</b>	any investment adviser, manager or other agent at any time appointed by Customer to act on its behalf.
<b>Margin</b>	cash or Assets paid or transferred by Customer to CS and subject to the Security.
<b>Net Asset Value</b>	the total value of assets less the total value of liabilities of Customer or any entity that controls Customer as appropriate, as calculated and determined in accordance with generally accepted accounting principles in the United States of America which, for the avoidance of doubt, shall include the impact of all off-balance sheet assets and liabilities of that entity.
<b>Obligations</b>	all obligations and liabilities of every kind and nature whatsoever (whether actual, contingent, present or future). A certificate in writing signed by a duly authorised officer of CS and certifying the total amount of Obligations shall be <i>prima facie</i> evidence of the matters so certified.
<b>Overdue Margin Rate</b>	an amount equal to USD LIBOR plus 2%.
<b>Reports</b>	has the meaning set out in section 9.1.
<b>Security</b>	the security interests and other rights granted pursuant to section 6 of these Terms.
<b>Securities Loan and Loaned Securities</b>	have the respective meanings set out in section 4.1.1.
<b>Security Margin</b>	has the meaning set out in section 6.1.1.
<b>Specified Assets</b>	has the meaning set out in section 3.2.1.
<b>Termination Date</b>	has the meaning set out in section 10.1.1 or 11.5.5 (as the case may be).
<b>Terms</b>	these Master Prime Brokerage Terms, together with any annexes, supplements or amendments hereto.
<b>Trade Report</b>	a report from Customer containing all details of a relevant Transaction, including but not limited to the contract amount, security, number of shares or units, whether the Transaction is a sale or purchase, any commission charged and other relevant market information.
<b>Transactions</b>	the purchase or sale by Customer of any security, derivative, currency or other financial instrument (whether on or off exchange), including (without limitation) any Foreign Exchange Transaction or Securities Loan.

Unless the context requires otherwise, references to: (a) these “**Terms**” are references to these Master Prime Brokerage Terms (along with any documents incorporated into these Terms); (b) sections are to sections of these Terms; (c) “**writing**”, or any notices or instructions in writing to be given or provided by any CS Entity (including any Default Notice), shall include, and may be given or provided by, telex, facsimile transmission, e-mail and

other electronic means; (d) “**applicable law**” means all applicable law, the FSA Rules and the rules, regulations, customs, requirements of any exchange, market, clearing house or settlement system through which Transactions are executed or settled; and (e) “**FSA**” or any regulatory body, or the “**FSA Rules**” or rules of any regulatory body, includes any entity which replaces or succeeds it and any rules which replace or succeed such rules. Section headings in these Terms are for guidance only and do not affect the interpretation of these Terms.

**EXECUTION PAGE**

**THESE MASTER PRIME BROKERAGE TERMS** are intended to take effect as a Deed even though CS executes them (for itself and on behalf of each Affiliate) under hand.

**SIGNATURES**

**EXECUTED AS A DEED AND DELIVERED ON THE DATE STATED BELOW BY CUSTOMER:**

**Full legal name of Customer:**

**Registered Address:**

\_\_\_\_\_  
\_\_\_\_\_

**Signature**

\_\_\_\_\_

**Signature:**

\_\_\_\_\_

**Name/Title:**

**Name/Title:**

**Witness Signature**

\_\_\_\_\_

**Witness Signature**

\_\_\_\_\_

**Name of Witness**

**Name of Witness:**

**Details for Notices:**

**Address:**

\_\_\_\_\_

**Tel No/Fax No:**

\_\_\_\_\_

**Address for e-mail:**

\_\_\_\_\_

**Process Agent:**

\_\_\_\_\_

**Address**

\_\_\_\_\_

---

**By Credit Suisse Securities (Europe) Limited** (for itself and on behalf of each Affiliate):

**Signature(s):**

\_\_\_\_\_

**Name(s):**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Details for Notices:**

One Cabot Square, London E14 4QJ (Attention of Head of Equity Prime Brokerage). Tel: 020 7888 7335. Fax: 020 7888 3368.

For personal use only