

RECORDATION FORM COVER SHEET
PATENTS ONLY

08-14-1998

FEE
OFFICE

To the Honorable Commissioner of Patents and Trademarks: Please record the attached

100793410

1. Name of conveying party(ies):

Daphne Eye Technologies
Daphne Medical Hong Kong Limited

Additional name(s) of conveying party(ies) attached?

☐ Yes☒ No

3. Nature of Conveyance:

☒ Assignment☐ Merger☐ Security Agreement☐ Change of Name☐ Other:

Execution Date: 24 December 1994

2. Name and address of receiving party(ies):

Name: Cain Research PTY Limited

Internal Address: 12/26 McPherson Street

Street Address:

City: Warriewood

Country: NSW, Australia Zip: 2102

Additional name(s) & address(es) attached?

☐ Yes☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s):

B. Patent No.(s): 5,329,322; 5,576,780; 5,684,561

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Greg T. Sueoka

Internal Address: Fenwick & West LLP

Street Address: Two Palo Alto Square

City: Palo Alto State: CA Zip Code: 94306

6. Total number of applications and patents involved: [3]

7. Total fee (37 CFR 3.41): \$120.00

☐ Enclosed☒ Fee Transmittal Enclosed

8. Deposit Account No.: 19-2555

DO NOT USE THIS SPACE

9. Statement and signature:

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Greg T. Sueoka, 33,800

Attorney, Reg No.

Signature

Date

Total number of pages including cover sheet, attachments, documents: [43]

Mail documents to be recorded with required cover sheet information to:

Box Assignment, Commissioner For Patents and Trademarks

Washington, D.C. 20231

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PATENT

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NO. 2232

P. 70

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PAGE 8

Revised
5:00 pm 30-12-99

CALN RESEARCH PTY LIMITED
("Caln")

DAFINE EYE TECHNOLOGIES
("Daphne US")

DAPHNE MEDICAL HONG KONG LIMITED
("Daphne HK")

DEED OF HEADS OF AGREEMENT

**Atanasovic Martell
Sydney**

Figure 8.4

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DEED OF HEADS OF AGREEMENT

THIS DEED is made on *28th* December, 1994.

BETWEEN:

1. **CAIN RESEARCH PTY LIMITED** (ACN 066 749 684) of 12/26 McPherson Street, Warriewood, New South Wales 2102 ("Cain");
2. **DAFINE EYE TECHNOLOGIES** a limited partnership of 2600 Puulani Way, Apt 2001, Honolulu, Hawaii, 96815, United States of America ("Daphne US"); and
3. **DAFINE MEDICAL HONG KONG LIMITED** of Unit B, 8th Floor, North Cape Commercial Building, 388 Kings Road, North Point, Hong Kong ("Daphne HK").

RECTALS

- A. Daphne US is the registered owner of the Patent.
- B. Daphne US wishes to assign the Patent to Daphne HK on the terms and conditions of this Deed.
- C. Daphne HK then wishes to assign the Patent to Cain upon the terms and conditions of this Deed.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed the following terms have the following meanings unless the context otherwise requires:

"Australian Assignment Fee" means the fee set out in Item 3 of Schedule 1;

"Australian Mortgage" means the mortgage granted by Cain to Daphne US in Clause 4.4 and includes any document entered into in accordance with Clause 2 in respect of that mortgage;

"Daphne Australia Limited" means the company to be incorporated by Daphne US in Australia;

"Dollars" or "\$" refers to Australian currency;

"Joint Venture" means the Joint Venture between Cain and Daphne Aus referred to in Clause 6;

"Joint Venturers" means Cain and Daphne Aus as parties to the Joint Venture;

"Patent" means:

- (a) the patent and patent continuations and related items and rights set out in Item 1 of Schedule 1;

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- (b) the model and prototype referred to in the valuation of Valutech Pty Limited dated on or about the date of this Deed in relation to, inter alia, the patent referred to in paragraph (a); and
- (c) all technology and information (including, without limitation, all "Core Technology" as defined in the Procedures memorandum) associated with the patent referred to in paragraph (a).

"Preference Shares" means redeemable preference shares in Cain referred to in Clause 5;

"Procedures Memorandum" means the document so entitled between Cain, AusAsean Financing Limited, AusAsean Management Limited, Thakral Corporation Pty Ltd and a wholly owned subsidiary of Thakral R&D Pty Ltd dated on or after the date of this Deed;

"Purchase Price" means the amount set out in Item 2 of Schedule 1.

"Settlement Date" has the same meaning as that set out in the Procedures Memorandum.

"US Mortgage" means the mortgage granted by Daphne HK to Daphne US in Clause 3.6 and includes any document which is entered into in accordance with Clause 2 in respect of that mortgage.

1.2 Interpretation

Unless otherwise specified, in this Deed:

- (a) words denoting the singular include the plural and vice versa;
- (b) a reference to a person includes a corporation;
- (c) a reference to any gender includes all genders;
- (d) a reference to an obligation includes a liability and a duty and a reference to perform includes observance;
- (e) headings in this Deed are for convenience of reference only and do not affect interpretation;
- (f) a reference to a recital or clause is to a recital or clause in this Deed;
- (g) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (h) a reference to a party to this Deed includes its successors, permitted transferees and assigns.

2. INTENTION

2.1 This Deed is intended to be legally binding on the parties to it.

2.2 (a) The terms of the Joint Venture and the terms of and the issue of the Preference Shares will have to be documented in further detail. The parties will use their best

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endeavours to negotiate definitive arrangements in that regard on the terms and conditions set out in this Deed.

- (b) Without limiting Clause 2.1, the failure for any reason (and whether in whole or in part) of Daphne HK or Cain to perform any of their respective obligations under this Deed (including the failure to pay any purchase price or issue of the Preference Shares and the failure for any reason to negotiate or conclude the definitive arrangements referred to in Clauses 2.2(a) or 2.3 or 2.4) shall not in any way effect the assignments in Clauses 3.1 and 4.1 and the mortgages in Clauses 3.6 and 4.4(a) which on the date of this Deed shall immediately (and without more) be of full force and effect.

2.3 The US Mortgage and Australian Mortgage will also have to be documented in further detail. However, the mortgages in Clauses 3.6 and 4.4(a) are intended to be binding obligations as of the date of this Deed. The parties will use their best endeavours to negotiate definitive arrangements in that regard on the terms and conditions set out in this Deed.

2.4 The release from the Australian Mortgage referred to in Clause 4.4(b) is intended to be legally binding and will be incorporated or apply to any definitive Australian Mortgage entered into in accordance with Clause 2.3.

3. DAPHNE US ASSIGNMENT

3.1 In consideration for the payment of the Purchase Price from Daphne HK to Daphne US, Daphne US assigns all of its right, title and interest in, to and under the Patent to Daphne HK or its nominee.

3.2 The Purchase Price will be payable from the first moneys received by it from the redemption of the Preference Shares net of any governmental charges (including tax) payable by Daphne HK on or in respect of such moneys.

3.3 Such net moneys shall be payable to Daphne US as and when received by Daphne HK.

3.4 (a) Daphne US shall do all things necessary to perfect the assignment referred to in Clause 3.1 to Daphne HK or its nominee within 180 days of the date of this Deed.

(b) Daphne HK nominates Cain as the party in whose name the assignment referred to in Clause 3.1 should be registered pursuant to the assignment referred to in Clause 4.1(a).

(c) At any time and from time to time after the date of this deed, Daphne US shall:

- (i) disclose to Cain all technology and information, in such detail as Cain may require; and
- (ii) make available all equipment and apparatus to Cain to such extent as Cain may require,

as comprises the Patent.

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(d) The Patent and any part thereof is the confidential information of Daphne HK and Daphne US will:

- (i) not disclose to any other person in any way whatsoever; and
- (ii) take all steps necessary to prevent from passing into public domain.

all or any part of the Patent at any time except as required by any applicable law or regulatory requirement or with the prior written consent of Cain.

3.5 Daphne US makes the following representations and warranties for the benefit of Daphne HK:

- (a) It is the registered owner of the Patent;
- (b) it has good right title and authority to assign the Patent in accordance with this Deed; and
- (c) It has not created any third party right or interest (including any security interest) in or over the Patent.

3.6 In order to secure the payment of the Purchase Price, Daphne HK mortgages (assigns by way of security) all its right title and interest in, to and under the Preference Shares to Daphne US free and clear of any other third party right or interest..

4. DAPHNE HK ASSIGNMENT

4.1 (a) In consideration for the payment of the Australian Assignment Fee from Cain to Daphne HK, Daphne HK assigns all of its right, title and interest in, to and under the Patent to Cain.

(b) Cain will satisfy its obligations to pay the Australian Assignment Fee by issuing the Preference Shares to Daphne HK.

4.2 (a) Daphne HK shall do all things necessary (and shall ensure that Daphne US shall do all things necessary) to perfect the assignment referred to in Clause 4.1(a) to Cain within 180 days of the date of this Deed.

(b) Daphne US agrees that its covenants under Clause 3.4 (c) and (d) are given for the benefit of Daphne HK and for the benefit of Cain.

(c) At any time and from time to time after the date of this Deed, Daphne HK shall procure to be:

- (i) disclosed to Cain all technology and information, in such detail as Cain may require; and
- (ii) made available all equipment and apparatus to Cain to such extent as Cain may require.

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as comprises the Patent.

(d) The Patent and any part thereof is the confidential information of Cain and Daphne HK will:

- (i) not disclose to any other person in any way whatsoever; and
- (ii) take all steps necessary to prevent from passing into public domain,

all or any part of the Patent at any time except as required by any applicable law or regulatory requirement or with the prior written consent of Cain.

4.3 Daphne HK makes the following representations and warranties for the benefit of Cain:

- (a) it is the assignee of the Patent under this Deed;
- (b) it has good right title and authority to assign the Patent in accordance with this Deed; and
- (c) it has not created any third party right or interest (including any security interest) in or over the Patent.

4.4 (a) In order to secure the payment of the issue of the Preference Shares, and the performance of Cain's other obligations under this Deed (and any definitive Deed entered into in accordance with Clause 2), Cain mortgages (assigns by way of security) all its right, title and interest in, to and under the Patent to Daphne US.

(b) Daphne US:

- (i) releases Cain from the Australian Mortgage in paragraph (a) to the extent that Cain licences the use of the Patent in accordance with the "Transaction Documents" as defined in the Procedures Memorandum; and
- (ii) acknowledges and agrees that its rights under or in respect of the Australian Mortgage shall be subject to the rights of the parties under such Transaction Documents as amended, novated or supplemented from time to time

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- (b) Cain may grant the "Licence" as defined in the Procedures Memorandum and there will be no joint venture in respect of the Patent to that extent only.

7. REPRESENTATIONS AND WARRANTIES

Each party makes the following representations and warranties for the benefit of each other party to this Deed:

- (a) if the party is a corporation, it is validly incorporated and if otherwise, it is validly constituted under its constituent documents (a copy of which shall be provided to any party, if requested);
- (b) it has the authority to enter into, deliver and perform its obligations and to carry out the transactions;
- (c) it has taken all necessary corporate and other action to authorize its entry into, delivery and performance of the deed;
- (d) the deed is its legal, valid and binding obligation enforceable in accordance with its terms;
- (e) in entering into the deed, it is not violating any laws, treaties or judgments of any governmental agency, its memorandum or articles of associations or other constituent acts or documents or any other document that is binding over any of its other assets; and
- (f) it is not trustee of any trust.

8. EFFECTIVE DEED

This Deed and the transactions contemplated by this Deed shall be of no force or effect prior to the Settlement Date.

9. ENTIRE DEED

This Deed embodies all of the terms of the deed between the parties. Each party acknowledges that no representation has been relied upon by it in entering into this Deed that is not set out in this Deed.

10. SEVERABILITY

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction will be ineffective as to that jurisdiction to the extent of such prohibition or unenforceability. This will not invalidate the remaining provisions of this Deed or affect the validity or enforceability of that provision in any other jurisdiction.

11. NON WAIVER

A single or partial exercise or waiver by a party of a right relating to this Deed will not prevent any other exercise of that right or the exercise of any other right.

12. GOVERNING LAW

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- (a) This Deed is governed by and shall be construed in accordance with the laws of New South Wales.
- (b) The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and the parties waive any right to object to any proceedings being brought in those courts.

13. ATTORNEYS

Each attorney executing this Deed states that it has no notice of the revocation of its power of attorney.

EXECUTED as a Deed in the United States of America.

CAIN

SIGNED for and on behalf of
CAIN RESEARCH PTY LIMITED
by its attorney
in the presence of:

Don Robert Yancey
(Print Name: DON ROBERT YANCEY)

Daphne Di Yancey
Witness
(Print Name: Daphne Di Yancey)

X DAPHNE US

SIGNED for and on behalf of
DAPHNE EYE TECHNOLOGIES
partnership by its authorized partners
in the presence of:

X Partner *Don Robert Yancey*
(Print Name: Don Robert Yancey)
X Partner *Daphne Di Yancey*
(Print Name: Daphne Di Yancey)

X *Jai-Fu Di, M.D.*
Witness
(Print Name: Jai-Fu Di, M.D.)

DAPHNE HK

SIGNED for and on behalf of
DAPHNE MEDICAL HONG KONG
LIMITED by its directors:

X Director *Don Robert Yancey*
(Print Name: DON ROBERT YANCEY)
X Director *Daphne Di Yancey*
(Print Name: Daphne Di Yancey)

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SCHEDULE 1

Item 1: Patent

1. US patent number 5,329,313

Location:

- * Maintained at the office of Brown Martin Haller & McClain, Patent Attorneys, San Diego CA USA.
- * Copies maintained in the company's files at its offices.

Date Filed: 26 May 1992

Date Granted: 12 June 1994

Description: Conceptual patent embodies the original concept for the Hand Held Autofactor. Its granting demonstrates the uniqueness of the overall design and establishes an identifiable, defensible right to the technology.

2. US patent Continuation-In-Part serial No 07/888,166; File Ref. 5905-PA01CP

Dated Filed: 29 June 1994

Location:

- * Maintained at the office of Brown Martin Haller & McClain, Patent Attorneys, San Diego CA USA.
- * Copies maintained in the company's files at its offices.

Description: Broad supplementary protection of the additional features designed since the original patent application. Provides general protection for devices of a similar description.

3. Technology Assessment Study (January-June 1993); Dated: June 1993; Authors John Fortner, Steve Wright and Leonard Sahupak; 35 pages; Wright Scientific Laboratories Inc, La Jolla, CA and the copyright and confidential information in relation thereto.

Location: Maintained in the file marked "Technology Studies" at the company's offices.

Description: This report describes extended, rigorous laboratory bench top testing of the electro-optics technology for measuring refraction.

Item 2:

Purchase Price:

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Item 3:

Australian Assignment Fee.

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NO. 4423 P. 3

THAKRAL R&D PTY LTD

and

CAIN RESEARCH PTY LIMITED
("Investor")

CAIN RESEARCH PTY LIMITED
("Researcher")

AUSASEAN FINANCING LIMITED
("Lender")

THAKRAL CORPORATION PTY LTD
("Company")

and

AUSASEAN MANAGEMENT LIMITED
("Manager")

PROCEDURES MEMORANDUM

-Arranged by -

AusAsian Advisers Limited

ATANASKOVIC HARTNELL
Sydney
ref:mt/per/cai1.3

29. APR. 1998 21:55

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NO. 4423 P. 4

PROCEDURES MEMORANDUM

THIS AGREEMENT is made on 30th December 1994.

BETWEEN:

1. **CAIN RESEARCH PTY LIMITED** (A.C.N. 066 749 684) of 12/26 McPherson Street, Warriewood, New South Wales 2102 ("Researcher");
2. **THAKRAL R&D PTY LTD** (A.C.N. 067 589 977) of Level 12, 301 George Street, Sydney, New South Wales ("JV1") and **CAIN RESEARCH PTY LIMITED** (A.C.N. 066 749 684) of 12/26 McPherson Street, Warriewood, New South Wales 2102 ("JV2") (the "Investor");
3. **AUSASEAN FINANCING LIMITED** (A.C.N. 003 645 823) of Level 1, 50 Carrington Street, Sydney, New South Wales (the "Lender");
4. **THAKRAL CORPORATION PTY LTD** (A.C.N. 056 566 253) of Level 12, 301 George Street, Sydney, New South Wales (the "Company"); and
5. **AUSASEAN MANAGEMENT LIMITED** (A.C.N. 002 866 971) of Level 1, 50 Carrington Street, Sydney, New South Wales (the "Manager").

RECITAL:

- A. The parties have entered into the Transaction Documents on the condition that they are of no force and effect until:

- (a) the Company notifies the Lender and the Manager; and
- (b) the Lender notifies the Company and the Researcher,

that certain funding conditions have been satisfied.

- B. The parties wish to set out certain funding procedures and general conditions in relation to the Transaction Documents.

IT IS AGREED as follows:**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In the Transaction Documents the following terms have the following meanings unless the context otherwise requires or such term is otherwise defined for the purposes of a Transaction Document.

"Advance" means the advance made or to be made under Clause 3 of the Loan Agreement and any amount capitalised under Clause 4 of the Loan Agreement.

"Authorization" includes any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Governmental Agency, or in relation to anything which will be prohibited or restricted in whole or in part by law if a Governmental Agency intervenes or acts in any way within a specific period after lodgement, filing, registration or notification, the expiry of such period without such intervention or action.

"Authorized Officer" of any person means any attorney, director, secretary or other officer of that person or any person from time to time nominated as such by that person by notice to the other parties, such notice to be accompanied by certified copies of signatures of all new persons so appointed.

"Borrower" means JV1 in its capacity as borrower under the Loan Agreement.

"Borrower Indemnity" means the counter indemnity contained in Clause 5.2 of the Deposit Agreement.

"Business Day" means a day on which:

- (a) banks are open for business in Sydney; or
- (b) where any payment is to be made, banks are open for business in the city where the payment is to be made.

"Collateral Security" means, in relation to any person a party to the Transaction Documents, any Security Interest, Guarantee or other document or agreement at any time created or entered into by any other person a party to the Transaction Documents as security for amounts or obligations owing to that first person.

"Commercialization Fee" means, in relation to any period, in relation to the Core Technology and the Research Results:

- (a) if an exclusive agency, licence or other right is granted under Clause 6.1(a)(ii) and (iii) of the LRC Agreement, the percentage of the R&D Proceeds agreed by the Marketer and the Investor; or
- (b) if a non-exclusive agency is granted under Clause 6.1(a)(i) or (iv) of the LRC Agreement:
 - (i) if the Principal Outstanding has not then been repaid, 12% of the R&D Proceeds; or
 - (ii) if the Principal Outstanding has then been repaid, 6% of the R&D Proceeds,

received by the Marketer during that period and to be paid in accordance with Clause 6.5 of the LRC Agreement.

"Commercialisation Income" means in relation to the Investor and any financial year:

(a) the Commercialisation Fee; and

(b) the R&D Proceeds *(not being Commercialisation Fee referred to in paragraph (a))* *in paragraph (a)*

received by the Investor during that financial year multiplied by the fraction $(1-T)$, where T represents the prevailing corporate rate of income Tax in Australia during that financial year, expressed as a fraction.

"Commercialisation Period" means, initially, the period commencing on the Settlement Date and terminating on the 7th anniversary of that date, or if the Marketer requests one or more Further Terms, the expiry of the final Further Term.

"Commitment" means the amount set out in Item 6 of Schedule 1, as reduced or cancelled under the Loan Agreement.

"Core Technology" means all technology and information (including, without limitation, Intellectual Property Rights, processes, formulas, reports, software, blueprints, know-how and research data) relating to the Project, as at the Settlement Date.

"Deposit" means the deposit referred to in Clause 3.1 (and all accruals on such deposit) made on the terms of the Deposit Agreement.

"Deposit Account" means the account in which the Deposit is made as referred to in Clause 2.2(c) of the Deposit Agreement.

"Deposit Agreement" means the agreement so entitled dated the date of this Agreement between the Lender, the Researcher and the Borrower.

"Deposit Amount" means the amount set out next to that term in Item 1 of Schedule 1.

"Drawdown Notice" means a notice given or to be given in accordance with Clause 3 of the Loan Agreement.

"Expiry Date" means 30 days after the date which is the earlier of:

(a) the expiry of the Commercialisation Period (excluding any Further Term); and

(b) the Investor giving the notice referred to in Clause 3.10(d) or Clause 9.3 of the L&C Agreement to both the Researcher and the Lender.

"First R&D Amount" means the amount set out next to that term in Item 2 of Schedule 1.

"First R&D Price" means the amount set out next to that term in Item 2 of Schedule 1.

"First R&D Price Date" means the amount set out next to that term in Item 2 of Schedule 1.

"Final Sum" means the amount in Item 4 of Schedule 1.

"Financial Indebtedness" means any indebtedness, present or future, actual or contingent in respect of moneys borrowed or raised or any financial accommodation whatsoever including, without limitation, under or in respect of any bill acceptance, endorsement, guarantee, interest, gold or currency exchange, hedge or arrangement of any kind, redeemable share, share the subject of a guarantee, discounting arrangement, financial or capital lease, hire purchase, deferred purchase price (for more than 90 days) of any asset or service, any obligation to deliver goods or other property or provide services paid for in advance by any financier or in relation to any other financing transaction.

"Further Term" means the period commencing on the expiry of the Previous Term and terminating on the 5th Anniversary of that date, if the Researcher so elects under Clause 6.1(b) of the LRC Agreement.

"Governmental Agency" means any government or any governmental, semi-governmental or judicial entity or authority.

"Guarantee" means any guarantee, indemnity, letter of credit, legally binding letter of comfort or suretyship, or other obligation or irrevocable offer (whatever called and of whatever nature):

- (a) to pay or to purchase;
- (b) to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of;
- (c) to indemnify against the consequences of default in the payment of; or
- (d) otherwise to be responsible for;

any obligation or indebtedness of any other person, any dividend, distribution, capital or premium on shares, stock or other interests, or the insolvency or financial condition of any other person.

"Instalment" means, in relation to an Instalment Date, that instalment set out next to that date in Item 3 of Schedule 1.

"Instalment Date" means each date referred to in Item 3 of Schedule 1.

"Insurance" means the insurance required to be taken out under Clause 3.7 or Clause 6.3(c) of the LRC Agreement.

"Intellectual Property Rights" means any industrial or intellectual property right including, without limitation, any rights in respect of or in connection with any confidential information, copyright, patents, trademarks, design rights, reports, drawings, specifications, plant variety rights or eligible layout rights and including further any rights to apply for registration of such intellectual property.

"Interest Rate" means the rate referred to in Item 5 of Schedule 1.

"IR&D Act" means the Industry Research and Development Act (Cth.).

"Joint Venture" means the joint venture constituted by the Joint Venture Agreement.

"Joint Venturer" means a joint venturer under the Joint Venture Agreement and, in relation to the Company, means JV1.

"Joint Venture Agreement" means the agreement so entitled and dated the date of this Agreement between JV1, JV2 and the Manager.

"Joint Venture Assets" means all the right, title and interest of the Joint Venture, both present and future, in the Technology, under the Transaction Documents and any other assets which the Joint Venturers agree should be contributed or acquired by the Joint Venture.

"Joint Venture Commitment" means, with respect to each Joint Venturer, the amount set out opposite its name in Item 2 of the Schedule to the Joint Venture Agreement or such other amount as that Joint Venturer may agree.

"Joint Venture Contribution" means the aggregate of all amounts required to be contributed by each Joint Venturer under Clause 4.2 of the Joint Venture Agreement.

"JV Account" means such bank accounts as the Manager may from time to time conduct for the purposes of the Joint Venture's business as notified from time to time to the Joint Venturers.

"JV1" means THAKRAL R&D PTY LTD (A.C.N. 067 589 977) of Level 12, 301 George Street, Sydney, New South Wales.

"JV2" means CAIN RESEARCH PTY LIMITED (A.C.N. 066 749 684) of 12/26 McPherson Street, Warriewood, New South Wales 2102

"Licence" means the licence granted under Clause 2.1(a) of the LRC Agreement or, if and to the extent the Core Technology is not property, the rights granted to the Investor under the Transaction Documents and the obligations of the Researcher under Clauses 2.5 and 8 of the LRC Agreement and Clause 4, in respect of the Core Technology.

"Licence Fee" means the amount set out next to that term in Item 1 of Schedule 1.

"Licence Period" means, initially, the period from the Settlement Date up to the twenty fifth anniversary of that date.

"Liquidation" includes official management, receivership, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

"Loan Agreement" means the agreement so entitled between the Borrower and the Lender dated

the date of this Agreement.

"Loan Event of Default" means any of the events specified in Clause 9 of the Loan Agreement.

"LRC Event of Default" means any of the events specified in Clause 9.1 of the LRC Agreement.

"LRC Agreement" means the agreement entitled Licence, Research and Commercialisation Agreement dated the date of this Agreement between the Investor and the Researcher.

"Majority Joint Venturer" means any one of the Joint Venturers whose aggregate Proportionate Share is greater than or equal to 60% of the aggregate of the total Proportionate Shares of all Joint Venturers.

"Management Fees" means the fees payable under Clause 8.2 of the Joint Venture Agreement.

"Manager" means the manager for the time being under the Joint Venture.

"Marketer" means the Researcher in that capacity.

"Material Adverse Effect" means in relation to any person, a material adverse effect upon:

- (a) the ability of that person to perform its obligations under any Transaction Document; or
- (b) the financial condition or business of that person and its Subsidiaries taken as a whole.

"Milestone" means any milestone in the R&D Program nominated as such in the Project Schedule.

"Mortgage" means the Mortgage of R&D Account dated the date of this Agreement given by the Researcher to JV1.

"Mortgaged Property" means the "Mortgaged Property" as defined in the Mortgage.

"Potential Event of Default" means any event or circumstance which with lapse of time or the giving of notice or both may, in the Investor's reasonable opinion, be a Loan Event of Default.

"Potential LRC Event of Default" means any event or circumstance which with the lapse of time or the giving of notice or both may be a LRC Event of Default.

"Power" means, in relation to any person, any power, right, authority, discretion or remedy conferred on that person by this Agreement or any Transaction Document.

"Previous Term" means the initial Commercialisation Period, or the current period at the time the Researcher elects a Further Term.

"Principal Outstanding" means, on any date, the aggregate amount advanced, capitalised or

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received by it as a result of or in connection with the commercialisation (including as contemplated in Clause 6 of the LRC Agreement) of all or any of the Technology.

"R&D Program" means the research and development to be conducted by the Researcher in accordance with Clause 3.1 of the LRC Agreement.

"Related Body Corporate" has the meaning given in the Corporations Law, but on the basis that **"Subsidiary"** where used in the Corporations Law has the meaning given in this Agreement.

"Repayment Date" means the earlier of:

- (a) 7 years from the Settlement Date; and
- (b) the Purchase Date.

"Report" means each quarterly report relating to the progress of the R&D Program as referred to in Clause 3.6 of the LRC Agreement.

"Researcher" means Cain Research Pty Limited in that capacity.

"Researcher Indemnity" means the indemnity contained in Clause 5.1 of the Deposit Agreement.

"Research Facilities" means any laboratory, office or other premises, personnel, equipment, computer hardware and software apparatus and property of any kind owned, controlled, reasonably required or utilised by the Researcher in relation to the Technology or the R&D Program.

"Research Results" means all technology and information (including, without limitation, Intellectual Property Rights, processes, formulae reports, software, blueprints, know-how and research data) generated or which comes to the knowledge of the Researcher during the R&D Period as a result of or in connection with the R&D Program or the Project or in connection with the performance of the Researcher's obligations under any Transaction Document but does not include the Core Technology.

"Reset Amount" means the amount set out next to that term in Schedule 1.

"Reset Conditions" means the conditions nominated in a notice under Clause 2.2 as such, as contemplated by Clause 2.4(a).

"Reset Date" means the date specified by the Company in a notice given in accordance with Clause 2.4(b).

"Second R&D Amount" means the amount set out next to that term in Item 2 of Schedule 1.

"Second R&D Price" means the amount set out next to that term in Item 2 of Schedule 1.

"Second R&D Price Date" means the amount set out next to that term in Item 2 of Schedule 1.

"Secured Moneys" means all moneys which the Borrower (whether alone or with any other person) or at any time may become actually or contingently liable to pay or which remains unpaid to or for the account of the Lender (whether alone or with any other person) for any reason whatsoever under or in connection with the Loan Agreement. It includes, without limitation, money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with the Loan Agreement or as a result of any breach of or default under or in connection with the Loan Agreement. Where the Borrower would have been liable but for its Liquidation, it will be taken still to be liable.

"Security Interest" includes any mortgage, pledge, lien or charge or any other security or preferential interest or arrangement of any kind, or any other right of, or arrangement with any creditor to have its claims satisfied prior to other creditors with, or from the proceeds or any asset (including, without limitation, retention of title other than in the course of day to day trading and any deposit of money by way of security) but excluding any charge or lien arising in favour of any Governmental Agency by operation of statute provided there is not default in payment of moneys secured by such charge or lien.

"Settlement Date" means the date the Lender gives the notice to the Researcher and the Company under Clause 2.3.

"Share" means, at any time, any issued share or other capital of JV1 and **"Shares"** means all of such shares or capital, in each case at that time.

"Subsidiary" has the meaning given in the Corporations Law but so that a corporation shall also be deemed to be a subsidiary of another corporation if that other corporation has appointed or is in a position to appoint a director or directors who are in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of the board of directors of the first mentioned corporation.

"Tax" includes any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by a Governmental Agency, together with any interest, penalty, charge, fee or other amount imposed or made on or in respect of any of the foregoing. **"Taxation"** shall be construed accordingly.

"Tax Act" means the Income Tax Assessment Act 1936 (Cth.).

"Technology" means all Core Technology and all Research Results.

"Transaction Document" means this Agreement, the Deposit Agreement, the Put Option, the LRC Agreement, the Mortgage, the Joint Venture Agreement, the Loan Agreement, the Head Licence, any agreement under which a payment is to be made to the Manager by any other party to this Agreement in connection with the Transaction Documents or any document or agreement entered into under, or for the purposes of amending or novating any of them.

1.2 Interpretation

In the Transaction Documents headings are for convenience only and do not affect the interpretation and except to the extent that the context otherwise requires:

- (a) references to any legislation or to any provision of any legislation include any modification or re-enactment of, or any legislative provisions substituted for, and all statutory instruments issued under, such legislation or such provision;
- (b) words denoting the singular include the plural and vice versa;
- (c) words denoting individuals include corporations and vice versa;
- (d) words denoting any gender include all genders;
- (e) references to any document or agreement (including this Agreement) include references to such document or agreement as amended, novated, supplemented or replaced from time to time;
- (f) references to Clauses, Annexures and Schedules are references to clauses, annexures and schedules of the agreement in which they appear and references to any such agreement include such Schedules and Annexures;
- (g) references to any party to any document or agreement include its successors or permitted substitutes or assigns;
- (h) "writing" and cognate expressions include all means of reproducing words in a tangible and permanently visible form;
- (i) "financial year" means the year 1 January to 31 December unless the context expressly relates to the financial year of a particular person and, in which case, means the income Tax year of such person; and
- (j) references to anything (including, without limitation, any amount) are a reference to the whole and each part of it.

1.3 Document or Agreement

In the Transaction Documents references to an "agreement" include any Security Interest, undertaking, deed, agreement or legally enforceable arrangements whether or not in writing and references to a "document" include any agreement (as so defined) in writing or any certificate, notice, instrument or document of any kind.

1.4 Assets

In the Transaction Documents a reference to any property or assets of any person includes any legal or beneficial interest of such person in such assets or property, whether as owner, lessee

or lessor, licensee or licensor, trustee or beneficiary or otherwise.

1.5 Investor

- (a) **(Obligation):** The obligations of each Joint Venturer in the Joint Venture under the Transaction Documents are several and not joint. The obligations of each Joint Venturer to contribute its share of the Licence Fee and the R&D Price shall be in the proportions set out in the Joint Venture Agreement.
- (b) **(Notices):** All consents, requests, demands, approvals, agreements, permissions, notices and other communications required or permitted to be given by and to the Investor under the Transaction Documents shall be given to or by:
 - (i) the Manager on behalf of the Investor, or
 - (ii) subject to Clause 20.3 of the Joint Venture Agreement, the Majority Joint Venturer alone (but shall be binding on all Investors).
- (c) **(Authority):** Any consent, permission or notice given by or to the Manager in accordance with the Transaction Documents shall be binding on the Investor and the Researcher shall not, unless expressly notified otherwise by the Investor, be obliged to investigate the authority of such person.

1.6 Business Day

Whenever any payment or any other action under a Transaction Document becomes due or is to be taken on a day which is not a Business Day, the due date for payment or taking of such action shall be the preceding Business Day and, if applicable, the payment shall be adjusted accordingly.

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4. CONFIDENTIALITY

4.1 Generally

(a) The Technology is the confidential information of the Investor and except as set out in Clause 4.2, each party will:

- (i) not disclose or permit the disclosure to any other person directly or indirectly in any way whatsoever of, and
- (ii) take all steps necessary to prevent from passing into the public domain or into the hands of third parties,

all or any part of the Technology

(b) It is acknowledged that the Core Technology is only the confidential information of the Investor during the Licence Period and thereafter will be the confidential information of the Researcher and, as except set out in Clause 4.2, will:

- (i) not disclose or permit the disclosure to any other person directly or indirectly in any way whatsoever of, and
- (ii) take all steps necessary to prevent from passing into the public domain.

4.2 Exceptions

Nothing in Clause 4.1 restricts the disclosure by any party of information:

- (a) (Court): In proceedings before any court or arbitral tribunal arising out of or in connection with any Transaction Document;

- (b) **(Governmental Agency):** if required under a binding order of any Governmental Agency or any procedure for discovery in any court proceedings;
- (c) **(Law):** if required to do so under any law or any administrative guideline, directive, request or policy, whether or not having force of law;
- (d) **(Lawyer):** its legal adviser and its professional consultants;
- (e) **(Employee):** to its employees, agents and sub-contractors;
- (f) **(Research):** in the case of the Researcher and the Investor, to the extent reasonably required by it to perform its obligations under the Transaction Documents; and
- (g) **(Consent):** otherwise as permitted by the Researcher and the Company.

3. GENERAL REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties

Each party makes the following representations and warranties for the benefit of each other party:

- (a) **(Status):** It is a corporation validly existing under the laws of the place of its incorporation.
- (b) **(Power):** It has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by these documents and to carry on its business as now conducted or contemplated.
- (c) **(Authorisations):** It has taken all necessary action to authorize any entry into and performance of the Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- (d) **(Documents Binding):** Each Transaction Document to which it is expressed to be a party is a valid and binding obligation of the party enforceable in accordance with its terms.
- (e) **(Transactions Permitted):** Neither the execution and performance by it of the Transaction Documents to which it is expressed to be a party nor any transaction contemplated under any such document will violate in any respect, any provision of:
 - (i) any law or treaty or judgement, ruling, order or decree or any Governmental Agency binding on it;
 - (ii) its memorandum or articles of association or other constituent documents; or

(iii) any other document or agreement which is binding upon it or its assets,

and, except as may be provided by the Transaction Documents, did not and will not result in:

(iv) the creation or imposition of any Security Interest on any of its assets under any of the foregoing; or

(v) the acceleration or cancellation of any obligation with respect to any Financial Indebtedness, or anything which constitutes (or which, with the giving of notice and/or lapse of time would constitute) an event of default, cancellation event, prepayment event or similar event (whatever called) under any agreement relating to Financial Indebtedness.

(f) (Authorisations): All Authorisations, if any, required in connection with the execution, delivery or performance by it and the validity and enforceability of the Transaction Documents to which it is a party and the transactions contemplated by such documents have been obtained or effected and are in full force and effect.

(g) (No trustee): It has not entered and will not enter into any Transaction Document as trustee of any trust.

5.2 Reliance

The parties acknowledge that they have each entered into the Transaction Documents in reliance on the representations and warranties in this Clause.

6. PAYMENTS

6.1 Time and Place

The Company and the Researcher shall make each payment under each Transaction Document by bank cheque not later than 2 p.m. (Sydney time) on the due date.

7. INTEREST ON OVERDUE AMOUNTS

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8. EXPENSES

Except as otherwise agreed, each party shall pay its own legal and accounting costs and expenses relating to the preparation and execution of the Transaction Documents.

9. STAMP DUTY

- 9.1 The Researcher shall pay all stamp, transaction, registration and similar Taxes (including fines and penalties except where such fine or penalty results from an act or omission of a party other than the Researcher) which may be payable or determined to be payable in connection with the execution or delivery of any Transaction Document (or any payment or receipt contemplated by any Transaction Document) or in connection with the sale of the Shares pursuant to the Put Option and the subscription referred to in Clause 5.3 of the Deposit Agreement.
- 9.2 Such Taxes shall include any financial institutions duty, debits tax or other Taxes payable by return and any such Taxes passed onto the Investor by any bank or financial institution.
- 9.3 The Researcher shall indemnify each other party on demand against any liabilities resulting from delay or omission to pay such Taxes except where such delay or omission is a result of an act or omission of a party other than the Researcher after that party has been placed in funds in respect of such Taxes by the Researcher in sufficient time (having regard to the place at which payment is required) and in cleared funds so as to enable the party to avoid any fine or penalty.
- 9.4 For the purposes of this Clause, Tax does not include tax on overall income.

10. WAIVERS, REMEDIES CUMULATIVE

- 10.1 No failure to exercise and no delay in exercising any right, power or remedy under any Transaction Document by the Investor or the Lender shall operate as a waiver, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- 10.2 The rights, powers and remedies provided to the Investor or the Lender in the Transaction Documents are cumulative and not exclusive of any rights, powers or remedies provided by law.

11. FURTHER ASSURANCES

Each party shall on request by another party and at the cost and expense of the requesting party, perform all such acts and execute all such agreements, assurances and other documents and instruments as the requesting party reasonably requires either to perfect the rights and powers afforded, created or intended to be afforded or created by the Transaction Documents or to give full force and effect to, the transactions provided for in or contemplated by the Transaction Documents.

12. CONSENTS AND APPROVALS

Unless otherwise expressly provided, a consent, approval or waiver to be given by any party under the Transaction Document may be given conditionally or unconditionally or withheld by that party in its absolute discretion.

13. SEVERABILITY OF PROVISIONS

Any provision of any Transaction Document which is prohibited or unenforceable in any jurisdiction will be ineffective as to that jurisdiction to the extent of such prohibition or unenforceability. That will not invalidate the remaining provisions of that Transaction Document or affect the validity or enforceability of that provision in any other jurisdiction.

14. REPRESENTATIONS

All representations and warranties in any Transaction Document shall survive the execution and delivery of the Transaction Documents and the provision of accommodation under them.

15. INDEMNITIES

Each indemnity in any Transaction Document shall:

- (a) be a continuing obligation;
- (b) constitute a separate and independent obligation of the party giving the indemnity from its other obligations under the Transaction Documents; and
- (c) survive termination of all or any part of the relevant Transaction Document.

16. MORATORIUM LEGISLATION

To the full extent permitted by law all legislation which at any time directly or indirectly:

- (a) lessens or otherwise varies or effects in favour of the Researcher or the Borrower any obligation under any Transaction Document; or
- (b) delays or otherwise prevents or prejudicially affects the exercise by the Investor or the Lender of any right, power or remedy conferred by any Transaction Document,

is negated and excluded from the Transaction Documents.

17. ASSIGNMENT AND AMENDMENTS

17.1 Assignment

No party shall novate, assign, transfer or otherwise create a participation or other interest in all or any of its rights or obligations under any Transaction Document without the prior

written consent of the Researcher, the Lender, the Manager and the Company.

17.2 Amendments

No party shall amend or vary any Transaction Document, except with the prior written consent of the other parties to that Transaction Document.

18. INDEMNITY

18.1 General

Subject to Clause 18.2, Cain Research Pty Limited, whether as Researcher, Marketer or JV2, ("Indemnifier") severally indemnifies the Lender, the Investor and the Company (each an "Indemnified Party") at all times from the date of this Agreement against all costs (including legal costs on the higher of a full indemnity and a solicitor and own client basis), losses, liabilities, damages, actions, suits, proceedings, claims, demands and expenses of whatsoever kind and nature directly or indirectly arising:

- (a) (enforcement): at any time from the exercise or enforcement, or attempted exercise or attempted enforcement of any right, remedy or power vested in an Indemnified Party against the Indemnifier (whether in its capacity as Researcher, Marketer or JV2) under or in connection with any Transaction Document;
- (b) (technology): in connection with:
 - (i) the licensing of the Core Technology and/or the Research Results under the Transaction Documents;
 - (ii) the carrying out of the R&D Program (including any testing or trial that may be carried out in connection with the R&D Program or the acts or omissions of the Researcher's agents or sub contractors),

whether or not relating to:

- (1) the property of any person;
 - (2) the death of, injury or other damage to any person; or
 - (3) the performance (or failure) by any person of any of its obligations under any Transaction Document;
- (c) from the occurrence of an Event of Default;
 - (d) from the infringement of any Intellectual Property Right arising as a result of or in relation to, or in connection with the use of the Core Technology and/or the Research Results; and

- (e) the use, sale, licence, sub licence or other commercialisation of the Technology undertaken by the Indemnifier.

18.2 Limitation

The Indemnifier shall have no liability under Clause 18.1 to an Indemnified Party to the extent that such liability arises as a direct result of the fraud, breach of obligations or negligence of that Indemnified Party or its Related Bodies Corporate.

19. NOTICES

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to the Transaction Documents shall:

- (a) be in writing addressed to the address of the recipient shown in this Agreement or to such other address as it may have notified the sender;
- (b) be signed by an Authorised Officer of the sender; and
- (c) be deemed to be duly given or made:
 - (i) (in the case of delivery in person or by cable) when delivered to the recipient at such address;
 - (ii) (in the case of telex) on receipt by the sender of the answerback code of the recipient at the end of transmission;
 - (iii) (in the case of post) if posted within Australia to an Australian address, 3 Business Days after posting and in any other case, 8 Business Days after posting by airmail; and
 - (iv) (in the case of facsimile) if the sender's facsimile produces a transmission report indicating that the facsimile was sent to the addressee's facsimile, the report will be prima facie evidence that the facsimile was received by the addressee at the time indicated on that report.

but if such delivery or receipt is later than 4 p.m. (local time) on a day on which business is generally carried on in the place to which such communication is sent, it shall be deemed to have been duly given or made at the commencement of business on the next such day in that place.

20. MANAGER AND CERTIFICATES

- (a) (Manager): The Manager shall perform the functions required of it under the Transaction Documents. In making any determinations and calculations the Manager shall act as an agent and as an expert and not as an arbitrator.

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- (b) (Authorized Officer): Each of the Company, the Researcher and the Borrower irrevocably authorises the Investor and the Lender to rely on a certificate by any person purporting to be a director or secretary of it as to the identity and signatures of its Authorized Officers and warrants that those persons have been authorised to give notices and communications under or in connection with the Transaction Documents.

21. GOVERNING LAW AND JURISDICTION

Each Transaction Document shall be governed by the laws of the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of its courts.

22. COUNTERPARTS

Each Transaction Document may be executed in any number of counterparts. All of such counterparts taken together shall be deemed to constitute the one instrument.

23. ATTORNEYS

Each attorney executing this Agreement states that it has no notice of the revocation of its power of attorney.

IN WITNESS the parties have executed this Agreement in the Australian Capital Territory.

RESEARCHER

SIGNED for and on behalf of
CAIN RESEARCH PTY
LIMITED by its attorney
in the presence of:


Witness

(Print Name: PAULINE BLAYDEN)



Attorney
(Print Name: JAMES GRANT)

23

LENDER

SIGNED for and on behalf of)
AUSASEAN FINANCING)
LIMITED)
by its attorney in the)
presence of:)



Witness)
(Print Name: **PAULINE BLAYDEN**)



Attorney
(Print Name: **JAMES GRANT**

MANAGER

SIGNED for and on behalf of)
AUSASEAN MANAGEMENT)
LIMITED by its attorney in the)
presence of:)



Witness)
(Print Name: **PAULINE BLAYDEN**)




Attorney
(Print Name: **JAMES GRANT**

INVESTOR

SIGNED for and on behalf of)
THAKRAL R&D PTY LTD)
by its attorney in the)
presence of:)



Witness)
(Print Name: **PAULINE BLAYDEN**)



Attorney
(Print Name:)
ROSEMARY TOWNSEND
Solicitor

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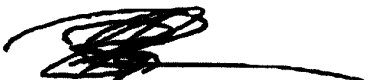
SIGNED for and on behalf of
CAIN RESEARCH PTY
LIMITED by its attorney
in the presence of:



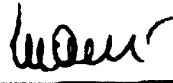
Witness
(Print Name: PAULINE BLAYDEN)

COMPANY

SIGNED for and on behalf of
THAKRAL CORPORATION
PTY LTD by its attorney in the
presence of:



Witness
(Print Name: PAULINE BLAYDEN)



Attorney
(Print Name: JAMES GRANT



Attorney
(Print Name:)

ROSEMARY TOWNSEND
Solicitor

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SCHEDULE 1

Item 1:	Licence Fee	Deposit Amount
Item 2:	R&D Price	R&D Deposit
	First R&D Price	First R&D Deposit
	Second R&D Price	Second R&D Deposit

REDACTED

First R&D Price Date Settlement Date
Second R&D Price Date 31 December 1995

Item 3:	Instalment Date	Instalment \$
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31 December 1994
31 March 1995
30 June 1996
30 September 1996
31 December 1995
31 March 1996
30 June 1996

Item 4:	Final Sum:	REDACTED
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Item 5:	Interest Rate.
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Item 6:	Commitment
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Item 7:	Reset Amount:
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T-937 P. 02/02 Job-920

4158570361

APR-29-98 06:44 From:FENWICK WEST

4154249772

T-501 P.30/88 Job-443

APR-29-98 04:58

61 2 92512937

P.30

R-762 Job-601

29. APR. 1998 22:02

CLAYTON UTZ 6 SYD 61 2 92517832

NO. 4423 P. 30

REDACTED

PATENT

REEL: 9375 FRAME: 0103

APR-29-98 06:44 From:FENWICK WEST

4154248772

T-501 P. 31/88 Job-443

APR-29-98 04:58

61 2 92512937

P 31

R-762

Job-601

29. APR. 1998 22:02

CLAYTON UTZ 6 BYD 61 2 92517832

NO. 4423 P. 31

REDACTED

APR-29-98 06:44 From:FENWICK WEST

4154248772

T-501 P 32/98 Job-443

APR-29-98 04:58

61 2 92512837

P 32

R-762 Job-601

29. APR. 1998 22:03

CLAYTON UTZ 6 FYD 61 2 92517832

NO. 4423 P. 32

REDACTED