

Draft: 12 Oct 2010

**Dated** [ ] 2010

[ ]

as the Guarantor

- and -

**ICE CLEAR EUROPE LIMITED**

as beneficiary

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DEED OF GUARANTEE AND INDEMNITY  
(Tri-Party Collateral)

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**THIS DEED** is dated [•] 2010

**BETWEEN:**

- (1) [ ] of [ ] as guarantor (the "**Guarantor**"); and
- (2) **ICE CLEAR EUROPE LIMITED** of [ ] as the beneficiary (the "**Clearing House**").

**WHEREAS:**

- (A) The Obligor (as defined below) is a clearing member of the Clearing House. The Obligor is party to a Clearing Membership Agreement (as defined below), the Rules (as defined below, which comprise a contract between the Obligor and the Clearing House) and certain other contracts-which from time to time require the Obligor to make payments to and deposit Security (as defined below) with the Clearing House in connection with the clearing of contracts.
- (B) The Guarantor, the Clearing House and Euroclear Bank have entered into the Collateral Service Agreement (as defined below) under which each of the Guarantor (as Collateral Giver thereunder) and the Clearing House (as Collateral Taker thereunder) have appointed Euroclear Bank as collateral service agent in connection with the delivery by outright transfer by the Guarantor to the Clearing House of collateral within the Euroclear System, being the clearance system for internationally traded securities operated by Euroclear Bank as operator of that system.
- (C) The Guarantor and the Clearing House may agree from time to time the Agreed Limit Amount (as defined below) which will limit the Guarantor's liability of the Guarantor under this Deed in respect of the Guaranteed Liabilities.
- (D) The Guarantor has agreed to deliver collateral by outright transfer to the Clearing House to collateralise its contingent liability under this Deed, having a Collateral Value (as defined below) not less than the Agreed Limit Amount. Such collateral is to be delivered under the Collateral Service Agreement.

**IT IS AGREED** as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions:** In this Deed:

"**Agreed Currency**" means U S Dollars, Euro or Pound Sterling.

"**Agreed Limit Amount**" means an amount agreed from time to time between the Clearing House and the Guarantor, which agreement is evidenced by the inputting by the Clearing House and the Guarantor of matching instructions to Euroclear Bank as agent pursuant to the Collateral Service Agreement;

"**Clearing Membership Agreement**" means the clearing membership agreement between the Obligor and the Clearing House;

"**Collateral Balance**" means the collateral delivered by the Collateral Giver to the Collateral Taker pursuant to the Collateral Service Agreement in respect of which equivalent assets have not been returned to the Collateral Giver by the Collateral Taker pursuant to Clause (3.2);

"**Collateral Giver**" has the meaning given in the Collateral Service Agreement;

"**Collateral Service Agreement**" means the Tri-party Collateral Service Agreement (ref [XXXX]) dated [\*\*] and entered into between the Guarantor (as Collateral Giver thereunder) (account [XXXXX]), the Clearing House (as Collateral Taker thereunder) (account 16900) and Euroclear Bank;

"**Collateral Taker**" has the meaning given in the Collateral Service Agreement;

"**Collateral Value**" means, at any time, the value, determined in the Agreed Currency, of the Collateral Balance calculated after taking into account all "haircuts" and percentage deductions provided for in Annexes I and II to the Collateral Service Agreement, such value to be taken, in the absence of manifest error, from the reports most recently delivered or made available to the Collateral Giver and the Collateral Taker by Euroclear Bank in connection with the operation of the Collateral Service Agreement;

("De Minimis Threshold" means [*here specify the threshold for requests by Guarantor for redelivery of collateral, in the Agreed Currency*]; )

"**Guaranteed Liabilities**" means all present and future obligations and other liabilities of any nature of the Obligor due, owing or incurred under or in connection with any of the Relevant Agreements to the Clearing House (including, without limitation, under any amendments, supplements or restatements of any of the Relevant Agreements or in relation to any new or increased amounts thereunder or any extension of any date for payment or repayment thereunder), actual or contingent, matured or not matured, liquidated or unliquidated, whether incurred solely or jointly and/or severally and whether as principal or surety or in any other capacity whatsoever, in any currency or currencies, including all interest accruing thereon, after as well as before judgment, and all costs, charges and expenses (to the extent payable by the Obligor pursuant to the terms of the Relevant Agreements) incurred in connection therewith (excluding, in any case, liabilities, damages or expenses resulting from the fraud, gross negligence or wilful misconduct of ICE and any punitive damages), and "**Guaranteed Liability**" shall be construed accordingly;

"**Obligor**" means [**name of clearing member**] of [ ];

"**Realised Value**" means, in respect of the Collateral Balance or any part thereof, the cash proceeds available to the Clearing House on a sale or other realisation of collateral comprised in the Collateral Balance, net of any costs (including any taxes) incurred in that realisation;

"**Release Date**" means the date on which the Obligor ceases to be a Clearing Member or the date of which the Obligor ceases to have obligations to the Clearing House, whichever is the later;

"**Relevant Agreements**" means the Clearing Membership Agreement, the Rules, all Contracts (as such term is defined in the Rules and all other agreements between the Obligor and the Clearing House);

"**Rules**" means the rules and procedures of the Clearing House, as amended from time to time, which, pursuant to the Clearing Membership Agreement, are contractually binding on the Obligor.

"**Security**" means any mortgage, charge, pledge, lien, collateral or other security interest or trust arrangement for the purpose of securing any obligation of any person or any other agreement or arrangement having a similar effect (including, without limitation, any Margin, Permitted Cover or Guaranty Fund Contribution); and

"**this Deed**" means this guarantee as varied, amended or supplemented from time to time.

1.2 Unless otherwise expressly defined in this Deed or the context otherwise required, words and expressions defined in the Relevant Agreements shall have the same meaning in this Deed or any notice given in relation to this Deed.

1.3 **Construction:**

Unless a contrary indication appears, any reference in this Deed to:

- (a) a "**person**" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (b) "**rights**" shall be construed as including rights, benefits, privileges, consents, authorities, discretions, remedies and powers and "**right**" shall be construed accordingly;
- (c) "**Guaranteed Liabilities**" includes any liabilities which would be treated as such but for the liquidation or dissolution or similar event affecting the Obligor;
- (d) the Guarantor or the Clearing House shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests;
- (e) any Clause or Schedule shall be to a clause or schedule of this Deed unless otherwise specified; and
- (f) any document, agreement or instrument is a reference to that document or other agreement or instrument as from time to time amended, restated, novated, varied and/or supplemented.

1.4 **Covenants and Representations:**

- (a) Each covenant of the Guarantor contained in this Deed shall be and remains in force from the later of (i) the date of this Deed and (ii) the date on which the Obligor executes the Clearing Membership Agreement until the Release Date.
- (b) The representations and warranties set out in this Deed are made on the date of this Deed and are, unless otherwise stated herein, deemed to be repeated by the Guarantor on each day from the date of this Deed until the Release Date with reference to the circumstances existing at the time of repetition.

2. **GUARANTEE AND COVENANT TO PAY**

2.1 **Guarantee:** Subject to Clause 2.4, the Guarantor unconditionally and irrevocably:

- (a) guarantees to the Clearing House as principal obligor the punctual performance and payment by the Obligor of all Guaranteed Liabilities due, owing or incurred by the Obligor;
- (b) undertakes with the Clearing House that whenever the Obligor fails to pay or perform any Guaranteed Liabilities when due, it will immediately on demand pay that amount as if it were the principal obligor or otherwise perform such Guaranteed Liability as if it were the principal obligor; and
- (c) agrees with the Clearing House that if, for any reason, any Guaranteed Liabilities are not recoverable on the basis of a guarantee, it will be liable as a principal debtor and

primary obligor to indemnify the Clearing House against any cost, loss or liability it incurs as a result of the Obligor not paying any Guaranteed Liabilities on the date when they are expressed to be due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 2 if the amount claimed had been recoverable on the basis of a guarantee.

- 2.2 **Covenant to Pay:** Subject to Clause 2.4, the Guarantor shall on demand pay or discharge to the Clearing House the Guaranteed Liabilities when the same have become due in the manner provided for in the Relevant Agreements.
- 2.3 **Interest:** If the Guarantor fails to pay any amounts due under this Deed in respect of a Guaranteed Liability on the due date for payment, the Guarantor shall on demand pay to the Clearing House, interest on all such amounts from the due date until the date of payment (both before and after judgment) in accordance with the rate and in the manner specified in the Relevant Agreements. Any such interest not paid when due shall be compounded and bear interest calculated as provided above.
- 2.4 **Limitation of liability:** The total amount at any time recoverable from the Guarantor pursuant to Clauses 2.1 and 2.2 of this Deed shall not exceed the Agreed Limit Amount at that time.
- 2.5 **Agreed Limit Amount.** Any agreement between the Guarantor and the Clearing House from time to time as to the level of the Agreed Limit Amount is reached in consideration of the Clearing House providing clearing services to the Obligor as a Clearing Member.

### 3. **COLLATERAL**

- 3.1 The Guarantor agrees to transfer collateral from time to time by way of outright transfer pursuant to the Collateral Service Agreement so that the Collateral Value is at all times equal to or in excess of the Agreed Limit Amount. Failure to comply with this Clause 7.1 (3.1) shall constitute a breach of contract by the Guarantor.
- 3.2 If, before the earlier of (i) the Clearing House making any demand on the Guarantor for payment pursuant to Clause 2 of this Deed and (ii) the Clearing House declaring that the Obligor is subject to an Event of Default (as defined in the Rules), the Collateral Value exceeds the Agreed Limit Amount (by more than the De Minimis Threshold), the Clearing House will on written request of the Guarantor, transfer to the Guarantor, by outright title transfer, assets equivalent to some of the collateral comprising the Collateral Balance (as chosen by the Clearing House) so as to reduce the Collateral Value to an amount not less than the Agreed Limit Amount, determined at the date of the written request of the Guarantor.
- 3.3 Where the Clearing House intends to make demand on the Guarantor hereunder, it shall, as soon as reasonably practicable, realise the assets comprising the Collateral Balance.
- 3.4 The Clearing House will apply the Realised Value of the Collateral Balance in satisfying in whole or in part the liability of the Guarantor under this Deed.
- 3.5 The Clearing House will account to the Guarantor for any excess of the Realised Value over all amounts due (or contingently due) from the Guarantor under this Deed.
- 3.6 Upon the Guarantor ceasing to have any liability, contingent or otherwise, under this Deed, the Clearing House will transfer to the Guarantor assets equivalent to the remaining Collateral Balance.

4. **EXPENSES, STAMP DUTY AND INDEMNITIES**

4.1 **Expenses:** The Guarantor will on demand pay to and reimburse the Clearing House on the basis of a full indemnity in respect of all reasonable costs and expenses (including legal fees and other out of pocket expenses and any VAT) incurred by the Clearing House in connection with this Deed and will indemnify it against any failure to pay such amounts including any amounts arising from any actual or alleged breach of any law.

4.2 **Stamp Duties:** The Guarantor will on demand pay to and indemnify the Clearing House from and against any liability for any stamp duty, stamp duty reserve tax, stamp duty land tax, documentary or registration or similar Taxes or notarial fees which are or may subsequently become payable in connection with the entry into, performance, execution or enforcement of this Deed or to which this Deed may otherwise be or become subject or give rise. The Guarantor will in addition on demand indemnify the Clearing House from and against any losses or liabilities which they incur as a result of any delay or omission by the Guarantor to so pay any such amounts.

4.3 **Currency Indemnity:**

(a) If any sum (a "**Sum**") owing by a party under this Deed, or any judgment, award or order given in relation to this Deed, has to be converted from the currency in which that Sum is payable into another currency for the purpose of:

- (i) making or filing a claim or proof against a party;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings; or
- (iii) in the case of the Clearing House, applying the Sum in satisfaction of any Guaranteed Liabilities,

the person liable to make payment shall, as an independent obligation, within three Business Days of demand, indemnify the other party from any cost, loss or liability incurred as a result of the conversion including any discrepancy between (A) the rate of exchange used to make the conversion and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each party waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency or currency unit other than that in which it is expressed to be payable unless required to do so by any applicable law.

4.4 **Taxes:**

(a) Without prejudice or limitation to the provisions of the Relevant Agreements relating to Taxes, all sums payable by the Guarantor under this Deed shall be paid:

- (i) free of any restriction or condition;
- (ii) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of any Tax; and
- (iii) without deduction or withholding (except to the extent required by law) on account of any other amount whether by way of set-off, counter-claim or otherwise.

- (b) Without prejudice or limitation to the provisions of the Relevant Agreements relating to Taxes, if the Guarantor or any other person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by the Guarantor to the Clearing House under this Deed, the sum payable by the Guarantor in respect of which the relevant deduction or withholding is required shall be increased to the extent necessary to ensure that, after the making of that deduction or withholding, the receiving party receives on the due date and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been required or made.

## 5. CERTIFICATES AND PAYMENTS

- 5.1 **Certificates:** A certificate, determination, notification or opinion of the Clearing House as to the amount of the Guaranteed Liabilities or any other matter connected with this Deed (including, without limitation, the declaration by it of any net sum pursuant to the Companies Act 1989) shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.
- 5.2 **Payments:** All payments under or pursuant to this Deed (including damages in respect of breaches hereof) shall be made in such manner as the Clearing House may agree and direct.

## 6. EFFECTIVENESS OF SECURITY

- 6.1 **Proviso:** The rights of the Clearing House and the obligations of the Guarantor under this Clause 6 are subject to the provisions of Clause 3.
- 6.2 **Guarantor's Obligations Continuing:** The Guarantor's obligations under Clause 2 (*Guarantee and Covenant to Pay*) are continuing obligations and will extend to the ultimate balance of the Guaranteed Liabilities regardless of any intermediate payment or discharge in whole or in part.
- 6.3 **Cumulative Rights:** The rights and remedies provided in this Deed are cumulative and in addition to and independent of and not in any way prejudiced by any rights or remedies provided by law or any other Security, guarantees or rights of set-off or combination thereof held by the Clearing House.
- 6.4 **Failure to Exercise Rights:** No failure by the Clearing House to exercise or delay in the exercise of any right or remedy under this Deed will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.
- 6.5 **Immediate Recourse:** This Deed and the Guarantor's obligations under this Deed are in addition to, and not to be prejudiced by or to be merged with, any other guarantee, indemnity or Security at any time existing in favour of any person. The Guarantor waives any right it may have to require the Clearing House (or any trustee or agent on its behalf) to make demand of, proceed against or enforce any other rights or Security or claim payment from any person before claiming against it. This waiver applies irrespective of any law or any provision of any Relevant Agreement to the contrary.
- 6.6 **Grant of Waivers:** A waiver given or consent granted by the Clearing House under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- 6.7 **Waiver of Defences:** As between the Guarantor and the Clearing House but without affecting

the obligations of the Obligor, the Guarantor shall be liable under Clause 2 (*Guarantee and Covenant to Pay*) as if it were the principal debtor and not merely a surety. The obligations of the Guarantor under this Deed shall not be discharged or affected by (and the Guarantor hereby irrevocably waives any defences it may now or hereafter acquire in any way relating to) any act, omission, matter or thing which, but for this Clause 5 (6), would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to the Guarantor or the Clearing House):

- (a) any time, waiver or consent given to, or any composition with, the Obligor or any other person;
- (b) the release of the Guarantor or any other person under the terms of any composition or arrangement with any creditor of the Guarantor or any other person;
- (c) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatever nature) or replacement of any Relevant Agreement or any other Security or document;
- (d) the taking, perfection, enforcement, variation, compromise, exchange, renewal, release of, or the refusal or neglect to take, perfect or enforce, any rights against, or Security over, assets of, or any guarantee or undertaking given by, the Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or constitution or status of the Obligor, Clearing House or any other person;
- (f) the illegality, invalidity or unenforceability of any obligation of any person under, or expressed to arise under, any Relevant Agreement or other document;
- (g) any insolvency or similar proceedings under the laws of any jurisdiction or the making of any arrangement or composition with or for the benefit of creditors by the Obligor, the Clearing House or any other person;
- (h) the Clearing House ceasing or refraining from giving credit or making loans or advances to or otherwise dealing with the Obligor or any other person; or
- (i) the failure of the Clearing House to disclose to the Guarantor any information relating to the business, assets, financial condition or prospects of the Obligor now or hereafter known to the Clearing House (the Guarantor waiving any duty on the part of the Clearing House to disclose such information).

6.8 **Deferral of Guarantor's Rights:** Until all the amounts which may be or become payable by the Obligor under or in connection with the Relevant Agreements have been irrevocably and unconditionally paid and discharged in full or the Clearing House otherwise directs, the Guarantor will not exercise any rights which it may have (by reason of performance of its obligations under this Deed) or by reason of any amount being payable, or liability arising, under this Deed:

- (a) to be indemnified by the Obligor;
- (b) to claim any contribution or payment from any other provider of Security or surety of the Obligor's obligations under the Relevant Agreements;

- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Clearing House under the Relevant Agreements or of any other Security or guarantee taken pursuant to, or in connection with, the Relevant Agreements by the Clearing House;
- (d) to bring legal or other proceedings for an order requiring the Obligor or the Guarantor to make any payment, or perform any obligation, in respect of which the Obligor or Guarantor has given a guarantee, undertaking or indemnity under this Deed;
- (e) to exercise any right of set-off against the Obligor; and/or
- (f) to claim or prove as a creditor of the Obligor in competition with the Clearing House.

The Guarantor shall hold any benefit, payment or distribution received by it in relation to such rights on trust for the Clearing House and shall pay an amount equal to the benefit, payment or distribution received immediately to the Clearing House.

6.9 **Partial Invalidity:** If at any time any provision of this Deed is or becomes invalid, illegal or unenforceable in any respect in any jurisdiction, that shall not affect the legality, validity or enforceability of the remaining provisions in that jurisdiction.

6.10 **Reinstatement:** If any payment, discharge, release, arrangement, settlement, avoidance or reduction (whether in respect of the obligations of the Guarantor or the Obligor or any Security for those obligations or otherwise) is made by the Clearing House in whole or in part on the faith of any payment, Security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation:

- (a) the liability of the Guarantor or Obligor (as applicable) will continue or be reinstated as if the payment, discharge, release, arrangement, settlement, avoidance or reduction had not occurred;
- (b) the Clearing House shall be entitled to recover the value or amount of that payment, release, discharge, release, arrangement, settlement, avoidance or reduction from the Guarantor, as if the payment, discharge, release, arrangement, settlement, avoidance or reduction had not occurred together with any other cost, loss, expense or liability incurred by the Clearing House as a result of such payment, release, discharge, release, arrangement, settlement, avoidance or reduction; and
- (c) the Guarantor shall on demand indemnify the Clearing House against any funding or other cost, loss, liability or expense incurred by the Clearing House as a result of the Clearing House being required for any reason to refund all or part of any amount received by it in respect of any of the Guaranteed Liabilities in relation to which the Clearing House, by virtue of the other provisions of this Clause 5.10,(6.10) has a continuing claim pursuant to this Deed.

6.11 **Security Retention:** If the Clearing House, acting reasonably, considers that any amount paid or credited under any Relevant Agreement is capable of being avoided or otherwise set aside under any laws relating to insolvency or otherwise, that amount shall not be treated as paid for the purposes of determining whether the Guaranteed Liabilities have been paid.

6.12 **Appropriations:**

- (a) Until all amounts which may be or become payable by the Obligor under or in connection with the Relevant Agreements have been irrevocably and unconditionally paid and discharged in full and all facilities which might give rise to Guaranteed

Liabilities have been terminated, the Clearing House (or any trustee or agent on its behalf) may, without affecting the liability of the Guarantor under this Deed:

- (b) refrain from applying or enforcing any other moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (c) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Deed.

## 7. SET-OFF

7.1 **Set-Off:** The Clearing House may (without notice to the Guarantor) set off or otherwise apply against the Guarantor's liability under this Deed (whether or not contingent) any credit balance to which the Guarantor is entitled on any account with the Clearing House and any other obligation (contingent or otherwise) owing by the Clearing House regardless of the place of payment, booking branch or currency of either obligation or the terms of any amount standing to the credit of such account.

7.2 **Currency Conversion:** The Clearing House may exercise such rights notwithstanding that the obligations concerned may be expressed in different currencies and the Clearing House is authorised to convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

7.3 **Set-Off Rights Cumulative:** This Clause 6 (7) (*Set-Off*) shall be in addition to and without prejudice to any rights of set-off or any other rights or remedies which the Clearing House may have.

## 8. COMMUNICATIONS

8.1 **Mode of Service:** Any communication to be made under or in connection with this Deed:

- (a) may, unless otherwise stated, be made in person or by letter or facsimile;
- (b) shall be made in writing; and
- (c) shall be made in the English language.

8.2 **Addresses:** The address and facsimile number and the person or department (if any) for whose attention the communication is to be made of each party for any communication or document to be made or delivered under or in connection with this Deed is that shown immediately after its name on the signature page of this Deed, or any substitute address, facsimile number, person or department as the Guarantor may notify the Clearing House by not less than five Business Days' notice.

8.3 **Delivery:**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effectively made or delivered:
  - (i) if sent by fax, when first received in legible form; or

(ii) if sent by post, three Business Days (or 10 Business Days in the case of airmail) after being deposited in the post, postage prepaid, in a correctly addressed envelope; or

(iii) if delivered in person, at the time of delivery,

and, if a particular department or officer is specified as part of its address details provided by a party, if addressed to that department or officer.

(b) Any communication or document given under paragraph (a) which is received after 5 p.m. in the place of receipt or on a day which is not a Business Day shall be deemed to have been received at 9 a.m. on the following Business Day.

## 9. **THIRD PARTIES**

9.1 Save as expressly stated in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

## 10. **COUNTERPARTS**

10.1 **Counterparts:** This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of the Deed.

10.2 **Non-signatories:** Failure by one or more parties ("Non-Signatories") to execute this Deed on the date hereof will not invalidate the provisions of this Deed as between the other parties who do execute this Deed. Such Non-Signatories may execute this Deed (or a counterpart thereof) on a subsequent date and will thereupon become bound by its provisions.

## 11. **ASSIGNMENT AND TRANSFER**

11.1 **Assignment:** The Clearing House may at any time assign or otherwise transfer all or any part of its rights under this Deed, provided that it gives prior notice to the Guarantor of the identity of the assignee or transferee. Any such assignee or transferee shall have no greater rights to indemnity or payments hereunder than those of the Clearing House prior to the assignment or transfer.

## 12. **GOVERNING LAW AND SUBMISSION TO JURISDICTION**

12.1 **Governing Law:** This Deed and any dispute (including in relation to non-contractual obligations) arising out of or in connection with this Deed shall be governed by and construed in accordance with English law.

### 12.2 **Jurisdiction:**

(a) Subject to paragraph (c) below, the courts of England have exclusive jurisdiction to settle any dispute (including in relation to non-contractual obligations) arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) or the consequences of its nullity (a "**Dispute**").

(b) The parties agree that the courts of England are the most appropriate and convenient courts to settle any Disputes and accordingly no party will argue to the contrary.

(c) This Clause is for the benefit of the Clearing House only. As a result, the Clearing House shall not be prevented from taking:

- (i) proceedings relating to a Dispute in any other courts with jurisdiction; and
- (ii) to the extent allowed by law, concurrent proceedings in any number of jurisdictions.

12.3 To the extent that the Guarantor may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to it or its assets such immunity (whether or not claimed), the Guarantor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction. The execution, delivery and performance of this Deed constitute private and commercial acts.

12.4 **Service of process:** If the Guarantor is not incorporated in England and Wales or at any time ceases to be incorporated in England and Wales, it shall appoint and maintain an agent in England and Wales to act as its agent to accept service of process issued out of the Courts of England and Wales in relation to this Deed and shall deliver to the Clearing House an agreement substantially in the form set out in the Annex relating to such appointment countersigned by such agent. The Guarantor shall not give any notice of revocation to, or otherwise terminate the appointment of, any such agent unless prior to such termination it has validly appointed a replacement agent in England and Wales reasonably acceptable to the Clearing House to accept service of process issued out of the Courts of England and Wales in relation to this Deed and has delivered to the Clearing House a copy of that agent's acceptance of that appointment substantially in the form set out in the Annex countersigned by such agent. If for any reason any agent appointed in accordance with this Clause ceases to be such an agent, the Guarantor shall forthwith appoint a replacement agent in England and Wales and deliver to the Clearing House a copy of the new agent's acceptance of that appointment substantially in the form set out in the Annex countersigned by such agent within 10 Business Days of such appointment. Nothing in this Deed shall affect the right of the Clearing House to serve process in any other manner permitted by law.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be duly executed and delivered as a deed on the date first written above.

Executed and delivered as a deed by [**Guarantor**] acting by:

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print Name)  
Director

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print Name)  
Director / Secretary / Witness

**Notice Details**

Address:

Facsimile:

Attention:

Executed and delivered as a deed by **ICE CLEAR EUROPE LIMITED** acting by:

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_  
(Print Name)  
Director

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_  
(Print Name)  
Director / Secretary / Witness

**Notice Details**

Address:

Facsimile:

Attention:

**Annex: Form of Service of Process Agent Appointment**

This service of process agent appointment agreement ("**Agreement**") is made on [date] by and between:

*[Legal name of Guarantor]*  
*[Non-England and Wales address]*  
(the "Guarantor")  
Fax: [•]  
Email: [•]

and:

*[Legal name of process agent]*  
*[England and Wales address]*  
(the "Process Agent")

This Agreement relates to the Deed of Guarantee and Indemnity (the "Deed") dated [XXXX] between ICE Clear Europe Limited (the "Clearing House") and the Guarantor (as amended from time to time, the "Guarantee").

With reference to Clause 11.4 of the Guarantee, the Guarantor hereby appoints the Process Agent as its

agent to accept for and on its behalf service of any process issued by the courts of England and Wales in connection with the Deed.

The Process Agent will accept such process at its address stated above and will notify the Guarantor and the Clearing House promptly if its address for service of process changes.

The Process Agent will forward any document received for and on behalf of the Guarantor within 7 days to the Guarantor by courier, or fax or email to the address, fax number or email address specified above or to such other address, fax number or email address as the Guarantor notifies in writing from time to time.

This Agreement will continue until either party gives seven days' written notice of termination to the other. This Agreement shall be governed and construed in accordance with English law. The Process Agent and the Guarantor agree that a copy of this Agreement may be provided to the Clearing House. This Agreement may be executed in any number of counterparts and all those counterparts taken together shall be deemed to constitute one and the same document.

Authorised Signatory

Guarantor

Authorised Signatory

Process Agent