



Dated **20__**

ICE CLEAR EUROPE LIMITED

- and -

COMPANY NAME

SPONSORED PRINCIPAL CLEARING AGREEMENT

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SPONSORED PRINCIPAL CLEARING AGREEMENT

This agreement ("**Agreement**") dated _____, is entered into as a deed by and between [*Prospective Sponsored Principal*], whose registered office is at [*ADDRESS*] (the "**Company**"), organised and existing under the laws of [*JURISDICTION*], and ICE Clear Europe Limited (the "**Clearing House**"), incorporated under the laws of England and Wales, with its registered office at Milton Gate, 60 Chiswell Street, London EC1Y 4SA, United Kingdom.

PURPOSE OF THE AGREEMENT

- A. The Clearing House carries on the business of a clearing house and acts as central counterparty and clearer in relation to certain contracts ("**Contracts**") that are traded on or subject to the rules of specified exchanges, markets or over-the-counter marketplaces (each such exchange, market or marketplace, a "**Market**").
- B. The Clearing House performs such functions in accordance with the Rules (as defined below) and separate agreements entered into between the Clearing House and relevant Markets.
- C. The Company desires to attain the status of Sponsored Principal at the Clearing House.
- D. If and as from the time that the Clearing House admits the Company to the status of Sponsored Principal, the Company shall be subject to the terms and conditions of this Agreement and the Rules applicable to Sponsored Principals.
- E. This Agreement sets out the terms that apply in respect of the Individually Segregated Sponsored Account of the Sponsored Principal but not in respect of any other Account in which the Sponsored Principal may be interested whether by virtue of being a Clearing Member or Customer of a Clearing Member or in another capacity or otherwise.

1. INTERPRETATION

1.1 In this Agreement, the following expressions shall have the following meanings:

- (i) The term "**Collateral**" means property of any description (including, without limitation, cash or any investment as defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, as amended), any substitutions for and proceeds of property and any amounts delivered and transferred to the Clearing House by the Company pursuant to the Rules by way of or as Permitted Cover, Margin or otherwise as security for any past, present or future obligation or liability.
- (ii) The term "**Dispute**" means any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation, or otherwise) arising out of, in relation to, or in connection with, this Agreement, including any dispute as to the construction, validity, interpretation, enforceability or breach of this Agreement.
- (iii) The term "**Individually Segregated Sponsored Account**" means the Individually Segregated Sponsored Account (as defined in the Rules) in the name of the Company and its Sponsor.
- (iv) The term "**Nominated Account(s)**" means the account or accounts of the Company (or its nominee, which may be the Sponsor) at an Approved Financial Institution from

which the Approved Financial Institution credits or withdraws funds in accordance with instructions from the Clearing House in relation to the Company's positions, payments and Contracts recorded in the Individually Segregated Sponsored Account.

- (v) The term "**Rules**" means the rules of the Clearing House, together with the procedures made thereunder, as interpreted in accordance with Guidance and Circulars of the Clearing House and as the same are amended in accordance with the Rules from time to time.
- (vi) The term "**Sponsor**" means the Sponsor (as defined in the Rules) which has agreed pursuant to a Sponsor Agreement to act as such in respect of the Individually Segregated Sponsored Account of the Company.
- (vii) The term "**Sponsor Agreement**" means an agreement between the Sponsor and the Clearing House under which, *inter alia*, the Sponsor agrees to act as a Sponsor (as defined in the Rules) at the Clearing House and be bound by and subject to the Rules in its capacity as such; and pursuant to which the Sponsor has nominated the Company as a Sponsored Principal for whom it will act.
- (viii) The term "**Third Party Authority Form**" means a form executed by the Company, Sponsor or other account holder in respect of the Nominated Account linked to the Individually Segregated Sponsored Account in favour of an Approved Financial Institution giving authority to the Clearing House to provide instructions in relation to the Nominated Account(s), in the form and subject to such terms and conditions as are required from time to time by the Approved Financial Institution and the Clearing House.

1.2 Unless the context clearly requires otherwise, all other capitalised terms used but not defined herein have the meaning given to such terms in the Rules.

1.3 The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

1.4 Any words or terms in singular form shall, where the context permits, include the plural and *vice versa*.

1.5 Any words or terms in the masculine gender shall include the feminine gender and, where the context permits or requires, such references and references to any person include any individual, partnership, firm, body corporate or incorporate, association, trust, unincorporated organisation or other entity whether or not a natural person.

1.6 A reference to any statutory provision shall be construed as a reference to such provision as modified, amended or re-enacted from time to time and to any subordinate legislation made under such provision and shall include references to any repealed statutory provision which has been so re-enacted (whether with or without modification).

1.7 A reference to a Clause or Schedule, unless the context otherwise requires, is a reference to a clause of or a schedule to this Agreement.

2. **OBLIGATIONS OF THE COMPANY**

2.1 As from the admission date, the Company agrees with the Clearing House to:

- (i) observe, comply with and be bound by the Rules as a Sponsored Principal as if such Rules were set out herein;

- (ii) be subject to and bound by all of the provisions and requirements of the Rules in relation to payments, title, rights, obligations, liabilities, property (whether tangible or intangible) and Collateral including any transfers, assignments and dispositions required thereunder as a Sponsored Principal;
- (iii) be subject to and bound by all representations, warranties, agreements and acknowledgements of Sponsored Principals that arise pursuant to the Rules from time to time;
- (iv) be subject to and bound by all Contracts recorded in the Individually Segregated Sponsored Account that arise pursuant to the Rules from time to time and subject to and bound by all rights, obligations and liabilities pursuant to such Contracts as a Sponsored Principal;
- (v) be subject to any requirement imposed as a result of a request, decision, determination, direction, sanction, requirement, award or discretion that the Clearing House is entitled to make, exercise or impose on a Sponsored Principal pursuant to the Rules;
- (vi) be responsible for the actions and omissions of its Representatives as set out in the Rules;
- (vii) if an Event of Default is declared in respect of it, be bound by the Rules as a Defaulter;
- (viii) if its Sponsor has an Event of Default declared in respect of it and such action as is required by the Rules is not taken within such time as is specified in the Rules, itself be bound by the Rules as a Defaulter; and
- (ix) submit to the jurisdiction and be bound by any decision, determination, direction, sanction, requirement or award of any Disciplinary Panel, Appeals Panel, Summary Proceedings Committee, arbitral tribunal, Court or other body appointed or formed pursuant to the Rules or that has jurisdiction over any matter in accordance with the Rules.

3. REPRESENTATIVES

- 3.1 The Company acknowledges and agrees that the Clearing House does not have any obligations to Persons other than the Company and its Sponsor in connection with the Individually Segregated Sponsored Account pursuant to its Rules, any Contracts or this Agreement. Contractual and other provision for any consequences for Sponsors or other counterparties of the Company (other than the Clearing House) of any Contract arising, existing or being settled or subject to delivery between the Clearing House and the Company (including, without limitation, effective and enforceable arrangements for any corresponding contract to a Contract with any third party and Transferor/Transferee arrangements) shall be the sole responsibility of the Company.
- 3.2 The Company shall be responsible for all acts and omissions of each of its Representatives to the same extent that it is responsible for the acts and omissions of itself, both under this Agreement and pursuant to the Rules.

4. COLLATERAL

- 4.1 Collateral shall be provided to the Clearing House by the Company at the times and in the manner specified in the Rules. Transfer shall be by way of outright transfer of cash or, as the

case may be, title to securities, to or to the order of the Clearing House or such other assets as may be eligible as Collateral in accordance with the Rules.

- 4.2 Transfers or deliveries in respect of Collateral shall be reflected in such accounts of the Company at the Clearing House (including, in the case of Margin, in the Individually Segregated Sponsored Account) as may be specified from time to time by the Clearing House.
- 4.3 The Company will transfer or deliver Collateral of such amount and within such time limits as are required in accordance with the Rules from time to time.
- 4.4 Where the Clearing House has any obligation to re-transfer or re-deliver to the Company any cash or securities which have been previously transferred or delivered to the Clearing House by the Company, the obligation of the Clearing House will be to transfer or deliver the amount of cash or equivalent securities (being securities of the same type, nominal value, description and amount; or, where any securities have been redeemed or undergone some other change after their transfer or delivery to the Clearing House, the proceeds of such redemption, less any deduction or withholding for or an account of tax required by Applicable Laws, or the securities so changed shall be equivalent securities for these purposes) and accordingly, the Clearing House shall have the right to deal with any amounts or securities transferred or delivered to it as referred to in this Clause 4 in any manner.
- 4.5 In relation only to cash Collateral held by the Clearing House, the Clearing House will transfer to the Company an amount in respect of interest on the net amount of Collateral to the Company's account from time to time at the rate determined by the Clearing House from time to time, less any deduction or withholding for or an account of tax required by Applicable Laws.
- 4.6 Each of the Clearing House and the Company represents to the other (which representation shall be deemed to be repeated as of each date on which it transfers, re-transfers, delivers or re-delivers any amounts or securities to the other as referred to in this Clause 4) that it is the sole owner of or otherwise has the right to transfer all such amounts or securities to the other party, free and clear of any Encumbrances of the transferor or of any third Person (other than a lien routinely imposed on all securities in a relevant settlement system or central securities depository, not being the Clearing House, and, in the case of the Clearing House, any deduction or withholding for or an account of tax required by Applicable Laws). All right, title and interest in and to any amounts or securities transferred, re-transferred, delivered or re-delivered as referred to in this Clause 4 shall vest in the recipient free and clear of any rights or Encumbrances of the transferor or of any third Person accordingly.
- 4.7 This Clause 4 is intended to create an ownership right in relation to any cash or other property transferred by the Company to the Clearing House pursuant to this Clause 4. Nothing in this Clause 4 is intended to create or does create in favour of the Clearing House or any other person any Encumbrance in relation to any cash or other property transferred by the Company to the Clearing House pursuant to this Clause 4.
- 4.8 The Company acknowledges that the Clearing House may attribute a value to any item of Permitted Cover which is less than the face or market value thereof (the discount from face or market value being known as a "haircut") and that the Clearing House may, from time to time, change the way in which it values Permitted Cover or the extent to which the value it attributes to items of Permitted Cover is less than the face or market value thereof and that this may affect the Company's obligations to transfer or deliver amounts or securities for the purposes of this Clause 4.
- 4.9 The parties agree that the provisions of this Clause 4 and the provisions of the Rules relating to the procedures to be followed on the occurrence of an Event of Default are intended to fall

within the scope of the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003/3226) and that the provisions of those regulations may accordingly be applied.

- 4.10 Notwithstanding anything in this Clause 4: (i) the Clearing House may perform any of its obligations in respect of Collateral received by it in respect of an Individually Segregated Sponsored Account to the Sponsor or Sponsored Principal, to the extent permitted under the Rules; (ii) any Collateral provided to the Clearing House in respect of an Individually Segregated Sponsored Account shall be in discharge of applicable obligations of both the Sponsor and Sponsored Principal, as provided pursuant to the Rules; and (iii) the Sponsor and Sponsored Principal may agree and arrange for either of them to pay and receive Collateral in respect of an Individually Segregated Sponsored Account, to the extent permitted under the Rules.

5. POWER OF ATTORNEY, PAYMENTS AND CLIENT MONEY RULES

- 5.1 As security for the obligations of the Company to the Clearing House under this Agreement and the Rules, the Clearing House shall be appointed as the Company's lawful attorney and agent, pursuant to which appointment, upon any Event of Default affecting the Company or its Sponsor, the Clearing House may take such action as it in its discretion determines in the Company's, Sponsor's or the Clearing House's name for the purposes of executing any document or instrument in order to liquidate any and all Contracts to which the Company is a party or in which the Sponsor has any right, title or interest and discharging any of the rights, obligations or liabilities of the Company and Sponsor in such a manner as the Clearing House may at its discretion determine. The Company shall ratify and confirm all acts or things the Clearing House does or purports to do pursuant to this power.

- 5.2 The Company shall be required at all times to have in place a duly executed Third Party Authority Form in respect of each Approved Financial Institution used by the Company and in respect of each of its Nominated Account(s) linked to the Individually Segregated Sponsored Account and additional Third Party Authority Forms executed by any account holder of the Nominated Account(s) that is not the Company. As security for the obligations of the Company to the Clearing House under this Agreement and the Rules, the Clearing House shall be appointed as the Company's lawful attorney and agent, pursuant to which appointment the Clearing House may take any action as it in its discretion determines in the Company's or the Clearing House's name in connection with the Company's Nominated Account(s). Such power of attorney and agency (if any) shall include the power to give instructions to Approved Financial Institutions to receive balance and transaction information, including without limitation account statements and transaction advices, from the Approved Financial Institutions in relation to the Nominated Account(s) at any time using any method of communication, including but not limited to, the Payment Bank's electronic client access systems, writing, facsimile transmission, telephone and SWIFT, using codes specified in the Third Party Authority Form. The Company agrees and acknowledges that the Approved Financial Institutions shall be authorised and directed to act upon any instructions received from the Clearing House in relation to the Nominated Account(s), notwithstanding that such instructions may result in an overdraft on (any of) the Nominated Account(s), without any further reference to or authority from the Company or its Sponsor. The Company represents, warrants and acknowledges that instructions given by the Clearing House in relation to the Nominated Account(s) shall be deemed to be, and may be treated by any Approved Financial Institution as, instructions given on behalf of the Company. No Third Party Authority Form may be revoked or countermanded by the Company unless and until it has established a replacement Nominated Account at another Approved Financial Institution with the prior written consent of the Clearing House and provided a Third Party Authority Form to the Clearing House that applies in respect of such replacement Nominated Account.

5.3 The Clearing House acknowledges that the Company is under an obligation to keep assets and positions relating to an Individually Segregated Sponsored Account separate from the assets and positions of a Sponsor. The Clearing House hereby acknowledges that the Individually Segregated Sponsored Account is not to be combined with any other Account, nor is any right of set-off to be exercised by the Clearing House against money credited to the Individually Segregated Sponsored Account in respect of any sum owed to the Clearing House in relation to any other Account.

6. **TERM**

6.1 This Agreement shall automatically terminate only upon: (i) the Company's status as a Sponsored Principal of the Clearing House having been terminated; (ii) all of the obligations of the Company pursuant to the Rules and this Agreement having been satisfied or discharged; (iii) all Collateral provided by the Company in respect of the Individually Segregated Sponsored Account having been applied or returned; (iv) all Complaints and Dispute Proceedings affecting the Company being terminated; and (v) any Default Proceedings against the Company having been fully completed. This Agreement shall not otherwise be terminable by either party. The requirements of the Rules and procedures thereunder for the termination of the Company's status as a Sponsored Principal at the Clearing House shall apply.

7. **REPRESENTATIONS AND WARRANTIES**

7.1 The Company represents and warrants that:

- (i) neither the execution nor performance of this Agreement or the Rules by or on behalf of the Company or the Clearing House will breach or conflict with any provision of the memorandum of incorporation, articles of association, by-laws, partnership agreement, limited liability company agreement or any other organisational document of the Company, or with any agreement or Applicable Law which is binding upon or affects the Company;
- (ii) the Company and signatories to this Agreement each have full power and all necessary authority to execute this Agreement and perform any act that may be required pursuant to this Agreement and the Rules;
- (iii) the Company is duly organised and validly existing under Applicable Laws of the jurisdiction of its incorporation and is in good standing under such Applicable Laws; and
- (iv) after having had the opportunity to ask questions and receive answers from the Clearing House regarding the Rules and the operation of the Clearing House, it has received all the information it considers necessary and appropriate for deciding whether to become a Sponsored Principal and has consulted its own independent advisers, or otherwise satisfied itself concerning, without limitation, the tax, legal and other considerations relevant to its status as a Sponsored Principal at the Clearing House.

7.2 The Company acknowledges that the Clearing House will not review or be responsible for reviewing any provision of the Company's memorandum of incorporation, articles of association, by-laws, partnership agreement, limited liability company agreement or any other organisational document of the Company, any agreement to which the Company is a party or any Applicable Law which is binding upon or affects the Company with a view to determining the authority of the Company to become a Sponsored Principal; and that, as a

result, the Clearing House relies upon the assumed authority of the signatories to this Agreement.

8. **ARBITRATION**

- 8.1 Any Dispute between the Clearing House and the Company shall be referred to and finally settled by arbitration under the Arbitration Rules of the London Court of International Arbitration ("LCIA"), which LCIA Rules are deemed to be incorporated herein. In the event of a conflict between any provision of the LCIA Rules and this Clause 8, this Clause 8 shall prevail.
- 8.2 The seat of arbitration will be London, England and the language of the arbitration proceedings shall be English.
- 8.3 No arbitral proceedings may be instigated where arbitral proceedings could have been instigated in the first instance under the procedures set out in any applicable Market Rules or in the second instance under the procedures set out in the Rules (with arbitration under the relevant Market Rules and Rules taking priority at all times).
- 8.4 The Tribunal will comprise three arbitrators appointed by the LCIA Court. The LCIA Court shall nominate one of the arbitrators to act as the chairman of the Tribunal. The members of the Tribunal will be persons considered by the LCIA Court in its discretion to have experience with respect to the subject matter of the Dispute. Tribunal members shall not be current or former employees or directors of any person that is a party to the arbitration, current or former employees of the Clearing House or any person or persons with a material interest or conflict of interest in the outcome of the Dispute.
- 8.5 The parties agree that any other Sponsored Principal, Clearing Member or Sponsor may be joined as an additional party to an arbitration under this Clause 8 and that arbitrations under this Clause 8 may be consolidated into a single arbitration with other arbitrations involving any other Sponsored Principals, Sponsors, Clearing Members, Customers and the Company in the same way and subject to the same conditions as an additional party may be joined to an arbitration pursuant to the Rules. In case of such joinder, the Tribunal shall make a single, final award determining all Disputes between the relevant parties in those proceedings. The Company and the Clearing House shall each be deemed irrevocably to have waived any right to challenge any award or order of the Tribunal by reason of the fact that it arises from a joined arbitration. The Sponsored Principal and Clearing House shall each be deemed irrevocably to have waived any right to challenge any award or order of any tribunal appointed under this Agreement by reason of the fact that it arises from a consolidated arbitration.
- 8.6 The commencement of any arbitral proceedings shall be without prejudice to and shall not limit in any way the right of the Clearing House to instigate any procedure under the Rules, including without limitation in relation to any Event of Default or any investigation, sanction or disciplinary proceedings.
- 8.7 The award of the Tribunal will be final and binding on the Clearing House and the Company from the day it is made. Judgment upon the award may be entered or the award enforced through any other procedure in any court of competent jurisdiction. The Company and the Clearing House shall each execute any such award and, to the extent permitted by law, irrevocably shall be deemed to have waived the making of any appeal or other means of recourse that might be open to them.

9. MISCELLANEOUS

- 9.1 The Company may not assign, transfer, deal or create any interest whatsoever in any of its rights or obligations under this Agreement or the Rules, whether in whole or in part, or purport to do any of the same, without the prior written consent of the Clearing House. Any assignee or transferee of the Company must be a Sponsored Principal or Clearing Member. Any such assignment or transfer shall be subject to completion of an orderly transfer of all Contracts of the Company to such transferee or assignee. This Agreement shall bind, and enure to the benefit of, the parties and their authorised successors and assignees.
- 9.2 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.
- 9.3 Any waiver of any right or consent under this Agreement is only effective if it is in writing and signed by the waiving or consenting party, applies only in the circumstances for which it is given and shall not prevent the party who is giving it from subsequently relying on the relevant provision. No delay or failure to exercise any right under this Agreement shall operate as a waiver. No single or partial exercise of any right under this Agreement shall prevent any further exercise of the same or any other right under this Agreement.
- 9.4 This Agreement, together with its Schedules and the Rules, constitutes the whole agreement between the parties with respect to its subject matter and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement. The Company warrants to the Clearing House that, in entering into this Agreement and becoming bound by the Rules as a Sponsored Principal, it does not rely on any statement, representation, assurance or warranty of the Clearing House or any other Person (whether a party to this Agreement or not) other than as expressly set out in this Agreement. The Company agrees and undertakes to the Clearing House that its only rights and remedies available arising out of or in connection with this Agreement and the Rules or their subject matters shall be solely for breach of contract, in accordance with the provisions of this agreement and the Rules. Nothing in this Agreement shall limit or exclude any liability for fraud, death, personal injury or any other liability which by law cannot be excluded.
- 9.5 The provisions of the Rules relating to the giving of notices and Force Majeure Events from time to time shall apply to this Agreement and the parties' conduct hereunder in the same way as such provisions apply to the Rules.
- 9.6 Interest shall be charged to the Company on any unpaid but due amount in respect of the Individually Segregated Sponsored Account from the date on which the amount becomes due and payable until the date of payment at 1% above the rate *per annum* which is the cost (without proof or evidence of any actual cost) to the Clearing House if it were to fund or itself funded the relevant amount, compounded daily.
- 9.7 The Company hereby waives any right enjoyed presently or hereafter to claim sovereign immunity from suit or sovereign immunity from enforcement for itself or any of its assets to the fullest extent permitted under the laws of England and Wales in any jurisdiction whatsoever in which the Company enjoys or will enjoy immunity, or in which immunity may be asserted. Such waiver shall apply in respect of any immunity from:
- (i) any proceedings commenced pursuant to this Agreement;
 - (ii) any judicial, administrative or other proceedings to aid an arbitration commenced pursuant to Clause 8 of this Agreement; and

- (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from any judicial or administrative proceedings commenced pursuant to this Agreement.
- 9.8 The rights and obligations of the Company under this Agreement are of a commercial and not a governmental nature.
 - 9.9 The Company shall not raise or in any way whatsoever assert a defence of sovereign immunity in relation to any claim or enforcement proceedings arising from a dispute under this Agreement.
 - 9.10 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties. Except as provided in Clauses 5.1 and 5.2 and without prejudice to the provisions of the Rules or any agreement in respect of the relationship between the Sponsor and the Company, nothing in this Agreement is intended to, or shall be deemed to, constitute any party the agent or principal of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
 - 9.11 If any provision of this Agreement (or part of any provision) is found by any Court or other Governmental Authority to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
 - 9.12 This Agreement and all non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
 - 9.13 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of the counterparts together shall constitute the same document.
 - 9.14 The Clearing House will have the right from time to time, by published Circular or other notice, to amend, modify or supplement the terms of this Agreement in the same way that Rules may be amended, and the Company by virtue of continuing to act as a Sponsored Principal under the Rules shall be deemed to consent and agree to any such amendment, modification or supplement.

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

By: _____ (Signature)

(Print Name)
Director

By: _____ (Signature)

(Print Name)
Director / Secretary

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

By: _____ (Signature)

(Print Name)
Director

By: _____ (Signature)

(Print Name)
Director / Secretary