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Text of guarantee

UBS AG in favour of certain counterparties of UBS Europe SE



Edition: March 2019

For information about our Investment Bank entities, visit www.ubs.com/ibterms

Text of guarantee

The following is the text of the guarantee issued by UBS AG in favour of certain Counterparties of UBS Europe SE on 22 January 2019.

This instrument by way of deed poll is executed on 22 January 2019 by UBS AG, a company incorporated under the laws of Switzerland whose registered offices are at Aeschenvorstadt 1, CH-4051 Basel, Switzerland and Bahnhofstrasse 45, CH-8098 Zurich, Switzerland acting through its London Branch whose offices are at 5 Broadgate, London EC2M 2QS, United Kingdom (the **Guarantor**).

Whereas:

UBS Europe SE, a European public limited liability company registered in Germany with registered number HRB 107046 at the Commercial Register of the Local Court of Frankfurt am Main, Germany, (**UBS ESE**) has requested the Guarantor and the Guarantor has agreed to guarantee payment of all Liabilities (as hereinafter defined) in accordance with, and as limited by, the terms and conditions of this Deed (the **Guarantee**).

Now therefore the Guarantor hereby covenants as follows:

1 Definitions and Interpretation

1.1 In this Guarantee, unless the context otherwise requires:

Business Day means a day (other than a Saturday or Sunday) on which banks generally are open for business in Frankfurt;

Contract means:

- (a) any Covered Agreement that is entered into by UBS ESE acting out of its Investment Bank with a Counterparty on or after the Effective Time; and
- (b) any Covered Agreement between UBS ESE and a Counterparty that was transferred from UBSL to UBS ESE as a result of the Merger;

Counterparty means any person, or group of persons, that is a counterparty to a Contract with UBS ESE.

Covered Agreement means any master agreement which provides for netting of transaction values to produce a single net termination amount owed by one party to the other, as further described in 0 (*Forms of Covered Agreements*).

Covered Transaction means any derivative, repurchase, exchange traded, cleared derivative, securities lending or other transaction governed by a Contract, which is entered into prior to the Netting Limitation Date.

Effective Time means the time and date on which the Merger becomes effective.

Investment Bank means the Investment Bank division of UBS AG and its affiliates.

Merger means (i) the transfer of UBSL's business to UBS ESE pursuant to a banking business transfer scheme pursuant to Part VII of the Financial Services and Markets Act 2000 combined with (ii) a merger of UBSL and UBS ESE through the operation of a European cross border merger effected under the EU Consolidated Company Law Directive (2017/1132/EC), as implemented in the UK and Germany, resulting in the dissolution of UBSL.

Netting Limitation Date means either, in respect of any termination of the Guarantee in accordance with Clause 13 (*Termination and Variation*), the Termination Date or, in respect of any other amendment or variation of the Guarantee in accordance with Clause 13 (*Termination and Variation*) which has the effect that some but not all of the Liabilities entered into under any Contract would be

covered by the Guarantee, the effective date of such amendment or variation.

Subsequent Transaction means any derivative, repurchase, exchange traded, cleared derivative, securities lending or other transaction governed by a Contract, which is entered into on or after the Netting Limitation Date.

Termination Date means the date on which termination of this Guarantee takes effect in accordance with Clause 13 (*Termination and Variation*).

UBSL means UBS Limited.

UBSL Guarantee means the guarantee provided by UBS AG in favour of counterparties of UBSL by way of deed poll dated 24 January 2003.

1.2 In this Guarantee, a reference to:

1.2.1 a **Clause** is a reference to a clause of this Guarantee;

1.2.2 each of **UBS ESE**, the **Guarantor** or a **Counterparty** shall be construed so as to include each such person's (and any subsequent) successors, permitted assigns and permitted transferees; and

1.2.3 a **person** includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of a state or any joint venture, association or partnership, works council or employee representative body (whether or not having separate legal personality).

1.3 In this Guarantee, the headings are for convenience only and are to be ignored in construing the Clauses to which they refer.

2 Guarantee

The Guarantor irrevocably and unconditionally guarantees, for the benefit of each Counterparty upon the terms of this Guarantee, the due and punctual performance of all present and future obligations and liabilities, whether actual or contingent, of UBS ESE to make any payment under or in relation to any Contract between UBS ESE and that Counterparty (the **Liabilities**) and promises to pay to that Counterparty on demand any unpaid balance of such Liabilities in accordance with the terms of this Guarantee.

3 Indemnity

As a separate and independent primary obligation, the Guarantor irrevocably and unconditionally agrees to indemnify each Counterparty on demand against any cost, loss or liability suffered by that Counterparty as a result of any Liability guaranteed by the Guarantor being or becoming unenforceable or invalid because of the operation of applicable insolvency or bankruptcy laws in relation to UBS ESE. The amount of the cost, loss or liability shall be equal to the amount of the Liability which the Counterparty would otherwise have been entitled to recover under this Guarantee.

4 Limitation

If at any time the Counterparty has a claim against the Guarantor under this Guarantee and under the UBSL Guarantee in respect of the same Liability, it shall only be entitled to enforce its claim under the UBSL Guarantee

and its claim under this Guarantee in respect of that Liability shall be extinguished.

5 Payment

5.1 Payment under this Guarantee in respect of any Liability is subject to the failure by UBS ESE to discharge the relevant Liability within any applicable grace period following the due date for payment (or such other period as may be agreed between the Counterparty and UBS ESE) and subject to written notice by the Counterparty of such failure to both UBS ESE and the Guarantor.

5.2 The Counterparty shall not be obliged before exercising any of the rights or remedies conferred upon it by this Guarantee or by law to take any action in or obtain judgment in any court against UBS ESE or to make or file any claim or proof in a winding up or dissolution of UBS ESE.

6 Exercise of Rights

6.1 No delay or omission on the part of a Counterparty in exercising any right, power, privilege or remedy (hereinafter together called **Rights**) arising under this Guarantee shall impair or be construed as a waiver of any such Rights, nor shall any single or partial exercise of any such Rights preclude any further exercise of any Rights.

6.2 The Rights herein provided are cumulative and not exclusive of any rights, powers, privileges or remedies provided by law.

6.3 Nothing in this Guarantee shall be construed as voiding, negating or restricting any right of set-off or any other right whatsoever existing in favour of a Counterparty, however arising.

7 Waiver of Defences

7.1 The obligations of the Guarantor under this Guarantee will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of the Guarantor's obligations under this Guarantee including:

7.1.1 any time, waiver or consent granted to, or composition with, UBS ESE or any other person;

7.1.2 the release of UBS ESE or any other person under the terms of any composition or arrangement with any creditor of UBS ESE;

7.1.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, UBS ESE 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;

7.1.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of UBS ESE or any other person;

7.1.5 any amendment, supplement or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of the Contract or any other document or security, including any material increase in liability under the Contract;

7.1.6 any unenforceability or invalidity of any obligation of any person under the Contract or any other document or security, except where such unenforceability or invalidity is the result of the Counterparty's fraud or wilful default; or

7.1.7 any insolvency or bankruptcy proceedings.

8 Subrogation

Until all amounts which may be or become payable by UBS ESE to a Counterparty under or in connection with a Contract have been irrevocably paid in full, the Guarantor shall not exercise a right which it may at any time have by reason of the performance of its obligations under this Guarantee to be indemnified by UBS ESE, to claim a contribution from another surety of UBS ESE's obligations or to take the benefit (wholly or partly and by way of subrogation or otherwise) of any of that Counterparty's rights under its Contract with UBS ESE or of any other security taken by that Counterparty in connection with the Contract.

9 Treatment of Withholdings

Payments made under this Guarantee shall be made free and clear of any deduction or withholdings other than those required by law and, in the event of any deductions or withholdings being applied to any payment hereunder, the Guarantor shall pay such additional amount to the relevant Counterparty as may be necessary in order that the actual amount received after all such deductions and withholdings shall equal the amount that would have been received if no such deduction or withholding were required *provided that* the Guarantor shall not be obliged to pay any such additional amount in circumstances where, had the withholding or deduction been made by UBS ESE, UBS ESE would not have been obliged to pay any additional amount.

10 Continued Validity

The Guarantor's obligations under this Guarantee are continuing obligations and are not satisfied, discharged or affected by an intermediate payment or settlement of account by, or a change in the constitution or control of, or merger or consolidation with any other person of, or the insolvency of, or bankruptcy, winding up or analogous proceedings relating to, UBS ESE.

11 Severability

In the event that any of the terms or provisions of this Guarantee are or shall become invalid, illegal or unenforceable, the remaining terms and provisions hereof shall survive unaffected.

12 Assignment

This Guarantee operates to the benefit of each Counterparty and its successors, and any assignees approved by UBS ESE. The Guarantor may not assign or transfer its rights, interest or obligations with respect to a Counterparty under this Guarantee to any person without the prior written consent of that Counterparty, except as permitted under (and subject to) applicable law.

13 Termination and Variation

13.1 The Guarantor shall be permitted at any time to terminate, amend or vary the terms of this Guarantee with immediate effect by giving in accordance with Clause 13.2 not less than 30 Business Days' notice of such termination, amendment or variation to each Counterparty whose rights under this Guarantee will be terminated, amended or varied thereby.

13.2 The notice referred to in Clause 13.1 shall be delivered to a Counterparty in accordance with such notice arrangements as may be provided for in the relevant Contract with such Counterparty, or by publication (i) on UBS AG's website (or such other website as may be notified by UBS AG to all Counterparties from time to time in accordance with this Clause 13.2) to which that Counterparty has access, and (ii) in the Financial Times (or

similar publication with circulation likely to include Counterparties) (or such other publication as may be notified by UBS AG to all Counterparties from time to time in accordance with this Clause 13.2) in all hard copy and electronic forms which are publicly available.

13.3 Clause 13.1 shall be without prejudice to the Guarantor's liability to a Counterparty in respect of any Liability incurred before the date of such termination, amendment or variation which shall not be in any way reduced or limited by such termination, amendment or variation.

13.4 Following any variation or amendment of this Guarantee in accordance with Clause 13.1, obligations and liabilities shall be incurred by the Guarantor in accordance with the terms of this Guarantee as amended or varied.

13.5 Following any termination of this Guarantee in accordance with Clause 13.1, with effect from the Termination Date no further obligations or liabilities shall be created or incurred by the Guarantor under this Guarantee.

13.6 With effect from the Netting Limitation Date, any liability of the Guarantor under this Guarantee in respect of any Contract is limited at any time to the lesser of (i) the amount that would have been payable by UBS ESE under the relevant Contract (including, without limitation, any obligation to make a termination payment or a payment in connection with collateral or margin transfers, in each case howsoever described) as if the relevant Contract only governed Covered Transactions outstanding at the relevant time (and as if no Subsequent Transactions had been entered into) and (ii) the actual amount owed by UBS ESE under the relevant Contract at the relevant time. In particular, the following provisions shall apply when calculating the amount due from the Guarantor under this Guarantee on or after the Netting Limitation Date in respect of any Contract:

13.6.1 where a Credit Support Agreement has been entered into in respect of any relevant Contract, in respect of any Delivery Amount or Return Amount or payment of any interest amount transferable by UBS ESE, the liability of the Guarantor under or arising in respect of this Guarantee is limited to the Delivery Amount or Return Amount or interest amount, as applicable, that would have been transferable by UBS ESE under that relevant Contract if no Subsequent Transactions had been entered into on or prior to the relevant Valuation Time;

13.6.2 where any amount is payable on any Close-Out Provision, the liability of the Guarantor under or arising in respect of this Guarantee is limited to the amount that would have been payable by UBS ESE under a relevant provision if:

- (a) only Covered Transactions were outstanding under the relevant Contract at the time of designation of the relevant Early Termination Date;
- (b) no unpaid amounts in respect of Subsequent Transactions were outstanding at the time of designation of the relevant Early Termination Date;
- (c) for the purposes of deeming the relevant unpaid amount in respect of any Credit Support Agreement that is an English law title transfer version, the Credit Support Balance was determined to be the Credit Support Balance that would have been applicable if no Subsequent Transactions had been entered into on or prior to the

date of designation of the Early Termination Date;

(d) in respect of any Credit Support Agreement that is a New York law pledge or an English law security interest, the Posted Collateral or the Cash Equivalent of any Posted Collateral held by the Secured Party was determined to be the Posted Collateral that would have been applicable if no Subsequent Transactions had been entered into at any time on or prior to the date of designation of the Early Termination Date; and

(e) such amount shall be subject to such adjustments as the Guarantor reasonably deems necessary in order to calculate the relevant net termination amount of the Covered Transactions only; and

13.6.3 The provisions of this Guarantee shall not alter, and therefore will not be construed as increasing, any obligation of UBS ESE under any Contract including any Close-Out Provision relating thereto.

For the purposes of the above,

Close-Out Provision means any provision under any Contract for determining the amount payable on any close-out or termination of the relevant Contract (including in respect of any ISDA Master Agreement, Section 6(e), or any provision in substantially similar terms or having substantially the same effect in respect of any other type of Covered Agreement)) as of the date of any early termination (the **Early Termination Date**)

Credit Support Agreement means any ISDA Credit Support Annex (whether in the form of an English law title transfer version, a New York law security interest version, or any modified version of the foregoing designed for the exchange of regulatory margin, and/or any other version subject to any other governing law) forming a part of an ISDA Master Agreement (**Credit Support Annex**), or any ISDA Credit Support Deed (whether an English law security interest version or any modified version of the aforementioned designed for the exchange of regulatory margin, and/or any other version subject to any other governing law) forming a part of an ISDA Master Agreement, or any agreement in substantially similar terms or having substantially the same effect in respect of any other relevant Contract.

Cash Equivalent, Credit Support Balance, Delivery Amount, Return Amount, Secured Party and Valuation Time shall (a) in respect of any Credit Support Agreement in the form of an ISDA Credit Support Annex or ISDA Credit Support Deed, have the meanings given to such terms, or substantially the same terms, under that Credit Support Agreement and (b) in respect of any other Credit Support Agreement, have the meanings given to the terms in substantially similar form or having substantially the same effect used in such Credit Support Agreement.

Posted Collateral shall (a) in respect of any Credit Support Agreement in the form of an ISDA Credit Support Annex or ISDA Credit Support Deed, have the meanings given to such term, or substantially the same term (including, without limitation, **Posted Credit Support**), under that Credit Support Agreement and (b) in respect of any other Credit Support Agreement, have the meaning given to the term in substantially similar form or having substantially the same effect used in that Credit Support Agreement.

14 **Other Guarantees**

For the avoidance of doubt, but without prejudice to the rights of any Counterparty under the UBSL Guarantee, this Guarantee shall supersede any other deed poll guarantee previously issued by the Guarantor for the benefit of Counterparties of UBS ESE.

15 **Notices**

Any notice or communication to the Guarantor in respect of this Guarantee must be given in writing and delivered by post or by hand to the Guarantor at the following address:

UBS AG London Branch
5 Broadgate
London EC2M 2QS
United Kingdom

Attention: Legal Department

16 **Law and Jurisdiction**

- 16.1 This Guarantee is governed by English law.
- 16.2 The courts in London, England have non-exclusive jurisdiction to settle any dispute arising from or connected with this Guarantee (a **Dispute**), including a dispute regarding the existence, validity or termination of this Guarantee or the consequences of its nullity.
- 16.3 The Guarantor agrees that the courts in London, England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary.

Schedule 1: Forms Covered Agreements

Covered Agreements shall mean any form of master agreement which provides for netting of transaction values to produce a single net termination amount owed by one party to the other, including each of the following forms of agreements:

- 1 **ISDA Master Agreement**
- 2 **Repurchase Agreement**
- 3 **Securities Lending Agreement**
- 4 **Exchange Traded and Cleared OTC Derivatives Agreement**
- 5 **FBF Master Agreement**
- 6 **German Master Agreement**
- 7 **Swiss Master Agreement**
- 8 **European Master Agreement,**

together with any successor to any form of agreement in the above list.

For the avoidance of doubt, any long-form confirmation that deems into existence any of the aforementioned master agreements shall also constitute a Covered Agreement.

For the purposes of the above:

European Master Agreement means the Master Agreement for Financial Transactions (2001 version and 2004 version), as published by the Banking Federation of the European Union, together with the schedule and any addenda or annexes thereto and any confirmations evidencing transactions thereunder.

German Master Agreement means any master agreement in the form of, or substantially in the form of the *Rahmenvertrag für Finanztermingeschäfte*, *Rahmenvertrag für Wertpapierpensionsgeschäfte* or *Rahmenvertrag für Wertpapierdarlehen* (as the case may be), as published by the German Banks Association (*Bundesverband der deutschen Banken*), together with any annex (*Anhang*) or supplement (*Zusatzvereinbarung*) thereto and any other related agreement (e.g. Clearing Annex (*Clearing-Anhang*), EMIR Annex (*EMIR-Anhang*), Umbrella Agreement for Financial Transactions with Investment Management Companies (*Mantelvereinbarung für Finanzgeschäfte mit Kapitalverwaltungsgesellschaften*), KAGB Annex (*KAGB-Anhang*), Collateral Addendum for Variation Margin (*Besicherungsanhang für Variation Margin*), Collateral Annex (*Besicherungsanhang*)) and trade confirmations (*Einzelbestätigungen*).

Exchange Traded and Cleared OTC Derivatives Agreement means any agreement under which UBS Limited or UBS ESE provides a Counterparty with clearing and execution services for exchange traded and cleared OTC derivatives (where applicable) and any other related bilateral agreements, including (without limitation) the FOA Clearing Module, the ISDA/FOA Clearing Addendum and other product or service specific agreements.

FBF Master Agreement means any master agreement in the form of, or substantially in the form of Master Agreement relating

to transactions on forward financial instruments (*Convention-cadre AFB relative aux opérations de marché à terme* and *Convention-cadre FBF relative aux opérations sur instruments financiers à terme*), Master Agreement for repurchase transactions (*Convention-cadre FBF relative aux opérations de pensions livrées*) and Master Agreement for loans of securities (*Contrat cadre de prêts de titres* and *Convention cadre relative aux prêts de titres*), as published by the Association Française des Banques (AFB), the Fédération Bancaire Française (FBF) and/or the Association Française des Professionnels des Titres (AFTI), as the case may be, together with the related schedules (annexes), collateral documentation, trade confirmations, novation agreements (*contrats de novation*) and amendment agreements, if any.

ISDA Master Agreement means any master agreement in the form of, or substantially in the form of, the 1987 ISDA Interest Rate and Currency Exchange Agreement, the 1992 ISDA Master Agreement (Multicurrency – Cross Border) or the ISDA 2002 Master Agreement, each as published by the International Swaps and Derivatives Association, Inc. (including any form of any such agreement as amended for compliance with, and governed by, a different governing law), together with the schedule thereto, any credit support document entered into in connection therewith and any confirmations evidencing transactions thereunder.

Repurchase Agreement means any master agreement in the form of, or substantially in the form of, the Global Master Repurchase Agreement (1995 version), the Global Master Repurchase Agreement (2000 version) or the Global Master Repurchase Agreement (2011 version) (including any form of any such agreement as amended for compliance with, and governed by, a different governing law), each as published by the International Capital Markets Association, together with any annexes thereto and any confirmations evidencing transactions thereunder.

Securities Lending Agreement means any master agreement in the form of, or substantially in the form of, (i) the Global Master Securities Lending Agreement (2000 version), the Global Master Securities Lending Agreement (2009 version), or the Global Master Securities Lending Agreement (2010 version), each as published by the International Securities Lending Association and (ii) the Overseas Securities Lender's Agreement (1995 version), the Master Gilt Edged Stock Lending Agreement (1996 versions) and the Master Equity and Fixed Interest Stock Lending Agreement (1996 version), (including any form of any such agreement as amended for compliance with, and governed by, a different governing law), together with the schedule and any addenda or annexes thereto and any confirmations evidencing transactions thereunder.

Swiss Master Agreement means any Swiss master agreement in the form of, or substantially in the form of, the Swiss Master Agreement for OTC Derivative Instruments as published by the Swiss Banking Association, together with the schedule and any addenda or annexes thereto and any confirmations evidencing transactions thereunder.