

IGDL SEF Application

Exhibit P: Disciplinary Protocols, Tools and Procedures and Dispute Resolution

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This Exhibit P describes ICAP Global Derivatives Limited’s (“IGDL”) disciplinary and enforcement protocols, tools and procedures, and arrangements for dispute resolution. All capitalised terms used in this Exhibit P and not defined have the meanings ascribed thereto in the Facility Rulebook, which is included as Exhibit M to this Application. All references to “Rules” contained in this Exhibit are references to the Rules of the Facility Rulebook.

1 DISCIPLINARY PANELS

a. Review Panel

Section 10.12 of IGDL’s Governance Policy provides for the Board of Directors of IGDL to appoint a “Review Panel” at such time as is determined in the discretion of the Board or as required by Applicable Law. The Review Panel shall consist of no less than five panelists and shall include at least one person who would not be disqualified from serving as a Public Director under the CFTC Regulations (the “Public Panelist”). Such Public Panelist shall serve as the chair of the Review Panel. No Participant shall be permitted to participate in deliberations or voting on any matter in which the Participant has a financial interest.

Under Section 10.13 of IGDL’s Governance Policy the Review Panel shall have the power to direct that an investigation of any suspected Violation be conducted. In any case where the Review Panel concludes, by majority vote, that a Violation may have occurred, the relevant Participant shall be advised of that fact and the matter shall be referred to the Hearing Panel (see below), pursuant to the procedures detailed in Chapter Five of the Company’s Facility Rulebook.

b. Hearing Panel

Section 10.14 of IGDL’S Governance Policy provides for the Board to appoint a “Hearing Panel,” at such time as is determined in the discretion of the Board or as required by Applicable Law. The Hearing Panel shall consist of no less than five panelists and shall include at least one person who is a Public Panelist, who shall serve as the chair of the Hearing Panel.

Pursuant to section 10.15 of IGDL’s Governance Policy, no Participant shall be permitted to participate in deliberations or voting on any matter in which the Participant has a financial interest. Within ten (10) days of being notified of the appointment of a Hearing Panel, a Respondent (as defined in Chapter Five of the Company’s Facility Rulebook) may seek to disqualify any individual named to the Hearing Panel on account of a conflict of interest or other reasonable grounds, by serving written notice to the appropriate staff of the Company and providing a copy thereof to the chair of the Hearing Panel. By not filing a timely request for disqualification, the Respondent will be deemed to have waived any objection to the composition of the Hearing Panel. The appropriate staff of the Company will decide the merits of any request for disqualification within his or her sole discretion and such decision will not be subject to appeal. The Hearing Panel shall conduct the formal hearings on Violations referred

to it by the Review Panel, pursuant to the procedures detailed in Chapter Five of the Company's Facility Rulebook.

c. Conflicts

Section 10.16 of IGDL'S Governance Policy provides that in designating the members of a Review Panel or Hearing Panel, the directors shall endeavour to appoint a Panel that is not dominated or subject to disproportionate influence by any group or class of Participants. The Board shall consider the objection of any Participant who believes this objective is not satisfied, and the Board will determine whether a change is necessary or advisable to meet this objective.

2 RULE ENFORCEMENT PROCEDURES

a. Jurisdiction

Under Rule 501(a), IGDL will have the authority to initiate, conduct investigations, and prosecute Violations committed by Participants and Customers, and to impose sanctions for such Violations as provided in the Rules.

Under Rule 501(b), each Participant, upon becoming a Participant and thereafter upon any change of address will file with IGDL a written notice designating an address for receiving service of documents. If a Participant fails to designate such an address, service by mail to its address on file with IGDL shall be good service, and delivery thereof shall be deemed to have occurred as of the date of such mailing.

b. Market Regulation Staff Powers and Duties

Under Rule 502(a), it will be the duty of the Compliance Function to enforce the Rules, and it shall have the authority to inspect the books and records of all Participants and Customers and the authority to require any Participant or Customer to appear before him or her to answer questions regarding matters being investigated by the Market Regulation Staff. The Compliance Function may also delegate such authority to Market Regulation Staff who shall consist of personnel of IGDL, and such other Regulatory Services Providers as IGDL may hire on a contract basis. The Compliance Function shall ensure that surveillance systems are established to monitor trading to prevent manipulation and price distortion. Such monitoring may be done by the Market Regulation Staff or a third party provider, and shall include real time monitoring and the ability to conduct comprehensive and accurate transaction reconstructions.

Under Rule 502(b), the Market Regulation Staff will conduct investigations of possible Violations, prepare written reports respecting such investigations, furnish such reports to the

Review Panel and conduct the prosecution of such Violations. An investigation must be commenced upon receipt of a request from any Regulatory Agency, its staff or receipt of information (such as data produced by automated surveillance systems) by IGDL that in the judgment of the Market Regulation Staff indicates a reasonable basis for finding that a Violation has occurred or will occur. Absent mitigating factors, each investigation will be completed no later than 12 months after the investigation is opened. Mitigating factors include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential Violations to be investigated and the volume of documents and data to be examined and analysed by Market Regulation Staff.

Under Rule 502(c) if, in any case, the Compliance Function or another member of the Market Regulation Staff, designated for this purpose by the Compliance Function, concludes that a Violation may have occurred, it may issue a warning letter, including for minor transgressions, or shall present an investigation report concerning the matter to the Review Panel. No more than one warning letter may be issued to the same person found to have committed the same Violation more than once in a rolling 12-month period. The investigation report must include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; Market Regulation Staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued. The report may also include the Participant's or Customer's disciplinary history at the Facility, including copies of any warning letters.

Under Rule 502(d) if, in any case, the Compliance Function or another member of the Market Regulation Staff, designated for this purpose by the Compliance Function, concludes that no reasonable basis exists for finding a Violation, it must prepare a written investigation report including the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; and Market Regulation Staff's analysis and conclusions. The Compliance Function or another member of the Market Regulation Staff may issue a warning letter in any case where it is concluded that no reasonable basis exists for finding a Violation, without limitation on the number of warning letters issued to a person.

Under Rule 502(e), before presenting an investigation report to the Review Panel, the Market Regulation Staff may, in its sole discretion, inform the prospective Respondent that it intends to submit the matter to the Review Panel, and at such time the proposed Respondent may submit an offer of settlement to the Hearing Panel, in accordance with the procedures of Rule 509, prior to presentation of the investigation report to the Review Panel.

Rule 502(f) provides that IGDL has contracted with NFA to act as Regulatory Services Provider to provide certain regulatory services to IGDL, including reviews of the Facility's audit trail information for potential violations. IGDL will retain ultimate decision-making authority with respect to any regulatory services to be provided by NFA.

Under Rule 502(g), the IGDL or its Regulatory Services Provider shall have the right with such prior reasonable advance notice as is practicable under the circumstances (unless in furtherance of regulatory purposes in which case without prior notice to Participants or

Customers), in connection with determining whether all Rules are being, will be, or have been complied with by the Participant or Customer, to: (i) inspect systems, equipment and software of any kind operated by the Participant or Customer in connection with accessing, and the Participant's or Customer's transacting on, the Facility, wherever located; (ii) access, either physically or electronically, the systems, equipment, software, and the premises on which the systems, equipment, and software are located, any data stored in any of the systems or equipment, during the regular business hours; and/or (iii) copy or reproduce any data to which IGDL has access under this Rule. Each Participant and Customer shall provide the Regulatory Services Provider with the same access to its books and records and offices as it is required to provide to IGDL under the Rules and Applicable Law.

c. The Review Panel

Under Rule 503(a), the Review Panel shall have the power to direct that an investigation of any suspected Violation be conducted by the Market Regulation Staff, and shall hear any matter referred to it by the Market Regulation Staff regarding a suspected Violation.

Under Rule 503(b), the Review Panel shall be appointed by the Board, and shall be comprised of five persons, including at least two Participants and at least two non-Participants. The Board shall appoint as chairman (the "Review Panel Chairman") of the Review Panel a person who would not be disqualified from serving as a "Public Director" as defined in Commission Regulations. Three panel members shall constitute a quorum for any action, so long as they are in attendance at the time of the relevant action. The Review Panel may not include any members of the Market Regulation Staff, or any person involved in adjudicating any other stage of the same proceeding.

Under Rule 503(c), all information, records, and documents provided to the Review Panel, and all related records and documents shall be treated as confidential and shall not be disclosed, except as necessary to further an IGDL investigation or as required by Applicable Law.

Under Rule 503(d), upon receipt of an investigation report, the Review Panel shall promptly review the report and, within thirty days of receipt, take one of the following actions:

- (1) If the Review Panel determines that additional investigation or evidence is needed, it shall promptly direct the Market Regulation Staff to conduct further investigation;
- (2) If the Review Panel determines that no reasonable basis exists for finding a Violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing and must include a written statement setting forth the facts and analysis supporting the decision; or
- (3) If the Review Panel determines that a reasonable basis exists for finding a Violation and adjudication is warranted, it must direct that the Participant or Customer alleged to have committed the Violation be served with a notice of charges as set forth in Rule 504.

Under Rule 503(e), if the Review Panel determines that there may have been a Violation but that no adjudication is warranted, the Review Panel may issue a warning letter to the Participant or Customer informing it that there may have been a Violation and that such continued activity may result in disciplinary sanctions. Where a Violation is determined to have occurred, no more than one warning letter for the same potential Violation may be issued to the same person during a rolling 12 month period.

d. Notice of Charges

Under Rule 504(a), if the Review Panel determines that a reasonable basis exists for finding a Violation and adjudication is warranted, the Compliance Function shall serve a notice of charges (a “Notice”) on the Participant or Customer alleged to have been responsible for the Violation (such Participant or Customer, the “Respondent”). Such Notice shall state:

- (1) the acts, practices or conduct with which the Respondent is charged;
- (2) the Rules allegedly violated and how such acts, practices or conduct constitute a Violation of such Rules;
- (3) that the Respondent is entitled, upon written request filed with IGDL, within twenty days of service of the Notice, to a formal hearing on the charges;
- (4) that the failure of the Respondent to request a hearing within twenty days of service of the Notice, except for good cause shown, will be deemed a waiver of its right to a hearing;
- (5) that the failure of the Respondent to file an Answer (as defined below under Rule 505) with the Market Regulation Staff within twenty days of service of the Notice shall be deemed an admission of all of the acts, practices or conduct alleged in the Notice; and
- (6) that the failure of the Respondent to expressly deny a particular charge contained in the Notice will be deemed an admission of such acts, practices or conduct.

Under Rule 504(b), a Respondent will have the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process, except by any member of the Board, Review Panel or Hearing Panel, any personnel of IGDL or any person substantially related to the underlying investigation, such as a material witness or Respondent.

e. Answer; Request for Hearing; Failure to Answer or Deny Charges

Under Rule 505(a), the Respondent will serve on the Compliance Function a written answer (an “Answer”) to the Notice and a written request for a hearing on the charges within thirty days of the date of service of the Notice. The Answer must include a statement that the Respondent admits, denies, or does not have and is unable to obtain sufficient information to deny each allegation. A statement of lack of sufficient information will have the effect of a denial of the allegation.

Under Rule 505(b), the Respondent’s failure to file an Answer within such thirty (30) day period shall be deemed an admission of all allegations contained in the Notice.

Under Rule 505(c), the Respondent’s failure to expressly deny a particular charge contained in the Notice shall be deemed an admission of such acts, practices or conduct.

Under Rule 505(d), the Respondent’s failure to request a hearing within such twenty (20) day period, absent good cause shown, shall be deemed a waiver of Respondent’s right to a hearing.

f. Selection of Hearing Panel

Under Rule 506(a), formal hearings on any Notice shall be conducted by the Hearing Panel selected by the Board. The Hearing Panel shall include at least two Participants and at least two non-Participants. The Board shall also select, as chairman of the Hearing Panel (“Hearing Panel Chairman”), a person who would not be disqualified from serving as a “Public Director” as defined in Commission Regulations. The Hearing Panel Chairman, in his or her sole discretion, will set a date for the hearing (the “Hearing Date”). The Hearing Panel may not include any members of the Market Regulation Staff, or any person involved in adjudicating any other stage of the same proceeding.

Under Rule 506(b), the Hearing Panel Chairman shall notify the Market Regulation Staff and the Respondent of the Hearing Date and the names of the members of the Hearing Panel at least fifteen (15) days prior to the Hearing Date.

Under Rule 506(c), no member of the Hearing Panel shall hear a case in which that member has a direct financial, personal or other interest in the matter under consideration.

g. Challenge to Members of the Hearing Panel

Under Rule 507, within ten (10) days after service on the Respondent of notice of the Hearing Date and names of the members of the Hearing Panel, the Respondent may challenge, in writing, the inclusion of any member of the Hearing Panel for cause, including without limitation, if the member has a direct financial, personal or other interest in the matter under consideration. The merits of such challenge shall be finally decided by the Regulatory Oversight Committee. If said written challenge is not received within such ten (10) day period, absent good cause shown, any such right to challenge is deemed waived.

h. Hearing on Sanctions in the Event of Failure to Deny Charges; Failure to Request Hearing Deemed Acceptance of Sanctions

Under Rule 508, in the event the Respondent fails to file an Answer or admits or fails to deny the charge of a Violation contained in the Notice, the Hearing Panel shall find the Respondent guilty of each such Violation and may impose a sanction for each such Violation subject to the

limitations set forth in Rule 511(f). The Hearing Panel shall promptly notify the Respondent of any such sanction and of the Respondent's right to a hearing on the sanction within the period of time which shall be stated in the notice, after the imposition of such sanction. Failure to request a hearing on the sanction in a timely manner, absent good cause shown, will be deemed to be acceptance of the sanction.

i. Settlement Prior to Commencement of Hearing

Under Rule 509(a), prior to the commencement of the hearing, the Hearing Panel may accept a written offer of settlement from the Respondent, whereby the Respondent, without either admitting or denying any Violations, may agree to:

- (1) a cease and desist order;
- (2) a fine for each Violation plus the monetary value of any benefit received as a result of the Violation (provided that in no case shall any fine exceed \$100,000 per Violation);
- (3) restitution of any counterparty harm; and/or
- (4) revocation or suspension of Trading Privileges or Customer status of the Respondent.

Under Rule 509(b), if the Hearing Panel accepts an offer of settlement, it must issue a written decision specifying each Rule Violation it has reason to believe was committed, including the basis for the Hearing Panel's conclusions. The sanctions must include full counterparty restitution where counterparty harm is demonstrated, except where the amount of restitution or to whom it should be provided cannot be reasonably determined. If an offer of settlement is accepted without the support of the Market Regulation Staff, the decision must adequately support the Hearing Panel's acceptance of the settlement. Where applicable, the decision must include a statement that the Respondent has accepted the sanctions imposed without either admitting or denying any Violations. Any sanctions imposed pursuant to an offer of settlement must take into account the Respondent's disciplinary history.

Under Rule 509(c), the Respondent may withdraw an offer of settlement at any time before final acceptance by the Hearing Panel. If an offer is withdrawn after submission, or is rejected by the Hearing Panel, the Respondent may not be deemed to have made any admissions by reason of the offer of settlement and may not be otherwise prejudiced by having submitted the offer of settlement.

j. Hearing Procedures

Under Rule 510(a), in every instance where a Respondent has requested a hearing on a charge that is denied, or on a sanction set by the Hearing Panel pursuant to Rule 508, the Respondent will have the opportunity for a hearing in accordance with the procedures of Rule 510.

Under Rule 510(b), the Hearing Panel shall determine the procedures to be followed in any hearing before it, except that the following will apply in every case:

- (1) The hearing must be fair and must be promptly convened after reasonable notice to the Respondent.
- (2) The prosecution shall be conducted by the Market Regulation Staff.
- (3) The Respondent shall be allowed to appear personally at the hearing, and to be represented by legal counsel or any other representative of its choosing and, either personally or through such representative, to present witnesses and documentary evidence and to cross-examine witnesses.
- (4) The Market Regulation Staff and the Respondent shall deliver to each other a statement listing the witnesses expected to be called and the documents expected to be introduced into evidence, together with copies of such documents, by ten days prior to the hearing or as the Hearing Panel may reasonably specify. Unless the Hearing Panel, in its discretion, waives compliance with this requirement, no witness may testify and no documentary evidence may be introduced into evidence unless listed in and, in the case of documents, furnished with such statement. On written request, the Market Regulation Staff will provide the Respondent with access to all books, documents or other tangible evidence in the possession or under the control of IGDL which are to be relied upon by the Market Regulation Staff or which are relevant to the charges; provided, however, that protected attorney work product, attorney-client communications and investigative work product, including the investigation report, are neither discoverable by a Respondent nor subject to review by a Respondent as part of the investigation file.
- (5) IGDL shall require that persons within its jurisdiction who are called as witnesses participate in the hearing and produce evidence, and will make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant. Failure by a Participant or Customer to so participate and produce evidence when requested by IGDL shall be a Violation of these Rules.
- (6) No formal rules of evidence shall apply, and the Hearing Panel shall be free to accept or reject any and all evidence it considers proper, but the hearing may not be so informal as to deny a fair hearing.
- (7) Neither the Market Regulation Staff, the Respondent, any witnesses testifying before the Hearing Panel nor any other person within the Facility's jurisdiction shall engage in conduct that may impede the progress of a hearing or the fair and just resolution of the subject matter thereof, and any such conduct may itself constitute a Violation.
- (8) Ex parte contacts by any of the parties with members of the Hearing Panel will not be permitted.
- (9) A substantially verbatim record capable of being accurately transcribed will be made of the Proceeding, provided however, that such record need not be transcribed, unless the transcript is requested by the Respondent or an applicable regulator, or unless the decision is appealed to the Commission or reviewed by the Commission on its own motion. In all other instances, a summary record of the hearing is permitted.
- (10) The cost of transcribing the record of the hearing must be borne by a Respondent who requests the transcript, or whose application for Commission review of the disciplinary action has been granted. In all other instances, the cost of transcribing the record will be borne by IGDL.

- (11) The Notice, the Answer, any stenographic transcript of the hearing, the documentary evidence and any other material presented to the Hearing Panel by either party with notice to the other shall constitute the record of the hearing (the “Hearing Record”).
- (12) The burden of proof will be on the prosecution to prove a Violation by a preponderance of the evidence. A finding of a Violation shall be made by majority vote based on the Hearing Panel’s decision as to the weight of the evidence contained in the Hearing Record.
- (13) All sanctions imposed by the Hearing Panel must be commensurate with the Violations committed and must be clearly sufficient to deter additional similar Violations by the Respondent and similar Violations by other Participants and Customers. All sanctions must take into account the Respondent’s disciplinary history. In the event of demonstrated counterparty harm, any sanctions must include full counterparty restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined.

k. Written Decision of Hearing Panel

Under Rule 511, the Hearing Panel shall render a written decision based upon the weight of evidence in the Hearing Record and must provide a copy to the Respondent. The written decision shall include:

- (a) a summary of the Violations alleged in the Notice;
- (b) a summary of the Answer;
- (c) a summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;
- (d) a statement of the findings and conclusions of the Hearing Panel with respect to each charge, and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge;
- (e) an indication of each specific rule that the Respondent was found to have violated; and
- (f) an order stating any sanctions imposed, including the basis for the sanctions, and the effective date of such sanctions; the sanctions that may be imposed on the Respondent may be one or more of the following:
 - (1) a cease and desist order;
 - (2) a fine for each Violation plus the monetary value of any benefit received as a result of the Violation (provided that in no case shall any fine exceed \$100,000–per Violation);
 - (3) restitution of counterparty harm, except where the amount of restitution or to whom it should be provided cannot be reasonably determined; and/or
 - (4) the issuance of a suspension or revocation of Trading Privileges or Customer status of the Respondent.
- (g) The Hearing Panel shall take into consideration the Respondent’s disciplinary history prior to imposing any disciplinary sanctions.

I. Liability for Expenses

Under Rule 512, any Respondent that, after notice and opportunity for hearing, has been found to have committed a Violation may, in the discretion of the Hearing Panel appointed in the matter, be required to pay to IGDL an amount equal to any and all reasonable and documented out-of-pocket expenses incurred by IGDL in connection with the prosecution of such Violations, in addition to any fine or other monetary sanction which may be imposed upon such Respondent by virtue of the Violations found by the Hearing Panel.

m. Effective Date of Sanctions

Under Rule 513(a), if a Respondent submits an offer of a settlement to the Hearing Panel, any sanction included as a part of such settlement shall become final and effective on the date that the Hearing Panel approves such settlement, or on such other date as is specified in the decision.

Under Rule 513(b), any decision (including any sanctions) by a Hearing Panel will be the final decision of IGDL and will become effective fifteen (15) days, or such longer time as the Hearing Panel may specify, after a copy of the written decision of the Hearing Panel has been served on the Respondent; provided, however, that in any case where the Respondent has consented to the action taken and to the timing of its effectiveness, the Hearing Panel may cause the decision involving any disciplinary action (including any sanctions) to become effective prior to the fifteen (15) day period.

Under Rule 513(c), any fine or other monetary sanction imposed by a Hearing Panel shall be due and payable on the effective date of the decision imposing such fine or sanction, or on such later date as the Hearing Panel may specify.

n. Summary Suspension

Under Rule 514(a), a Participant or Customer (as identified by Market Regulation Staff in an investigation or by a Trading Privilege Holder acting as an Intermediary for such Customer) may be summarily and immediately suspended from trading on the Facility, upon a written determination based on a reasonable belief, by the Chairman of the Regulatory Oversight Committee that such immediate action is necessary to protect the best interest of the market place.

Under Rule 514(b), the Participant or Customer against whom such summary action is taken shall be served with a notice of the action either before the action is taken or at the earliest possible opportunity thereafter. The notice will state the action taken, the reasons for the action, the effective date and time, and the duration of the action.

Under Rule 514(c), the Participant or Customer may as soon as practicable, upon written request, have a hearing before the Hearing Panel pursuant to the procedures of Rule 510.

Under Rule 514(d), promptly following the hearing, the Hearing Panel shall render a written decision based upon the weight of the evidence in the record and will provide a copy to the Participant or Customer. The decision shall include a description of the summary action taken, the reasons for the summary action, the reasons for the summary action, a summary of the evidence produced at the hearing, a statement of findings and conclusions, a determination that the summary action should be affirmed, modified or reversed, a declaration of any action to be taken pursuant to the determination, and the effective date and duration of the action.

o. Extension of Time Limits

Under Rule 515, any time limit provided for in Rules 504, 505, 506, 507, 508, or 510 may be extended by the mutual consent of the Respondent and the Market Regulation Staff, or by the Hearing Panel Chairman.

3 DISPUTE RESOLUTION

a. Choice of Law

Under Rule 701, the laws of England and Wales, without regard to its conflict of laws principles, will govern the Facility Rulebook and all disputes arising out of or related to IGDL, the Facility or any transaction on the Facility

b. Disputes Among Trading Privilege Holders, Authorised Traders, and Customers

Under Rule 702, all disputes between and among Trading Privilege Holders, Authorised Traders, and Customers that arise out of or relate to IGDL or the Facility or any transaction that was made or attempted to be made on the Facility shall be resolved exclusively in the courts of England and Wales, save for in the following circumstances:

- (i) If all parties to the dispute are members or associates of the NFA, the dispute will be resolved in NFA Member Arbitration; or
- (ii) If all parties separately agree to another forum, the dispute will be resolved in the other forum.

c. Disputes with IGDL

Under Rule 703(a), subject to Rule 102 (Limitation of Liability), all disputes between and among IGDL on the one hand, and Trading Privilege Holders and/or Authorised Traders and/or Customers on the other hand, that arise out of or relate to the Facility, or any transaction that was made or attempted to be made on the Facility, shall be resolved exclusively in the courts

of England and Wales. Suit on any such dispute must be brought within one year from the time the cause of action has accrued.

Under Rule 703(b), any current or former Trading Privilege Holder, Authorised Trader, or Customer who does not substantially prevail in a lawsuit or any other type of legal proceeding instituted in a court of law or otherwise against IGDL or any of its officers, directors, committee members, volunteers, employees, personnel or agents, shall pay to IGDL any and all reasonable expenses and disbursements, including reasonable attorneys' fees, incurred by IGDL to defend such lawsuit or proceeding.