



**FCM SWAPCLEAR CLEARING MEMBERSHIP AGREEMENT**

DATED

**LCH.CLEARNET LIMITED**

and   
("the Firm")

Address of the Firm

In consideration of becoming an "FCM Clearing Member" of LCH.Clearnet Limited (the "Clearing House") and of being permitted to clear with the Clearing House "FCM SwapClear Contracts", and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agrees with the Clearing House (this "Agreement") as follows:

## **1 Definitions**

The term "FCM Rulebook" has the meaning ascribed to it in under the rules of the Clearing House denoted "FCM Regulations", and which includes without limitation the Clearing House's "Default Rules", "Default Fund Rules", "Settlement Finality Regulations", the "FCM Regulations" and the "FCM Procedures". The term "Collateral" shall mean the funds, property (including without limitation any substitutions for and proceeds of such property) and amounts subject to the pledges and security interests granted pursuant to Section 6, Section 7 and Section 9 of this Agreement. Unless the context requires otherwise, all terms used herein which are defined in the FCM Regulations and not otherwise defined herein shall have the meanings set forth in the FCM Regulations. All capitalized terms used herein which are defined in the FCM Rulebook (other than in the FCM Regulations which form a part of the FCM Rulebook) and not otherwise defined herein or in the FCM Regulations shall have the meanings set forth in the FCM Rulebook.

## **2 Adherence to FCM Rulebook**

2.1 The undersigned will observe, comply with and be bound by all provisions of the FCM Rulebook. Without limiting the generality of the foregoing, the undersigned specifically acknowledges and agrees as follows:

- (a) The undersigned agrees to comply with all financial requirements of the Clearing House in effect from time to time.
- (b) The undersigned will execute (and comply with the terms of) an FCM Default Fund Agreement with the Clearing House.
- (c) The undersigned will pay when and as due any assessments that may be made against the undersigned pursuant to the FCM Rulebook.
- (d) The undersigned, for any purpose whatsoever, subject to applicable law and regulation, will timely comply with the FCM Rulebook governing the deposit and payment of Initial Margin, Variation Margin, and any other amounts coming due pursuant to or in accordance with the FCM Rulebook, and the Clearing House may sell or otherwise dispose of money or other property deposited as Initial Margin by the undersigned without notice to or further consent of the undersigned as provided in or pursuant to the FCM Rulebook.
- (e) The undersigned will comply promptly with any request for information that may be made by authorized representatives of the Clearing House pursuant to the FCM Rulebook, and will permit authorized representatives of the Clearing House, at any time upon demand, to inspect, take temporary possession of and make copies of the undersigned's books and records relating to transactions of the undersigned cleared or submitted for clearance by the Clearing House.
- (f) The undersigned may be suspended, expelled or penalized by the Clearing House in accordance with the FCM Rulebook if the undersigned violates any provision of the FCM Rulebook.
- (g) The undersigned will be bound by, and will timely perform all obligations arising under or in connection with, all FCM SwapClear Contracts which are hereafter submitted by or pursuant to the FCM Rulebook for clearance by the undersigned until they are fully performed or closed out in accordance with the FCM Rulebook.
- (h) The FCM Rulebook may be changed at any time and for any reason by the Clearing House without the consent of, or any by, the undersigned or any other FCM Clearing Member or Executing Dealer, except as may be otherwise expressly set forth in the FCM Rulebook.
- (i) The provisions of this shall be without limitation of any similar provisions in the FCM Rulebook and shall not be deemed to modify any provision of the FCM Rulebook.

## **3 Bank Account Authorization**

The undersigned shall, in accordance with the FCM Rulebook, from time to time designate in writing to the Clearing House its PPS accounts to be debited in connection with amounts due to the Clearing House by the undersigned pursuant to the FCM Rulebook (collectively, the "Accounts"), and the undersigned hereby authorizes the Clearing House to give instructions to the banks of the undersigned corresponding to the Accounts (the "Bank(s)") to debit the Accounts in such amounts as the Clearing House may specify for the deposit with, or payment to, the Clearing House of Initial Margin, Variation Margin, or any other amounts coming due pursuant to or in accordance with the FCM

Rulebook, and to transfer such amounts so debited to such account or accounts of the Clearing House as the Clearing House may specify, without inquiry or regard as to the purpose or use of such amounts or as to the authority of the person or persons acting on behalf of the Clearing House in giving such instructions.

#### **4 Account Deposits**

The undersigned will have on deposit in the Accounts sufficient funds and property to deposit with or pay to the Clearing House in full any Initial Margin, Variation Margin, and any other amounts coming due when and as required pursuant to and in accordance with the FCM Rulebook.

#### **5 Further Action Relating to Clearing House Rights**

The undersigned will execute and deliver such instruments and documents, and take such further action, as the Clearing House may reasonably request in order to confirm or better effectuate the authority and rights granted to the Clearing House pursuant to this Agreement or the FCM Rulebook.

#### **6 Security Interest in Default Fund Deposits and Proprietary Account Deposits**

The undersigned hereby pledges and grants to the Clearing House a security interest in all property deposited in the Default Fund by the undersigned from time to time, all property deposited in the Proprietary Accounts of the undersigned with the Clearing House, and all substitutions for, and proceeds of, any such property, as security for the prompt and unconditional payment of each and every obligation and liability of the undersigned to the Clearing House under the FCM Rulebook.

#### **7 Security Interest and Right of Setoff Regarding Amounts Owing to Undersigned in Default Fund and Proprietary Account**

The undersigned hereby pledges, and grants to the Clearing House a security interest in, and right of setoff as to, any amounts owing to the undersigned from the Default Fund and the Proprietary Accounts of the undersigned from time to time, as security for the prompt and unconditional payment of each and every obligation and liability of the undersigned to the Clearing House under the FCM Rulebook.

#### **8 Application of Collateral by Clearing House**

The Clearing House may, at any time and from time to time, in its sole discretion and without notice to the undersigned, appropriate and apply any of the Collateral described in Section 6 or Section 7 toward the payment of any amounts owing by the undersigned to the Clearing House and may take such other actions with respect thereto as may be authorized or permitted to a secured party under the New York Uniform Commercial Code, as in effect from time to time.

#### **9 Security Interest in FCM Omnibus OTC Client Account with LCH in Connection with FCM SwapClear Contracts**

The undersigned hereby pledges, and grants to the Clearing House a security interest in, all funds and property on deposit in each FCM Omnibus OTC Client Account with LCH of the undersigned with the Clearing House from time to time, and all substitutions for and proceeds of such property, as security for the prompt and unconditional payment of each and every obligation and liability of the undersigned to the Clearing House under the FCM Rulebook with respect to and in connection with FCM Contracts cleared or carried by the Clearing House for the FCM Omnibus OTC Client Account with LCH of the undersigned. The Clearing House may at any time or from time to time in its sole discretion and without notice to the undersigned or any other person appropriate and pay any of said funds and property, including said substitutions and proceeds, toward the payment of any such obligation or liability and may take such other actions with respect thereto as may be authorized or permitted to a secured party under the New York Commercial Code, as in effect from time to time.

#### **10 Representations and Warranties**

The undersigned hereby represents and warrants to the Clearing House that:

- (a) The undersigned has, as of the date of this Agreement and on each date up to the termination of this Agreement, the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder, including without limitation any obligation required under the FCM Rulebook. The execution, delivery and by the undersigned of this Agreement has been duly and validly authorized. This Agreement, when executed and delivered by the undersigned will constitute a valid and legally binding obligation of the undersigned.

- (b) The undersigned is, as of the date of this Agreement and on each date up to the termination of this Agreement, (i) duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and (ii) duly qualified to do business and in good standing as a foreign corporation in each jurisdiction where the conduct of its business requires such qualification.
- (c) The execution, delivery and performance by the undersigned of this Agreement will not violate any applicable law, regulation, judicial or administrative order or material contract by which they may be bound.
- (d) All information furnished to the Clearing House in connection with the undersigned's application for membership in the Clearing House is true, complete and accurate.
- (e) The undersigned is a futures commission merchant duly registered and in good standing with the United States Commodity Futures Trading Commission.
- (f) Each security interest granted herein creates a valid and continuing first lien on, and security interest in, the Collateral in favor of the Clearing House, subject to no prior liens, security interest or encumbrances of any kind whatsoever or right of others, which lien and security interest is effective as against creditor of, or purchasers from, the undersigned, subject to any requirement for perfection thereof under any applicable law.
- (g) The undersigned is, or will be (insofar as the security interest granted herein covers Collateral to be acquired after the date hereof), the owner of the Collateral described in Section 6 of this Agreement, and authorized (by the legal and beneficial owner's unconditional consent) to pledge and grant a security interest in the Collateral described in Section 9 of this Agreement, free from any and all pledges, liens, security interests, encumbrances, claims or right of others, and the undersigned will promptly notify the Clearing House of any pledge, lien, security , claim or right of others which is adverse to the lien and security interest granted to the Clearing House.
- (h) No financing statement, assignment, notice of assignment or other similar document covering all or any part of the Collateral is on file in any public office or has been delivered to any obligee or obligor of the undersigned or any other person, except any financing statement, assignment, notice of assignment or other similar document filed or delivered by the undersigned in favor of the Clearing House pursuant to his Agreement or the FCM Rulebook.
- (i) The undersigned authorizes the Clearing House, at the undersigned's expense, to file one or more financing statements to perfect the security interests granted herein, without the Clearing Member's signature thereon, and the undersigned agrees to take such actions and to execute and deliver such documents as the Clearing House may request in order to perfect and enforce its rights under this Agreement or the FCM Rulebook.

#### **11 Notification to Clearing House of Material Changes**

The undersigned shall, as promptly as practicable, notify the Clearing House of any material changes to the information submitted to the Clearing House in connection with (i) its application for membership as an FCM Clearing Member and (ii) its continued membership following an approval of its membership as an FCM Clearing Member.

#### **12 Indemnity**

The undersigned shall indemnify and hold harmless the Clearing House and the Bank from and against any liability, loss, cost or expense incurred by either of them in connection with any act or omission made in compliance with this Agreement.

#### **13 Authorization in Effect**

The authorization granted to the Clearing House and the Bank pursuant to Section 3 of this Agreement shall remain in full force and effect unless and until expressly revoked or modified by written notice received and accepted by the Clearing House and the Bank at least five business days prior to the day any proposed revocation or modification is to become effective. In the event such authorization should be revoked or terminated by operation of law without notification to the Clearing House and the Bank, the obligation of the undersigned to indemnify and hold harmless the Clearing House and the Bank pursuant to Section 12 of this Agreement shall nevertheless continue in full force and effect with respect to any act or omission made in compliance with this Agreement until such written notice has been so received.

#### **14 Payments in Required Currency**

The undersigned agrees that it will satisfy each and every obligation and liability to the Clearing House under the FCM Rulebook by payment in the currency required by the Clearing House as applicable to each such obligation or liability

(in each such case, the "Required Currency"), except to the extent that (i) the Clearing House consents to payment in an alternative currency and (ii) such payment in an alternative currency to the Clearing House results, by the Clearing House acting in good faith and using commercially reasonable procedures in converting such currency into the Required Currency, in receipt by the Clearing House of the full amount due to the Clearing House in the Required Currency. If for any reason the amount in the Required Currency so received by the Clearing House falls short of the amount in the Required Currency payable in respect of any such applicable obligation or liability of the undersigned, the undersigned shall immediately pay such additional amount in the Required Currency as may be necessary to compensate the Clearing House for the shortfall. If for any reason the amount in the Required Currency so received by the Clearing House exceeds the amount in the Required Currency payable in respect of any such obligation or liability, the Clearing House shall refund promptly the amount of such excess to the undersigned.

## 15 Conflicts

In the event there is any conflict between this Agreement and the FCM Default Fund Agreement executed by the undersigned with respect to the subject matter of such FCM Default Fund Agreement, the terms of such FCM Default Fund Agreement shall prevail.

## 16 Term

- (a) Subject to clause (c) below either party (provided, in the case of the undersigned, that the Clearing House has not issued a Default Notice in respect of the undersigned) may terminate this Agreement by giving to the other party notice in writing, such notice to specify the effective date of termination ("the termination date") which shall be a business day not less than three months after the date of the notice, and this Agreement shall, subject to clause (b)(ii) below, terminate on the termination date. By the close of business on the termination date the undersigned shall ensure that all FCM SwapClear Contracts in the undersigned's name have been closed-out or transferred so that there are no open FCM SwapClear Contracts to which the undersigned is party at the end of the termination date.
- (b) If, under clause (a) above, the undersigned has not closed out or transferred all FCM SwapClear Contracts by the set termination date the Clearing House shall, at its sole discretion, be entitled to:

***(i) liquidate any such FCM SwapClear Contracts in accordance with the FCM Rulebook; and***

***(ii) require that the undersigned remains an FCM Clearing Member of the Clearing House until such time as there are no FCM SwapClear Contracts in existence to which the undersigned is a party and the effective date of termination of this Agreement shall be postponed until such time.***

- (c) If the undersigned is in breach of or in default under any term of this Agreement or the FCM Rulebook, or if the Clearing House has issued a Default Notice in respect of the undersigned, or if the Clearing House reasonably determines that the undersigned no longer satisfies the Membership criteria set out in the FCM Rulebook as an FCM Clearing Member, the Clearing House may in its absolute discretion terminate this Agreement in writing either summarily or by notice as follows:

Any termination by notice under this clause (c) may take effect (subject as follows) on the expiry of 30 days or such longer period as may be specified in the notice. A notice given by the Clearing House under this clause (c) may at the Clearing House's discretion allow the undersigned a specified period in which to remedy the breach or default or to satisfy the Membership criteria set out in the FCM Rulebook as the case may be, and may specify what is to be done to that end, and may provide that if the same is done to the satisfaction of the Clearing House within that period the termination of this Agreement shall not take effect; and if this Agreement has terminated after the Clearing House has allowed the undersigned such a period for remedy or satisfaction, the Clearing House shall then notify the undersigned of the fact of termination. The Clearing House may, if the Clearing House has issued a Default Notice in respect of the undersigned immediately, and in any other case after the effective date of termination, take such other action as it deems expedient in its absolute discretion to protect itself or any other FCM Clearing Member or SwapClear Clearing Member including, without limitation, the liquidation of FCM SwapClear Contracts but without prejudice to its own rights in respect of such contracts.

- (d) Upon the termination of this Agreement for whatever reason the undersigned shall unless otherwise agreed cease to be an FCM Clearing Member.

## 17 Force Majeure

Neither party shall be liable for any failure in performance of this Agreement if such failure arises out of causes beyond its control. Such causes may include, but are not limited to, acts of God or the public enemy, acts of civil or military authority, fire, flood, labor dispute (but excluding strikes, lock-outs and labor disputes involving the employees of the

party intending to rely on this clause or its sub-contractors), unavailability or restriction of computer or data processing facilities or of energy supplies, communications systems failure, failure of a common depository, clearing system or settlement system, riot or war.

**18 Governing Law**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAWS PRINCIPLES.

**19 Submission to Jurisdiction; Selection of Forum**

The Clearing House and the undersigned irrevocably agree that (i) the courts of the State of New York, Borough of Manhattan in the United States of America, (ii) the United States District Court for the Southern District of New York, or (iii) the courts of England and Wales (the "Chosen Courts") shall have exclusive jurisdiction to hear and determine any claim or matter arising out of this Agreement, and the undersigned and the Clearing House each irrevocably submits to such jurisdiction and to waive any objection which it might otherwise have to the Chosen Courts being a convenient and appropriate forum, save that this submission to the exclusive jurisdiction of the Chosen Courts shall not (and shall not be construed so as to) limit the right of the Clearing House to take proceedings in any other court of competent jurisdiction, nor shall the taking of action in one or more jurisdictions preclude the taking of action in any other jurisdiction, whether concurrently or not.

**20 Waiver of Jury Trial**

THE UNDERSIGNED AND THE CLEARING HOUSE EACH HEREBY IRREVOCABLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

IN WITNESS whereof the parties hereto have caused this Agreement to be signed by their duly authorised representatives the day and year first before written.

(Signature)

(Print Name and Title)

for THE FIRM

(Signature)

(Print Name and Title)

for THE FIRM

(Signature)

(Print Name and Title)

for **LCH.CLEARNET LIMITED**

(Signature)

(Print Name and Title)

for **LCH.CLEARNET LIMITED**

**LCH.CLEARNET LIMITED**

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