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**EXECUTION COPY**

**MASTER CLEARING LINK AGREEMENT**

**DATED** *6 August 2009*

**BETWEEN**

**LCH.CLEARNET LIMITED**  
**and**

**SIX X-CLEAR AG**

**ALLEN & OVERY**

**Allen & Overy LLP**

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RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG

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RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG

THIS AGREEMENT is dated 6 August 2009

**BETWEEN:**

- (1) **LCH.CLEARNET LIMITED** a company incorporated in England and Wales under number 0025932 whose registered office is at Aldgate House, 33 Aldgate High Street, London EC3N 1EA ("LCH"); and
- (2) **SIX x-clear AG** a company incorporated in Switzerland under number CH-020.3.024.561-6 whose registered office is at Brandschenkestrasse 47, CH-8002 Zurich ("x-clear").

**WHEREAS:**

- (A) LCH is a recognised clearing house ("RCH") under the Act and a designated system pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (as amended) (the "Settlement Finality Regulations") enacted pursuant to Directive 98/26/EC on settlement finality in payment and securities settlement systems.
- (B) x-clear is authorised as a bank by the FINMA and is also, as a systemically important system, subject to the oversight of the SNB. x-clear is also a recognised overseas clearing house ("ROCH") under the Act and intends to seek designation under the Settlement Finality Regulations.
- (C) x-clear and LCH (each a "Party" and together, the "Parties") operate an interoperable central counterparty structure in relation to the London Stock Exchange under a link agreement between x-clear and LCH dated 10 December 2008 (the "LSE Link Agreement") which permits the clearing of certain products traded on the London Stock Exchange through either LCH or x-clear or both. The Parties intend, by this Agreement, to amend and restate the LSE Link Agreement in the context of a broader common framework which the Parties would extend to co-operation in implementing an interoperable central counterparty structure for the provision of co-clearing in respect of other trading venues. Each of the Parties would expect to be treated by each such trading venue as a clearing house and central counterparty in this context in a similar manner and on similar terms.
- (D) As at the date of this Agreement, the Parties intend to extend the application of the Agreement to co-clearing of certain products traded at SIX Swiss Exchange.
- (E) In respect of Mixed Member Transactions entered into by an LCH Clearing Member and an x-clear Clearing Member which are registered with LCH and x-clear in accordance with their respective Rules, LCH-x-clear Contracts will arise between LCH and x-clear and be reflected in a Balance Account maintained by each Party.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

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

"**Absolute Majority Share**" means, in relation to a Trading Venue, a percentage share being the product of one hundred divided by the number of clearing houses entitled to clear that Trading Venue;

"**Act**" means the Financial Services and Markets Act 2000;

"**Adjudicator**" shall have the meaning given to it in Clause 16;

"**ADR Procedure**" means an alternative dispute resolution procedure;

"**Affiliate**" means, in relation to an undertaking (the "first undertaking") from time to time:

- (a) any other undertaking which is its subsidiary undertaking or parent undertaking or fellow subsidiary undertaking of the parent undertaking;
- (b) any undertaking whose directors are accustomed to act in accordance with the first undertaking's instructions or directions; and
- (c) any undertaking in the capital of which the first undertaking, and any other undertaking under (a) or (b) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) interested so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able to:
  - (i) exercise or control the exercise of more than 50% of the votes able to be cast at general meetings on all, or substantially all, matters; or
  - (ii) appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters; or
  - (iii) direct or cause the direction of the management and policies of such undertaking, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise;

and the term "parent undertaking" and "subsidiary undertaking" shall have the meaning given to them in section 420 of the Act, the term "undertaking" shall have the meaning given to it in section 259 of the Companies Act 1985 and the term "Affiliated", when used in the context of Affiliated undertakings, shall be construed accordingly;

"**Agreement**" means this agreement;

"**Applicable Laws**" means, in relation to a Party, any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, guidance or order applicable to it, including (without limitation) in the United Kingdom or (in the case of x-clear) Switzerland and, for the avoidance of doubt, includes all relevant provisions of the FSA Rules;

"**Approved Settlement Location**" means a settlement system appointed by or which has contracted with a Trading Venue to act as the location for settlement of Transactions on that Trading Venue, as the same may be further specified in the relevant Schedule for that Trading Venue;

"**Balance Account**" means the risk account maintained by each Party in accordance with its Rules in which LCH-x-clear Contracts will be reflected;

"**Balance Position**" means the aggregate of risk positions in LCH-x-clear Contracts reflected in a Balance Account;

"**Business Day**" means a day, other than a Saturday, Sunday or public holiday in England and Wales, on which banks in England and Wales are generally open for inter-bank business;

**"Claim"** means any action, claim, proceedings, losses, damages, costs, expenses (including court and legal costs) and other liabilities of whatever nature;

**"Cleared Product"** means any equity or other product agreed by the Parties which is traded on a Trading Venue Market from time to time or reported to a Trading Venue for registration in accordance with Trading Venue Rules;

**"Clearing Member"** means an LCH Clearing Member and/or an x-clear Clearing Member, as the context so requires;

**"Clearing Services"** means the LCH Clearing Services and/or the x-clear Clearing Services, as the context so requires;

**"Clearing System"** means, in relation to a Party, the resources (including hardware and software) used by that Party for the clearing of Cleared Products;

**"Collateral Side Letter"** shall have the meaning given to it in Clause 8.3;

**"Common Product"** means a Cleared Product which is eligible for clearing, at the election of a Trading Member, through either Party;

**"Contract"** means an LCH Member Contract, an LCH Mixed Member Contract, an x-clear Mixed Member Contract, an LCH-x-clear Contract or an x-clear Member Contract, as the context so requires;

**"Contract Data"** means all data relating to Contracts, to the extent owned by LCH or x-clear;

**"Co-operating Clearing House"** means (i) in the context of the LCH Regulations or the x-clear Regulations, the "Co-operating Clearing House" as defined therein; and (ii) in the context of this Agreement, LCH and any clearing house which has entered into arrangements with LCH in respect of their operations as clearing houses for a Trading Venue in order to give effect to an interoperable central counterparty structure and where each clearing house recognises the other's nature and regulatory status as a central counterparty and not as a risk-taking intermediary (such as clearing members of a central counterparty);

**"Co-ordinating Central Counterparty"** means, in relation to a Trading Venue, the Party or other clearing house so designated in accordance with Clause 16 or otherwise agreed between the Parties;

**"Co-ordinating Central Counterparty's Procedures"** means the Co-ordinating Central Counterparty's procedures published from time to time which are applicable to the performance and settlement of LCH-x-clear Contracts as further described in Clause 5;

**"Data Protection Laws"** means all Applicable Laws which relate to the protection and privacy of the personal data of individuals or any subject of a similar nature to the foregoing including, without limitation, the Data Protection Directive (Directive 95/46 EC), the Data Protection Act 1998 and secondary legislation thereunder and (in the case of x-clear) the Swiss Federal Law on Data Protection 1992 and the Ordinance on the Federal Law on Data Protection;

**"Default Event"** shall have the meaning given to it in Clause 21;

**"Default Notice"** has in relation to:

- (a) LCH, the meaning given to it in the LCH Regulations;
- (b) x-clear, the meaning given to it in the x-clear Regulations; and
- (c) a Trading Venue or Approved Settlement Location, the meaning given to the term or a similar term in its governing legislation or regulation or the rules governing its relationships with its members or participants (as applicable);

**"Default Rules"** means:

- (a) in relation to LCH, the rules designated as "Default Rules" in the LCH Regulations; and
- (b) in relation to x-clear, the provisions of the x-clear Regulations which provide for the taking of action in the event of an x-clear Clearing Member or LCH (as applicable) appearing to be unable or likely to become unable to meet its obligations in respect of one or more Contracts to which x-clear is a party, including, without limitation, its rules relating to close-out netting and the realisation of collateral furnished by x-clear Clearing Members;

**"Defaulting Party"** means a Party that is subject to a Default Event;

**"Dispute"** shall have the meaning set out in Clause 41.1;

**"Eligibility Criteria"** means the eligibility criteria set by a Party for registration of Transactions and /or the availability of the open offer (as applicable) made by it to its Clearing Members under its Rules;

**"Encumbrance"** means any claim, charge, mortgage, security, lien, equity, power of sale, option or other right to purchase, usufruct, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing;

**"Event of Force Majeure"** shall have the meaning given to that term in Clause 30;

**"FINMA"** means the Swiss Financial Market Supervisory Authority or, where applicable, any successor entity thereto;

**"FSA"** means the Financial Services Authority in the UK or, where applicable, any successor thereto;

**"FSA Rules"** means all the rules, requirements, directions and guidance issued by the FSA from time to time;

**"Governmental Authority"** means, in relation to a Party, any federal, national, supranational, state, provincial, local or other government, government department, ministry, secretary of state, minister, governmental or administrative authority, agency, commission, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, investigative or legislative powers or authority anywhere in the world including any Person which exercises a regulatory or supervisory function over that Party under the Applicable Laws of any jurisdiction in relation to financial services, the financial markets, exchanges or clearing houses (including, without limitation, the FSA, any Person given powers under the FSMA, the Bank of England, HM Treasury, the Office of Fair Trading, (and in the case of x-clear) the SNB and the FINMA);



"**GTCB**" means the General Terms and Conditions of Business (English Law) for Clearing of LSE Transactions applicable to x-clear Clearing Members as amended, updated or replaced from time to time;

"**Intellectual Property Rights**" means trade marks, service marks, trade names, know-how, patents, topographies, inventions, design rights, copyrights, database rights, domain names and all other similar proprietary rights, in each case whether registered or unregistered, and including applications and rights to apply for such registrations;

"**Inter-CCP Procedures**" means the procedures of that name agreed between the Parties in a letter agreement dated the same date as this Agreement, as the same may be modified, amended or replaced from time to time in accordance with Clause 15.5 or as otherwise agreed by the Parties;

"**Irregular Pledge**" means an Irreguläres Pfandrecht or "gage irrégulier", as such term is understood under the laws of Switzerland;

"**LCH Clearing Member**" means an entity admitted as a member of LCH and authorised by LCH pursuant to the LCH Regulations to receive LCH Clearing Services and "LCH Clearing Membership" shall be construed accordingly;

"**LCH Clearing Membership Agreement**" means an agreement under which LCH agrees to provide LCH Clearing Services to LCH Clearing Members;

"**LCH Clearing Services**" in relation to a particular Cleared Product or category of Cleared Products, means the package of clearing, central counterparty and related services, provided (or to be provided) by LCH to LCH Clearing Members for such Cleared Products or category of Cleared Products;

"**LCH Materials**" means all Materials provided or made available by or on behalf of LCH to x-clear under or pursuant to this Agreement;

"**LCH Member Contract**" means a contract in a Common Product between LCH and an LCH Clearing Member under the LCH Regulations arising from a Transaction in which both Trading Members to the Transaction have elected to use LCH as the clearing house;

"**LCH Member Default**" means the default of an LCH Clearing Member pursuant to the LCH Regulations;

"**LCH Mixed Member Contract**" means a contract in a Common Product between LCH and an LCH Clearing Member in accordance with the LCH Regulations arising from a Mixed Member Transaction;

"**LCH Regulations**" means the General Regulations, Default Rules, and Procedures of LCH as from time to time in force, and/or any arrangements, directions and provisions made thereunder, as the context may require, in all cases in the form published from time to time by LCH;

"**LCH Settlement Arrangements**" means, in relation to any Trading Venue, arrangements made by LCH that enable it, whether directly or indirectly, to effect settlement at the Approved Settlement Location for that Trading Venue;

**"LCH-x-clear Contract"** means, in respect of a Mixed Member Transaction, the Contract between LCH and x-clear for the sale and purchase of a Common Product or Products arising in accordance with Clause 4.1;

**"Listing Authority"** means a competent supervisory authority or a body authorised by a competent supervisory authority that maintains and/or enforces rules for the listing of public companies;

**"Losses"** means in respect of any matter, event or circumstance all demands, claims, actions, proceedings, damages, payments, losses, costs, expenses or other liabilities;

**"Material"** means any material in whatsoever form (including, without limitation, specifications, plans, methodologies, software, databases, reports, processes, designs, documentation, information and know-how);

**"Mixed Member Contract"** means an LCH Mixed Member Contract or an x-clear Mixed Member Contract, as the context so requires, and references to "corresponding Mixed Member Contracts" are to the LCH Mixed Member Contract and the x-clear Mixed Member Contract that arise from the same Mixed Member Transaction;

**"Mixed Member Transaction"** means a Transaction in respect of which one Trading Member has elected to use LCH as the clearing house and the other Trading Member has elected to use x-clear as the clearing house;

**"New Market"** shall have the meaning given to it in Clause 10.2;

**"New Trading Venue"** means a trading venue which has invited a Party to provide a proposal for interoperable central counterparty clearing in relation to a market operated by it, and which is not a Trading Venue at the date of such invitation;

**"Non-Defaulting Party"** means in relation to the occurrence of a Default Event in respect of a Party, the other Party;

**"Orderbook Trade"** means a trade in a Common Product concluded by means of a Trading Venue Orderbook and made subject to the relevant Trading Venue Rules;

**"Party"** and **"Parties"** shall have the meaning set out in Recital (C);

**"Person"** means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated association, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

**"RCH"** shall have the meaning set out in Recital (A);

**"Recognition Requirements"** means the threshold conditions for recognition of an RCH (for LCH) or an ROCH (for x-clear) for the purposes of the Act and the regulatory obligations of an RCH (for LCH) or an ROCH (for x-clear), including under the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 and the provisions of the REC Sourcebook in the FSA Rules;

**"Relevant Time"** shall have the meaning set out in Clause 4.3;

**"Reported Trade"** means a trade in a Common Product reported to a Trading Venue in accordance with the relevant Trading Venue Rules;

**"RIE"** means a recognised investment exchange under the Act;

**"ROCH"** shall have the meaning set out in Recital (B);

**"Rules"** means the LCH Regulations or the x-clear Regulations, as the context so requires;

**"Rules Dispute"** shall have the meaning set out in Clause 15.6;

**"SNB"** means the Swiss National Bank and, where applicable, any successor thereto;

**"Stamp Taxes"** means stamp duty, stamp duty reserve tax, registration and other similar Taxes;

**"Sub-Contractor"** means any third party provider appointed by one of the Parties, such as, but not limited to SIX Group Services Ltd, SIX Systems Ltd., and, in the context of LCH in respect of CREST Services, Euroclear UK, but excluding any Trading Venue, Clearing Members, any Approved Settlement Location or any provider of Transaction Routing Functionality (other than Euroclear UK in providing CREST Services to LCH);

**"Swiss Secrecy Laws"** means Art. 47 Swiss Federal Banking Act, Art. 162 Swiss Criminal Code, Art. 271 Swiss Criminal Code, Art. 273 Swiss Criminal Code, the Swiss Federal Law on Data Protection 1992 and the Ordinance on the Federal Law on Data Protection;

**"Tax"** means any tax, levy, impost duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or delay in paying any of the same) including, without limitation, Stamp Taxes;

**"Terminating Party"** shall have the meaning given to it in Clause 22.3;

**"Trading Member"** means a member of a Trading Venue or other person approved by the Trading Venue who trades on the Trading Venue Market;

**"Trading Services"** means the services provided by a Trading Venue in relation to the trading of a Trading Venue Product or category of Cleared Products in accordance with its Trading Venue Rules;

**"Trading Venue"** means any trading venue (whether established and operated as a regulated market, exchange, multilateral trading facility or other trading venue) which brings together multiple third-party buying and selling interests in financial instruments, to which the Parties have agreed to provide Clearing Services on the basis of an interoperable central counterparty structure under this Agreement;

**"Trading Venue-LCH Agreement"** means an agreement or agreements in place from time to time between LCH and a Trading Venue pursuant to which LCH provides LCH Clearing Services in relation to such Trading Venue;

**"Trading Venue Market"** is a market operated by a Trading Venue under its Trading Venue Rules;

**"Trading Venue Orderbook"** means the facilities operated by a Trading Venue for the electronic submission and automatic execution of orders in Cleared Products;

**"Trading Venue Rules"** means all the rules of a Trading Venue as from time to time in force and/or any arrangements, directions and provisions made thereunder, as the context may require, in all cases in the form published from time to time by the Trading Venue;

**"Trading Venue-x-clear Agreement"** means an agreement or agreements in place from time to time between x-clear and a Trading Venue pursuant to which x-clear provides x-clear Clearing Services in relation to such Trading Venue;

**"Transaction"** means an Orderbook Trade or a Reported Trade (whichever is applicable to a Trading Venue, noting that both may apply to a particular Trading Venue);

**"Transaction Routing Functionality"** means the various services and functionality whereby data in relation to a Mixed Member Transaction is processed and transmitted to the Parties;

**"x-clear Clearing Member"** means an entity admitted as a member of x-clear and authorised by x-clear pursuant to the x-clear Regulations to receive x-clear Clearing Services and "x-clear Clearing Membership" shall be construed accordingly;

**"x-clear Clearing Membership Agreement"** means any agreement under which x-clear agrees to provide x-clear Clearing Services to an x-clear Clearing Member;

**"x-clear Clearing Services"** in relation to a particular Cleared Product or category of Cleared Products, means the package of clearing, central counterparty and related services, provided (or to be provided) by x-clear to x-clear Clearing Members for such Cleared Products or category of Cleared Products;

**"x-clear Materials"** means all Materials provided or made available by or on behalf of x-clear to LCH for the purposes of this Agreement;

**"x-clear Member Contract"** means a contract in a Common Product between x-clear and an x-clear Clearing Member in accordance with the x-clear Regulations arising from a Transaction in which both Trading Members have elected to use x-clear as the clearing house;

**"x-clear Member Default"** means the default of an x-clear Clearing Member pursuant to the x-clear Regulations;

**"x-clear Mixed Member Contract"** means a contract in a Common Product between x-clear and an x-clear Clearing Member in accordance with the x-clear Regulations arising from a Mixed Member Transaction;

**"x-clear Regulations"** means all the rules and regulations of x-clear as from time to time in force applicable to x-clear Members including the provisions contained in the documents and agreements entitled the Contract for Clearing Services (English Law), the GTCB, the General Terms and Conditions of Business (English Law) for Clearing of Trading Platform Transactions, the Trading Platform Specific General Terms and Conditions of Business, the Clearing Terms, the List of Securities eligible for Clearing, the Business Partners Specifications, the Schedule of Fees, the Pledge Agreement for Margins, the Pledge Agreement for Default Funds, the Pledgeholder Agreement, each as amended, updated or replaced from time to time and/or any arrangements, directions and provisions made thereunder, as the context may require; and

**"x-clear Settlement Arrangements"** means, in relation to any Trading Venue, arrangements made by x-clear that enable it, whether directly or indirectly, to effect settlement at the Approved Settlement Location for that Trading Venue.

- 1.2 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 1.3 The words "include", "includes" and "including" and any words following them shall be construed without limitation to the generality of any preceding words or concepts and vice versa.
- 1.4 In this Agreement, unless the context otherwise requires:
- (a) the headings are inserted for convenience only and do not affect the construction of the Agreement;
  - (b) any reference to a Directive, a rule, a guidance, an enactment or a statutory provision is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated, re-enacted or replaced; and
  - (c) any reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England and Wales, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term.
- 1.5 Subject to Clause 1.6, for the purposes of this Agreement, in the event of any conflict between the provisions of this Agreement and any provision of a Party's Rules which are expressed as being applicable to either Party by operation of this Agreement, the provisions of such Party's Rules shall, as between the Parties, prevail except to the extent that such Rules have been introduced in breach of any provisions of this Agreement as to the modification or amendment of Rules applicable to either Party by operation of this Agreement.
- 1.6 In the event of a conflict between the provisions of this Agreement and the procedures applicable to the performance and settlement of LCH-x-clear Contracts pursuant to Clause 5.1, the provisions of the clauses of this Agreement shall prevail.
- 1.7 In the event of a conflict between the clauses of this Agreement and any of the schedules, the provisions of the schedules shall prevail.
- 1.8 References in this Agreement to a Party's information technology, computer systems, computer interfaces and Clearing System shall include those of its Sub-Contractors.
- 1.9 For the purpose of Clause 11 and Clause 28.2, the expressions "**control**" and "**process**" (and derivations therefore), "**personal data**" and "**data controller**" each have the meaning given to such terms in the Data Protection Act 1998.

## 2. SUBJECT MATTER OF THIS AGREEMENT

- 2.1 This Agreement is intended to create a common framework for co-clearing arrangements between the Parties in respect of Common Products traded on Trading Venues to which the Parties may agree from time to time to provide Clearing Services on the basis of an interoperable central counterparty structure. The Parties may agree to amend and/or supplement the provisions of this Agreement applicable to Clearing Services in respect of any Trading Venue by way of Trading Venue-specific provisions contained in a schedule to this Agreement agreed by the Parties from time to time.
- 2.2 The obligations of the Parties under or pursuant to this Agreement in relation to:

- (a) the London Stock Exchange shall commence on the date hereof and the Parties agree that this Agreement amends and restates and in all other respects replaces the LSE Link Agreement as of the date of this Agreement;
- (b) SIX Swiss Exchange shall commence on the date hereof; and
- (c) in relation to a New Trading Venue shall commence on the date agreed by the Parties.

### **3. CLEARING STRUCTURE**

- 3.1 Each of the Parties acknowledges that the other is subject to recognition and/or regulation by the FSA and that x-clear is subject to regulation by the FINMA and the SNB. Each Party agrees that, notwithstanding any provision to the contrary contained in this Agreement, each Party will be entitled to take any action or refrain from taking any action as may be required or requested by the FSA, FINMA or SNB or as required in order to comply with Applicable Laws.
- 3.2 In providing Clearing Services in respect of Cleared Products, each Party shall at all times have arrangements for the settlement of Contracts which are sufficient to enable it, whether directly or indirectly, to effect settlement at the Approved Settlement Location for that Trading Venue at all relevant times.
- 3.3 In relation to the provision of a Party's Clearing Services in respect of LCH-x-clear Contracts, the Parties agree that neither Party shall be liable to the other Party for any fee, disbursement or other payment under this Agreement except as expressly contemplated under the terms of this Agreement or an LCH-x-clear Contract.
- 3.4 Neither Party shall be fettered by virtue of this Agreement from charging its Clearing Members such fees and other charges or providing its Clearing Members with such incentives as it, in its absolute discretion determines. The Parties agree that all such fees, charges and incentives shall be published promptly and that the published fees, charges and incentives will be binding on LCH or x-clear, as the case may be, in the provision and charging of Clearing Services to Clearing Members.
- 3.5 x-clear is hereby admitted to membership of LCH as a Co-operating Clearing House (as defined in the LCH Regulations) in relation to the clearing of Mixed Member Transactions, on the terms set out in this Agreement and otherwise subject to those of the LCH Regulations provided by this Agreement to be applicable to it and x-clear undertakes to comply with and be bound by the same.
- 3.6 LCH is hereby admitted to membership of x-clear as a Co-operating Clearing House (as defined in the x-clear Regulations) in relation to the clearing of Mixed Member Transactions, on the terms set out in this Agreement and otherwise subject to those of the x-clear Regulations provided by this Agreement to be applicable to it and LCH undertakes to comply with and be bound by the same.
- 3.7 LCH agrees to establish and maintain one or more Balance Accounts for x-clear and x-clear agrees to establish and maintain one or more Balance Accounts for LCH. Such accounts will be opened, operated and maintained in accordance with this Agreement and such other arrangements agreed in writing between the Parties from time to time.
- 3.8 LCH agrees that in relation to any other agreement it enters into with another clearing house in respect of the clearing by LCH and such clearing house of Cleared Products, it shall endeavour to ensure that such agreement is consistent with this Agreement.

- 3.9 x-clear agrees that in relation to any other agreement it enters into with another clearing house in respect of the clearing by x-clear and such clearing house of Cleared Products, it shall endeavour to ensure that such agreement is consistent with this Agreement.
- 3.10 Each Party (in this context, the "**Receiving Party**") agrees that in the event that it receives from the other Party a request for the establishment of an interoperable central counterparty structure, in respect of a market which is at such time cleared by the Receiving Party, the Receiving Party shall use all reasonable endeavours to facilitate interoperable co-clearing by both Parties on terms that are materially consistent with the terms of this Agreement, provided always that the relevant Trading Venue has requested that its market be subject to competitive clearing.

#### 4. **FORMATION OF CONTRACTS**

- 4.1 Subject to the remainder of this Clause 4 and any relevant Schedule, each Party acknowledges that it shall enter into and become party to a Mixed Member Contract with its Clearing Member in relation to any Mixed Member Transaction in accordance with and subject to its Rules.
- 4.2 Subject to Clause 21, the Parties agree, in respect of any Mixed Member Transaction, that an LCH-x-clear Contract shall immediately and automatically arise between LCH and x-clear at the same moment that the two corresponding Mixed Member Contracts are formed in accordance with the Parties' Rules, which, for the avoidance of doubt, is at the moment the Mixed Member Transaction arises in accordance with Trading Venue Rules, subject always to the terms of this Agreement. Each LCH-x-clear Contract shall arise without need for any formality pursuant to this Agreement. Each Party shall ensure that its Rules facilitate the formation of LCH-x-clear Contracts in the circumstances and manner set out in this Clause 4.2.
- 4.3 An LCH-x-clear Contract and the corresponding Mixed Member Contracts shall automatically be void if both Parties (including any agent on a Party's behalf) have not received the relevant data relating to the corresponding Mixed Member Transaction from the provider of Transaction Routing Functionality by such time on the trade date of the Mixed Member Transaction prior to the commencement of both Parties' netting processes as shall be agreed between the Parties, unless an extension is or has been agreed by the Parties (the "**Relevant Time**").
- 4.4 Clause 4.2 is subject always to the right of a Party to decline to register, reject, cancel, avoid or terminate or subsequently cancel the registration of an LCH-x-clear Contract in the following circumstances, provided always that a Party will only be permitted to exercise such right before the Relevant Time:
- (a) the listing of the Common Product which is the subject-matter of a Mixed Member Transaction was suspended by the relevant Listing Authority at the time when, or before, the Transaction was made;
  - (b) the trading of a Common Product which is the subject-matter of a Mixed Member Transaction was suspended by the relevant Trading Venue at the time when, or before, the Transaction was made;
  - (c) a Mixed Member Transaction is concluded at a time when there is a valid suspension of the Clearing Services by either Party in accordance with the terms of this Agreement and related procedures, either generally or in respect of a Clearing Member that is party to the Mixed Member Transaction;

- (d) the size or value of a Mixed Member Transaction exceeds a maximum amount agreed by each Party with the relevant Trading Venue and specified in the Trading Venue Rules or other procedures agreed between the Parties and the Trading Venue from time to time;
- (e) the data in relation to the corresponding Mixed Member Transaction submitted to a Party by the provider of Transaction Routing Functionality is not made available to a Party by the time prescribed by it from time to time or a Party is not able to access such details;
- (f) the data in relation to the corresponding Mixed Member Transaction submitted to a Party by the provider of Transaction Routing Functionality is incorrect or inaccurate in any material respect;
- (g) this Agreement, the relevant Trading Venue-LCH Agreement, the relevant Trading Venue-x-clear Agreement, the relevant LCH Settlement Arrangements, the relevant x-clear Settlement Arrangements or any agreement either Party has entered into with the relevant Trading Venue (in relation to the provision of Clearing Services) or the relevant provider of Transaction Routing Functionality has been terminated or is otherwise not in force;
- (h) the LCH-x-clear Contract or the corresponding Mixed Member Transaction results or appears to result from a communications or information technology error or problem; or
- (i) the other Party declines to register, rejects, cancels, avoids or terminates a Mixed Member Contract for non-compliance with the other Party's Eligibility Criteria or as otherwise contemplated in its Rules or under this Agreement.

4.5 Where a Party has, or intends to, decline to register, reject, cancel, avoid or terminate or subsequently cancel the registration of a Mixed Member Contract in accordance with its Rules provided that it occurs no later than the Relevant Time, it shall notify the other Party as soon as reasonably possible (except where prevented from doing so by Applicable Laws). For the avoidance of doubt and following any rejection, cancellation, avoidance, termination, cancellation of registration or non-registration of a Mixed Member Contract by a Party where this has been effected no later than the Relevant Time, any corresponding LCH-x-clear Contract which would otherwise have arisen pursuant to this Agreement shall be deemed not to have arisen and be rendered void ab initio.

## **5. PERFORMANCE AND SETTLEMENT OF THE LCH-X-CLEAR CONTRACTS**

5.1 The terms of an LCH-x-clear Contract shall be as follows:

- (a) the LCH-x-clear Contract shall be for the sale and purchase of a Common Product equal in identity and number to that under the corresponding Mixed Member Transaction;
- (b) the Party used as the clearing house by the Clearing Member which is, or acts for, the Trading Member selling the Common Product pursuant to a Mixed Member Transaction shall be the seller under the corresponding LCH-x-clear Contract;
- (c) the Party used as the clearing house by the Clearing Member which is, or acts for, the Trading Member buying the Common Product pursuant to a Mixed Member Transaction shall be the buyer under the corresponding LCH-x-clear Contract;



- (d) performance and settlement of the LCH x-clear Contract shall occur through, and in accordance with the relevant Trading Venue Rules, the rules of the relevant Approved Settlement Location and (unless otherwise provided in this Agreement) in accordance with the Co-ordinating Central Counterparty's Procedures and the Inter-CCP Procedures, provided always that the Co-ordinating Central Counterparty's Procedures and the Inter-CCP Procedures shall be in compliance with Applicable Laws and other legal, fiscal and regulatory requirements relevant to the jurisdiction of the applicable Trading Venue;
  - (e) the LCH-x-clear Contract shall be governed by and construed in accordance with English law and the courts of England and Wales shall have jurisdiction in respect of any disputes relating thereto;
  - (f) each of LCH and x-clear shall contract as principal and not as agent; and
  - (g) the liabilities and obligations of a Party pursuant to the LCH-x-clear Contract shall extend only to, and are enforceable only by, the other Party. A Person who is not a party to the LCH-x-clear Contract shall have no rights under or in respect of such LCH-x-clear Contract. Rights of third parties to enforce any term of the LCH-x-clear Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are expressly excluded. Without limiting the generality of the foregoing, neither Party shall have any liability or obligation whatsoever to a Clearing Member of the other Party.
- 5.2 The Parties agree to apply netting of settlement instructions in respect of LCH-x-clear Contracts where practicable. Except as provided otherwise in relation to a particular Trading Venue in the relevant Schedule to this Agreement, each Party shall be responsible for the submission of its own settlement instructions in respect of LCH-x-clear Contracts and no charge shall be levied by either Party to the other for the issue of such settlement instructions.
- 5.3 Each Party agrees that, where it is the Co-ordinating Central Counterparty pursuant to this Agreement, it shall ensure that those aspects of the Co-ordinating Central Counterparty's Procedures dealing with the following subject-matter (except to the extent that the Co-ordinating Central Counterparty's Procedures are inconsistent with the terms of this Agreement, the Inter-CCP Procedures or any other procedures or aspects of performance and settlement of LCH-x-clear Contracts agreed between the Parties from time to time) shall be reciprocal in nature so that, in the circumstances described, action can be taken by either Party against the other in accordance with those procedures:
- (a) buy in rights upon settlement failure (currently section 2D.10 of LCH's Procedures for EquityClear);
  - (b) claims due to settlement failure (currently section 2D.9.1 of LCH's Procedures for EquityClear);
  - (c) residual events (currently section 2D.13.2 of LCH's Procedures for EquityClear); and
  - (d) such other matters as the Parties may agree from time to time.
- 6. CONTRACTS: RECTIFICATION AND OTHER ACTION**
- 6.1 Where a Party is required or requested by a Governmental Authority to cancel or suspend performance of an LCH-x-clear Contract or a corresponding Mixed Member Contract at any time, it shall notify the other Party and take such action as is required of it as soon as

reasonably practicable. The Parties acknowledge that any affected LCH-x-clear Contract shall be cancelled or varied accordingly.

- 6.2 Notwithstanding Clause 4.4, LCH and x-clear shall vary the terms of an LCH-x-clear Contract, or cancel it, where both Parties and, where relevant, a Trading Venue, agree to vary, or cancel, both of the corresponding Mixed Member Contracts where permitted under or required by the applicable Trading Venue Rules.
- 6.3 Upon any rejection, cancellation, avoidance or termination of an LCH-x-clear Contract pursuant to this Agreement, each Party in receipt of any funds or assets that had been delivered pursuant to such LCH-x-clear Contract shall be obliged to transfer back such funds or assets to the Party that had made performance under the LCH-x-clear Contract prior to such rejection, cancellation, avoidance or termination in such a manner as to put both Parties in the position that they would have been had that LCH-x-clear Contract never have been formed.

## 7. **SUSPENSION OF CLEARING SERVICES**

- 7.1 A Party shall be entitled to suspend the provision of its Clearing Services in respect of Cleared Products (in accordance with the relevant Trading Venue-LCH Agreement or the relevant Trading Venue-x-clear Agreement, as applicable) immediately upon notice to the relevant Trading Venue and to the other Party in the following circumstances:
- (a) a malfunction, breakdown or other failure in the electronic communication link between the Trading Venue and that Party (including any linkage via a third party system) or in a Party's computer systems or any other relevant communication link or computer system such that a Party is not able to receive or otherwise access all such particulars as it may require in order to exercise adequate risk management controls over Contracts, provided that (i) such circumstances have been notified to the Trading Venue and to the other Party, (ii) the circumstances persist for longer than one hour from first notification to the Trading Venue, and (iii) the respective Party and the Trading Venue have not, during such period, been able to establish a satisfactory solution or alternative arrangement;
  - (b) a significant banking crisis or an extended disruption to any relevant bank payment systems or any other event the occurrence of which in that Party's reasonable opinion may jeopardise the solvency or integrity of that Party, and in any such case in that Party's reasonable opinion there is a need to suspend the Clearing Services in order to protect the solvency or integrity of that Party;
  - (c) an Event of Force Majeure;
  - (d) where a market emergency affecting the Trading Venue has a material effect on that Party's provision of Clearing Services or the provision of Trading Services by a Trading Venue; or
  - (e) in order to comply with any requirements to which it is subject under Applicable Laws.
- 7.2 A Party shall not be under any obligation to enter into LCH-x-clear Contracts in relation to the affected Trading Venue(s) after such suspension has come into effect. The Parties shall agree upon any notice periods which must be observed before a Party may suspend its Clearing Services.

## 8. BALANCE POSITIONS AND PROVISION OF COLLATERAL AND MARGIN

- 8.1 In order to reflect the Balance Positions between the Parties arising out of LCH-x-clear Contracts, each Party shall hold one or more Balance Accounts in accordance with their respective arrangements in which such LCH-x-clear Contracts shall be reflected.
- 8.2 If any Party (the "**first Party**") at any time wishes (at its discretion) to investigate the data it or the other Party (the "**second Party**") holds with respect to Balance Positions, current or historical, the second Party shall comply with any reasonable request from the first Party for all requested data that it holds.
- 8.3 Each Party shall provide to the other Party collateral to secure its margin obligations from time to time to the other Party in respect of the Balance Positions in respect of all Trading Venues (on a net basis) and all other obligations arising under or pursuant to this Agreement in accordance with the collateral provisions of the receiving Party's Rules (including, *inter alia*, as to the classes of acceptable collateral, rights attached thereto, substitution of collateral, weightings attributed to collateral and retention of voting rights), or as otherwise agreed between the Parties in a Schedule to this Agreement or any separate document (a "**Collateral Side Letter**"). For the avoidance of doubt, any collateral provided by one Party to another as contemplated under this Agreement or a Collateral Side Letter shall be deemed to be cover for margin for the purposes of the receiving Party's Default Rules. Subject to any specific arrangements to the contrary in relation to any particular Trading Venue, any collateral provided by one Party to another as contemplated under this Agreement or a Collateral Side Letter shall be deemed to be cover for margin in respect of the Balance Positions in respect of all Trading Venues.
- 8.4 All assets deposited by a Party with the other Party hereunder shall be free of all Encumbrances. The Party depositing such assets shall act as sole principal and as the sole legal and beneficial owner thereof.
- 8.5 Each Party undertakes not to assign, charge or subject to any other form of Encumbrance, whether purporting to rank in priority over, *pari passu* with or subsequent to the rights of the other Party, any collateral deposited with the other Party. Any purported assignment, charge, or Encumbrance over any such collateral shall be null and void.
- 8.6 In connection with this Agreement, neither Party shall be obliged to make any contribution to any default fund established by the other Party.
- 8.7 Each Party agrees that it will not dispute the construction of the arrangements regarding the provision of collateral under this Clause 8 as "financial collateral arrangements" within the meaning of the Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on Financial Collateral Arrangements.

## 9. CHANGES AND REPORTING

### 9.1 Review

- (a) Each of the Parties shall conduct periodic reviews of its own obligations hereunder in order to ensure that it is not prevented from complying with its obligations under the Act, Applicable Laws and the Recognition Requirements.
- (b) Without prejudice and limitation to any other provisions in the Agreement following any such review, either Party may request changes, in accordance with and subject to

Clause 24, to this Agreement to reflect the changed business or legal requirements of either Party.

## 9.2 Reporting

- (a) Each Party shall maintain appropriate written records with regard to its performance hereunder. Subject to any relevant confidentiality obligations and Applicable Laws, a Party shall, upon written request of the other Party, provide reasonable access to any such records where required by the other Party in order to enable that Party to comply with Applicable Laws.
- (b) A Party (the "first Party") shall give notice to the other Party (the "second Party") upon its becoming aware of the occurrence of any of the following events (subject to any relevant confidentiality obligations and Applicable Laws):
  - (i) in the case of x-clear, immediately upon the presentation of a petition or passing of any resolution for the bankruptcy or winding-up of, or for a maturity postponement in accordance with article 25 et seq. of the Swiss Banking Act or in respect of, or for an administration order in respect of, x-clear and in the case of LCH, immediately upon the presentation of a petition or the passing of any resolution for the bankruptcy or winding up of or for an administration order in respect of LCH;
  - (ii) immediately upon the appointment of a receiver or of a commissioner of x-clear of the estate of x-clear or a substantial proportion of its assets, or the appointment of a receiver, administrative receiver, administrator or trustee of the estate of LCH or a substantial proportion of its assets;
  - (iii) immediately upon the proposed or actual dissolution of the first Party;
  - (iv) immediately upon any step analogous to those mentioned in paragraphs (i) to (iii) being taken in respect of the first Party;
  - (v) immediately upon the making of a composition or arrangement with the creditors of the first Party in respect of all or a substantial proportion of its assets or any order or proposal in connection therewith;
  - (vi) immediately upon the granting, withdrawal or refusal of an application for, or the revocation of, any recognition order, licence, authorisation or permission in favour of the first Party to carry on investment, banking, insurance or other financial business in Switzerland, the United Kingdom or any other country or territory, but only where such event will have a material adverse effect on such Party's ability to provide the Clearing Services in respect of any Trading Venue;
  - (vii) immediately it receives a notification that the FSA is considering withdrawal of its status as an RCH or an ROCH (as applicable), or exercise of powers of direction, issue of a warning or final notice, or other disciplinary powers, or (in the case of x-clear) if the FINMA or the SNB is acting similarly.
  - (viii) immediately upon the granting, withdrawal or refusal of an application for, or the revocation of, membership by the first Party of any recognised investment exchange or RCH (other than LCH) or any other exchange or clearing house (other than x-clear) wherever located, but only where such event will have a

material adverse effect on such Party's ability to provide the Clearing Services in respect of any Trading Venue;

- (ix) immediately upon the request for a special audit, the appointment of observers or inspectors by a statutory or other regulatory authority to investigate the affairs of the first Party (other than an inspection of a purely routine and regular nature);
  - (x) immediately upon the imposition of any disciplinary measures or sanctions (or similar measures) on the first Party in relation to its banking, investment or other business or any other organisation responsible for the operation and administration of an exchange or by any legal, regulatory or supervisory authority, but only where such event will have a material adverse effect on such Party's ability to provide the Clearing Services in respect of any Trading Venue;
  - (xi) immediately upon the conviction of the first Party for any offence under legislation relating to banking, investment, insurance or other financial services, companies, credit unions, consumer credit or insolvency or for any offence involving fraud or dishonesty;
  - (xii) immediately upon the suspension or termination of the membership of a Clearing Member, but only where such suspension or termination relates to the first Party's Clearing Services in respect of any Trading Venue;
  - (xiii) immediately upon any action or order being made in connection with the enforcement of a judgment against the first Party, but only where such event will have a material adverse effect on such Party's ability to provide Clearing Services in respect of any Trading Venue;
  - (xiv) immediately upon any arrangement being entered into by the first Party with one of its Clearing Members relating to the clearing of any Mixed Member Contract that would have a material adverse effect on the Clearing Services provided by the second Party in respect of any Trading Venue;
  - (xv) immediately upon the occurrence of any of the events referred to in (i) to (x) above inclusive in relation to a parent undertaking of a Party;
  - (xvi) immediately upon any event specified in (i) to (xi) above inclusive occurring in relation to any director of a Party (insofar as it is capable of materially affecting such director);
  - (xvii) immediately upon any disciplinary or penal action being taken in relation to any director of a Party by a Governmental Authority under Applicable Laws relating to the conduct of company directors or officers; and
  - (xviii) on an annual basis, any change in its name or the address of its head office, registered office or London office.
- (c) LCH shall, on request from x-clear, during the term of this Agreement, provide x-clear with copies of its annual audited accounts and the consolidated annual audited accounts of the group in which LCH sits as soon as reasonably practicable after the completion of such accounts. x-clear shall, on request from LCH, during the term of this Agreement, provide LCH with copies of its audited annual accounts and the

consolidated annual audited accounts of the group in which x-clear sits as soon as reasonably practicable after the completion of such accounts.

- (d) x-clear undertakes to notify LCH immediately in writing if:
- (i) a Trading Venue or x-clear serves notice of termination of a Trading Venue-x-clear Agreement;
  - (ii) a provider of Transaction Routing Functionality or x-clear serves notice of termination of any agreement with a provider of Transaction Routing Functionality;
  - (iii) x-clear or any other clearing house used by a Trading Venue serves notice of termination of an agreement between such clearing house and x-clear in relation to the clearing of Cleared Products;
  - (iv) a Trading Venue-x-clear Agreement terminates;
  - (v) any agreement between x-clear and a provider of Transaction Routing Functionality terminates; or
  - (vi) an agreement between x-clear and any other clearing house used by a Trading Venue in relation to the clearing of Cleared Products terminates.
- (e) LCH undertakes to notify x-clear immediately in writing if:
- (i) a Trading Venue or LCH serves notice of termination of a Trading Venue-LCH Agreement;
  - (ii) a provider of Transaction Routing Functionality or LCH serves notice of termination of any agreement with a provider of Transaction Routing Functionality;
  - (iii) LCH or any other clearing house used by a Trading Venue serves notice of termination of an agreement between such clearing house and LCH in relation to the clearing of Cleared Products;
  - (iv) a Trading Venue-LCH Agreement terminates;
  - (v) any agreement between LCH and a provider of Transaction Routing Functionality terminates; or
  - (vi) the agreement between LCH and any other clearing house used by a Trading Venue in relation to the clearing of Cleared Products terminates.
- (f) Where the second Party receives notification pursuant to Clause 9.2(b), it shall be entitled to make reasonable requests for information of whatsoever nature in order to determine whether the first Party continues to be able to perform its obligations under or pursuant to this Agreement. Subject to any relevant confidentiality obligations and to the extent permitted by Applicable Laws, the first Party shall forthwith on demand use reasonable endeavours to supply to the second Party any information requested under this Clause 9.2(f). Any requests made pursuant to this Clause 9.2(f) shall be dealt with by the first Party without charge to the second Party.

### 9.3 **Rectification of Breach**

If a Party fails to perform its obligations hereunder, then, without prejudice to any other rights or remedies it may have under or pursuant to this Agreement or otherwise, the other Party may require the Party in breach by notice in writing, at the Party in breach's expense, to remedy any such failure and re-perform any obligation within a reasonable time specified in the notice, provided that LCH-x-clear Contracts shall only be cancelled, rejected, avoided or terminated in accordance with Clauses 4 or 5.

## 10. **CLEARED PRODUCTS**

10.1 Insofar as both Parties are willing to provide their respective Clearing Services in respect of new Cleared Products to be offered by any Trading Venue which the Trading Venue requests be subject to competitive clearing, each Party shall co-ordinate and cooperate with the other Party in relation to the acceptance of such new Cleared Products becoming available for clearing by it such that the new Cleared Products are available for clearing at both Parties and any other clearing house appointed to provide the services of a clearing house to the relevant Trading Venue simultaneously. Neither Party shall unreasonably delay the commencement of the provision of Clearing Services in respect of new Cleared Products where the relevant Trading Venue and the other Party are in a position to offer such new Cleared Product for trading and to provide Clearing Services in respect thereof, respectively.

10.2 To the extent that a Trading Venue requests the extension of competitive clearing to any new market segment (a "New Market") which is separate to and distinct from the market segments already subject to competitive clearing by the Parties under this Agreement at such time, the Parties agree that they shall in good faith seek to negotiate such amendments or modifications to this Agreement and to any related procedures as are necessary to facilitate the clearing of such New Market.

## 11. **DATA PROTECTION AND BANK SECRECY**

11.1 In connection with the subject matter of this Agreement, each Party shall comply with all applicable Data Protection Laws and any notification or registration made by it under such law. LCH shall be the data controller in relation to any personal data included in Contract Data resulting from LCH Member Contracts and LCH Mixed Member Contracts. x-clear shall be the data controller in relation to any personal data included in Contract Data resulting from x-clear Member Contracts and x-clear Mixed Member Contracts. x-clear and LCH shall both be data controllers in relation to any personal data included in Contract Data relating to LCH-x-clear Contracts.

11.2 In relation to any personal data included in Contract Data each Party shall comply with all relevant data protection obligations in respect of the relevant Clearing Member, if in connection with the subject matter of this Agreement, personal data included in Contract Data is to be transferred outside the European Economic Area (excluding Switzerland).

## 12. **IT SYSTEMS**

12.1 Each Party agrees to consult with the other in respect of any proposal by such Party materially to change or modify any material computer systems or material computer interfaces that may have, in the reasonable opinion of the proposing Party, an adverse effect on the ability of either Party to provide its Clearing Services or perform its obligations under or pursuant to this Agreement.

12.2 The Parties shall use reasonable endeavours to ensure that any problem associated with the operation of IT systems, including but not limited to gateways and networks, used for the purposes of this Agreement is brought to the immediate attention of both Parties. The Parties will co-operate and provide all reasonable assistance where possible to resolve such problems and to mitigate any consequences.

### **13. DEFAULT OF CLEARING MEMBER**

13.1 Nothing in this Clause 13 shall require either Party to obtain the approval of the other Party, written or oral, prior to doing any act or thing in accordance with the provisions of its Default Rules.

13.2 x-clear shall give LCH notice of its application or intended application of its Default Rules in respect of any x-clear Clearing Member in connection with the x-clear Clearing Services, provided that nothing in this Clause 13.2 shall prejudice x-clear's ability to do any act or thing in accordance with the provisions of its Default Rules.

13.3 LCH shall give x-clear notice of its application or intended application of its Default Rules in respect of any LCH Clearing Member in connection with the LCH Clearing Services, provided that nothing in this Clause 13.3 shall prejudice LCH's ability to do any act or thing in accordance with the provisions of its Default Rules.

13.4 Each Party agrees and acknowledges that in the event of an LCH Member Default or an x-clear Member Default:

(a) any unsettled x-clear Member Contracts and x-clear Mixed Member Contracts shall be dealt with in accordance with the Default Rules of x-clear and Applicable Laws; and

(b) any unsettled LCH Member Contracts and LCH Mixed Member Contracts shall be dealt with in accordance with the Default Rules of LCH and Applicable Laws.

13.5 If the Default Rules of either Party become applicable in relation to a Clearing Member, or the other Party, the Parties shall, subject to Applicable Laws, co-operate and share information to the extent necessary to enable each Party to discharge its functions under its Default Rules.

13.6 Each Party shall provide the other with a copy of any certificate issued in respect of a Defaulter under its Default Rules.

### **14. CONTINGENCY PLANNING**

14.1 Each Party shall use its reasonable endeavours to ensure its own business continuity. Subject to its Rules, each Party shall each establish contingency plans to address the possible event of a market emergency and any other contingency or Event of Force Majeure that might reasonably be expected to affect or be capable of affecting the performance of its obligations hereunder, including the performance of LCH-x-clear Contracts.

### **15. AMENDMENTS TO RULES**

15.1 Neither Party shall be bound by the Rules of the other Party except to the extent expressly provided for in this Agreement. All Rules of one Party which are intended to be binding upon the other Party as at the date of this Agreement are referred to in the Rules Schedule, which shall be updated from time to time to reflect any changes to such applicable Rules and to



reflect legal, fiscal and regulatory requirements of the jurisdiction of a Trading Venue, provided that neither Party shall amend such of its Rules in a manner that would cause the other Party to breach Applicable Laws, the requirements or directions of a Governmental Authority or other regulatory or fiscal arrangements applicable to that other Party, to the extent that the commission of such breach would be outside the control of that other Party. Each Party undertakes that, where practicable, it shall give reasonable advance written notice to the other Party of any amendment to its Rules as listed in the Rules Schedule.

- 15.2 Subject to the remainder of this Clause 15, each Party agrees that it will not maintain or introduce any requirement binding on its Clearing Members which has a material adverse effect on the other Party's ability to properly and fully comply with its obligations under or pursuant to this Agreement, unless such amendment is required by a Governmental Authority, Applicable Laws, other regulatory or fiscal arrangements applicable to that Party or is to provide reasonable additional protection against the risk of Default or is in response to a significant operational risk. If a Party is obliged to make such change and it has a material adverse effect on the other Party's ability properly and fully to comply with its obligations under or pursuant to this Agreement, the other Party shall not be in breach of this Agreement merely by virtue and to the extent of its failure to comply in this manner and the Parties shall use all reasonable endeavours to agree amendments to those provisions of this Agreement which the other Party is no longer able to perform properly and fully.
- 15.3 Subject to Clauses 15.1 and 15.2, neither Party shall be fettered by this Agreement in its ability to amend its Rules.
- 15.4 Each Party shall include the other in its appropriate distribution lists so that:
- (a) LCH will receive a copy of any guidance, circulars and other notices issued by x-clear to x-clear Clearing Members relating to the provision of x-clear Clearing Services in relation to Common Products; and
  - (b) x-clear will receive a copy of any guidance, circulars or other notices issued by LCH to LCH Clearing Members relating to the provision of LCH Clearing Services in relation to Common Products.
- 15.5 The Co-ordinating Central Counterparty shall have the right to amend the Co-ordinating Central Counterparty's Procedures and the Inter-CCP Procedures at its discretion, with amendments taking effect from such time as is prescribed by such Co-ordinating Central Counterparty, subject to the following:
- (a) the Co-ordinating Central Counterparty shall only amend the Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures:
    - (i) where required to do so by a Governmental Authority, Applicable Laws or other regulatory or fiscal arrangements applicable to the Co-ordinating Central Counterparty; or
    - (ii) otherwise at its discretion on the basis that such amendment (a) does not have a material adverse effect on such Party's ability to provide the Clearing Services to a Trading Venue and (b) does not prevent, restrict or distort competition or otherwise have an anti-competitive effect,

provided always that any amendment shall be in compliance with Applicable Laws and other legal, fiscal and regulatory requirements relevant to the jurisdiction of the applicable Trading Venue.

- (b) where it proposes to amend the Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures, the Co-ordinating Central Counterparty shall, where reasonably practicable, consult with the other Party in respect of the proposed amendments in advance of their implementation; and
  - (c) any amendments which are made to the Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures, other than those that are required by a Governmental Authority, Applicable Laws or other regulatory or fiscal arrangements applicable to the Co-ordinating Central Counterparty, remain subject to a Party's right to dispute any such amendments as further described in this Clause 15.
- 15.6 A Party shall have the right to dispute any amendments to the Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures which are proposed or have been implemented by the Co-ordinating Central Counterparty, other than amendments that are required by a Governmental Authority, Applicable Laws or other regulatory or fiscal arrangements applicable to the Co-ordinating Central Counterparty (a "**Rules Dispute**"), on the following basis:
- (a) a Party may only raise a Rules Dispute on the basis (i) that the relevant amendments to the Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures have a material adverse effect on such Party's ability to provide the Clearing Services to a Trading Venue and / or (ii) that the Co-ordinating Central Counterparty acted in a manner which sought to prevent, restrict or distort competition or otherwise had an anti-competitive effect; and
  - (b) notice of a Party's intention to raise a Rules Dispute on any amendment is provided to the Co-ordinating Central Counterparty in writing not later than 20 Business Days after the proposed or actual date (whichever is the later) for implementation of the amended Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures.

For the avoidance of doubt, prior to the outcome of any dispute resolution process under this Clause 15, no action taken by a Party under this Clause 15 shall prevent the Co-ordinating Central Counterparty from implementing any proposed amendment to the Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures at such time as it, in its discretion, sees fit.

- 15.7 The Parties shall seek to resolve any Rules Dispute arising under Clause 15.6 in accordance with Clauses 41.1 to 41.5 of this Agreement. If:
- (a) any such Rules Dispute has not been resolved to the satisfaction of the Parties within 30 days after the appointment of the neutral adviser or within such longer period as the Parties may agree; or
  - (b) either Party fails or refuses to agree to or participate in the ADR Procedure; or
  - (c) in any event the Rules Dispute is not resolved 90 days after it has arisen,

then either Party may refer the Rules Dispute to arbitration, and such Rules Dispute shall be finally resolved by arbitration, in accordance with the remainder of this Clause 15.

- 15.8 In the event that the Rules Dispute is referred to arbitration pursuant to Clause 15.7:

- (a) any neutral adviser involved in the ADR Procedure shall not take any part in the arbitration, whether as a witness of fact, as an expert witness or otherwise, and any recommendations made by him during the course of or in connection with the ADR Procedure shall not be relied upon by either Party without the express written consent of both the other Party and the neutral adviser; and
  - (b) neither Party shall make use of or rely upon any without prejudice statements or admissions made by the other Party during the course of or in connection with the ADR Procedure.
- 15.9 Where any Rules Dispute is referred to arbitration in accordance with this Clause 15, it shall be referred to and finally resolved by arbitration under the LCIA Rules, which LCIA Rules are deemed to be incorporated into this Clause 15 subject to the further provisions of this Clause 15.9. The Tribunal shall be empowered as follows:
- (a) to hear any Rules Dispute;
  - (b) to require the amendment of the Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures to the extent required to reverse any amendment (or part thereof) which is the subject of a Rules Dispute and which the Tribunal finds (in relation to the whole or any part of an amendment) meets one or both of the conditions set out in Clause 15.6(a); and
  - (c) where the Tribunal finds against the Co-ordinating Central Counterparty and requires amendment of the Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures to reverse any amendment (or part thereof) which is the subject of a Rules Dispute, to make a monetary award to a Party limited to reasonable direct costs incurred by that Party in complying with the relevant amendment (or part thereof) which would not otherwise have been incurred by that Party in the absence of such amendment, together with interest thereon. For the avoidance of doubt, the Tribunal shall have no power to make an award in respect of any indirect or consequential loss or loss of profit.
- 15.10 The Tribunal shall consist of one arbitrator who shall, failing agreement between the Parties, be appointed by the LCIA. The seat of the arbitration and the venue of all hearings shall be London, England, and the language of the arbitration shall be English. The Parties exclude any rights to refer points of law or to appeal to the courts, to the fullest extent they can do so.
- 16. DESIGNATION OF CO-ORDINATING CENTRAL COUNTERPARTY**
- 16.1 The Parties agree that from the date of this Agreement (or, in relation to a New Trading Venue, from the point at which this Agreement becomes effective) until the first determination under Clause 16.2 below, the identity of the Co-ordinating Central Counterparty in respect of a Trading Venue shall be as agreed in the relevant Schedule for that Trading Venue.
- 16.2 In relation to any Trading Venue, a periodic determination as to the identity of the Co-ordinating Central Counterparty shall take place on the following basis:
- (a) one calendar year following the date of the last determination pursuant to this Clause 16.2 (or in respect of the first such determination, six calendar months following the date of the commencement of Clearing Services in relation to that Trading Venue); or

- (b) if earlier, the point in time at which another clearing house becomes an additional clearing house in respect of the relevant Trading Venue (or any part thereof) for the first time, or a clearing house ceases to be a clearing house in respect of the Trading Venue as a whole, under the interoperable central counterparty structure.
- 16.3 The determination as to the identity of the Co-ordinating Central Counterparty shall be carried out by the Adjudicator in accordance with the criteria set out in Clause 16.4. The Parties shall procure that the result of such determination is published (whether through a Trading Venue or otherwise). Each Party shall be entitled to request and have full rights of access over the figures employed and calculations made by the Adjudicator in making such determination.
- 16.4 The Adjudicator shall be required to apply the following criteria in assessing the identity of the Co-ordinating Central Counterparty for any Trading Venue for the following period:
- (a) the clearing house which was the Co-ordinating Central Counterparty for the most recent period shall continue to be designated as the Co-ordinating Central Counterparty for the following period unless another clearing house shall satisfy all of the following criteria in respect of the relevant period preceding the determination:
- (i) such other clearing house had equal to or more than the Absolute Majority Share of clearing volumes of the Trading Venue;
- (ii) such other clearing house had a share of clearing volumes of the Trading Venue that was at least five (5) per cent. greater than the share held by the clearing house which was the Co-ordinating Central Counterparty for the most recent period; and
- (iii) such other clearing house has, out of all of the central counterparties clearing the Trading Venue, the greatest single share of clearing volumes of the Trading Venue; and
- (b) for the purposes of this Clause 16.4, "clearing volumes" shall be calculated by reference to aggregate number of cleared trades or such other measure as the Parties may agree from time to time.
- 16.5 The Adjudicator will be required to have appropriate commercial and practical experience and expertise in the area of dispute. Any person nominated to act as an Adjudicator will be required to fully disclose any interest or duty prior to that person's appointment. If that person has or may have any interest or duty which conflicts with their appointment as Adjudicator, then that person may not be appointed except with the agreement of the Parties. It will be a term of the Adjudicator's appointment that the Adjudicator will be required to make a determination of the dispute within 20 Business Days of the Adjudicator's appointment or such further period as the Parties may agree. The costs of the Adjudicator will be borne by the Party requesting the determination.
- 16.6 Where the determination under Clause 16.3 results in a change in the identity of the Co-ordinating Central Counterparty, the clearing house designated as the new Co-ordinating Central Counterparty undertakes to use all reasonable endeavours to minimise the impact of any transition and shall seek to avoid making any material amendments to the existing Co-ordinating Central Counterparty's Procedures without reasonable prior consultation.
- 16.7 For the avoidance of doubt, the determination under Clause 16.3 may result in the designation of a clearing house other than LCH or x-clear as the Co-ordinating Central Counterparty. In such circumstances, the Parties acknowledge that such other clearing house shall have the

rights set out in Clause 15.5, provided that it is at such time a Co-operating Clearing House and has entered into arrangements with both of the Parties which provide equivalent protections to those set out in Clauses 15.6 to 15.9 and Clause 16.4 as to the basis on which it may amend the Co-ordinating Central Counterparty's Procedures or the Inter-CCP Procedures. In the absence of such protections, such clearing house shall be excluded in the determination of the Co-ordinating Central Counterparty for the purposes of this Agreement.

## 17. OTHER AMENDMENTS

17.1 When an amendment is proposed to a Trading Venue-LCH Agreement or Trading Venue-x-clear Agreement which may have an adverse effect on the rights of either of the Parties hereunder or when a new Trading Venue-LCH Agreement or Trading Venue-x-clear Agreement is proposed, each of the Parties shall use their reasonable endeavours to co-ordinate the implementation of the proposed amendment with the relevant Trading Venue, with the objective of ensuring minimal disruption to the Clearing Services of either Party or the performance of its obligations hereunder.

17.2 When an amendment is proposed to the LCH Settlement Arrangements, x-clear Settlement Arrangements or equivalent agreement with a provider of Transaction Routing Functionality which may have a material adverse effect on the rights of the Parties hereunder, each of the Parties shall use their reasonable endeavours to co-ordinate the implementation of the proposed amendment with the objective of ensuring minimal disruption to the Clearing Services of either Party or the performance of its obligations hereunder.

17.3 If a Party becomes aware that the performance of any obligation under or pursuant to this Agreement would or could breach any Applicable Laws to which it is subject, or where there is a change, or a proposed or anticipated change, to Applicable Laws during the term of this Agreement which has the effect (or is likely to have the effect) of:

- (a) detrimentally impacting or prohibiting the provision of and/or operation of the performance of either Party hereunder;
- (b) resulting in a breach of this Agreement by either Party; or
- (c) prejudicing LCH's status as an RCH or x-clear's status as an ROCH or as a Swiss bank,

then the Parties shall use their reasonable endeavours to work together in good faith to find a reasonable and workable solution that, *inter alia*, ensures that either or both Parties (as the case may be) are in compliance with Applicable Laws.

17.4 The Parties acknowledge that any request submitted pursuant to this Clause 17 shall be subject always to the availability of the resources of x-clear, LCH and the relevant Trading Venue generally. Each of the Parties will act reasonably regarding the making of such requests, prioritisation and resource allocation.

17.5 This Clause 17 shall not apply to any written amendment agreement or waiver made in accordance with Clause 24 or Clause 34.

## 18. RECORD KEEPING

18.1 Subject to the timely provision of accurate information by a Trading Venue or provider of Transaction Routing Functionality in relation to each LCH-x-clear Contract, each of the Parties undertakes to keep adequate records in respect of them and corresponding Mixed

Member Contracts to enable the other Party to establish a full audit trail of all Contracts arising from Mixed Member Transactions including details of each such Contract, the Clearing Members party to that Contract and the date and time of each Contract.

- 18.2 Any records which are required to be maintained under this Clause 18 may be on paper, on microfiche or in computerised or other electronic form and shall be maintained for a period of at least six years or such other period as the Parties may agree or may be required by Applicable Laws or as the Parties reasonably consider necessary in the context of applicable limitation periods.
- 18.3 Subject to Applicable Laws, each Party shall upon reasonable notice provide to the other Party copies of any records which are required to be maintained by it under Clause 18.1.

## **19. CONFIDENTIALITY**

19.1 Each Party shall during the term of this Agreement and after the arrangements contemplated by this Agreement have terminated:

- (a) keep confidential all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other Party in confidence or which by its nature ought to be regarded as confidential (including this Agreement and its contents, any related documentation or agreements between the Parties entered into pursuant to this Agreement, any business information in respect of the other Party which is not directly applicable or relevant to the Contracts contemplated by this Agreement and any information received through membership of boards and committees);
- (b) procure that its officers, employees, representatives and other persons to whom such information is disclosed keep secret and treat as confidential all such documentation and information; and
- (c) comply with all Applicable Laws relating to confidential information, including the Recognition Requirements, Swiss Secrecy Laws (in the case of x-clear) and Data Protection Laws.

19.2 Clause 19.1 does not apply to information:

- (a) which shall after the date of this Agreement become published or otherwise generally available to the public (except in consequence of an act or omission in contravention of the obligations in Clause 19.1 by the Party which seeks to rely upon this Clause 19.2(a));
- (b) to the extent made available to the recipient Party by a third party who is entitled to disclose such information and who is not under any obligation of confidentiality in respect of such information to the other Party or which has been disclosed under an express statement that it is not confidential;
- (c) to the extent required to be disclosed by Applicable Laws or by any Governmental Authority of competent jurisdiction to whose rules the Party making the disclosure is subject, whether or not such requirement has the force of law, provided that the Party disclosing the information, subject to Applicable Laws, notifies to the other Party the information to be disclosed and the circumstances in which the disclosure is alleged to be required prior to such disclosure and takes all reasonable action to avoid and limit such disclosure;

- (d) which has been independently developed by the recipient Party otherwise than in the course of the exercise of that Party's rights under or pursuant to this Agreement or the implementation of this Agreement;
  - (e) which, in order to perform its obligations under or pursuant to this Agreement, either Party is required to disclose to a third party;
  - (f) to the extent required to be disclosed to any applicable Tax authority; or
  - (g) which was already known to it before its receipt from the disclosing Party.
- 19.3 Each Party grants the other Party and each of its Sub-Contractors appointed in accordance with this Agreement a non-exclusive, royalty-free, non-transferable non-sublicensable licence to use and copy Contract Data for the purposes of its performance hereunder. Such licence shall continue beyond the term of the Agreement solely for the purposes of complying with Applicable Laws (including in relation to record keeping), but shall terminate when such Applicable laws cease to apply to Contract Data.
- 19.4 Without prejudice to the generality of Clause 19.3, each Party hereby agrees that the other Party and its Sub-Contractors may use the Contract Data for the purposes of:
- (a) compiling and distributing to third parties statistics on the number and aggregate value of trades cleared by it, provided that such statistics are calculated on an aggregate basis, that the other Party does not identify any particular Clearing Member as a party to any Contract and that such statistics are not calculated for a period shorter than one Business Day;
  - (b) calculation of intra-day and end of day margin obligations and reporting to Clearing Members of the information relied upon in calculating such margin obligations or otherwise for risk management purposes;
  - (c) performing its obligations under its Rules (including providing to any Clearing Member any information or details regarding any Contract to which that Clearing Member is a Party and transmitting such details to third parties);
  - (d) performing its obligations under or pursuant to this Agreement and any LCH-x-clear Contract;
  - (e) internal record-keeping and management purposes;
  - (f) complying with Applicable Laws, its Rules, the relevant Trading Venue-x-clear Agreement, Trading Venue-LCH Agreement, any LCH Settlement Arrangements, any x-clear Settlement Arrangements and any agreement between a Party and a provider of Transaction Routing Functionality; and
  - (g) complying with requests from a Governmental Authority or court of competent jurisdiction or for the purposes of commencing, or defending, any arbitration or court proceedings.
- 19.5 Each Party acknowledges and agrees that the other may disclose confidential information, including Contract Data to its Sub-Contractors appointed hereunder, employees, legal advisers, insurance brokers and underwriters, auditors and such other professional advisers as the Parties may agree from time to time provided that such disclosure is necessary for the

proper performance of that Person's functions and that such Persons are required to keep confidential information and the Contract Data confidential.

## **20. ASSIGNMENT AND DELEGATION**

- 20.1 Subject to Clause 20.2 or any circumstance which may occur by operation of law, neither Party shall take any steps to assign, transfer, charge or otherwise dispose or encumber all or any of its rights or obligations under or pursuant to this Agreement without the prior written approval of the other Party.
- 20.2 Subject to Clause 20.3, if either Party proposes to delegate or sub-contract the performance of any of its obligations under or pursuant to this Agreement, it shall notify the other Party before doing so, provided that, if either Party proposes to delegate or sub-contract the performance of any of its material obligations under or pursuant to this Agreement, it shall obtain the written consent of the other Party in respect of such delegation or sub-contract before doing so (such written consent not to be unreasonably withheld). Neither Party shall be in breach of this Agreement as a result of any of the arrangements contemplated by this Clause 20, existing or future, (provided such amendment or restatement would not affect the rights of either of the Parties hereunder) or contracts related to such arrangements being amended or restated.
- 20.3 A Party's appointment of third parties to act as part of the LCH Settlement Arrangements or the x-clear Settlement Arrangements shall not be subject to Clause 20.2.
- 20.4 Each Party shall use all reasonable endeavours to procure, where requested by the other Party and at the other Party's expense, access to its Sub-Contractors and the co-operation of such Persons to facilitate the other Party's performance and receipt of performance under or pursuant to this Agreement.
- 20.5 A delegation or sub-contracting by a Party under Clause 20.2 shall not affect the obligations of that Party under or pursuant to this Agreement or any LCH-x-clear Contract and that Party shall be responsible for the acts and omissions of its delegate and/ or Sub-Contractor as if they were its own.

## **21. DEFAULT**

- 21.1 The occurrence of any of the following events shall be regarded as a "Default Event":
- (a) the inability by a Party to fulfil its obligations to make payments due with respect to the Balance Position or any LCH-x-clear Contract, or any margin obligations relating thereto, where not remedied by 12pm (London time) on the day immediately following the day on which such obligations fall due to be satisfied and payment is called for by the other Party;
  - (b) in relation to the Defaulting Party, a declaration by the Non-Defaulting Party, under its Default Rules specified below as applicable to the Defaulting Party, that the Defaulting Party is subject to the occurrence of any of the insolvency, bankruptcy or regulatory events referred to in the following Default Rules of the Non-Defaulting Party:
    - (i) Clause 24 of the GTCB as modified by of Schedule 2 thereof as at the date of entry into force of this Agreement inclusive (as identified in Schedule 2), which shall apply to LCH, *mutatis mutandis*, as to any other x-clear Clearing Member; and



- (ii) LCH Default Rules 5(i) to (o) as at the date of entry into force of this Agreement inclusive (as identified in Schedule 2), which shall apply to x-clear, *mutatis mutandis*, as to any other LCH Clearing Member;
  - (c) the Defaulting Party enters into liquidation whether compulsory or voluntary (other than for the purposes of amalgamation or reconstruction approved in writing by the Non-Defaulting Party on the basis that the resulting company undertakes the Defaulting Party's obligations under or pursuant to this Agreement and is commercially acceptable to the Non-Defaulting Party) or has a receiver or administrative receiver or administrator or similar official appointed over all or any of its assets and such receiver or administrative receiver or administrator or similar official is not discharged within a period of 30 days (except where such liquidation occurs or receiver, administrator or official is appointed in Switzerland);
  - (d) the Defaulting Party is declared insolvent or makes any general composition or compromise with its creditors (except where such insolvency or composition occurs in Switzerland);
  - (e) the Defaulting Party commits a material breach (or a series of breaches which taken together amount to a material breach) of its obligations under or pursuant to this Agreement that is either not capable of remedy or is capable of remedy and the Defaulting Party has failed to remedy that breach within 30 days after being required in writing by the Non-Defaulting Party to do so (and the remedy of a payment of damages or amount in settlement shall not be excluded as an appropriate remedy for these purposes where the same would be an adequate remedy in the circumstances); or
  - (f) an event in Switzerland, equivalent to any of the events described in Clauses 21.1(c) and 21.1(d), occurs in relation to the Defaulting Party.
- 21.2 A Party shall not draw down or otherwise realise or use any collateral provided by the other Party to it pursuant to Clause 8 except where the other Party is subject to a Default Event pursuant to Clause 21 and, in respect of any such Default Event which is capable of remedy, is not remedied within the period specified above in respect of such Default Event.
- 21.3 Any unsettled LCH-x-clear Contracts shall, (i) if x-clear is the Defaulting Party, be dealt with in accordance with the Default Rules of LCH and Applicable Laws; (ii) if LCH is the Defaulting Party, be dealt with in accordance with the Default Rules of x-clear and Applicable Laws.
- 21.4 Where a Party intends to make any material amendment to its Default Rules and such amendment may affect the application of Clause 21.121.1(b) to the other Party, it shall notify that other Party of such proposed amendment at the earliest opportunity.
- 21.5 Immediately upon the declaration of a Default Event, neither the Non-Defaulting Party nor the Defaulting Party shall be obliged to enter into any further LCH-x-clear Contracts, unless and until the Non-Defaulting Party certifies that the Default Event has been remedied or waived by the Non-Defaulting Party. Any corresponding Mixed Member Contracts shall automatically be void.
- 22. TERM AND TERMINATION**
- 22.1 This Agreement shall continue in force until terminated in accordance with Clause 22.3 or Clause 22.7.

22.2 Both Parties shall be released from all their obligations under or pursuant to this Agreement when this Agreement terminates, subject to Clauses 22.8 and 22.9.

22.3 A Party (the "**Terminating Party**") may (without prejudice to any other right or remedy) by written notice to the other Party terminate this Agreement with immediate effect on the occurrence of any of the following events:

- (a) a Default Event (except in respect of the occurrence of a Default Event described in Clauses 21.1(c), 21.1(d) and 21.1(f));
- (b) the other Party has received notice from the FSA that it will cease to be an RCH or ROCH (as applicable) or has received a notice from the FINMA that it will cease to be a Swiss bank (in the case of x-clear) and the other Party has failed to satisfy the Terminating Party that it has obtained an alternative regulatory status which entitles it lawfully to carry on the provision of Clearing Services; or
- (c) Clause 30.3 applies,

provided that where the Terminating Party is entitled to give notice of termination pursuant to this Clause 22.3, the Terminating Party shall use all reasonable endeavours to undertake prior consultation with the relevant Trading Venue(s).

22.4 A Party may (without prejudice to any other right or remedy) by written notice to the other Party terminate this Agreement only as it relates to a particular Trading Venue on the occurrence of any of the following events:

- (a) the relevant Trading Venue-LCH Agreement terminates and is not replaced or restated;
- (b) the relevant Trading Venue-x-clear Agreement terminates and is not replaced or restated,

provided that this Agreement shall in such circumstances remain in full force and effect in relation to any other Trading Venues at such time.

22.5 Where either Party serves notice to terminate this Agreement for any reason, in whole or in relation to a particular Trading Venue only, the Parties shall use all reasonable endeavours to effect the termination of this Agreement in a manner which does not prejudice the interests of Clearing Members and which ensures, to the extent reasonably practicable, an orderly run down of operations and closure and settlement of relevant LCH-x-clear Contracts.

22.6 On termination of this Agreement all licenses of Intellectual Property Rights shall terminate, subject to legal requirements to maintain and use records, including for up to 10 (ten) years under Swiss Applicable Laws. Further, LCH shall identify x-clear Materials in its possession by written notice to x-clear and x-clear shall identify LCH Materials in its possession by written notice to LCH and:

- (a) x-clear shall return the LCH Materials to LCH and LCH shall return x-clear Materials to x-clear; and
- (b) if a Party so elects by written notice, subject to Clauses 19.3 and 19.4 and Applicable Laws, the other Party shall delete the relevant Materials from all information files, if any, maintained by it.

- 22.7 On the occurrence of a Default Event as described in Clauses 21.1(c), 21.1(d) and 21.1(f) this Agreement shall terminate with immediate effect and the Parties shall (without prejudice to each Party's rights to take action under its Default Rules) use all reasonable endeavours to effect the termination of this Agreement in an orderly manner which does not prejudice the interests of Clearing Members.
- 22.8 Termination of this Agreement shall not release any of the Parties from any liability which at the time of termination has already accrued, nor does termination affect in any way the survival of any other right, duty or obligation of the Parties which is expressly stated elsewhere in this Agreement to survive such termination nor the Parties' obligations under Mixed Member Contracts or LCH-x-clear Contracts.
- 22.9 The provisions of Clauses 8, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 34 to 38, 0 and 40.4 (inclusive) shall survive termination of this Agreement.

### **23. TAX**

- 23.1 The Parties agree and acknowledge that they will co-operate with each other (and with any relevant Tax or other Governmental Authority) and will take all necessary steps (which shall include, without limitation, applying to any relevant Tax or other Governmental Authority for any applicable statutory relief) to procure that any Transaction or Contract will, to the extent possible, be capable of being effected or performed free from all Stamp Taxes.

### **24. AMENDMENTS TO THE AGREEMENT**

- 24.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of the Parties.
- 24.2 Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied.

### **25. RELATIONS WITH GOVERNMENTAL AUTHORITIES**

- 25.1 Each Party undertakes that at all times, to the extent it is required under Applicable Laws to be authorised, licensed or approved in relation to any activities undertaken by it, in the case of LCH, in the United Kingdom and, in the case of x-clear, in the United Kingdom or Switzerland, it shall be so authorised, licensed or approved. Each of the Parties will procure that any registrations, filings and submissions are made to the extent required under the Applicable Laws of such jurisdiction(s). Each of the Parties will co-ordinate and co-operate with one another in providing such information and all reasonable assistance to the other as may be requested in connection with any such registrations, filings and submissions.
- 25.2 LCH acknowledges that, in accordance with Applicable Laws, x-clear is not able to provide information directly to the FSA or any other non-Swiss Governmental Authority (although such information may be obtained indirectly by the FSA or another non-Swiss Governmental Authority through relevant Swiss Governmental Authorities) and that x-clear will not be in breach of this Agreement in any circumstance for failing to directly co-operate with the FSA or any such other non-Swiss Governmental Authority in such a way. Subject to Clause 11, x-clear undertakes to co-operate with any relevant Swiss Governmental Authorities in respect of any request from such Swiss Governmental Authorities on behalf of the FSA or any other non-Swiss Governmental Authority.

- 25.3 Subject to Clause 25.2, the Parties will co-operate with one another to ensure that each of them is able to provide the FSA, the FINMA or the SNB with any information relating to this Agreement that the FSA, the FINMA or the SNB requires or requests from time to time.
- 25.4 Subject to Clause 25.2, the Parties agree to co-operate with one another and provide reasonable assistance to one another in respect of any correspondence or meetings between either of the Parties and any other Governmental Authority in respect of this Agreement.
- 25.5 To the extent permitted by Applicable Laws, x-clear agrees that LCH shall have authority to disclose any information of whatsoever nature concerning x-clear in accordance with the LCH Regulations.
- 25.6 To the extent permitted by Applicable Laws, x-clear shall have authority to disclose any information of whatsoever nature concerning LCH if asked to do so by any Governmental Authority to which x-clear is subject, including the FINMA.

## **26. FURTHER ASSURANCE**

- 26.1 Each of the Parties agrees to perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by law or as may be necessary or reasonably desirable to implement or give effect to this Agreement.

## **27. INTELLECTUAL PROPERTY RIGHTS**

- 27.1 As between LCH and x-clear:

- (a) LCH (or its Sub-Contractors) shall own all Intellectual Property Rights in the LCH Materials;
- (b) x-clear (or its Sub-Contractors) shall own all Intellectual Property Rights in x-clear Materials;
- (c) (LCH (or its Sub-Contractors) shall own all Intellectual Property Rights in Contract Data relating to LCH Member Contracts and LCH Mixed Member Contracts;
- (d) x-clear (or its Sub-Contractors) shall own all Intellectual Property Rights in Contract Data relating to x-clear Member Contracts and x-clear Mixed Member Contracts; and
- (e) x-clear and LCH shall own jointly all Intellectual Property Rights in Contract Data relating to LCH-x-clear Contracts.

- 27.2 Each Party agrees to do all things and to execute all deeds, instruments, transfers or other documents as may be necessary or desirable in order to give effect to Clause 27.1.

- 27.3 Subject to Clause 27.4, each Party (as applicable, the "Indemnifying Party") shall indemnify the other Party (as applicable, the "Indemnified Party") and keep the Indemnified Party indemnified from and against any and all Claims suffered, incurred or sustained by the Indemnified Party as a result of any action, claim or proceeding made or brought by any third party alleging that the Indemnified Party's exercise of the rights to use Materials granted to it by the Indemnifying Party under or pursuant to this Agreement infringes the rights (including Intellectual Property Rights) of any such third party to the Materials.

- 27.4 The Indemnified Party or a Party that is likely to be an Indemnified Party shall:

- (a) promptly notify the Indemnifying Party of any Claim brought against the Indemnified Party and which may result in him making a claim on the Indemnifying Party under this Clause 27.4. Upon the Indemnifying Party accepting in writing that the relevant Claim (or aspect thereof) is covered in its entirety by the relevant indemnity and subject to the Indemnified Party being reasonably satisfied at all times with the Indemnifying Party's conduct of the defence to the Claim, the Indemnified Party shall allow the Indemnifying Party to control that defence exclusively (including full authority to compromise or settle it); and
- (b) provide all reasonable assistance to the Indemnifying Party (subject to the Indemnifying Party meeting the reasonable costs and expenses of the Indemnified Party).

## 28. REPRESENTATIONS AND WARRANTIES

28.1 Each Party represents and warrants on the date hereof, and at the date of any extension of this Agreement to a New Trading Venue, that:

- (a) in the case of x-clear, it is duly organised and validly existing under the laws of Switzerland and, in the case of LCH, it is duly incorporated and registered in England and Wales and each Party has capacity and power to enter into and perform its obligations under or pursuant to this Agreement;
- (b) neither the execution and delivery by it of this Agreement nor the performance by it of any of the obligations under or pursuant to this Agreement will:
  - (i) contravene any Applicable Law;
  - (ii) contravene or constitute a default under any agreement or instrument to which it is a Party; or
  - (iii) cause any limitation on it or the powers of its directors, whether imposed by or contained in its memorandum or articles of association (or equivalent company constitutional documentation in any other jurisdiction) or any law, order, judgement, consent, agreement, instrument, or otherwise, to be exceeded;
- (c) it has obtained all authorisations, consents or approvals of any Governmental Authority required in connection with the execution or performance of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligations;
- (e) no event has occurred which constitutes or, with the giving of notice or the lapse of time or a relevant determination, would constitute a contravention of, or default under, any agreement or instrument by which it or any of its assets is bound or affected, being a contravention or default which might have a material adverse effect on its business and which might adversely affect its ability to observe and perform its Clearing Services and obligations under or pursuant to this Agreement;
- (f) there is not any current or pending or, to its best knowledge, threatened, litigation, arbitration or administrative action or proceeding in relation to it or to which it is a Party before any court, arbitrator, Governmental Authority or administrative agency or which by itself or together with any other such proceedings or claims, if

determined adversely to it, will or might have a material adverse effect on its ability to provide Clearing Services or perform its obligations under or pursuant to this Agreement; and

- (g) there are no other facts or matters which might reasonably be expected to have a material adverse effect on its business and its ability to perform its obligations under or pursuant to this Agreement.

28.2 Each Party represents and warrants as at the moment when each Mixed Member Contract and LCH-x-clear Contract is formed that:

- (a) it has obtained sufficient consent for the purposes of Data Protection Laws to ensure that all personal data relating to Clearing Members or their clients or employees envisaged to be transferred between the Parties or processed under or pursuant to this Agreement can be controlled and processed lawfully by the Parties and their Sub-Contractors and transferred to locations outside the European Economic Area;
- (b) to the extent permitted by any Applicable Law or regulatory requirement to which it is subject, it has procured from its Clearing Members all waivers of any rights to secrecy or confidentiality which it requires to enable it to perform its obligations under or pursuant to this Agreement, including the provision of any information or data to the other Party.
- (c) it is recognised by the FSA as an RCH or ROCH and such recognition has not been revoked.

## 29. LIABILITY

29.1 Except as expressly provided in this Agreement and subject to Clauses 29.3 and 29.4:

- (a) neither a Party nor any of its respective Affiliates, directors, employees, agents, licensors and/or contractors shall be liable to any other Party for any Claim arising from, relating to or in connection with the performance or non-performance of its obligations under or pursuant to this Agreement except to the extent that such Claim results from the negligence, wilful default or fraud of such Party, its Affiliates or its directors, employees, agents and/or contractors; and
- (b) no Party shall incur any liability for any loss of business or profits or anticipated business or profits, indirect, special, consequential or punitive loss or damages of any kind whether or not the relevant Party had knowledge of the likelihood of such loss or damages or of any facts likely to give rise to such loss or damages.

29.2 Each Party acknowledges and agrees that it does not owe any duty of care to the other in relation to the admission (or rejection of admission) of any Clearing Member (or applicant for Clearing Member status) or in relation to the exercise or non-exercise of that Party's powers of suspension or termination of the membership of any Clearing Member or the exercise of its powers under its Rules.

29.3 The aggregate liability of one Party to another for all Losses suffered arising out of or in connection with the subject matter of this Agreement (whether in tort (including negligence), contract (including under indemnity) or otherwise) shall be limited to £10 million.

#### 29.4 **Exceptions**

No limit on liability set out in this Agreement shall apply in respect of:

- (a) any liability for death or personal injury resulting from that Party's negligence;
- (b) any liability for wilful default or wilful misconduct, fraud or fraudulent misrepresentation;
- (c) any liability governed by the indemnities in Clause 27.3;
- (d) any liability which, pursuant to Applicable Laws (including FSA Rules) cannot be excluded or limited; and
- (e) performance by a Party in respect of LCH-x-clear Contracts.

#### 29.5 **Allocation of Risk**

The Parties acknowledge and agree that they have entered into this Agreement in reliance upon the limitations of liability and disclaimers of warranties and damages contained in this Agreement and that the same form an essential basis of the bargain between the Parties.

#### 30. **FORCE MAJEURE**

- 30.1 A Party shall not be liable for any failure or delay in performing any of its obligations under or pursuant to this Agreement to the extent that such failure or delay is due to any cause whatsoever outside its reasonable control, including, without limitation, acts of God, accident, fire, floods, hurricanes, pandemics, riots, civil commotion, malicious damage (other than malicious damage caused by employees of the relevant Party or its Group), acts of war, hostilities, acts of terrorism, acts of third Parties (including without limitation a Trading Venue, Approved Settlement Location and any third party clearing house or central counterparty but excluding acts of a Party's own Sub-Contractors) and acts of a Governmental Authority (any such event, an "Event of Force Majeure"), and it shall be entitled to a reasonable extension of the time for performing such obligations as a result of such cause.
- 30.2 The Party seeking to rely on Clause 30.1 shall notify the other Party forthwith and shall use reasonable endeavours in any situation where it has invoked this clause to perform its relevant obligations as soon as possible.
- 30.3 Where the effects of an Event of Force Majeure persist for 90 days or more, the Party unaffected by the Event of Force Majeure may terminate this Agreement immediately upon written notice to the other Party.

#### 31. **ILLEGALITY**

A Party shall not be required to perform any of its obligations under or pursuant to this Agreement to the extent that the performance of such obligation would cause that Party to breach any Applicable Laws.

#### 32. **SEVERABILITY**

If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall (so far as invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this

Agreement. Save in the case of an Event of Force Majeure, the Parties shall use all reasonable endeavours to agree new wording to replace the invalid or unenforceable provisions, the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

**33. NOTICES**

33.1 Save where expressly provided to the contrary under or pursuant to this Agreement any notice to be given by one Party to the other Party under or pursuant to this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it by hand, or sending it by pre-paid recorded delivery, special delivery, internationally-recognised courier or registered post to the address or sent by facsimile to the number set out in Clause 33.3 and in each case marked for the attention of the relevant Party (or as otherwise notified from time to time in accordance with the provisions of this Clause 33).

33.2 Any notice so served by hand, post, courier or facsimile shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of prepaid recorded delivery, special delivery, courier or registered post, at 10 a.m. on the 3rd Business Day following the date of posting;
- (c) in the case of facsimile, at the time of transmission;

provided that in each case where delivery occurs after 6 p.m. (London time) on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9 a.m. on the next following Business Day.

33.3 The details of the Parties for the purpose of Clause 33.1 are as follows:

LCH	
Address:	Aldgate House, 33 Aldgate High Street, London EC3N 1EA
Fax:	020 7667 7354
For the attention of:	Company Secretary
x-clear	
Address:	Brandschenkestrasse 47, 8002 Zürich Switzerland
Fax:	+41 44 288 43 12
For the attention of:	Marco Strimer, CEO

33.4 A Party may notify the other Party of a change to its addressee, address or facsimile address specified in Clause 33.3, provided that such notice shall only be effective on:

- (a) the date specified in the notice; or
- (b) if no date is specified or the date specified is less than 5 Business Days after the date on which such notice has been given, the 6th Business Day after the date on which such notice has been given.

**34. WAIVERS**

34.1 No failure or delay by any Party in exercising any right or remedy provided by law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a



waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right, power or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy provided by law or under or pursuant to this Agreement.

34.2 Any waiver of any right, power or remedy under or pursuant to this Agreement must be in writing, must be expressly stated to be a waiver and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given and, therefore, shall not be construed as a waiver of a Party's rights or remedies with respect to any succeeding breach of the same or other provisions.

**35. REMEDIES CUMULATIVE**

The rights and remedies of each Party under or pursuant to this Agreement are cumulative, may be exercised as often as such Party considers appropriate and are in addition to its rights and remedies under general law.

**36. ENTIRE AGREEMENT**

36.1 Save where otherwise expressly provided herein, this Agreement sets out the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement. It is agreed that:

- (a) neither of the Parties has entered into this Agreement in reliance upon any representation, warranty or undertaking of any of the other Parties which is not expressly set out or referred to in this Agreement; and
- (b) neither Party shall have any remedy in respect of misrepresentation or untrue statement made by the other Party which is not contained in this Agreement nor for any breach of warranty which is not contained in this Agreement.

**37. LEGAL RELATIONSHIP**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties nor shall anything in this Agreement constitute or be deemed to constitute any Party the trustee, beneficiary, agent or principal of the other Party for any purpose.

**38. THIRD PARTIES**

38.1 A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. In particular, the Parties acknowledge and agree that neither a Trading Venue, an Approved Settlement Location, a provider of Transaction Routing Functionality nor any Clearing Member shall acquire any rights in respect of or as a result of this Agreement.

38.2 Neither Party shall be responsible to the other Party for any act or omission of a Trading Venue, an Approved Settlement Location, a provider of Transaction Routing Functionality, any Clearing Member, any Trading Member, the FSA, the SNB, the FINMA or any other third party exchange, clearing house, central counterparty, settlement system, Governmental Authority or any third party operator or member of any of the foregoing that is not a Sub-Contractor of the relevant Party.

38.3 LCH agrees to waive all present and future rights, causes of action and remedies, whether in tort, contract or otherwise, under common law or Applicable Laws arising from the breach or alleged breach by x-clear of any of the x-clear Settlement Arrangements, a Trading Venue-x-clear Agreement, any of the x-clear Regulations or any agreement between x-clear and a provider of Transaction Routing Functionality or any other action or omission by x-clear where a loss or damages are suffered by an LCH Clearing Member or another person but not directly by LCH.

38.4 x-clear agrees to waive all present and future rights, causes of action and remedies, whether in tort, contract or otherwise, under common law or Applicable Laws arising from the breach or alleged breach by LCH of any of the LCH Settlement Arrangements, a Trading Venue-LCH Agreement, any of the LCH Regulations or any agreement between LCH and a provider of Transaction Routing Functionality or any other action or omission by LCH where a loss or damages are suffered by an x-clear Clearing Member or another person but not directly by x-clear.

### 39. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

### 40. GOVERNING LAW AND JURISDICTION

40.1 Subject to Clause 40.2 below, this Agreement, the relationship between the Parties and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of England and Wales.

40.2 Any Dispute relating to the nature, scope, rights and obligations in respect of collateral provided by x-clear to LCH by way of an Irregular Pledge including the use of such collateral by LCH and the bank guarantee issued to x-clear in satisfaction of LCH's margin obligations hereunder shall be governed by and construed in accordance with Swiss law.

40.3 Subject to Clause 15, the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales and Switzerland in relation to any dispute including a dispute relating to non-contractual obligations arising out of or in connection with this Agreement.

40.4 In respect of this Agreement generally and in respect of each LCH-x-clear Contract arising pursuant to this Agreement, x-clear hereby appoints SIX X-CLEAR AG; ROOM 4.10; 288 BISHOPSGATE, LONDON EC2M 4QP, whose registered office is at c/o Jordans Company Secretaries Limited, 20-22 Bedford Row, London WC1R 4JS, as its agent for service of process in England and Wales and if, for any reason, such agent ceases to be able to act as agent or no longer has an address in England or Wales, x-clear shall forthwith appoint a substitute acceptable to LCH and deliver to LCH the new agent's name and registered address.

### 41. DISPUTE RESOLUTION

41.1 If any dispute, difference, controversy or claim (of any and every kind or type, whether based on contract, tort, statute, regulation or otherwise) arises out of or in connection with this Agreement, including any dispute as to its construction, validity, interpretation, enforceability or breach (a "Dispute"), the Parties shall seek to resolve the Dispute by negotiation and shall refer the Dispute in the first instance to LCH's deputy head of risk management and x-clear's deputy head of risk management. If either party is unsatisfied following the referral of the

Dispute as aforesaid, the Parties shall refer the Dispute in writing to their respective chief executives.

- 41.2 If the Parties are unable to resolve a Dispute in accordance with Clause 41.1, they shall seek to resolve the Dispute amicably by using the following procedure before pursuing any other remedies available to them. The Parties acknowledge and agree that they shall endeavour to ensure that this dispute resolution structure hereunder mirrors the provisions of every Trading Venue-x-clear Agreement and Trading Venue-LCH Agreement. Each of the Parties agrees that in the event of a Dispute involving both of the Parties and a Trading Venue, they will each seek to coordinate dispute resolution procedures in such a way as to enable all the Parties and the Trading Venue to participate in the meetings, hearings, cases and notices described below, *mutatis mutandis*.
- 41.3 The Parties shall submit the Dispute to a neutral adviser appointed by agreement between the Parties to assist them in resolving the Dispute. Either Party may give written notice to the other Party describing the nature of the Dispute, requiring the Dispute to be submitted to such a neutral adviser and proposing the name of a suitable person to be appointed. If no such person is appointed by agreement between the Parties within 14 days after such notice is given (or, if no such notice is given, within 28 days after the Dispute has arisen) either Party may request the Centre for Dispute Resolution to appoint a neutral adviser acceptable to both Parties. If the Centre for Dispute Resolution fails to make any appointment within 30 days of a written request to do so by the Parties, this Clause 41 (except Clause 41.9) shall cease to apply in relation to the relevant Dispute.
- 41.4 The Parties shall, with the assistance of the neutral adviser appointed in accordance with Clause 41.3, seek to resolve the Dispute by using an ADR Procedure agreed between the Parties or, in default of such agreement, established by the neutral adviser.
- 41.5 If the Parties accept any recommendations made by the neutral adviser or otherwise reach agreement as to the resolution of the Dispute, the Parties shall use all reasonable endeavours to record the resolution of the Dispute in writing in a legally binding agreement signed by both Parties (and, if applicable, the neutral adviser), upon execution of which, such resolution and any waivers or obligations of the Parties as a result of the resolution shall become binding upon such Parties.
- 41.6 If:
- (a) any Dispute has not been resolved to the satisfaction of the Parties within 30 days after the appointment of the neutral adviser or within such longer period as the Parties may agree; or
  - (b) either Party fails or refuses to agree to or participate in the ADR Procedure; or
  - (c) in any event the Dispute is not resolved 90 days after it has arisen,
- then either Party may institute proceedings in accordance with Clause 0.
- 41.7 In the event that either Party takes any action in accordance with Clause 0:
- (a) any neutral adviser involved in the ADR Procedure shall not take any part in such proceedings, whether as a witness of fact, as an expert witness or otherwise, and any statements made by him during the course of or in connection with the ADR Procedure shall not be relied upon by either Party without the express written consent of both the other Party and the neutral adviser; and

- (b) neither Party shall make use of or rely upon any without prejudice statements or admissions made by the other Party during the course of or in connection with the ADR Procedure.
- 41.8 The fees of the neutral adviser and the other costs and fees associated with the ADR Procedure shall be borne equally by the Parties; provided that each such Party shall bear its own legal and other professional costs.
- 41.9 Any action taken by a Party pursuant to Clause 40.4 and shall be without prejudice to such Party's rights:
  - (a) to take action against its Clearing Members under its Rules; or
  - (b) to realise collateral posted by the other Party pursuant to its Default Rules applicable to LCH-x-clear Contracts.

**SCHEDULE 1**  
**RULES SCHEDULE**

**LCH Regulations applicable to x-clear**

LCH's Default Rules and any LCH Regulations and definitions referred to therein for the purposes of the Default Rules in relation to LCH Clearing Services.

**x-clear Regulations applicable to LCH**

Whichever of the following sets of default rules are applicable to the relevant Trading Venue:

- Clause 24 of the GTCB (which represent the Default Rules of x-clear in relation to x-clear Clearing Services contemplated under Schedule 2 of this Agreement) as modified by Clause 34 and Schedule 2 thereof and applicable definitions therein.
- Clause 14 of the General Terms and Conditions of Business (Swiss Law) (which represent the Default Rules of x-clear in relation to x-clear Clearing Services contemplated under Schedule 3) and applicable definitions therein.
- Clause 18 of the General Terms and Conditions of Business (English Law) for Clearing of Trading Platform Transactions (which represent the Default Rules of x-clear in relation to x-clear Clearing Services contemplated under forthcoming Schedules to this Agreement regarding multilateral trading facilities) as modified by Clause 28 and Schedule 2 thereof and applicable definitions therein.

**Co-ordinating Central Counterparty's Procedures**

The Co-ordinating Central Counterparty's Procedures shall apply to both Parties.



**SCHEDULE 2**

**FORM OF COLLATERAL**

**PART I - FORM OF BANK GUARANTEE ISSUED ON BEHALF OF LCH**

RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG

SCHEDULE 2

FORM OF BANK GUARANTEE ISSUED ON BEHALF OF LCH

**REDACTED**

RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG



**PAR II - FORM OF PLEDGE AGREEMENT FOR MARGIN PROVIDED BY X-CLEAR TO  
LCH**

RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG

# Pledge Agreement for Margins (Irregular Pledge)

between

**LCH.CLEARNET LIMITED**, of Aldgate House, 33 Aldgate High Street, London EC3N 1EA,

**United Kingdom,**

hereinafter referred to as "LCH"

and

**SIX x-clear AG**, of Brandschenkestrasse 47, 8002 Zurich,

**Switzerland,**

hereinafter referred to as "x-clear"

both LCH and x-clear hereinafter referred to as "Party" or "Parties", as the context requires

## Recitals

- LCH is a recognised clearing house under the Act and a designated system pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (as amended) enacted pursuant to Directive 98/26/EC on settlement finality in payment and securities settlement systems.
- x-clear is authorised as a bank by the SFBC and is also, as a systemically important system, subject to the oversight of the SNB. x-clear is also a recognised overseas clearing house under the Act. x-clear intends to seek designation as a "system" pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (as amended) enacted pursuant to Directive 98/26/EC on settlement finality in payment and securities settlement systems.
- In respect of Mixed Member Transactions entered into by an LCH Clearing Member and an x-clear Clearing Member which are registered with LCH and x-clear in accordance with their respective Rules, LCH-x-clear Contracts will arise between LCH and x-clear and be reflected in a Balance Account maintained by each Party.
- The Parties have entered into the London Stock Exchange: Clearing Link Agreement (hereinafter the "Clearing Link Agreement") on 27 / 11 /, 2008.

- In the Clearing Membership Agreement, x-clear is admitted to membership of LCH as a Co-operating Clearing House.
- x-clear intends to provide collateral to secure the performance of its obligations to LCH under the Clearing Link Agreement and especially as risk cover for LCH for the time between the matching of orders and the settlement of the resulting LCH – x-clear Contracts, should x-clear fail to fulfil its obligations arising from such LCH – x-clear Contracts, whether wholly or in part.
- Cash collateral and any collateral provided by x-clear by way of LCH's standard form charge do not form part of the present Pledge Agreement.

The Parties therefore agree the following:

## A. Interpretation

1. Unless otherwise expressly stated in this Pledge Agreement (including the recitals), the terms used shall have the meanings given to them in the Clearing Link Agreement and the following terms shall have the following meanings:
  - **"Collateral Procedures"** means that part of the LCH Regulations relating to the provision of eligible securities as cover for margin requirements pursuant to the requirements of the LCH Regulations.
  - **"cover"** and **"margin"** shall have the meaning given to such terms in the LCH Regulations.
  - **"SIS"** means SIS SegalInterSettle AG, a national (CSD) and international (ICSD) Central Securities Depository regulated as a bank under the laws of Switzerland with its domicile at Baslerstrasse 100, 4601 Olten, Switzerland, being a subsidiary of the SIS Group.

## B. Obligation to provide Collateral

2. Without prejudice to clause 7 of the Clearing Link Agreement and the LCH Regulations, x-clear hereby undertakes to provide collateral to LCH (hereinafter the **"Collateral"**) in the form of eligible securities in accordance with LCH's margin requirements (as stipulated in the LCH Regulations), as security for the performance by x-clear of all of its obligations owing to LCH under the Clearing Link Agreement, the LCH Regulations and any LCH – x-clear Contracts (hereinafter the **"Secured Obligations"**).
3. Title to the Collateral shall be transferred to LCH by x-clear by way of Irregular Pledge. In return, x-clear shall acquire a right of release (i.e. to restitution of eligible securities of the same type, quality and amount as those transferred to LCH as Collateral) in respect of such Collateral as soon as the Secured

Obligations have been discharged in full. This right of release shall be exercisable by x-clear in accordance with the Collateral Procedures and is not assignable by x-clear (*"pactum de non cedendo"*).

4. The amount of the Collateral to be provided by x-clear to LCH hereunder shall be calculated in accordance with the calculation method for initial margin and variation margin specified in the LCH Regulations. The procedures for the release of any excess in the amount of Collateral provided by x-clear to LCH hereunder shall be as set out in the Collateral Procedures.

### **C. Provision of Collateral**

5. LCH shall accept under this Pledge Agreement as Collateral only eligible securities (including, without limitation, any listed, certificated and uncertificated debt securities issued by the Swiss Federal Government) determined as being so acceptable under the provisions of the Collateral Procedures.
6. LCH shall maintain a cash and custody account in its own name at SIS (hereinafter the "**Collateral Account**"). x-clear must transfer the Collateral to LCH's Collateral Account in accordance with the Collateral Procedures as supplemented by the procedures set out in Section D below. Such transfer to LCH shall include all entitlements (i.e. outright collateral transfer in the case of certificated securities and assignment in the case of book-entry securities) and shall be made in accordance with the provisions of Clause 7 of the Clearing Link Agreement and the Collateral Side Letter.
7. x-clear hereby gives a declaration of assignment for the provision of Collateral in the form of book-entry securities and, in relation to the provision of Collateral in the form of registered securities, x-clear gives a blank assignment or a proxy for an endorsement in favour of LCH. This Pledge Agreement shall also be regarded as a declaration of assignment or as a proxy for an endorsement from x-clear in favour of LCH for claims, book-entry securities, or registered securities.
8. LCH shall calculate the securities cover required from x-clear and the value of the Collateral to be provided by x-clear at several points in time throughout each business day in accordance with the Collateral Procedures.
9. Collateral shall be regarded as having been provided by x-clear to LCH when the Collateral Account has been credited with eligible securities.
10. If any Collateral required from x-clear has not been credited to the Collateral Account within the specified period, LCH shall be entitled, but not obliged, to take

measures in accordance with the LCH Regulations (including, without limitation, the Default Rules) and the Clearing Link Agreement.

#### **D. Delivery and redelivery of Collateral**

11. For the purpose of transferring Collateral requested by LCH in the form of eligible securities, x-clear will initialise the respective transfer by issuing a "delivery free of payment" instruction and the Collateral Lodgement Form of LCH. X-clear shall send the Collateral Lodgement Form by facsimile or email to LCH's Treasury Department, with a hard copy to follow within 14 days. LCH will accept such message and issue a "receive free of payment" instruction. Upon matching of these two instructions, the securities will be transferred and booked to the Collateral Accounts of LCH at SIS.
12. x-clear will request LCH to release the Collateral not required according to the Collateral Procedures by sending a collateral release form which will be sent by facsimile or email to LCH's Treasury Department. LCH will then issue a "delivery free of payment" instruction, which will be accepted by SIX x-clear AG without counter instruction.

#### **E. Realisation of Collateral**

13. Should x-clear fail to fulfil any of the Secured Obligations, LCH shall be entitled to realise, at its discretion, the Collateral provided to it by x-clear with a view to discharging any Secured Obligations which are then owing to it. The realisation of Collateral in such circumstances shall not require any prior notification to x-clear.
14. In the event of any realisation of the Collateral provided by x-clear, LCH shall be obliged to render an account to x-clear. The proceeds of such realisation (net of any taxes paid by LCH in connection therewith) shall be set-off against any Secured Obligations then owing to LCH and any surplus then remaining shall be credited or paid to x-clear.

#### **F. Release of Collateral**

15. The release by LCH of any Collateral provided to it by x-clear shall take place upon x-clear's application in accordance with the Collateral Procedures as supplemented by the procedures set out in Section D above.

16. Notwithstanding the provisions of Clause 3, x-clear is entitled to request the release by LCH of any Collateral provided to it by x-clear under this Pledge Agreement:
- if LCH is no longer entitled to such Collateral, whether hereunder or under the LCH Regulations or the Clearing Link Agreement (where, for example, the amount of Collateral should be reduced in order to avoid over-collateralisation); or
  - in the event of any substitution of such Collateral for eligible securities of the same value to LCH's satisfaction; or
  - where the release of such Collateral is permitted under the provisions of the Collateral Procedures.
17. Where any Collateral provided to LCH by x-clear is released by LCH, x-clear shall have no claim on particular numbers or denominations of eligible securities, but only a contractual entitlement to the redelivery of eligible securities of the same type, quality and amount as those provided to LCH hereunder.

## **G. Corporate Actions Events and Taxation**

18. Except as otherwise provided in Clauses 19 and 20 of this Pledge Agreement, responsibility for administering the Collateral provided to LCH by x-clear shall rest with LCH.
19. Earnings (including any interest and premiums) due on any Collateral provided by x-clear during the period of its use as Collateral hereunder, and any liquidation proceeds from any Collateral credited to the Collateral Account are subject to a claim by x-clear against LCH for compensation of the same value in the same currency, less any expenses and other charges actually incurred (hereinafter a "compensation payment").
20. LCH shall be the holder of any option, pre-emption and other similar rights relating to any Collateral credited to the Collateral Account. Any such pre-emption rights shall normally be credited to x-clear in real form. If a credit entry is not possible, compensation shall be paid by LCH to x-clear on the basis of the average market value of the relevant eligible securities on the last trading day before expiry of the pre-emption period. If x-clear insists on exercising any such pre-emption rights, it must arrange in good time for the eligible securities required for the exercise of such rights to be substituted by Collateral of the same value to LCH's satisfaction. LCH shall be discharged from any liability for any loss incurred by x-clear as a result of any failure to exercise any such pre-

emption rights. If any distribution in respect of any Collateral credited to the Collateral Account is in the form of securities, LCH shall be obliged to return such securities at the time of releasing the Collateral to which such securities relate.

21. Should any Collateral credited to the Collateral Account be the subject of any corporate action, the following provisions shall apply:
- in the event that any Collateral is converted, upon any release of such Collateral under this Pledge Agreement, LCH will return to x-clear the Collateral so converted in accordance with the conversion rules;
  - in the event that any Collateral is bought back or liquidated, upon any release of such Collateral under this Pledge Agreement, LCH shall pay to x-clear the amount received from such buy back or liquidation;
  - in the event that any Collateral is drawn by lot, LCH will duly inform x-clear sufficiently in advance (where practicable) to allow x-clear to substitute the corresponding Collateral with alternative Collateral of equal value to LCH's satisfaction; and
  - in the event that any Collateral is affected by a takeover bid, merger, split or similar event, upon any release of such Collateral under this Pledge Agreement, LCH shall retransfer either the affected securities or pay an amount equal to the takeover price paid to LCH.

The provisions of this Clause 21 are without prejudice to Parts B and C of this Pledge Agreement.

22. In respect of any Swiss withholding tax which may be levied on any interest payments made on any eligible Swiss securities provided to LCH as Collateral hereunder, LCH shall not apply for restitution of the withholding tax so levied under the applicable double tax treaty between the United Kingdom and Switzerland. Any claim by x-clear against LCH for a compensation payment shall be net of any Swiss withholding tax levied on the related interest payment. Each of LCH and x-clear agrees to notify the other Party as soon as practicable upon it becoming aware of any adverse change in the withholding tax treatment of any such interest payment in the United Kingdom or Switzerland. Following the giving of such notice, the Parties shall discuss whether any consequential amendments should be made to this Clause 22 in order to reflect the relevant change in withholding tax treatment.

## **H. Warranty for Collateral provided**

23. x-clear hereby warrants and confirms to LCH that any Collateral provided to LCH hereunder either does not belong to any x-clear Clearing Member and is its sole property free of the proprietary rights of any third party, or has been provided to x-clear by one or more x-clear Clearing Members by way of an Irregular Pledge executed by each such x-clear Clearing Member in its favour. x-clear further warrants and confirms to LCH that it is the full legal owner of any Collateral provided to LCH hereunder and that the use of the related eligible securities as Collateral does not breach any of x-clear's contractual obligations owing to third parties, including any x-clear Clearing Member, or any statutory provisions or regulations.
24. LCH warrants and confirms to x-clear that any Collateral provided by x-clear hereunder which is to be released by LCH is its sole property free of the proprietary rights of any third party and that the return of the related eligible securities to x-clear does not breach any of LCH's contractual obligations owing to third parties or any statutory provisions or regulations.

## **I. Additional Provisions**

25. x-clear acknowledges that Article 16 (2) of the Swiss Federal Banking Act is not applicable to any Collateral provided to LCH hereunder, since such Collateral is received by LCH neither on a fiduciary basis nor with a requirement to place it in safe custody.
26. x-clear acknowledges that any Collateral in the form of bearer or registered securities which is provided to LCH hereunder is not regarded as "having been transferred or endorsed as cover for a specified future payment" within the meaning of Article 201 of the Swiss Federal Law on Debt Collection and Bankruptcy.
27. The parties expressly declare that this Collateral provided under this Pledge Agreement is provided by way of an Irregular Pledge and not a regular pledge within the meaning of Article 884 ff. of the Swiss Civil Code.
28. This Pledge Agreement shall not terminate until such time as all Secured Obligations have been discharged in full.
29. The rights of LCH under this Pledge Agreement are without prejudice to any right of LCH to require x-clear to provide collateral under clause 7 of the Clearing Link Agreement and the Collateral Side Letter.
30. Amendments and additions to this Pledge Agreement shall only be valid if they are in writing.



31. The legal relationships between the Parties in respect of the provision and restitution of Collateral under this Pledge Agreement shall be governed by and construed in accordance with Swiss law, subject to the Collateral Procedures which are governed by English law.
32. The exclusive place of jurisdiction for any form of proceedings and for any disputes arising in connection with the present Pledge Agreement, shall be the Commercial Court of the Canton of Zurich. Zurich shall also be the place of enforcement.

### SCHEDULE 3

## PROVISIONS SPECIFIC TO CLEARING SERVICES FOR THE LONDON STOCK EXCHANGE

### DEFINITIONS

In this Schedule the following expressions shall have the following meanings:

"**Adjudicator**" shall mean the London Stock Exchange or such other person as the Parties may agree from time to time;

"**Alternative Services**" means services similar in purpose or functionality to the CREST Services (or part thereof) whether provided by a provider of Transaction Routing Functionality, another third party or the Parties themselves;

"**CREST Services**" means the services provided by Euroclear UK as part of the central counterparty service for LSE trades, as more fully described under the section headed "Central counterparty service for LSE trades - CREST services" in the CREST Central Counterparty Service Manual;

"**Euroclear UK**" means Euroclear UK & Ireland Limited (formerly known as CrestCo Limited) incorporated in England & Wales under number 2878738 whose registered office is at 33 Cannon Street, London EC4M 5SB;

"**Main Market**" means those segments of the London Stock Exchange which were subject to co-clearing arrangements between the Parties at the date of the LSE Link Agreement (including for the avoidance of doubt any successors to such market segments and any instruments included within such market segments from time to time), as the same may be extended by agreement of the Parties and provided always that the relevant Trading Venue has requested such extension of competitive clearing.

#### 1. MARKET SEGMENTS

1.1 The Parties (being, for the purposes of this Schedule, only those Parties to the Agreement who have expressly acceded to this Schedule) agree to provide Clearing Services under this Schedule in respect of the Main Market.

#### 2. SETTLEMENT

2.1 In providing Clearing Services in respect of Cleared Products, each Party shall use:

- (a) where applicable, the CREST Services in accordance with its standard charges until such time as there are Alternative Services and each Party is entitled to cease to use the CREST Services (or such part thereof) in favour of such Alternative Services. Where a Party decides to cease to use the CREST Services (or a part thereof) in favour of an alternative, such Party shall notify the other Party as soon as reasonably practicable of such intention, or;
- (b) unless paragraph 2.1(a) applies, such Alternative Services as the Parties may agree.

2.2 For the avoidance of doubt, Euroclear UK shall be regarded as an agent of a Party for the purposes of Clause 4.3 of the Agreement for so long as that Party continues to use the CREST Services.

### 3. OTHER PROVISIONS

#### 3.1 Co-ordinating Central Counterparty

The Parties agree that from the date of this Agreement until any later determination under Clause 16, LCH shall be the Co-ordinating Central Counterparty in respect of the Main Market.

#### 3.2 Collateral

Except as agreed between the Parties in a Collateral Side Letter or otherwise:

- (a) LCH shall issue a Swiss-law governed bank guarantee substantially in the form set out in Schedule 2 or provide other collateral whether in the form of securities or cash to x-clear pursuant to its obligations in Clause 8 of the Agreement.
- (b) x-clear shall post collateral with LCH pursuant to its obligation in Clause 8 of the Agreement by way of an Irregular Pledge under a Swiss law-governed pledge agreement, the form of which is set out in Schedule 2.

#### 3.3 Notifications

- (a) x-clear undertakes to notify LCH immediately in writing if Euroclear UK or x-clear serves notice of termination of any agreement between x-clear and Euroclear UK pursuant to which Euroclear UK provides settlement and other related services in relation to Transactions on the London Stock Exchange or if any such agreement terminates;
- (b) LCH undertakes to notify x-clear immediately in writing if Euroclear UK or LCH serves notice of termination of any agreement between LCH and Euroclear UK pursuant to which Euroclear UK provides settlement and other related services in relation to Transactions on the London Stock Exchange or if any such agreement terminates.

## SCHEDULE 4

### PROVISIONS SPECIFIC TO CLEARING SERVICES FOR SIX SWISS EXCHANGE

#### DEFINITIONS

In this Schedule the following expressions shall have the following meanings:

**"Adjudicator"** shall mean the SIX Swiss Exchange or such other person as the Parties may agree from time to time;

**"Alternative Services"** means services similar in purpose or functionality to the SIX SIS AG Services (or part thereof) whether provided by a provider of Transaction Routing Functionality, another third party or the Parties themselves;

**"SIX SIS AG Services"** means the services provided by SIX SIS AG as part of the settlement service for SIX Swiss Exchange trades.

**"Main Market"** means SIX Swiss Exchange and all of its markets and market segments as at the date of this Agreement, as the same may be amended or supplemented from time to time by agreement of the Parties.

#### 1. MARKET SEGMENTS

1.1 The Parties (being, for the purposes of this Schedule, only those Parties to the Agreement who have expressly acceded to this Schedule) agree to provide Clearing Services under this Schedule in respect of the Main Market.

#### 2. SETTLEMENT

2.1 In providing Clearing Services in respect of Cleared Products, each Party shall use:

(a) where required to do so, the SIX SIS AG Services in accordance with its standard charges until such time as there are Alternative Services and each Party is entitled to cease to use the SIX SIS AG Services (or such part thereof) in favour of such Alternative Services. Where a Party decides to cease to use the SIX SIS AG Services (or a part thereof) in favour of an alternative, such Party shall notify the other Party as soon as reasonably practicable of such intention, or;

(b) unless paragraph 2.1(a) applies, such Alternative Services as the Parties may agree.

2.2 Existing arrangements as at the date of this Agreement for one Party to issue settlement instructions in respect of LCH-x-clear Contracts in relation to the Main Market on behalf of the other Party shall continue unless and until agreed otherwise by the Parties. No charge shall be levied by one Party to the other Party for issuing such settlement instructions in respect of LCH-x-clear Contracts.

### **3. OTHER PROVISIONS**

#### **3.1 Co-ordinating Central Counterparty**

The Parties agree that from the date of this Agreement until any later determination under Clause 16, x-clear shall be the Co-ordinating Central Counterparty in respect of the Main Market.

#### **3.2 Collateral**

Except as agreed between the Parties in a Collateral Side Letter or otherwise:

- (a) LCH shall issue a Swiss-law governed bank guarantee substantially in the form set out in Schedule 2 or provide other collateral whether in the form of securities or cash to x-clear pursuant to its obligations in Clause 8 of the Agreement.
- (b) x-clear shall post collateral with LCH pursuant to its obligation in Clause 8 of the Agreement by way of an Irregular Pledge under a Swiss law-governed pledge agreement, the form of which is set out Schedule 2.

#### **3.3 Notifications**

- (a) x-clear undertakes to notify LCH immediately in writing if SIX SIS AG or x-clear serves notice of termination of any agreement between x-clear and SIX SIS AG pursuant to which SIX SIS AG provides settlement and other related services in relation to Transactions on SIX Swiss Exchange or if any such agreement terminates;
- (b) LCH undertakes to notify x-clear immediately in writing if SIX SIS AG or LCH serves notice of termination of any agreement between LCH and SIX SIS AG pursuant to which SIX SIS AG provides settlement and other related services in relation to Transactions on the SIX Swiss Exchange or if any such agreement terminates.

Urs Wieland  
SIX x-clear AG  
Brandschenkestrasse 47  
8002 Zurich  
Switzerland

2 July 2010

Dear Urs

**Public disclosure of the Master Clearing Link Agreement dated 6 August 2009**

I refer to the Master Clearing Link Agreement between LCH.Clearnet Limited and SIX x-clear AG dated 6 August 2009 ("Master Clearing Link Agreement").

The Financial Services Authority has requested that LCH.Clearnet and x-clear waive any confidentiality in respect of the Master Clearing Link Agreement and consent to its publication.

As a result, I am writing to seek your agreement that:

1. subject to paragraph 2, either party may publicly disclose the Master Clearing Link Agreement;
2. the parties must not disclose, and must keep confidential, Schedule 2 of the Master Clearing Link Agreement; and
3. except as set out in paragraph 1, above, each Party will observe its obligations of confidentiality either under the Master Clearing Link Agreement or otherwise.

Could you please indicate your agreement by signing and returning a copy of this letter.



**SIGNED**

Acknowledgement

I agree to the public disclosure of the Master Clearing Link Agreement on the terms set out above.

**SIGNED**

**AMENDMENT TO  
MASTER CLEARING LINK AGREEMENT**

**DATED**

**BETWEEN**

**LCH.CLEARNET LIMITED  
and**

**SIX X-CLEAR AG**



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THIS AGREEMENT is dated

BETWEEN:

- (1) **LCH.CLEARNET LIMITED** a company incorporated in England and Wales under number 0025932 whose registered office is at Aldgate House, 33 Aldgate High Street, London EC3N 1EA ("LCH"); and
- (2) **SIX x-clear AG** a company incorporated in Switzerland under number CH-020.3.024.561-6 whose registered office is at Brandschenkestrasse 47, CH-8002 Zurich ("x-clear").

WHEREAS:

- (A) On 6 August 2009, LCH and x-clear executed a Master Clearing Link Agreement.
- (B) This Agreement amends the Master Clearing Link Agreement to enable the Parties to interoperate to clear the Trading Venues operated by Chi-X Europe Limited, BATS Trading Limited, Euronext NV (trading as NYSE Arca Europe) and Turquoise Services Limited.

IT IS AGREED as follows:

## 1. INTERPRETATION

- 1.1 Unless otherwise defined in this Agreement, capitalised terms shall have the same meaning as in the Master Clearing Link Agreement.

## 2. AMENDMENT OF THE MASTER CLEARING LINK AGREEMENT

- 2.1 In text in Clause 3.2 of Schedule 3 and Clause 3.2 of Schedule 4 of the Master Clearing Link Agreement are deleted and replaced with the following:

"Except as agreed between the Parties in a Collateral Side Letter or otherwise:

- (a) LCH shall post collateral with X-clear pursuant to its obligations in Clause 8 of the Agreement by way of a Pledge under a Belgian law-governed pledge agreement, the form of which is set out in Schedule 9.
- (b) X-clear shall post collateral with LCH pursuant to its obligations in Clause 8 of the Agreement by way of a Regular Pledge under a Swiss law-governed pledge agreement, the form of which is set out in Schedule 10."

- 2.2 Clause 21.1(a) of the Master Clearing Link Agreement is deleted in its entirety and replaced with the following Clauses 21.1(aa) and Clause 21.1(ab):

"(aa) the inability by a Party to fulfil its obligations to make payments due with respect to any margin obligations relating to the Balance Position or any LCH-x-clear Contract, where not remedied by 17.30 CET on the day on which such obligations fall due to be satisfied and payment is called for by the other Party unless delayed payment of margin obligations is otherwise agreed by the Parties pursuant to section 5.3 of the Inter-CCP Procedures;

(ab) the inability by a Party to fulfil its obligations to make payments due with respect to the Balance Position or any LCH-x-clear Contract (other than payments due with respect to any margin obligations relating thereto), where not remedied by 12pm (London Time) on the day immediately following the day on which such obligations fall due to be satisfied and payment is called for by the other Party;"

2.3 The Parties agree to amend the Master Clearing Link Agreement by adding the Schedules 5, 6, 7, 8, 9 and 10 that are annexed to this Agreement at Schedule 1.

**3. MISCELLANEOUS**

3.1 The Parties agree that this Agreement, including any Schedules, may be publicly disclosed.

3.2 The following Clauses of the Master Clearing Link Agreement apply, *mutatis mutandis*, to this Agreement:

(a) Clause 1 (Interpretation), Clause 20 (Assignment and Delegation), Clause 25 (Relations with Government Authorities), Clause 29 (Liability), Clause 31 (Illegality), Clause 32 (Severability), Clause 33 (Notices), Clause 34 (Waivers), Clause 37 (Legal Relationship), Clause 38 (Third Parties), Clause 39 (Counterparts), Clause 40 (Governing Law and Jurisdiction), Clause 41 (Dispute Resolution).

**SCHEDULE 1**

**SCHEDULE 5**

**PROVISIONS SPECIFIC TO CLEARING SERVICES FOR NYSE ARCA**

**DEFINITIONS**

In this Schedule the following expressions shall have the following meanings:

“**Adjudicator**” shall mean NYSE Arca or such other person as the Parties may agree from time to time.

“**EuroCCP**” means European Central Counterparty Limited

“**Market Segment**” shall mean those segments of the Main Market, in each case as they relate to equities, depository receipts, exchange-traded funds, exchange-traded commodities and exchange-trade currencies (but not, for the avoidance of doubt, warrants, options or any other interest or derivative referable to an equity), with symbol references which identify the Primary Market MIC for the relevant product as being one of the following:

WBAH; XCSE; XHEL; XETA; MTAA; XDUB; XOSL; XSTO; XVTX; XLON; XBUD; XPRA; XSWX.

“**Main Market**” means NYSE Arca and all of its markets and market segments as at the date of this Agreement, as the same may be extended by agreement of the Parties and provided always that the relevant Trading Venue has requested such extension of competitive clearing.

“**NYSE Arca**” means the multilateral trading facility operated by Euronext N.V.

**1. MARKET SEGMENTS**

The Parties (being, for the purposes of this Schedule, only those Parties to the Agreement who have expressly acceded to this Schedule) agree to provide Clearing Services under this Schedule in respect of the agreed Market Segments of the Main Market.

**2. OTHER PROVISIONS**

**2.1 Co-ordinating Central Counterparty**

The Parties agree that from the date of this Agreement until any later determination under Clause 16, EuroCCP shall be the Co-ordinating Central Counterparty in respect of the Main Market.

**2.2 Collateral**

Except as agreed between the Parties in a Collateral Side Letter or otherwise:

- (a) LCH shall post collateral with X-clear pursuant to its obligations in Clause 8 of the Agreement by way of a Pledge under a Belgian law-governed pledge agreement, the form of which is set out in Schedule 9.

- (b) X-clear shall post collateral with LCH pursuant to its obligations in Clause 8 of the Agreement by way of a Regular Pledge under a Swiss law-governed pledge agreement, the form of which is set out in Schedule 10.



RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG

## SCHEDULE 6

### PROVISIONS SPECIFIC TO CLEARING SERVICES FOR BATS

#### DEFINITIONS

In this Schedule the following expressions shall have the following meanings:

“**Adjudicator**” shall mean BATS or such other person as the Parties may agree from time to time.

“**BATS**” means the multilateral trading facility operated by BATS Trading Limited.

“**EMCF**” means European Multilateral Clearing Facility N.V.

“**Market Segment**” shall mean those segments of the Main Market, in each case as they relate to equities, depository receipts, exchange-traded funds, exchange-traded commodities and exchange-trade currencies (but not, for the avoidance of doubt, warrants, options or any other interest or derivative referable to an equity), with symbol references which identify the Primary Market MIC for the relevant product as being one of the following:

WBAH; XBRU; XCSE; XHEL; XPAR; XETR; MTAA; XDUB; XAMS; XOSL; XLIS; XSTO; XVTX; XLON; XSWX; ETFP

“**Main Market**” means BATS and all of its markets and market segments as at the date of this Agreement, as the same may be extended by agreement of the Parties and provided always that the relevant Trading Venue has requested such extension of competitive clearing.

#### 3. MARKET SEGMENTS

The Parties (being, for the purposes of this Schedule, only those Parties to the Agreement who have expressly acceded to this Schedule) agree to provide Clearing Services under this Schedule in respect of the agreed Market Segments of the Main Market.

#### 4. OTHER PROVISIONS

##### 4.1 Co-ordinating Central Counterparty

The Parties agree that from the date of this Agreement until any later determination under Clause 16, EMCF shall be the Co-ordinating Central Counterparty in respect of the Main Market.

##### 4.2 Collateral

Except as agreed between the Parties in a Collateral Side Letter or otherwise:

- (a) LCH shall post collateral with X-clear pursuant to its obligations in Clause 8 of the Agreement by way of a Pledge under a Belgian law-governed pledge agreement, the form of which is set out in Schedule 9.
- (b) X-clear shall post collateral with LCH pursuant to its obligations in Clause 8 of the Agreement by way of a Regular Pledge under a Swiss law-governed pledge agreement, the form of which is set out in Schedule 10.

## SCHEDULE 7

### PROVISIONS SPECIFIC TO CLEARING SERVICES FOR TURQUOISE

#### DEFINITIONS

In this Schedule the following expressions shall have the following meanings:

“**Adjudicator**” shall mean Turquoise or such other person as the Parties may agree from time to time.

“**EuroCCP**” means European Central Counterparty Limited.

“**Market Segment**” shall mean those segments of the Main Market, in each case as they relate to equities, depository receipts, exchange-traded funds, exchange-traded commodities and exchange-trade currencies (but not, for the avoidance of doubt, warrants, options or any other interest or derivative referable to an equity), with symbol references which identify the Primary Market MIC for the relevant product as being one of the following:

WBAH; XBRU; XCSE; XHEL; XPAR; XETR; MTAA; XDUB; XLUX; XAMS; XOSL; XLIS; XSTO; XVTX; XLON; XPRA; XBUD; XSWX.

“**Main Market**” means Turquoise and all of its markets and market segments as at the date of this Agreement, as the same may be extended by agreement of the Parties and provided always that the relevant Trading Venue has requested such extension of competitive clearing.

“**Turquoise**” means the multilateral trading facility operated by Turquoise Services Limited.

#### 5. MARKET SEGMENTS

The Parties (being, for the purposes of this Schedule, only those Parties to the Agreement who have expressly acceded to this Schedule) agree to provide Clearing Services under this Schedule in respect of the agreed Market Segments of the Main Market.

#### 6. OTHER PROVISIONS

##### 6.1 Co-ordinating Central Counterparty

The Parties agree that from the date of this Agreement until any later determination under Clause 16, EuroCCP shall be the Co-ordinating Central Counterparty in respect of the Main Market.

##### 6.2 Collateral

Except as agreed between the Parties in a Collateral Side Letter or otherwise:

- (a) LCH shall post collateral with X-clear pursuant to its obligations in Clause 8 of the Agreement by way of a Pledge under a Belgian law-governed pledge agreement, the form of which is set out in Schedule 9.
- (b) X-clear shall post collateral with LCH pursuant to its obligations in Clause 8 of the Agreement by way of a Regular Pledge under a Swiss law-governed pledge agreement, the form of which is set out in Schedule 10.



## SCHEDULE 8

### PROVISIONS SPECIFIC TO CLEARING SERVICES FOR CHI-X

#### DEFINITIONS

In this Schedule the following expressions shall have the following meanings:

“**Adjudicator**” shall mean Chi-X or such other person as the Parties may agree from time to time.

“**Chi-X**” means the multilateral trading facility operated by Chi-X Europe Limited.

“**EMCF**” means European Multilateral Clearing Facility N.V.

“**Market Segment**” shall mean those segments of the Main Market, in each case as they relate to equities, depository receipts, exchange-traded funds, exchange-traded commodities and exchange-trade currencies (but not, for the avoidance of doubt, warrants, options or any other interest or derivative referable to an equity), with symbol references which identify the Primary Market MIC for the relevant product as being one of the following:

WBAH; XBRU; XCSE; XHEL; XPAR; XETR; MTAA; XDUB; XAMS; XOSL; XLIS; XSTO; XVTX; XLON; XSWX.

“**Main Market**” means Chi-X and all of its markets and market segments as at the date of this Agreement, as the same may be extended by agreement of the Parties and provided always that the relevant Trading Venue has requested such extension of competitive clearing.

#### 7. MARKET SEGMENTS

The Parties (being, for the purposes of this Schedule, only those Parties to the Agreement who have expressly acceded to this Schedule) agree to provide Clearing Services under this Schedule in respect of the agreed Market Segments of the Main Market.

#### 8. OTHER PROVISIONS

##### 8.1 Co-ordinating Central Counterparty

The Parties agree that from the date of this Agreement until any later determination under Clause 16, EMCF shall be the Co-ordinating Central Counterparty in respect of the Main Market.

##### 8.2 Collateral

Except as agreed between the Parties in a Collateral Side Letter or otherwise:

- (a) LCH shall post collateral with X-clear pursuant to its obligations in Clause 8 of the Agreement by way of a Pledge under a Belgian law-governed pledge agreement, the form of which is set out in Schedule 9.
- (b) X-clear shall post collateral with LCH pursuant to its obligations in Clause 8 of the Agreement by way of an Regular Pledge under a Swiss law-governed pledge agreement, the form of which is set out in Schedule 10.



**SCHEDULE 9**  
**FORM OF BELGIAN LAW GOVERNED PLEDGE**



RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG

**LCH.CLEARNET LIMITED**  
(as LCH)

- and -

**SIX X-CLEAR AG**  
(as [CCP])

**PLEDGE AGREEMENT**

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THIS PLEDGE AGREEMENT is made on the date stated on the execution page of this document (this "Pledge Agreement")

BETWEEN:

- (1) LCH.Clearnet Limited, a company incorporated in England and Wales (registered number 0025935 whose registered office is at Aldgate House, 33 Aldgate High Street, London, EC3N 1EA ("LCH"); and
- (2) SIX x-clear AG, a company incorporated in Switzerland under number CH-020.3.024.561-6 whose registered office is at Brandschenkestrasse 47, CH-8002 Zurich ("[CCP]").

WHEREAS:

- (A) [CCP] and LCH provide an interoperable central counterparty clearing structure between them so as to permit the clearing of certain products through either LCH or [CCP].
- (B) In connection with the above mentioned arrangements, LCH is to grant to [CCP] a pledge over cash and a portfolio of securities deposited in Euroclear, a securities custody and clearing system operated in Brussels by Euroclear Bank SA/NV ("Euroclear") and recognised as a central depository for the purposes of the Belgian Royal Decree No. 62, to secure the payment or discharge of the Secured Sums (as defined below).
- (C) [CCP] is a participant in Euroclear, and is authorised pursuant to its regulatory status to maintain securities accounts.

IT IS AGREED as follows:

## 1. DEFINITIONS

The following expressions shall have the following meanings:

"Agreement" means the Link Agreement, the Inter-CCP Procedures and, where applicable, the Rules.

"Default Event" has the meaning attributed to it in the Link Agreement.

"Default Notice" means a notice sent by [CCP] to LCH declaring a Default Event in accordance with clause 21 of the Link Agreement.

"Eligible Securities" means securities agreed, between the parties, as being of sufficient quality to be pledged under this Pledge Agreement.

"Euroclear Cash" means all cash from time to time credited to the Euroclear Cash Account.

"Euroclear Cash Account" means the cash account (as defined in the Operating Procedures of the Euroclear System, as amended from time to time) in the Euroclear System in the name of [CCP] associated with the Euroclear Securities Account.

"Euroclear Distributions" means all amounts payable to [CCP] in respect of Euroclear Entitlements from time to time, whether by way of dividend, interest, return of capital or otherwise.

**"Euroclear Entitlements"** means, in relation to any Euroclear Securities, the entitlements, whether to cash or securities, and all related rights of any kind relating to such Euroclear Securities, standing from time to time to the credit of the Euroclear Securities Account or the Euroclear Cash Account, including any Euroclear Distributions.

**"Euroclear Securities Account"** means the Securities Clearance Account (as defined in the Operating Procedures of the Euroclear System, as amended from time to time) specified in the Schedule to this Pledge Agreement and opened in the name of [CCP] pursuant to the Euroclear SPPA Terms and Conditions.

**"Euroclear SPPA Terms and Conditions"** means the Single Pledgor Pledged Account Terms and Conditions (2006 Edition) issued by Euroclear governing the pledging of accounts through the Euroclear System pursuant to Article 7 of the Royal Decree No. 62 and any other Belgian laws to which the Euroclear Single Pledgor Pledged Account Terms and Conditions are from time to time expressed to apply and as amended, supplemented, restated or replaced from time to time by Euroclear.

**"Euroclear Securities"** means all Eligible Securities now or in the future deposited with or transferred by or on behalf of LCH to [CCP] in Euroclear for the credit of the Euroclear Securities Account, including all interests and rights in relation to such securities for the time being held in Euroclear.

**"Euroclear System"** means the clearance and settlement system for internationally traded securities operated under contract by Euroclear, including all services offered by Euroclear in respect of securities held or recorded in any account as set forth in the Terms and Conditions Governing Use of Euroclear or in the Operating Procedures of the Euroclear System as amended, supplemented, restated or replaced from time to time by Euroclear.

**"Financial Collateral Law"** means the law of 15 December 2004 on financial collateral arrangements, as amended from time to time.

**"Inter-CCP Procedures"** has the meaning attributed to it in the Link Agreement.

**"Link Agreement"** means the Master Clearing Link Agreement between LCH and [CCP], as amended from time to time.

**"Margin Amounts"** means collateral provided by virtue of clause 8.3 of the Link Agreement.

**"Margined Value"** means with respect to an Eligible Security, the market value of that Eligible Security (including any accrued interest on that Eligible Security) calculated in accordance with the margin methodology applied by [CCP].

**"Pledged Accounts"** means the Euroclear Cash Account and the Euroclear Securities Account.

**"Required Collateral Amount"** means the amount of collateral to be delivered by LCH in accordance with clause 8 of the Link Agreement, as notified to LCH by [CCP] in accordance with clause 33 of the Link Agreement.



"**Royal Decree No. 62**" means the Royal Decree No. 62 of November 10, 1967 concerning the custody of fungible financial instruments and the settlement of transactions in respect of these instruments (as co-ordinated), as amended from time to time.

"**Rules**" means the rules and procedures established by [CCP] which are from time to time in force in relation to participants in the [CCP] system, insofar as applicable to LCH or expressly referred to in this Pledge Agreement.

"**Security Interest**" means:

- (a) any mortgage, charge, pledge, assignment (whether or not expressed to be by way of security), hypothecation, lien, encumbrance or other priority or security interest whatsoever, howsoever created or arising;
- (b) any deferred purchase, title retention, trust, sale-and-repurchase, sale-and-leaseback, hold back or "flawed asset" arrangement or right of set-off;
- (c) any other agreement or arrangement whatsoever having the same or a similar commercial or economic effect as security; and
- (d) any agreement for any of the foregoing.

"**Secured Sums**" means all money and liabilities whatsoever now or in the future (whether before or after the service of a Default Notice) due, owing or incurred by LCH to [CCP] (whether solely or jointly, or jointly and severally, with another or others, and whether as principal or surety, and whether actual or contingent, present or future), under or in connection with the Agreement and also including (whether before or after any judgment) all interest, costs and other charges whatsoever, in each case whether recorded in [CCP]'s books of account or other account of LCH or otherwise.

"**Termination Event**" means the circumstances, other than those which amount to a Default Event (as defined in the Link Agreement) set out in clause 22 of the Link Agreement in which the parties may terminate the Link Agreement.

## 2. CREATION OF PLEDGE

2.1 LCH and [CCP] acknowledge and agree that the Euroclear Securities, the Euroclear Entitlements and all rights, title and interest of LCH in and to the Pledged Accounts are hereby pledged by LCH to [CCP] to secure the payment or discharge of the Secured Sums.

2.2 For the avoidance of doubt, clause 2.1 shall be construed as creating a first ranking commercial pledge (*gage commercial/handelspand*) under the law of 5 May 1872 and Article 7 of the Royal Decree No. 62 and a financial collateral arrangement (*financiële zekerheidsovereenkomst/ contrat de garantie financière*) under Article 4 of the Financial Collateral Law, which pledge shall constitute a priority right to payment out of the assets pledged (*sûreté réelle/zakelijke zekerheid*). To that effect, [CCP], LCH and Euroclear have entered into an agreement with Euroclear accepting the Euroclear SPPA Terms and Conditions. Securities shall become subject to the pledge hereby created immediately upon being transferred to the Euroclear Securities Account in accordance with the Royal Decree No. 62.

LCH acknowledges that the Euroclear Cash, whether such monies proceed from the sale or repayment of Euroclear Securities or otherwise, represents a claim against Euroclear which is owed to [CCP] exclusively, and that LCH has no right whatsoever against

Euroclear in respect of such monies or claim. Should, however, LCH have any such right pursuant to mandatory provisions of Belgian law or otherwise, then LCH hereby pledges such rights to [CCP] as security for the Secured Sums. In case of discrepancy between this Pledge Agreement and the Euroclear SPPA Terms and Conditions, the Euroclear SPPA Terms and Conditions shall prevail.

- 2.3 LCH hereby also pledges to [CCP], as security for the Secured Sums, any claims LCH may have against [CCP] in connection with such monies and any proceeds of the Euroclear Securities that may be from time to time be held by or for the account of [CCP], whether such proceeds result from a sale, a repayment of principal, interest payments or otherwise.
- 2.4 This pledge shall rank ahead of the right of preference of qualified intermediaries and clearing- and settlement houses as contemplated in Article 31 of the Belgian law of 2 August 2002 on the supervision of the financial sector and financial services, save as expressly provided otherwise in the Euroclear SPPA Terms and Conditions.
- 2.5 The parties shall treat each of the Pledged Accounts as a special account specifically opened for the purpose of holding collateral, whether or not exclusively in the context of this Pledge Agreement, and each of the parties undertakes that it will not use any Pledged Account for any other purposes.
- 2.6 For the avoidance of doubt, the pledge created hereby shall apply to all securities transferred to the Pledged Accounts pursuant to the Agreement.
- 2.7 All money received or realised under the powers conferred by this Pledge Agreement shall be applied for the purposes and in the manner determined by [CCP] in accordance with the Agreement.

### 3. DEPOSITS IN THE PLEDGED ACCOUNTS

- 3.1 LCH shall cause all such Eligible Securities and cash to be transferred to the Euroclear Securities Account and the Euroclear Cash Account such that the Margined Value of the Euroclear Securities, when aggregated with the value of any Euroclear Cash, is at least equal to the Required Collateral Amount and as required in each case to comply at all times with its obligations under the Agreement.
- 3.2 LCH shall procure that, so far as it is able, following any crediting of securities to the Euroclear Securities Account, Euroclear shall confirm to [CCP] that such securities have been transferred to the Euroclear Securities Account.
- 3.3 LCH shall procure that, so far as it is able, except to the extent that [CCP] or its representative (acting on the written instructions of [CCP]) otherwise agrees and except as otherwise provided in clause 6 below, all Euroclear Distributions are credited to the Euroclear Cash Account.
- 3.4 The parties agree that the Euroclear Securities shall be subject to the fungibility regime organised by the Royal Decree No. 62.
- 3.5 The parties acknowledge and agree that the pledge created under this Pledge Agreement is governed by the Financial Collateral Law. All questions relating to matters referred to in article 17, § 2 of the Financial Collateral Law arising in relation to book entry securities collateral under this Pledge Agreement shall be treated by the parties as governed by



Belgian law (being the law of the jurisdiction where the Pledged Accounts are maintained).

4. **SUBSTITUTION**

- 4.1 As long as the pledge created by this Pledge Agreement has not become enforceable in accordance with Clause 7.1, LCH will have the right to deliver a notice to [CCP] to substitute all or part of the Euroclear Securities by other Eligible Securities. [CCP] hereby consents to any such substitution, subject to Clause 4.2 and shall instruct Euroclear to perform such substitution.
- 4.2 The substitution under clause 4.1 will occur simultaneously. The withdrawal of the Euroclear Securities from the Euroclear Securities Account will be made by Euroclear against simultaneous crediting of the new Eligible Securities to the Euroclear Securities Account. Following such substitution, the Margined Value of the Euroclear Securities, when aggregated with the value of any Euroclear Cash, will be at least equal to the Required Collateral Value.
- 4.3 The parties hereto agree that a substitution of Euroclear Securities in accordance with this Clause 4, will not affect the continuity of the pledge created in accordance with this Pledge Agreement. The parties hereto acknowledge that the new Euroclear Securities will be deemed to be pledged under the same conditions as the substituted Euroclear Securities. As from the substitution in accordance with this Pledge Agreement, all references to Euroclear Securities in this Pledge Agreement will be deemed to include the new Euroclear Securities. The parties hereto agree that the new Euroclear Securities will be deemed equivalent to the Euroclear Securities that are replaced.
- 4.4 Such substitution shall not constitute a release of the pledge granted hereunder (except in respect of the particular securities substituted) and all Euroclear Securities which from time to time stand to the credit of the Euroclear Securities Account shall remain subject to this pledge.
- 4.5 LCH shall bear all costs, taxes and expenses related to such substitution of Euroclear Securities.

5. **MARGIN ADJUSTMENTS**

- 5.1 The parties agree that the Margined Value of all Euroclear Securities, when aggregated with the value of any Euroclear Cash, will at all times be at least equal to the Required Collateral Amount.
- 5.2 Upon the notification by [CCP] to LCH of a new Required Collateral Amount (a new Required Collateral Amount) in accordance with clause 8.3 of the Link Agreement:
- (a) if such new Required Collateral Amount is higher than the Required Collateral Amount applicable immediately before such notification (the previous Required Collateral Amount), LCH shall immediately transfer additional Eligible Securities or cash into the Euroclear Securities Account or the Euroclear Cash Account, respectively, so as to ensure that the Margined Value of all Euroclear Securities, aggregated with the value of any Euroclear Cash is at least equal to the new Required Collateral Amount; and

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(b) if such new Required Collateral Amount is lower than the previous Required Collateral Amount, LCH may deliver a notice to [CCP] to transfer Euroclear Securities for a Margined Value equal to the difference between the previous Required Collateral Amount and the new Required Collateral Amount into an account nominated by LCH, it being understood that the Margined Value of the remaining Euroclear Securities aggregated with the value of any Euroclear Cash must at least be equal to the new Required Collateral Amount. Upon receipt of such notice, [CCP] shall immediately instruct Euroclear to make the required transfer.

5.3 The parties agree that the provision of additional security in accordance with Clause 5.2 (a) will not affect the continuity of the pledge created in accordance with this Pledge Agreement. The parties hereto acknowledge that the additional Euroclear Securities will be deemed to be pledged under the same conditions as the original Euroclear Securities. As from the provision of additional security in accordance with Clause 5.2 (a), all references to "Euroclear Securities" in this Pledge Agreement will be deemed to include such additional Euroclear Securities.

5.4 The parties agree that upon a transfer of Euroclear Securities from the Euroclear Securities Account into an account nominated by LCH in accordance with Clause 5.2 (b), such transferred securities will be released from the pledge created under this Pledge Agreement.

5.5 LCH shall bear all costs, taxes and expenses related to such transfers.

#### 6. RELEASES FROM THE PLEDGED ACCOUNTS

6.1 Unless and until a Default Notice is served by [CCP] to LCH, [CCP] will immediately upon receipt of any and all Euroclear Distributions on the Euroclear Securities Account and/or the Euroclear Cash Account instruct Euroclear to transfer such Euroclear Distributions to such account as nominated by LCH subject to and in accordance with this Pledge Agreement. All Euroclear Distributions will be released from the pledge created under this Pledge Agreement from the time they are transferred into an account nominated by LCH in accordance with Clause 6.1.

6.2 Unless and until a Default Notice is served by [CCP] to [LCH], [LCH] may by notice to [CCP] request that Euroclear Cash be transferred to an account designated by LCH. [CCP] shall instruct Euroclear to effect such transfer requested by LCH unless, as a result of the transfer, the Margined Value of the Euroclear Securities, when aggregated with the value of any remaining Euroclear Cash, would be less than the Required Collateral Amount.

6.3 Unless and until a Default Notice is served by [CCP] to LCH, [CCP] will immediately upon receipt of any further or new securities (whether by way of bonus, rights, conversion, merger, reconstruction or otherwise) which may be issued in respect of any Euroclear Securities on the Euroclear Securities Account instruct Euroclear to transfer such securities to such account as nominated by LCH subject to and in accordance with this Pledge Agreement. Such securities will be released from the pledge created under this Pledge Agreement from the time they are transferred into an account nominated by LCH in accordance with Clause 6.1.

- 6.4 [CCP] shall instruct Euroclear to transfer securities to and from the Euroclear Securities Account strictly in accordance with the terms of this Pledge Agreement (and as may be required in accordance with Clause 4, 5 and 6 of this Pledge Agreement).
- 6.5 Save as otherwise provided in Clauses 4, 5 and 6.1, 6.2, 6.3 and 6.4, the Euroclear Securities, the Euroclear Entitlements and any other assets pledged under this Pledge Agreement and any Euroclear Cash shall be exclusively under the possession and control of [CCP] or its agent. Other than as provided in Clause 4.1, [CCP] shall not accept any instructions from LCH to dispose of the Euroclear Securities, the Euroclear Entitlements or any other assets pledged under this Pledge Agreement so long as such assets remain pledged under this Pledge Agreement.
- 6.6 [CCP] shall not be obliged to give an instruction pursuant to clauses 6.1, 6.2, 6.3 or 6.4 if doing so would cause a breach of the provisions of this Pledge Agreement or otherwise in any way jeopardise the pledge created by this Pledge Agreement or the same would violate any applicable law, decree, regulation or order of any government or governmental body.
- 6.7 If LCH ceases to be a party to the Link Agreement with [CCP], [CCP] shall give such directions to Euroclear in relation to the Euroclear Securities Account and the Euroclear Cash Account (pursuant to the Euroclear SPPA Terms and Conditions) as LCH may reasonably request after all Secured Sums have been fully and unconditionally paid or discharged to [CCP] (or, if contingent, have wholly ceased to be capable of arising) and after LCH has become entitled under the Agreement to request the release of the pledge created by this Pledge Agreement.
- 6.8 LCH shall bear all costs, taxes and expenses related to such transfers.
7. ENFORCEMENT
- 7.1 This Pledge Agreement will become immediately enforceable if a Default Notice is served by [CCP] to LCH. The taking of enforcement action by [CCP] shall not preclude [CCP] from taking further enforcement action on the occurrence of any other Default Event.
- 7.2 If and whenever this Pledge Agreement becomes enforceable, [CCP] (or a custodian acting on its behalf) may exercise its powers under this Pledge Agreement in relation to all or such part of the Euroclear Securities, the Euroclear Entitlements and all other assets pledged under this Pledge Agreement (the "Charged Property") in such manner and at such time or times as it thinks fit.
- 7.3 [CCP] may enforce the pledge over the Charged Property created by this Pledge Agreement in accordance with the procedures set out in the Financial Collateral Law, in particular articles 8, §1 and §2, or any other relevant law, and without the need for prior authorization from the Belgian courts. This means that at any time after the pledge created by this Pledge Agreement has become enforceable, [CCP] may, without any prior notice to LCH, appropriate with immediate effect the Charged Property and apply it by way of set-off in or towards the discharge of the Secured Sums in accordance with the Agreement.
- 7.4 The value of any Euroclear Securities or other Charged Property appropriated under clause 7.3 shall be the market price for those Euroclear Securities at the time of appropriation, as determined after appropriation by [CCP] on the basis of the market price obtained from any generally recognised source specified in the Agreement (converted, where necessary, into sterling on the basis set out in the Agreement).



- 7.5 LCH agrees that (i) all Euroclear Securities referred to in clause 7.1 have been delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of [CCP] or a person acting on its behalf, and (ii) the method of valuing Euroclear Securities or other Charged Property under clause 7.4 is commercially reasonable.
- 7.6 [CCP] is entitled, as an additional or alternative means of enforcement of the pledge under this Pledge Agreement, to sell or otherwise dispose of the Charged Property at the best price reasonably obtainable in the market and to set off the price received from the sale of the Charged Property against the Secured Sums in accordance with the Agreement.
- 7.7 [CCP] will account to LCH for any amount by which the value of the appropriated or otherwise enforced Euroclear Securities and other Charged Property exceeds the Secured Sums then due and LCH shall account to [CCP] for any amount by which the value of the appropriated or otherwise enforced Euroclear Securities and other Charged Property is less than the Secured Sums then due.
- 7.8 Without prejudice to its other rights under this Pledge Agreement and as a separate and independent stipulation, LCH agrees that, following the delivery of a Default Notice, any Euroclear Cash may, without notice to LCH, be applied and set off in or towards the discharge of the Secured Sums or such part of them as [CCP] may select, regardless of the place of payment, delivery and/or currency of the obligation, subject only to the provisions of clause 2.7.
- 7.9 [CCP] may make any currency conversion necessary to give effect to such set-off. If any obligation is unliquidated or unascertained, [CCP] may set off an amount estimated by it in good faith to be the amount of that obligation. [CCP] will endeavour to notify LCH following the exercise of any such right of set-off but any failure to do so will not affect the validity of such right or its exercise.

## 8. REPRESENTATIONS AND WARRANTIES

- 8.1 LCH represents and warrants to [CCP] that:
- (a) LCH has the corporate power, and has taken all necessary action, to execute and perform this Pledge Agreement;
  - (b) this Pledge Agreement constitutes legal, valid and binding obligations enforceable against LCH and creates the Security Interests expressed to be created by this Pledge Agreement;
  - (c) all Eligible Securities are or will (at the time of their becoming part of the Euroclear Securities) be fully paid up;
  - (d) LCH has obtained all authorisations of any governmental or regulatory body required in connection with execution and performance of this Pledge Agreement and such authorisations are in full force and effect;
  - (e) the execution and performance of this Pledge Agreement has not, and will not, violate any law, ordinance, charter, by-law or rule applicable to LCH or any agreement by which it is bound or by which any of its assets are affected; and

(f) LCH is acting as principal in entering into this Pledge Agreement and performing its obligations under each of them.

8.2 LCH also represents and warrants to [CCP] that:

- (a) all property and rights hereby pledged will comprise "financial instruments" within the meaning of the Financial Collateral Law; and
- (b) at the time of each transfer of Eligible Securities to the Euroclear Securities Account, LCH will be the full owner of them and will have the full and unqualified right to make such transfer and, upon such transfer being effected, all right, title and interest in and to such Euroclear Securities shall stand pledged to [CCP] on the terms of this Pledge Agreement, and in particular free of any Security Interest in favour of any third party.

8.3 On each day on which such a transfer is effected, the representations and warranties stated in clauses 8.1 and 8.2 shall be deemed to be repeated.

## 9. NEGATIVE PLEDGE AND OTHER RESTRICTIONS

LCH shall not, without the prior written consent of [CCP]:

- (a) create, or agree or attempt to create, or permit to subsist, any Security Interest (or irrevocable mandate to create the same) or any trust over any Euroclear Securities or Euroclear Cash, or permit any lien (other than a lien arising by operation of law in the ordinary course of LCH's business or, if applicable, a lien arising in favour of Euroclear) to arise or subsist over any Euroclear Securities or any Euroclear Cash;
- (b) sell, transfer or otherwise dispose of any part of the Euroclear Securities or Euroclear Cash or any of its right, title or interest therein;
- (c) withdraw, or attempt to withdraw, any Euroclear Securities or Euroclear Cash from any account with Euroclear, except as permitted under this Pledge Agreement or if and insofar as expressly permitted by [CCP];
- (d) consent to any Euroclear Securities being consolidated, sub-divided or converted or any rights attaching to them being varied.

## 10. SCOPE OF THE PLEDGE

- 10.1 This pledge shall be a continuing security, shall remain in force until expressly released in accordance with clause 11.1 and shall in particular not be discharged by reason of the circumstance that there are at any time no Secured Sums currently owing from LCH to [CCP].
- 10.2 This pledge shall not be discharged by the entry of any Secured Sums into any current account, in which case this pledge shall secure any provisional or final balance of such current account up to the amount in which the Secured Sums were entered therein.
- 10.3 [CCP] may at any time without discharging or in any way affecting this pledge (a) grant LCH any time or indulgence, (b) concur in any moratorium of the Secured Sum, (c) amend the terms and conditions of the Secured Sums, (d) abstain from taking or

perfecting any other security and discharge any other security, (e) abstain from exercising any right or recourse or from proving or claiming any debt and waive any right or recourse.

**11. DISCHARGE OF PLEDGE**

11.1 This pledge shall be discharged by, and only by, the express release thereof granted by [CCP].

11.2 [CCP] shall grant an express release of this pledge, without delay upon demand of LCH, as soon as all Secured Sums shall have been finally discharged and there is no possibility of any further Secured Sum coming into existence. Forthwith upon such release being granted, [CCP] shall transfer the Euroclear Securities and the Euroclear Cash to such accounts as LCH may designate.

11.3 Any release of this pledge shall be null and void and without effect if any payment received by [CCP] and applied towards satisfaction of all or part of the Secured Sums (a) is avoided or declared invalid as against the creditors of the maker of such payment, or (b) becomes repayable by [CCP] to a third party, or (c) proves not to have been effectively received by [CCP].

**12. PAYMENT OF CALLS**

LCH shall promptly pay all calls, fees, charges, fines and other amounts which may become due in respect of any Euroclear Securities. If LCH fails to do so, [CCP] shall be entitled to pay them and the amount of any such payment made by [CCP] shall be added to and form part of the Secured Sums.

**13. COSTS, EXPENSES AND INDEMNITY**

13.1 LCH shall indemnify [CCP] fully against all liabilities which [CCP] may incur under or in connection with this Pledge Agreement or in exercise of any rights or powers conferred on [CCP] by this Pledge Agreement, except if and insofar as any such liability results from [CCP]'s own gross negligence or wilful default.

13.2 If, for any reason, any amount payable to [CCP] by LCH under this Pledge Agreement is paid or recovered in a currency other than that in which it is required to be paid, then, to the extent that the payment to [CCP] falls short of the amount payable in the contractual currency, LCH shall fully indemnify [CCP] on demand for such shortfall.

13.3 LCH shall reimburse or pay to [CCP] on demand (on the basis of a full indemnity) the amount of all liabilities incurred by [CCP] in connection with the exercise, or the attempted or purported exercise, by or on behalf of [CCP] of any of its powers or any other action taken by or on behalf of [CCP] with a view to or in connection with the recovery of the Secured Sums, the realisation of the security interest created in this Pledge Agreement, the preservation of the Euroclear Securities or any other purpose contemplated in this Pledge Agreement, except and insofar as any such liability results from [CCP] own gross negligence or wilful default.

13.4 LCH shall pay all present and future stamp, registration and similar taxes or charges which may be payable in connection with the execution or enforcement of this Pledge Agreement and shall indemnify [CCP] against all liabilities (including penalties) resulting



from any delay or omission to pay any such stamp, registration and similar taxes or charges.

**14. POWER OF ATTORNEY**

14.1 For the purposes of securing the interest of [CCP] in the Euroclear Securities and the performance of its obligations to [CCP] under the Agreement, LCH hereby irrevocably appoints [CCP] to be its attorney (with full power to appoint substitutes and to sub-delegate, including power to authorise the person so appointed to make further appointments, in both cases, with regard to all or any part of the Euroclear Securities and the Euroclear Cash) on behalf of LCH and in its name or otherwise:

- (a) to execute any document or do any act or thing which [CCP] or Euroclear or such substitute or delegate may, in its absolute discretion, consider appropriate in connection with the exercise of any of the powers of [CCP] or which LCH is obliged by [CCP] to execute or do under the Agreement;
- (b) to act on behalf of LCH with full authority to communicate with Euroclear in all matters relating to the Euroclear Securities and the Euroclear Cash and, without limitation, to send and receive messages and instructions on behalf of LCH with respect to the Euroclear Securities or the Euroclear Cash,

in each case as may be required for the continued validity and enforceability of the pledge created under this Pledge Agreement.

14.2 The power of attorney contained in clause 14.1 shall be exercisable by [CCP] or Euroclear at any time or times as [CCP] thinks fit in its entire discretion (without the necessity for any Termination Event or any other condition having been fulfilled first) and shall continue in force until the security interests constituted by this Pledge Agreement are absolutely and unconditionally released in writing by [CCP].

**15. FORBEARANCE, SEVERABILITY, VARIATION**

15.1 No failure to exercise and no delay on the part of [CCP] in exercising any right, remedy, power or privilege under the Agreement and no course of dealing between the parties shall be construed or operate as a waiver of that right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of it or the exercise of any other right, remedy, power or privilege. The rights and remedies provided by the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

15.2 If any provision of this Pledge Agreement is held to be illegal, invalid or unenforceable in whole or in part, this Pledge Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

15.3 No variation, supplement, deletion or replacement of or from this Pledge Agreement or any of its terms shall be effective unless made in writing and signed by or on behalf of each party.

**16. DEMANDS, NOTICES ETC**

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Any demand or notice to LCH under this Pledge Agreement shall be effective only if made in writing by an officer of [CCP] and served on LCH in accordance with the Agreement.

Any demand or notice to [CCP] under this Pledge Agreement shall be effective only if made in writing by an officer of LCH and served on [CCP] in accordance with the Agreement.

17. GOVERNING LAW AND JURISDICTION

17.1 This Pledge Agreement shall be governed by and construed in accordance with Belgian law.

17.2 LCH hereby irrevocably agrees for the exclusive benefit of [CCP] that the courts of Brussels have jurisdiction to settle any disputes which may arise out of or in connection with the validity, effect, interpretation or performance of, or the legal relationships established by, this Pledge Agreement and that accordingly any suit, action or proceeding arising out of or in connection with this Pledge Agreement (in this clause referred to as "Proceedings") may be brought in such courts.

17.3 LCH hereby irrevocably waives (and irrevocably agrees not to raise) any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in this clause and any claim that any such Proceedings have been brought in an inconvenient forum and undertakes not to attempt or apply to have any such Proceedings which are brought in such court stayed, suspended or dismissed on any ground as is referred to above, and further irrevocably agrees that a judgment in any Proceedings brought in any such court as is referred to in this clause shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction.

17.4 Nothing in this Pledge Agreement precludes [CCP] from bringing Proceedings in any other country which may have jurisdiction to whose jurisdiction LCH irrevocably submits nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

THIS PLEDGE AGREEMENT has been executed in two copies by LCH and [CCP] (each party acknowledging receipt of one signed and initialled copy) and this Pledge Agreement shall come into force on 2010 (being the date on which it was accepted and executed by [CCP]).

This Pledge Agreement was executed outside Belgium.

EXECUTED by  
LCH.Clearnet Limited  
acting by its attorney:

.....  
Attorney

.....  
Witness

Name:

RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG

**SCHEDULE**

**Euroclear Securities Account details**

<b>Account Number:</b>	Euroclear 25899 - SIS X-Clear
<b>CSD Number:</b>	Euroclear Bank 19358

RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG



**SCHEDULE 10**  
**FORM OF SWISS LAW GOVERNED REGULAR PLEDGE**

RELEASED BY LCH.CLEARNET LIMITED AND SIX X-CLEAR AG

**PLEDGE AGREEMENT**

between

**LCH.CLEARNET LIMITED**

(as Pledgee)

and

**SIX x-clear AG**

(as Pledgor)

and

**SIX SIS AG**

(as Custodian)

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**THIS PLEDGE AGREEMENT is dated** \_\_\_\_\_

**BETWEEN:**

- 1) **LCH.Clearnet Limited**, of Aldgate House, 33 Aldgate High Street, London EC3N 1EA, United Kingdom, ("**LCH**"); and
- 2) **SIX x-clear AG**, a company incorporated in Switzerland under number CH-020.3.024.561-6 whose registered office is at Brandschenkestrasse 47, CH-8002 Zurich, Switzerland, ("**x-clear**"); and
- 3) **SIX SIS AG**, a company incorporated in Switzerland under number CH-249.3.003.233-8 whose registered office is at Baslerstrasse 100, CH-4600 Olten, Switzerland, ("**SIS**").

**WHEREAS:**

- A) LCH is a recognised clearing house under the Act and a designated system pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (as amended) enacted pursuant to Directive 98/26/EC on settlement finality in payment and securities settlement systems.
- B) x-clear is authorised as a bank by the FINMA and is also, as a systemically important system, subject to the oversight of the SNB. x-clear is also a recognised overseas clearing house under the Act. x-clear has applied for designation as a "system" pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (as amended) enacted pursuant to Directive 98/26/EC on settlement finality in payment and securities settlement systems.
- C) x-clear and LCH operate an interoperable central counterparty structure in relation to certain trading platforms under a link agreement between x-clear and LCH dated 6th August 2009 (hereinafter: "**Master Clearing Link Agreement**") which permits the clearing of certain products traded on the trading platforms as defined in the Master Clearing Link Agreement through either LCH or x-clear or both.
- D) In respect of Mixed Member Transactions entered into by an LCH Clearing Member and an x-clear Clearing Member, which are registered with LCH and x-clear in accordance with their respective Rules, LCH - x-clear Contracts will

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arise between LCH and x-clear and be reflected in a Balance Account maintained by each Party.

- E) x-clear intends to provide Collateral (as defined below) to secure the performance of its obligations to LCH under the Master Clearing Link Agreement and especially as risk Cover for LCH for the time between the matching of orders and the settlement of the resulting LCH – x-clear Contracts, should x-clear fail to fulfil its obligations arising from such LCH – x-clear Contracts, whether wholly or in part.
- F) In connection with the above mentioned arrangements, x-clear is to grant to LCH a Swiss law governed regular pledge over a portfolio of securities deposited in SIS in accordance with Art. 24 Swiss Federal Act on Intermediated Securities (hereinafter: "FISA") and/or a Swiss law governed pledge over a currency account maintained by SIS to secure the payment or discharge of the Secured Obligations (as defined below).

**IT IS AGREED** as follows:

**A. Definitions and Interpretation**

1. Capitalised terms used in this Pledge Agreement shall have the meanings given to them in the Master Clearing Link Agreement, unless separately defined herein or unless the context otherwise requires.
2. In addition, the following terms shall have the following meanings:

**"Collateral Procedures"** means that part of the LCH Regulations relating to the provision of eligible securities and eligible currency as Cover for Margin requirements pursuant to the requirements of the LCH Regulations.

**"Cover"** and **"Margin"** shall have the meaning given to such terms in the LCH Regulations.

**"Eligible Currency"** means currency determined as being so acceptable under the provisions of the Collateral Procedures.

**"Eligible Securities"** means eligible securities determined as being so acceptable under the provisions of the Collateral Procedures including,

without limitation, any listed, certificated and uncertificated debt securities issued by the Swiss Federal Government.

"Parties" means the Pledgor and the Pledgee.

"Pledgee" means LCH as the receiving party of Collateral (as defined below).

"Pledgor" means x-clear as the providing party of Collateral (as defined below).

"SIS" means SIX SIS AG, a national (CSD) and international (ICSD) central securities depository regulated as a bank under the laws of Switzerland with its domicile at Baslerstrasse 100, 4601 Olten, Switzerland, being a subsidiary of the SIX Group.

#### **B. Pledging of Collateral**

3. Without prejudice to clause 8 of the Master Clearing Link Agreement and the LCH Regulations, x-clear hereby agrees to pledge and pledges the collateral provided to LCH in the form of Eligible Securities ("**Securities Collateral**") or Eligible Currency ("**Currency Collateral**") (Eligible Securities and Eligible Currency together the "**Collateral**") in accordance with LCH's margin requirements (as stipulated in the LCH Regulations), as security for the performance by x-clear of all of its present and future obligations owing to LCH under the Master Clearing Link Agreement, the LCH Regulations and any LCH – x-clear Contracts, including Margin and all court or out-of-court expenses and costs incurred in connection with any default as defined in the LCH Regulations or with the realisation of the Collateral with respect to the relevant trading venue (hereinafter: the "**Secured Obligations**").
4. The amount of Collateral to be provided by x-clear to LCH hereunder shall be calculated in accordance with the calculation method for Initial Margin and Variation Margin specified in the LCH Regulations. The procedures for the release of any excess in the amount of Collateral provided by x-clear to LCH hereunder shall be as set out in the Collateral Procedures.
5. The pledge shall extend to all lapsed, current and future ancillary rights of the Collateral including, without limitation, interest, dividends, and pre-emption rights.



6. In case of Collateral being provided in form of Securities Collateral:
  - a) The Securities Collateral must be delivered by x-clear to a collateral account, held in the name of LCH with SIS ("Securities Collateral Account").
  - b) The Securities Collateral is provided in the form of intermediated securities in the meaning of Art. 3 FISA by booking these securities in the Securities Collateral Account in accordance with Art. 24 FISA.
  - c) SIS herewith waives in respect to x-clear any and all rights of retention and security interests it might have in the assets held in the Securities Collateral Account of LCH.
  - d) LCH herewith authorises x-clear to monitor its Securities Collateral Account held by SIS.
7. In case of Collateral being provided in form of Currency Collateral:
  - a) The Currency Collateral must be delivered by x-clear to a collateral account, held in the name of x-clear with SIS ("Currency Collateral Account").
  - b) The Currency Collateral may only be surrendered by SIS to x-clear with LCH's consent.
  - c) x-clear herewith authorises LCH to monitor its Currency Collateral Account held by SIS.

### C. Representation and Warranties

8. x-clear hereby, and upon any transfer of Securities Collateral, represents and warrants to LCH that any Securities Collateral provided to LCH hereunder does not belong to any x-clear Clearing Member and is its sole property free of proprietary rights (including any rights to intermediated securities under Federal Act on Intermediated Securities) of any third party and is not credited to a securities account of a third party.
9. x-clear hereby, and upon any transfer of Collateral, represents and warrants to LCH that such Collateral are not deposited assets under Article 16 of the Federal Act on Banks and Saving Institutions.



10. x-clear hereby, and upon any transfer of Collateral, represents and warrants to LCH that it has full legal title to any Collateral provided to LCH hereunder and that the use of the related eligible securities as Collateral does not breach any of x-clear's contractual obligations owing to third parties, including any x-clear Clearing Member, or any statutory provisions or regulations.

**D. Re-use of Collateral**

11. Re-use of the Collateral by LCH shall not be allowed. LCH may use the Collateral only as security for the Secured Obligations.

**E. Administration, voting and ancillary rights**

12. Responsibility for administering the Collateral shall rest with x-clear. LCH shall provide, to the extent reasonable and compatible with the pledge created hereunder, any assistance necessary for x-clear to exercise its rights.
13. The following provisions shall also apply:
  - a) x-clear shall remain entitled to the participation rights (taking part in the annual general meeting, voting rights and rights of election) attached to the Securities Collateral.
  - b) x-clear shall be entitled to the dividends, interest, and premiums, and any other income inuring from the Securities Collateral, and liquidation proceeds in respect of the Securities Collateral (hereinafter: "Income"), but such Income is hereby pledged as Collateral in favour of LCH.
  - c) x-clear shall be entitled to options, pre-emption rights and other rights relating (hereinafter: "Rights") to the Securities Collateral, but such Rights are hereby pledged as Collateral in favour of LCH.
  - d) x-clear shall be entitled to the interest in respect of the Currency Collateral (hereinafter: "Interest"), but such Interest is hereby pledged as Collateral in favour of LCH.

As long as LCH is not entitled to realise the Collateral as provided for in let. G, the Income and Interest shall be transferred to an account in the name of x-clear (as nominated by x-clear) and the Rights shall be exercised by and in favour for x-clear.



**F. Release of Collateral**

14. LCH shall be under no obligation whatsoever to allow x-clear to make any withdrawal from or accept and carry out any instructions with regard to the Collateral, including, for the avoidance of doubt, the Securities Collateral Account or the Currency Collateral Account. LCH will however give consent (such consent not to be unreasonably withheld or delayed) to x-clear to transfer any part of the Collateral from x-clear's Currency Collateral Account or LCH's Securities Collateral Account held by SIS that is in excess of the minimum amount required pursuant to the Master Clearing Link Agreement. x-clear shall bear all costs, taxes and expenses related to such transfer.
15. x-clear may request the release of Collateral provided such Collateral is validly and irrevocably exchanged against Collateral of the same value acceptable to LCH (substitution of collateral). x-clear shall bear all costs, taxes and expenses related to such substitution of Collateral.

**G. Realisation of Collateral**

16. Should x-clear fail to meet its obligations to LCH or fail to do so fully on the due date or otherwise be in default, LCH shall be entitled but not obliged to, at its discretion, to freely realise the Collateral, notwithstanding the formalities provided for in national and foreign law. In particular, LCH shall be entitled to:
  - (i) enforce the pledge by either (1) private realisation (*Private Verwertung*, including, self-sale [*Selbsteintritt*]) of Collateral or (2) enforcement proceedings pursuant to the Swiss Federal Act on Debt Collection and Bankruptcy under the exclusion of Art. 41(1bis) of the Swiss Federal Act on Debt Collection and Bankruptcy (waiver of the *beneficium excussionis realis*) and the parties hereto agree in advance that a "*Freihandverkauf*" of the Collateral shall be admissible or (3) transferring Cash Collateral to an account in the name of LCH and applying such amounts to the Secured Obligations.
  - (ii) apply all Income, Rights and Interest and other monies arising from the Collateral as though they were the proceeds of realization under this Pledge Agreement.



17. The realisation of Collateral in such circumstances shall not require any prior notification to x-clear. X-clear hereby expressly waives its right to notice pursuant to Art. 32 (1) of the FISA.
18. In the event of realisation of the Collateral, LCH shall be obliged to render account to x-clear for the proceeds of such realisation. Any surplus remaining after the proceeds of Collateral have been applied shall be credited or transferred to x-clear.
19. Failure by LCH or to exercise any right or remedy including the acceptance of partial or delinquent payments shall not result in any liability of LCH and shall not prejudice any of the rights LCH nor be a waiver of any obligation of the x-clear.

#### H. Power of Attorney

20. x-clear authorises LCH to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents (including to transfer Collateral to an acquirer) and do all things that LCH may consider to be requisite for carrying out any obligation imposed on the x-clear under this Pledge Agreement or exercising any of the rights conferred on LCH by this Pledge Agreement or by law, in particular in connection with a private realisation (*Private Verwertung*, including self-sale [*Selbsteintritt*]), provided that as long as no default has occurred, LCH not to take any such step unless LCH would have the right under this Pledge Agreement to request x-clear to take such step and x-clear has failed to take such step within 5 Business Days, or such shorter period as may be reasonably necessary to safeguard the interests of LCH, upon receipt of a written notice to such effect.

#### I. Taxes, Cost and Expenses

21. All taxes, costs, fees and expenses arising out of or in connection with the perfection, maintenance, protection and enforcement of the Securities Collateral Account or the Currency Collateral Account created under this Pledge Agreement or the exercise of any of the rights of LCH shall be borne by x-clear and x-clear shall reimburse and indemnify LCH on demand for any such taxes, costs, fees and expenses incurred by it.



**J. No Assignment or Transfer of Rights**

22. This Pledge Agreement, and the rights and obligations under this Pledge Agreement may not be assigned or transferred by a party without the prior written consent of the other party.

**K. Limitation of Liability**

23. LCH shall not be liable for any loss or damage suffered by x-clear, except in case of wilful misconduct (*Absicht*) and gross negligence (*grobe Fahrlässigkeit*) on the part of LCH (or any auxiliary person for which x-clear is responsible pursuant to mandatory applicable law).

**L. Additional Provisions**

24. This Pledge Agreement shall not terminate until such time as all Secured Obligations have been discharged in full. As long as this Pledge Agreement is in force, other Pledge Agreements between the Parties (if any) shall be suspended.
25. The rights of LCH under this Pledge Agreement are without prejudice to any right of LCH to require x-clear to provide Collateral under clause 8 of the Master Clearing Link Agreement and the Collateral Side Letter.
26. If any provision of this Pledge Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, this shall not affect or impair (i) the validity or enforceability in that jurisdiction of any other provision of this Pledge Agreement or (ii) the validity or enforceability in any other jurisdiction of that or any other provision of this Pledge Agreement. The illegal, invalid or unenforceable provision shall be replaced by a legal, valid and enforceable provision which approximates as closely as possible to the economic purpose of the illegal, invalid or unenforceable provision. The same shall apply mutatis mutandis in case of omissions.



**M. Amendments**

27. Amendments and additions to the present Pledge Agreement shall be made in writing.

**N. Governing Law and Place of Jurisdiction**

28. Any dispute arising out of or in connection with this Pledge Agreement and the legal relationship it entails will be governed and construed by Swiss law without reference to Swiss principles on conflicts of laws, save as the Collateral Procedures provide for the application of English law. For the avoidance of doubt this choice of Swiss law extends to the issues covered by the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary and the parties expressly for the purpose of Art. 4 para. 1 let. a and/or b elect Swiss law to govern the legal relationship between the parties.
29. The exclusive place of jurisdiction for any form of proceedings and for any disputes arising in connection with the present Pledge Agreement shall be the Commercial Court in Zurich.

