



**AGREEMENT GOVERNING TECHNICAL ACCESS TO
LCH.CLEARNET CLEARING SOLUTIONS**

BETWEEN

**BANQUE CENTRALE DE COMPENSATION
AND**

The undersigned:

LA BANQUE CENTRALE DE COMPENSATION (BCC), trading as LCH.CLEARNET SA, a company incorporated under the laws of France, having its registered office at 18 Rue du Quatre Septembre, 75002 - Paris, France, registered in the Commercial and Companies registry of Paris under the number B 692 032 485, represented by Mr. Jean-Marie BOUDET, duly authorised (**LCH.CLEARNET**);

and

_____,

a [.....] (limited) company incorporated under the

laws of [.....],

having its registered office at [.....],

[.....],

[.....],

registered on the [.....] Companies Register / Chamber of Commerce under

the number [.....],

duly represented by its director(s),

M.. [.....]

(and M.....),

hereinafter referred to as "User";

Hereinafter jointly to be referred to as the "Parties" and individually referred to as the "Party";

WHEREAS

LCH.CLEARNET acts as a central counterparty for Clearing Members and provides clearing services for Transactions executed on any Market cleared through any Clearing solution as may be specified in accordance with the provisions of this Access Agreement.

The Clearing Member becomes a member of LCH.CLEARNET by signing the Admission Agreement. The Clearing Rules, the CDS Clearing Rules or the Operating Rules, the related Instructions, Notices and Specifications as amended from time to time and available on LCH.CLEARNET SA website (hereafter referred as "Documentation") are applicable to the relationship between the Clearing member and LCH.CLEARNET.

The clearing services are described in details in the above Documentation.

The Clearing Members shall implement or have implemented the required technical environment to be connected to the relevant Clearing Access Solution and therefore benefit from the Services as defined in Clause 1 below and related Schedules. LCH.CLEARNET also offers the Clearing Member the possibility to appoint a Clearing Access Solution Third Party Provider to provide the Services. In this latter case, a direct contractual relationship will be set up between the Clearing Member and the Clearing Access Solution Third Party Provider. The Clearing Member remains solely responsible for the appointment of the Clearing Access Solution Third Party Provider.

Should the Clearing Member delegate a Clearing Access Solution Third Party Provider, this Access Agreement shall be signed by both the Clearing Member and the Clearing Access Solution Third Party Provider.

This Access Agreement has been drawn up with the willingness to clarify both the Services provided and LCH.CLEARNET's commitments and liabilities.

This Access Agreement is notably structured around the following main elements:

- Clearing Access Solutions description further to the implementation of the following: Group Member Access and LCAP (Logical Centralised Access Point),
- integration of the Clearing Access Solution ordering process further to its global review (new standard forms),
- Support Services description further to their internalisation within LCH. CLEARNET in the first quarter 2008,
- integration of the data (list of files, messages and reports) to be accessed via the Clearing Access Solution,

The Clearing Member and the Clearing Access Solutions Third Party Provider (together referred as Users) wish to benefit from the Services and LCH.CLEARNET agrees to provide the same, and the Parties have agreed to enter into this Access Agreement that sets out the terms and conditions of the provision of the Services to the Users.

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1. DEFINITIONS

Capitalised terms used in this Access Agreement shall have the meaning as set forth in this clause.

Access Agreement: means this Agreement including its Schedules and any amendments to this Access Agreement.

Admission Agreement: means the written agreement entered into between LCH.CLEARNET and the Clearing Member.

Anomaly: means any defect that can be reproduced by the Clearing Member and that does not arise from non-compliant use of technical specifications and/or the Documentation or use which does not comply with technical specifications and/or the Documentation, or any defect resulting from operating anomalies, or structural, functional, organisational or conceptual problem encountered by the Users in using the Services.

Change Request: means any kind of changes requested by the Users to LCH.CLEARNET regarding their Clearing Access Solutions governed by this Agreement and specified in each relevant applicable Schedule.

Clearing Access Solutions: means the access provided by LCH.CLEARNET and selected by the Users through a Request Form. At the date of this Agreement the eCCW, Web OTC, LCAP and Network Services are the Clearing Access Solutions that can be ordered by Users.

Clearing Access Solution Third Party Provider: means a third party provider (information software vendor, information technology managed services (hosting, outsourcing)) duly appointed by the Clearing Member to subscribe to the Services. The Clearing Access Solution Third Party Provider is responsible for setting up the accurate network links between itself and the Clearing Member and is also responsible for the transmission of the relevant files and/or messages generated by the Clearing Solution and related to the relevant Clearing Member activity.

Clearing Hours: means the clearing hours set forth in the Documentation.

Clearing Member: means any General Clearing Member, Individual Clearing Member and Clearer, as these terms are defined in LCH.CLEARNET applicable Documentation.

Clearing Solution: means LCH.CLEARNET's clearing system(s) used to provide clearing services to the Users.

Customer Technical Helpdesk: means LCH.CLEARNET desk providing technical Support Services for the purpose of centralising Clearing Members requests to resolve any Anomaly and/or manage any Change Request regarding the Services.

Force Majeure Events : means, according to French case law, any extraordinary events independent of the Parties' will that cannot be foreseen or avoided by them even with due diligence, being beyond their control preventing the Parties to comply with their obligations undertaken in this Access Agreement (including without limitation disasters, such as hurricane, earthquake, international conflicts, stroke of lightning and war).

Market means any Regulated Market, Multilateral Trading Facilities and Designated LCH.CLEARNET SA Gateways benefiting from clearing services provided by LCH.CLEARNET.

Network Services means the network services as described in Schedule 2.

Request Forms means the LCH.CLEARNET forms that the Users shall duly fill-in, sign and send back to LCH.CLEARNET any time it requires a new Clearing Access Solution or requires a modification/addition/suppression on its Clearing Access Solution.

Schedules: means the schedules including any appendices thereto (hereafter “Appendices”) attached to this Access Agreement that have been initialised by the Parties and which shall form an integral part of this Access Agreement.

Service(s): means the Clearing Access Solutions and/or Support Services enabling the Users to access the Clearing Solution.

Services Hours: means the hours and dates or any period during which the Services are available as defined in Schedule 3, Appendix 1.

Subcontractor: means a sub-contractor of LCH.CLEARNET for the performance of LCH.CLEARNET's obligations under this Access Agreement.

Support Services: means the support services provided by the Customer Technical Helpdesk as detailed in Schedule 3.

Users: means any Clearing Member and Clearing Access Solution Third Party Provider.

2. SCOPE OF THE ACCESS AGREEMENT

- 2.1. This Access Agreement sets out the terms and conditions under which LCH.CLEARNET provides the Services to the Users enabling them to have access to the Clearing Solution covering both test and production environments.
- 2.2. The Parties agree that, with regards to the test environment, LCH.CLEARNET shall make its best endeavours to provide the Users with similar service as for production environment.
- 2.3. However, the test environment has been designed to handle lower volumes of transactions and therefore the Users are expressly requested not to perform any kind of tests (notably but not exclusively (performance tests)) which could lead to the unavailability of the test environment. Consequently, any test performed on the test environment, shall not be qualified, howsoever, as a benchmark for production environment.
- 2.4. Furthermore, the Users acknowledge and agree that any incident detected on the test environment shall be processed with a lower priority than any incident occurring on the production environment. However LCH.CLEARNET reserves the right to prioritise differently any incidents.
- 2.5. This Access Agreement repeals and replaces any agreement previously entered into by the Users and related to the provision of any similar Services.

3. STRUCTURE OF THE DOCUMENTS

- 3.1. In this Agreement, Network and Network Services shall have the same meaning.
- 3.2. In this Agreement, Days shall be read as calendar days.
- 3.3. This Access Agreement encompasses the following Schedules:
 - Schedule 1 Security of the Clearing Access Solutions;
 - Schedule 2 Clearing Access Solutions description;
 - Schedule 3 LCH.CLEARNET Support Services;
- 3.4. By signing this Access Agreement, the Users agree to comply with the terms herein including the Schedules, and the related Documentation.
- 3.5. This Access Agreement and its Schedules shall form one integral document. Any modification of this Access Agreement may be made pursuant to and in accordance with the conditions described in clause 21.3.

- 3.6. The most recent version of any constituent part of this Access Agreement shall always take priority over former version of the same constituent part.
- 3.7. If there is a conflict or inconsistency between the provisions of this Access Agreement and the Schedules or any other constituent part of this Access Agreement, the provisions of this Access Agreement shall prevail, unless the relevant document provides otherwise.
- 3.8. An obligation by a Party in this Agreement to use “best endeavours” shall require the Party to take :
 - all necessary steps that a prudent person would take in the circumstances, acting in its own interests and anxious to obtain the desired results; and
 - all positive steps and possible courses of action that would be reasonably apparent to such person under the circumstances in each case, with no requirement to take such action unless and until the relevant obligation crystallises. Such obligation shall not be regarded as an “obligation de résultat”.

4. SERVICE PROVISION

- 4.1. LCH.CLEARNET shall (i) grant the Users access to the Clearing Solution through one or several Clearing Access Solutions selected by the Users and (ii) supply the corresponding Services.
- 4.2. The Users hereby acknowledge that they can have access to the Clearing Solutions and receive the Services only through one or several Clearing Access Solutions and to the extent that it complies with the obligations set out in this Access Agreement.
- 4.3. The access to the Clearing Solution is subject to the completion of all installation and verification tests as further described in Schedule 3.
- 4.4. If the Services include the provision by LCH.CLEARNET of equipment specified in a Request Form, this equipment will be installed and maintained by LCH.CLEARNET. Should the installation require the removal or disconnect of any existing equipment, the Users will permit, and obtain all necessary consents for, the removal or disconnect and will give LCH.CLEARNET or its Subcontractors all necessary assistance to enable such work to be carried out. Neither LCH.CLEARNET nor the Subcontractor shall be obligated to connect any equipment in the presence of any hazardous condition or material. The Users will be responsible for the correction of any such condition or the removal of such material, and LCH.CLEARNET may, without suffering any penalty, delay the provision of the Services until the Users have completed those actions.
- 4.5. LCH.CLEARNET shall have the right, if necessary, to modify, enhance its Services and the related Documentation, as described in the attached Schedules, or add new Services upon reasonable prior notice. LCH.CLEARNET shall make its best endeavours to comply with a six-month prior notice to inform and consult the Users regarding the actions mentioned above. However, this prior notice cannot be less than three (3) months unless otherwise agreed. In case of substantial modification of the Services and the related Documentation, LCH.CLEARNET shall, prior to the implementation of such modification, consult the Users and make its reasonable endeavours to take into account their remarks. In addition, LCH.CLEARNET shall communicate in writing to Users, for each such modification, a specific implementation plan including a testing plan, a description of the launch strategy, documentation and any such communication as LCH.CLEARNET deems appropriate.
- 4.6. If any modification of the Services or the Documentation adversely affects the Users' activity, the Users shall be entitled to terminate this Access Agreement subject to and in accordance with the provisions of clause 16.3.2.

- 4.7. In the event that access to the Clearing Solution is denied to the Users due to LCH.CLEARNET's act or omission, LCH.CLEARNET shall, as far as LCH.CLEARNET is aware of such access denial, immediately inform the Users and make its best endeavours to restore the access in the shortest delay and as soon as practicably possible.
- 4.8. LCH.Clearnet shall promptly notify the Users in case of delay in the performance of a substantial obligation set out in the Access Agreement.
- 4.9. LCH.CLEARNET's responsibility is limited to:
 - the integrity, confidentiality, authenticity and completeness of all types of instructions/messages generated by the relevant Clearing Solution,
 - the transmission of all types of instructions/messages or files in the appropriate format to the Users through the Clearing Access Solution.
- 4.10. Both Parties shall adopt good industry practice with regard to virus in relation to their own systems and shall use at all times the current release of virus detection software.

5. CLEARING ACCESS SOLUTIONS

- 5.1. Having assessed the respective Clearing Access Solutions capabilities, purpose, functionalities and operating method, and found it suitable for their own needs for access to the Clearing Solution, the Users will request LCH.CLEARNET to supply the requested Clearing Access Solutions under the terms of Schedule 2.
- 5.2. The Users agree to inform LCH.CLEARNET of their choice in accordance with the provisions set out in the appropriate Request Form attached in Schedule 2. Furthermore, the Users agree to inform LCH.CLEARNET, in the same manner, for any change, move, addition, or deletion in their choice.
- 5.3. The Users shall ensure that they have the skills necessary to use the Clearing Access Solutions, in particular that their staffs are capable of using the Clearing Access Solutions with the requisite degree of efficiency.
- 5.4. In all cases the Clearing Access Solutions shall be used by the Users under their sole control, direction and responsibility.
- 5.5. With respect to the use of any Clearing Access Solution, the Users accept that it is not advisable to connect the Clearing Access Solutions to other networks or to share files or data with other networks or applications. For the avoidance of doubt, LCH.CLEARNET would not suffer any liability regarding any adverse effect resulting from the non respect of the above provision.
- 5.6. Pursuant to and in accordance with clause 4.5 of this Agreement and with respect to any new Clearing Access Solution, LCH.CLEARNET shall consult the Users regarding (i) the selection criteria to be commonly agreed and (ii) the description of the expected new Clearing Access Solution encompassing the associated services, if any.

6. USERS OBLIGATIONS

- 6.1. The Users acknowledge having received from LCH.CLEARNET sufficient information, advice and Documentation that enabled them to make their choice with respect to the type and number of Clearing Access Solutions to be set up. This discretionary choice being made on the basis of their own needs, LCH.CLEARNET shall not be held liable for the choices made by the Users with respect to the Clearing Access Solutions. Pursuant to and in accordance with Clause 4.5 above, the Users are aware that LCH.CLEARNET may modify from time to time the Documentation and/or add any additional documents; such documents being enforceable between the Parties.

- 6.2. The Users shall comply with any relevant provision of any relevant Schedule and associated Appendices, Documentation, and with the provisions set out in the relevant Request Form, and satisfy all requirements applicable to their selected Clearing Access Solution. Notwithstanding any other obligations under this Access Agreement, the Users shall ensure that environmental conditions at each Users' premises as communicated by LCH.CLEARNET or its Subcontractors are maintained for any equipment provided by LCH.CLEARNET (such as routers, cables, connectors...) and that the exterior surfaces are kept clean and in good working conditions. Subject to applicable law, any individual engaged in the performance of the Services shall comply with any relevant company procedure and/or policy.
- 6.3. The Users shall be liable for the implementation and continuous operation of the data storage link to their Clearing Access Solutions.
- 6.4. The Users shall be solely responsible for the proper use and application within their organisation of the Services, as described in Schedule 2. The Users shall ensure that the Services are used in a competent and conscientious manner by their duly skilled personnel, in accordance with the Access Agreement and the Documentation.
- 6.5. The Users shall render such assistance, close and continuous collaboration and provide all data and information as LCH.CLEARNET deems reasonably necessary for the performance of the Services. In particular, the Users shall grant LCH.CLEARNET and/or any of its Subcontractors, with the right to access their premises at any reasonable time pursuant to and in accordance with Schedules 2 and 3. LCH.CLEARNET shall comply with the Users security, health and safety requirements that shall be communicated to LCH.CLEARNET by the Users. When, at the request of the Users, and under their sole liability the Clearing Access Solution has to be installed, on a non Users' premises, the Users commit to provide LCH.CLEARNET, its Subcontractors with the right to access at any reasonable time the non Users premises.
- 6.6. The Users shall provide to LCH.CLEARNET or any Subcontractor in a timely manner, all information reasonably needed to install and provide the Services. LCH.CLEARNET will not be liable if it is unable to install or provide the Network Services on a timely basis due to any delay or failure by the Users or any third party appointed by the User in providing accurate information on a timely basis. LCH.CLEARNET may charge the Users (i) an additional fee for each instance the Users refuse to give LCH.CLEARNET or its Subcontractors access to the Users premises after an appointment has been made for installation work, or if the Users cause LCH.CLEARNET to incur significant unanticipated costs due to the Users' delays or errors in the information provided; or (ii) cancellation charges if, in LCH.CLEARNET's reasonable discretion, the Users have implicitly cancelled the Request Form for granting access to Clearing Access Solution by continually refusing to allow LCH.CLEARNET or the Subcontractor to complete the installation.
- 6.7. When this is necessary for the proper fulfilment of the Services as described in the Access Agreement, the Users shall grant LCH.CLEARNET, its Subcontractors with a right to access remotely the Clearing Access Solution.
- 6.8. The Users may neither use the Services for any purpose other than for which it is intended, and as exclusively determined by this Access Agreement and the Documentation nor connect to another supplier network, nor use hardware (or any data transmission facility to which the hardware is connected), not supplied by LCH.CLEARNET and/or its Subcontractors
In the event of a use of Services otherwise than as described above which results in materially adverse consequences for any other users the Users accept irrevocably that LCH.CLEARNET will reject any claim based on damages resulting from any non compliance with the provisions set out in this clause and that LCH.CLEARNET reserves the right to disconnect immediately (or requires the immediate disconnection of) any equipment or network connected in breach of this clause.

- 6.9. The right to use the Services is not transferable unless LCH.CLEARNET has explicitly given its prior written consent.
- 6.10. The Users shall:
- ensure that their installations comply with prevailing industry standards and is compatible with the Clearing Access Solution chosen;
 - initiate all reasonable measures needed to guarantee the protection of their access codes from unauthorised third parties;
 - ensure that the specifications of the Clearing Access Solution(s) selected are consistent with their needs;
- 6.11. The Users shall ensure that the characteristics of their hardware and software environment will not disturb or interfere with any of the Services provided by LCH.CLEARNET.
- 6.12. The Users shall comply with their obligations regarding security as described in clause 9 and any relevant Schedules.
- 6.13. The Users shall implement a back up Clearing Access Solutions, according to their needs pursuant to and in accordance with clause 9.3 of this Access Agreement.

7. AVAILABILITY

- 7.1. LCH.CLEARNET may interrupt the provision of the Services when any modifications or adjustments are made. LCH.CLEARNET shall make its best endeavours to comply with a 5-days prior notice and only interrupt the Services outside Clearing Hours. However, under exceptional circumstances, (such as for instance the intervention to resolve an Anomaly immediately in order to maintain or resume the provision of the Services), LCH.CLEARNET may interrupt the Services within a shorter prior notice and within the Clearing Hours.
- 7.2. LCH.CLEARNET shall have the right to suspend the use of the Clearing Access Solution to the Clearing Solution, and hence to the Services, in order to carry out maintenance work on equipment and/or the Software and/or the infrastructure. However and unless exceptional circumstances require otherwise, any such suspension of the access to the Clearing Solution due to maintenance work, shall take place outside the Clearing Hours and upon reasonable prior notice.
- 7.3. To this extent, LCH.CLEARNET will make its best endeavours to limit the periods during which the Services remain unavailable.
- 7.4. In case of breakdown or unavailability of the Services attributable to network operators selected as Subcontractors by LCH.CLEARNET to provide Network Services as described in Schedule 2, LCH.CLEARNET undertakes to make its best endeavours to ensure that the network operators make their best endeavours to restore the Services covered by this Access Agreement as quickly as possible being agreed between the Parties that LCH.CLEARNET shall not suffer any other liabilities than those set out in the agreement entered into between LCH.CLEARNET and any network operator as reproduced in clause 13 of this Access Agreement.
- 7.5. Should any Anomaly arise with respect to the provision of the Services, the procedure sets out in Schedule 3 shall be implemented.

8. HARDWARE, ACCESS EQUIPMENT AND TELECOMMUNICATIONS NETWORKS

The Clearing Member, at its sole expense, shall be responsible for providing and maintaining, if relevant, any hardware, facilities, telecommunication and Internet access, software, services and access equipment needed, and not provided by LCH.CLEARNET or its Subcontractors under this Access Agreement, in accordance with the specifications set out in the Documentation.

9. SECURITY AND BUSINESS CONTINUITY

- 9.1. LCH.CLEARNET complies with the best security and business continuity practices commonly implemented by banking and financial institutions from time to time.
- 9.2. LCH.CLEARNET has implemented and shall maintain the necessary actions and policies in order to guarantee the continuity and the security in its Services to Users at all times either on its primary site or back-up sites.
- 9.3. The Users shall ensure that they have in place at all times appropriate business continuity arrangements, having regard to the nature of the Services. Business continuity arrangements shall include (i) the provision of off-site continuity facilities at (a) separate location(s) from the main facilities of the Users and (ii) the implementation of a resilient network infrastructure, in compliance with their business continuity needs in order to enforce the system resiliency so as to allow them to continue benefiting from the Services and guarantee business continuity.
- 9.4. Notwithstanding the above provision, the Users undertake to comply with any specific security and business continuity requirements LCH.CLEARNET may determine at any time. Such requirements may be as follows: restriction of use of the Clearing Access Solution (only within the Users' premises), communication of the Users security policy related to Clearing Access Solutions or any components used to access the Clearing Solution, resiliency of the Clearing Access Solution on the Users primary site and back up site, obligation to proceed to real switch-over tests from the primary site to back-up site). The above list shall not be construed as an exhaustive list. If need be such requirements will be attached to this Access Agreement in due time and a dedicated schedule will be drawn up.
- 9.5. Moreover, when a Clearing Member delegates its access to the Clearing Solution to a Clearing Access Solution Third Party Provider, LCH.CLEARNET strongly recommends, and the Clearing Members expressly acknowledge that the network connection, which might be set up by the Clearing Member to the Clearing Access Solution, complies with minimum network security specifications as set out in Schedule 2.

10. OWNERSHIP/INTELLECTUAL PROPERTY AND LICENCES

- 10.1. Copyright and all other intellectual property rights regarding all Documentation and other material made available by LCH.CLEARNET, including any preparatory material pertaining thereto, shall vest exclusively in LCH.CLEARNET or its licensors as the case may be.
- 10.2. Neither Party grants to the other the right to use its trademarks, trade name, service marks or any other proprietary designations without the prior written consent of such Party.
- 10.3. The Users shall refrain from infringing the rights of LCH.CLEARNET, whether directly or indirectly.

- 10.4. The Users may not remove or change any indications of copyright, trademarks, trade names or any other signs of intellectual property rights from software, Documentation or other material.
- 10.5. Each Party retains ownership of the documents, data and information of any kind transmitted to the other Party in connection with the performance of this Access Agreement and to which either Party may have access.
- 10.6. All the component items of any software or updates, including studies, analyses, documentation, offers, test suites and any other information and document given by LCH.CLEARNET or any third party to the Users, including in connection with Support Services (hereafter referred as "Component Items"), are and shall remain the sole and exclusive property of the holder of the rights to such component items.
- 10.7. LCH.CLEARNET warrants that it holds the necessary copyrights or licence to sub-licence if need be and authorisations allowing it to grant the licence hereunder.

LCH.CLEARNET shall indemnify the Users against claims by third parties in respect of any infringement of third party intellectual property rights.

This undertaking is subject to the following express conditions:

- that the Users have promptly notified LCH.CLEARNET in writing of the notice of the claim, proceedings for infringement or the announcement of such proceedings;
- that the Users provide all information, documents, and reasonable assistance and:
 - either permit LCH.CLEARNET or LCH.CLEARNET's licensor to control the defence, settlement, adjustment or compromise of any such claim. The Users may appoint a counsel at their own expense to assist them with respect to any such claim.
 - or, if the Users refuse that LCH.CLEARNET control the defence, the Users shall not take any decision related to the strategy, the admission of any liability or other statement or enter into any settlement or other agreement which would bind LCH.CLEARNET without LCH.CLEARNET's prior written approval, which shall not be unreasonably withheld.

If it is judicially established by a final court judgment or order that a claim is made correctly or in LCH.CLEARNET's reasonable opinion is likely to be made correctly, LCH.CLEARNET will attempt, at its own choice and its own expense, either:

- to obtain the right for the Users to continue using the Component Items ;
- to replace the Component Items by an equivalent application with the same functionality that is not the subject of an action for infringement;
- to modify the Component Items in such a way as to avoid the said infringement.

In the event of summary and temporary court decision preventing either LCH.CLEARNET or Users from using any Component Items, LCH.CLEARNET shall use its best endeavours to implement a temporary work around solution until the Court decision on the merits.

LCH.CLEARNET shall have no obligation under this clause 10 to the extent any claim of infringement results from: (i) use of the Component Items in combination with any other software, hardware, firmware, or product or service if the infringement would not have occurred but for such combination; (ii) modification, alteration or change made to the Component Items by any person or entity other than LCH.CLEARNET; (iii) use of the Component Items for purposes for which it was not specified in the Documentation; or (iv) use of other than the most recent release or version of the Component Items .

The above provisions establish LCH.CLEARNET's sole liability and the Users' exclusive remedy in relation to actions for infringement arising from use of the Component Items.

11. WARRANTIES

11.1. Each Party represents and warrants to the other Party that:

- it is, and shall remain, duly organised and validly existing under the laws of the jurisdiction of its incorporation and has been in continuous existence since incorporation;
- it has the right, power and authority, and has taken all action necessary, to execute, deliver and exercise its rights, and perform its obligations under this Access Agreement;
- it has, and shall continue to have, the right, power and authority to enter into all the transactions contemplated by this Access Agreement;
- it has obtained and complied with all applicable regulations;
- it holds all the authorisations, property rights and licence contracts:
 - for all the hardware, configurations, facilities, firmware, access equipment, and specific software; and
 - for the content of legally protected databases.

11.2. The Users represent and warrant that they hold all the authorisations, property rights and licence contracts :

- for all the hardware, configurations, facilities, firmware, access equipment, and specific software; and
- for the content of legally protected databases.

to which LCH.CLEARNET, or its Subcontractors may need to have access to perform the Services in connection with this Access Agreement.

11.3. LCH.CLEARNET does not make any warranty or representation other than those formally expressed in this Access Agreement and the Documentation and LCH.CLEARNET expressly disclaims any and all other warranties, express or implied including warranties against inherent defects and hazardous products. In particular LCH.CLEARNET expressly disclaims any implied warranty of fitness for a particular purpose.

12. INVOICING

12.1. Fees

12.1.1. LCH.CLEARNET will charge the Users the fees specified in the Request Forms and/or in LCH.CLEARNET Fee Grid available on LCH.CLEARNET web site. Upon sixty (60) Days written notice, LCH.CLEARNET may increase the fees; such increase being effective as of the expiry of the above notice unless otherwise specified. For the avoidance of doubt, any increase shall apply regardless of the date on which Users subscribed or renewed the Services. Should the User disagree with such increase, he may be entitled to terminate this Access Agreement pursuant to the conditions set out in Clause 16.3.2 below.

12.1.2. All fees are in euros and exclusive of applicable taxes and other impositions, including without limitation, value added tax and similar taxes that may be imposed by competent authority.

12.2. Invoicing and Payment

- 12.2.1. Regarding the Clearing Member: on the 10th Business Day following the end of each month during which the provision of the Services occurred, LCH.CLEARNET directly debits the due and payable amounts from the relevant account as for any cash payment obligation as described in the Documentation. Prior to such debits, the Clearing Member receives an invoice detailing those amounts.
- 12.2.2. Regarding the Clearing Access Solution Third Party Provider, LCH.CLEARNET will issue an invoice which shall be paid within thirty (30) Days upon receipt of the invoice. If the Clearing Access Solution Third Party Provider fails to pay the invoice, LCH.CLEARNET shall be entitled to suspend the provision of the Services upon the expiry of a ten (10) Days period from the date of a written notice requesting the payment of the fees.
- 12.2.3 Notwithstanding the provisions of Clause 12.2.2 above and if the Clearing Access Solutions Third Party Provider duly appointed through a Request for Delegation Form by one or several Clearing Members fails to pay the amounts due pursuant to the process detailed above, LCH.CLEARNET reserves the right to debit directly the full amount due by the delegated Clearing Access Solutions Third Party Provider from the account of one of the delegating Clearing Member.
- 12.2.3. If the Users fail to pay any amount due within the timeframe described in Clauses 12.2.1 and 12.2.2, the Users shall pay interest in relation to that amount, accruing daily from the due date to the date of actual payment (both dates inclusive) at a rate equal to one and a half times the most recent refinancing rate of the European Central Bank. LCH.CLEARNET may assign its claim for payment to one or more third parties, in which case the Users, in addition to the aggregate amount due, shall be liable for any legal and/or extra-legal collection costs incurred.
- 12.2.4. Payment shall be made without offset or postponement on any grounds whatsoever, except to the extent that an arbitration award or court decision has determined that the Users has a counterclaim eligible for offset or valid grounds for postponement.
- 12.2.5. LCH.CLEARNET shall neither have any obligation to reimburse any Users for any payment already made in the event that the Users have not started their clearing activities or for any other reason whatsoever, nor shall there be any such obligation to reimburse any payments made for the provision of Services after the termination of this Access Agreement.

13. LIABILITY

- 13.1. Taking into account the special characteristics of LCH.CLEARNET's business and the nature of the Services, the Parties expressly agree that LCH.CLEARNET is subject to a best-efforts obligation as regards to the performance of all the obligations referred to in this Access Agreement. The Users are also under a best efforts obligation.
- 13.2. LCH.CLEARNET shall only be liable for direct losses or damages if it is evidenced that LCH.CLEARNET or its Subcontractors have breached any of their obligations under this Access Agreement or have acted with negligence.

Notwithstanding any other provisions hereunder, in no circumstances shall LCH.CLEARNET be liable for the reinstatement of data nor for indirect or consequential damages or loss which shall include inter alia loss of profits, loss of opportunities or income, loss of sales, loss of image or commercial reputation, or (except as set out in and subject to Clause 10.7 of this Access Agreement) third party's claims or actions.

Whenever data are lost due to a breakdown in the Network Services, LCH.CLEARNET may, in cooperation with the Users, make its best endeavours to set up a contingency procedure to deliver the lost data to its Users. The Users undertake to fully collaborate and to dedicate as many duly skilled resources as necessary to implement the contingency procedure

- 13.3. In the event of loss of or damage to tangible property caused by LCH.CLEARNET's or its Subcontractors negligent act or omissions, LCH.CLEARNET's liability shall not exceed the amount of one million Euros (€1,000,000).
- 13.4. As far as the performance of the Network Services set out in Schedule 2 of this Access Agreement is concerned, LCH.CLEARNET's total liability, howsoever such liability arises, whether in contract, tort (including, without limitation, negligence) or otherwise, in respect of any claim or series of connected claims, which have become final, is capped to the amount (excluding any applicable taxes) paid by each User during the period of twelve (12) months prior to the occurrence of the event or series of connected events giving rise to a claim or series of claims.

For the sake of clarity LCH.CLEARNET undertakes to refund the relevant Users with all the sums received from the Subcontractor without retaining any fee.

- 13.5. Except as set out in and subject to Clause 10.7, 13.3 and 13.4 of this Access Agreement or if LCH.CLEARNET or its Subcontractors act with fraud, wilful misconduct or gross negligence, LCH.CLEARNET' liability, whether in breach of contract, misrepresentation or otherwise, towards all Users which have entered into this Access Agreement shall be limited to an aggregate amount of five million Euros per calendar year for all claims made by one or several Users which have become final during the relevant year.

This maximum amount applies to all final claims made by Users under this Access Agreement. A claim shall become final:

- (i) on the date of its receipt by LCH.CLEARNET if LCH.CLEARNET has not disputed it, neither as to its principle nor as to its amount, within the time period provided for in Clause 23.5.; or
- (ii) if LCH.CLEARNET has disputed the claim, on the date on which LCH.CLEARNET has been found liable either as a result of the amicable settlement procedure provided for in Clauses 23.1 and 23.2 or by a final and enforceable decision rendered by the French court or the arbitration centre which is competent pursuant to Clause 23.3 .

In the course of each calendar year, LCH.CLEARNET shall pay the final claims, within a reasonable timeframe, up to an amount of fifty thousand Euros per User. LCH.CLEARNET shall postpone any complementary payment until the end of the relevant calendar year at which time it shall determine the global amount of claims which became final during that calendar year. LCH.CLEARNET will deduct this amount from the global annual amount of 5 million Euros. If the global annual amount of five million Euros has been partially used, LCH.CLEARNET will pay prior to the 31st of March of the next calendar year and subject to the above conditions, in proportion to the Users' damages, any remaining amount to the Users having made such final claims.

- 13.6. LCH.CLEARNET shall not be held liable for:
- problems caused by the hardware, equipment, firmware and software used by the Users to gain access to the Clearing Access Solution, unless such hardware and/or software is owned by and under the control ("*sous la garde*") of LCH.CLEARNET;
 - the actions, omissions, Service interruptions, quality defects or delays caused by third parties such as regulators, Clearing Access Solution Third Party Providers, or any other providers of services or equipment;
 - anomalies occurring in the transmission facilities supplied to the Users or, broadly, on any equipment of any nature whatsoever unless such deficiencies result from LCH.CLEARNET's acts;

- for any loss resulting from the Users non compliance with the security and business continuity requirements set out in Clause 9.
- for any loss resulting from the Users' absence or deficiency of their back up Clearing Access Solution.

13.7. If the Users have contributed to the occurrence of the loss by their act or negligence, any loss or damages shall be allocated between LCH.CLEARNET and the Users in accordance with their respective contributions to such loss.

13.8. In case the Clearing Member delegates its access to the Clearing Solution to a Clearing Access Solution Third Party Provider, the Clearing Member expressly renounces, for the Services subscribed through the Clearing Access Solution Third Party Provider, to its rights to directly sue LCH.CLEARNET in case of failure of the latter's obligations. Should this situation occur, only the Clearing Access Solution Third Party Provider may be entitled to claim LCH.CLEARNET for compensation.

In such situation, the Clearing Member acknowledges and agrees it has no recourse to LCH.CLEARNET, save for seeking reimbursement for any sums directly debited by LCH.CLEARNET for the same Services under Clause 12.2.3.

13.9. LCH.CLEARNET agrees to provide the Services at the premises of a non Clearing Member upon the Clearing Member's request, under the Clearing Member's sole liability. In that respect, the Clearing Member shall hold harmless and indemnify LCH.CLEARNET against any losses arising out or in connection with the provision of the Services at the premises of a non Clearing Member. The Clearing Member shall procure that the non Clearing Member fully complies with the requirements set out in this Access Agreement and shall be liable for any act or omission of the non Clearing Member.

13.10. The Users shall only be held liable for direct losses or damages, including notably any losses or damages to the hardware and other material and equipment under their control ("gardien") even those provided by LCH.CLEARNET, if it is evidenced that the Users have breached any of their obligations under this Access Agreement or has acted with negligence.

Notwithstanding any other provisions hereunder, in no circumstances shall the Users be held liable for the reinstatement of data nor for indirect or consequential damages or loss which shall include inter alia loss of profits, loss of opportunities or income, loss of sales, loss of image or commercial reputation, or third party's claims or actions.

13.11. Unless the Users act with wilful misconduct, fraud or gross negligence, the Users' liability, whether in breach of contract, misrepresentation or otherwise, towards LCH.CLEARNET shall be limited to a global annual amount of 100 000 Euros for all claims made by LCH.CLEARNET which have become final during the relevant calendar year.

This maximum amount applies to all final claims made by LCH.CLEARNET under this Access Agreement. A claim shall become final:

(i) on the date of its receipt by any User if the User has not disputed it, neither as to its principle nor as to its amount, within the time period provided for in Clause 23.5; or

(ii) if the User has disputed the claim, on the date on which the User has been found liable either as a result of the amicable settlement procedure provided for in Clauses 23.1 and 23.2 or by a final and enforceable decision rendered by the French court or the arbitration centre which is competent pursuant to Clause 23.3.

13.12. The Parties shall effect and maintain at all times from the Effective Date as this term is defined in Clause 16 below, policies of insurance with a solvent insurance company in relation to their potential liabilities under or in connection with this Access Agreement and the Services.

14. SUBCONTRACTORS

- 14.1. LCH.CLEARNET shall be entitled to engage Subcontractors to perform certain Services.
- 14.2. The Clearing Member shall be informed with reasonable prior notice as soon as LCH.CLEARNET designates such a Subcontractor.
- 14.3. LCH.CLEARNET remains fully liable for the performance of the Access Agreement even in case of use of Subcontractors whatever the level of subcontracting without prejudice to the provisions of Clause 13.4.

15. FORCE MAJEURE

- 15.1. Neither party shall be held liable to the other Party for any delay or non-performance of its obligations under this Access Agreement arising from any Force Majeure Event.
- 15.2. The affected Party shall promptly notify the other Party in writing of the cause of the delay or non-performance and the likely duration of the delay or non-performance with all supporting documents and evidences. The affected Party shall use its reasonable endeavours to limit the effect of that delay or non-performance on the other Party. The performance of the affected Party's obligations, to the extent affected by the cause, will be suspended during the period that the cause persists. If performance is not resumed within 90 days after that notice and the Parties shall have failed to resolve through the dispute resolution mechanism, the other Party may terminate this Access Agreement immediately by written notice to the affected Party subject to and in accordance with Clause 16.
- 15.3. During such period of ninety days, the Parties shall co-operate in view of resolving the interruption of Services.

16. TERM AND TERMINATION

16.1. DURATION

The Access Agreement shall enter into force on the date of signing by both Parties (the **Effective Date**) and shall remain in force for an indefinite duration.

16.2. SUSPENSION

- 16.2.1. LCH.CLEARNET may suspend the Services in the event that the Clearing Member's membership is suspended for any reason whatsoever as stated in the Documentation. During such suspension, the Clearing Member shall remain liable for payment of all fees due to LCH.CLEARNET under this Access Agreement.
- 16.2.2. In the event of temporary suspension of clearing activities, of the services provided by the Clearing Access Solution Third Party Provider, or temporary unavailability of the Clearing Access Solution, the Parties expressly agree that this Access Agreement shall remain in effect. The Users agree to maintain the Clearing Access Solutions in proper working conditions and to make timely payments of any amounts owed for the provision of the Clearing Access Solutions and for the provision of the Services themselves unless LCH.CLEARNET is responsible for the temporary suspension.

16.3. TERMINATION

16.3.1. Either Party shall have the right to terminate this Access Agreement with immediate effect by registered letter to the other Party, without prejudice to any rights and remedies:

- if the other Party is unable to pay its debt or becomes insolvent or an order or application is made or a resolution passed for the bankruptcy, administration, winding-up or dissolution of the other Party or to a significant extent discontinues part or all of such of its activities that relate to the object of this Access Agreement to the extent permitted by law;
- if the other Party is in material breach of its obligations under this Access Agreement and if this obligation is capable of remedy fails to remedy such breach within fourteen (14) days after receiving written notice requiring it to do so;
- in the event of Force Majeure in accordance with Clause 15.
- if the Admission Agreement is terminated for any reason whatsoever.

16.3.2. Notwithstanding the above provisions, the Access Agreement may only be terminated in accordance with the Documentation.

16.3.3. Notwithstanding Clause 16.3.1, the LCAP Clearing Access Solution and Network Services, ordered pursuant to the terms of the relevant Request Form, shall run for a 12 months period starting, at the earlier, (i) from the date on which the Services are operational (Operational Service Date) or (ii) from the date mentioned on the first invoice issued by LCH.CLEARNET following the implementation of the relevant Clearing Access Solution. At the term of the initial 12 months period, the LCAP Clearing Access Solution and Network Services will automatically renew for successive one month periods unless the Users decide to terminate them by giving a 60 Days written notice.

In case of termination prior to the expiry of the Initial 12 months period, the Users shall owe LCH.CLEARNET the fees due up to the expiry of this initial 12 months period. In case of termination after the expiry of the 12 months period, the Users shall owe LCH.CLEARNET the fees due up to the expiry of the 60 Days notice period mentioned above.

Unless otherwise specified, the above provisions are not applicable to the other Clearing Access Solutions, being, at the date of this Access Agreement, eCCW, Web OTC, which can be terminated in writing at any time. For the sake of clarity, the fees corresponding to the month during which the termination notice is given will be fully invoiced without any prorata temporis.

16.3.4. Where this Access Agreement ceases to be in force by operation of law, it shall terminate with immediate effect, without any requirement for notice of default and without prejudice to the right of the Parties to claim compensation for any damages or losses.

16.4. CONSEQUENCES OF TERMINATION

16.4.1. Any termination of this Access Agreement for whatever reason shall not affect the accrued rights or liabilities of either Party nor shall it affect the coming into force or continuation into force of any other of its clauses or provisions which are expressly or by implication intended to come into force or continue in force on or after termination of this Access Agreement including Clauses 11 "Warranties", 13 "Liability", and 18 "Confidentiality".

16.4.2. Termination of the Access Agreement for whatever reason shall render all outstanding amounts due by the Users under the Access Agreement immediately payable and will require the performance of any outstanding commitment on their part.

16.4.3. Upon termination of this Access Agreement for any reason, the Users shall return to LCH.CLEARNET, no later than one month after such termination, the Documentation and all other

equipment and material provided by LCH.CLEARNET, in good condition, reasonable wear and tear excepted. The said material shall be returned directly, or placed at the disposal of LCH.CLEARNET or its Subcontractors with the Users duly informing LCH.CLEARNET by registered mail with return receipt. If the Users do not return any equipment or material, LCH.CLEARNET will have the right, in its sole discretion, to remove the equipment or material and to charge the Users for the equipment or material based on their then current value.

16.4.4. Upon return of the material, the Parties agree to sign a certificate of recovery of possession.

17. REVERSIBILITY

In case of LCH.CLEARNET decision to:

- either appoint a new Network Services Subcontractor, or replace the existing Network Services Subcontractor,
- or retrieve, replace or add one or several Clearing Access Solutions,

LCH.CLEARNET undertakes to cooperate with the Users in order to ensure an orderly transition of the Services.

LCH.CLEARNET will in due time issue a general communication to the Users detailing the conditions under which (planning, testing plan....) such transition will take place.

18. CONFIDENTIALITY

18.1. Each Party (**Recipient**) undertakes to the other Party (each, a **Disclosing Party**) to treat as confidential all the information and/or documents, in any form whatsoever, obtained in performing this Access Agreement that the Recipient receives from the Disclosing Party either directly or from any other person which concerns the business, operations, customers or users of the Disclosing Party including any data and/or electronic data files, whether or not such items are associated with a notice of confidentiality (the **Confidential Information**).

18.2. The Recipient may only use the Confidential Information for the purposes of, and in accordance with, this Access Agreement. The Recipient may only provide its employees, directors, Subcontractors, and professional advisers together with their respective employees, directors, subcontractors and professional advisers (**Permitted Users**) with access to the Confidential Information on a strict "need-to-know" basis. The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence to the standard required under this Access Agreement. Where a Permitted User is not an employee or director of the Recipient (and is not under a professional duty to protect confidentiality) the Recipient shall ensure that the Permitted User shall, prior receiving the Confidential Information, enter into a written confidentiality undertaking with the Recipient on substantially equivalent terms to this Access Agreement, a copy of which shall be provided to the Disclosing Party upon request.

18.3. This Clause 18 shall not apply to any information which:

- 18.3.1. is in or subsequently enters the public domain other than as a result of a breach of this Clause 18;
- 18.3.2. has been or is subsequently received by the Recipient from a third party and the Recipient is under no confidentiality obligation in respect of that information other than under this Access Agreement;
or
- 18.3.3. has been or is subsequently independently developed by the Recipient without use of the Disclosing Party's Confidential Information; or

18.3.4. the Disclosing Party has agreed in writing may be disclosed.

18.4. Each Permitted User may disclose Confidential Information where that Permitted User (or, where the Permitted User is an individual, his or her employer) is required to do so by law, by the Clearing Rules or by any competent court or by any clearing organisation or competent regulatory authority. In these circumstances the Recipient shall give the Disclosing Party prompt advance written notice of the disclosure (where lawful and practical to do so) so that the Disclosing Party has sufficient opportunity (where possible) to prevent or control the manner of disclosure by appropriate legal means.

18.5. This obligation shall remain in effect for three years after termination of this Access Agreement.

19. ASSIGNMENT

The Users shall not under any circumstances assign or transfer this Access Agreement in whole or in part without the prior written consent of LCH.CLEARNET.

Nothing in this Access Agreement shall prevent or restrict LCH.CLEARNET from assigning, transferring or otherwise disposing of any of its rights and obligations under this Access Agreement to any of its affiliated company as defined in French Commercial Code.

20. HEADINGS

The headings in this Access Agreement do not affect its interpretation. In case of conflict between any heading to a provision and any provision itself, the heading shall be deemed non-existent.

21. GENERAL

21.1. **No partnership or agency:** Nothing in this Access Agreement shall be deemed to constitute a partnership between the Parties, nor constitute either Party the agent of the other Party for any purpose.

21.2. **Waiver:** The rights of each Party under this Access Agreement:

21.2.1. may be exercised as often as necessary;

21.2.2. are cumulative and not exclusive of rights or remedies provided by law; and

21.2.3. may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

21.3. **Amendments:** Any amendment of this Access Agreement shall not be binding on the Parties unless set out in writing, expressed to amend this Access Agreement and signed by authorised representatives of each of the Parties. Notwithstanding the above provision, the Parties agree that LCH.CLEARNET may decide to add or remove documents as Schedules to this Access Agreement pursuant to Clause 4.5 of this Access Agreement. Any new Schedule will either repeal and replace the relevant former Schedule or be added to the contractual documentation governing the Access Agreement and shall enter into force 30 days after LCH.CLEARNET sent, through email, general information to the Clearing Member. These new documents shall be deemed to form integral part of this Access Agreement.

21.4. **Severability:** If any term of this Access Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

21.4.1. the legality, validity or enforceability in that jurisdiction of any other term of this Access Agreement; or

21.4.2. the legality, validity or enforceability in other jurisdictions of that or any other provision of this Access Agreement,

and the Parties shall use all reasonable endeavours to agree to replace such a term with one that reflects the meaning and purpose of the relevant term within this Access Agreement as closely as possible without being illegal, invalid or unenforceable.

22. LANGUAGE

All notifications or correspondence between the Parties shall be made in English, but may be translated in the language of the Users at their request. In case of any discrepancy between these versions, the signed version shall prevail.

23. APPLICABLE LAW AND JURISDICTION

This Access Agreement shall be governed and interpreted in accordance with French Law.

23.1. In the event of a dispute, the Parties shall try and seek an amicable settlement to their conflict.

23.2. Where such an amicable settlement cannot be reached within one month, the Parties agree that any dispute shall be resolved in accordance with Clause 23.3 of this Access Agreement.

23.3. Any dispute between the Parties that may arise out of or in connection with this Access Agreement shall be dealt with either by the French courts having jurisdiction or the arbitration centre chosen in the Admission Agreement if the Clearing Member agreed to refer their dispute to arbitration. In the latter case, the Parties acknowledge that they have the capacity to enter into an arbitration agreement.

23.4. The language to be used in arbitration proceedings shall be English unless the Parties agree otherwise.

23.5. On pain of forfeiture of the rights to claim for compensation, the Users shall notify LCH.Clearnet SA of every claim for compensation within and no later than twelve (12) months from the day the Users become aware, or should have become aware using due diligence, of the occurrence of the harmful event.

Agreed and signed in two original copies, each Party acknowledging receipt of one such copy,
on

.....,

LCH.CLEARNET

User

M_ : _____

M_ : _____

title: _____

title: _____

date: _____

date: _____

User's contact details for Support Services:

telephone number

fax number.....

email address.....