

DATED [●]

LIFFE ADMINISTRATION AND MANAGEMENT

LCH.CLEARNET LIMITED

and

[CLEARING MEMBER]

TRIPARTITE CLEARING MEMBERSHIP AGREEMENT

This TRIPARTITE CLEARING MEMBERSHIP AGREEMENT is made on [●]

BETWEEN:

- (1) [●] whose registered office is at [●] (the “**Clearing Member**”);
- (2) **LCH.CLEARNET LIMITED** whose registered office is at Aldgate House, 33 Aldgate High Street, London, EC3N 1EA (“**LCH**”); and
- (3) **LIFFE ADMINISTRATION AND MANAGEMENT** whose registered office is at Cannon Bridge House, 1 Cousin Lane, London, EC4R 3XX (“**LIFFE**”),

(each a “**Party**” and, together, the “**Parties**”).

WHEREAS:

- (A) LIFFE operates the London International Financial Futures and Options Exchange (the “**LIFFE Market**”) and, as of the date of commencement of operation of its LiffeClear service (the “**Go-Live Date**”), acts as central counterparty to all Registered Exchange Contracts on the LIFFE Market during the ordinary course of trading.
- (B) LCH acts as the provider of certain clearing services to LIFFE, including, amongst others, the collection of margin from members in respect of cleared trades and the management of defaulting members’ positions.
- (C) The Clearing Member is a member of LCH and LIFFE who wishes to trade as a clearing member on the LIFFE Market, and enters into this Agreement to further detail those rights and obligations it has in respect of each of LIFFE and LCH in such capacity.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. **Interpretation**

- 1.1 When used in this Agreement, the following expressions shall have the following meanings, unless otherwise expressly stated or the context requires otherwise:

“**Agreement**” shall mean this agreement, including any Schedule or Annex hereto, as amended by the Parties from time to time;

“**Clearing Member**” shall have the meaning given to it in the preamble;

“**Cover**” means an amount of cash or securities required to be provided by the Clearing Member in respect of its business on the LIFFE Market;

“**Defaulter**” means a LIFFE Clearing Member which has been declared a defaulter by LIFFE in accordance with the default rules of LIFFE;

“Default Novation” shall mean the actions set out in Section 4.1 in respect of Registered Exchange Contracts and agreed to by the Parties hereunder to occur in the event of the Clearing Member being declared a Defaulter by LIFFE;

“Go-Live Date” shall have the meaning given to it in the recitals;

“LCH” shall have the meaning given to it in the preamble;

“LCH Membership Agreement” shall have the meaning given to it in section 3.1;

“LCH Rules” shall mean the rules, procedures and notices of LCH applicable to members of LCH trading on the LIFFE Market, as in force from time to time;

“LIFFE” shall have the meaning given to it in the preamble;

“LIFFE Clearing Member” means a member of LIFFE who is permitted to register trades for clearing on the LIFFE Market in accordance with the LIFFE Rules;

“LIFFE Market” shall have the meaning given to it in the recitals;

“LIFFE Rules” shall mean the rules, procedures and notices of LIFFE applicable to members of the LIFFE Market, as in force from time to time;

“Party” shall have the meaning given to it in the preamble;

“Registered Exchange Contract” means a contract in the terms of a LIFFE exchange contract arising out of an eligible trade, registered with LIFFE as central counterparty in the name of the Clearing Member in accordance with the LIFFE Rules; and

“Replacement Contract” shall have the meaning given to it in the LIFFE Rules.

1.2 The clause headings in this Agreement shall not affect its interpretation.

1.3 References in this Agreement to any agreement or other document include any amendment thereto or variation or novation thereof for the time being having effect.

2. **Membership**

2.1 The Clearing Member acknowledges that in accordance with the LIFFE Rules, any person wishing to execute trades as a clearing member on the LIFFE Market is required at all times to be admitted as a LIFFE Clearing Member and a member of LCH.

2.2 The Clearing Member agrees to remain a member of LCH until such time as its clearing membership of LIFFE ceases in accordance with the LIFFE Rules. Should the Clearing Member cease to be a clearing member of LIFFE and/or a member of LCH, this Agreement will terminate and be of no further force and effect, without prejudice to the Clearing Member’s obligation to continue to comply with the LIFFE Rules and LCH Rules with respect to any Registered Exchange Contracts remaining in existence at the date of such termination.

3. **Status of this Agreement, the LIFFE Rules and the LCH Rules**

- 3.1 This Agreement is in addition to and shall not be deemed to replace or terminate any separate agreement between the Clearing Member and (i) LIFFE, or (ii) LCH (including, for the avoidance of doubt, such Clearing Member's "Clearing Membership Agreement" with LCH (the "**LCH Membership Agreement**")), provided that, to the extent the LCH Membership Agreement is (insofar as it relates to trades subject to the LIFFE Rules) inconsistent with the terms of this Agreement, the terms of this Agreement shall prevail and such existing agreement shall (to that extent) be deemed amended hereby.
- 3.2 For the benefit of LIFFE and LCH, the Clearing Member agrees at all times to abide by and perform its obligations under the LIFFE Rules and the LCH Rules.
- 3.3 Should a conflict arise between the provisions of the LIFFE Rules and the LCH Rules, the provisions of the LIFFE Rules shall prevail, save following a Default Novation, in which case the LCH Rules shall prevail as regards any action taken by LCH with respect to Replacement Contracts.

4. **Novation of Registered Exchange Contracts to LCH following a Default**

- 4.1 In the event that LIFFE declares the Clearing Member to be a Defaulter under the LIFFE Rules, each outstanding Registered Exchange Contract between the Clearing Member and LIFFE shall automatically be novated so as to substitute LCH as party in place of LIFFE. The novation will be effected in accordance with the LIFFE Rules.
- 4.2 Simultaneously with the Default Novation described in Section 4.1, in respect of each Registered Exchange Contract so novated a contract shall automatically arise between LCH and LIFFE (a "**LCH-LIFFE Contract**"). The LCH-LIFFE Contract shall:
- (a) be a contract of sale and purchase, the terms of which will be the same as to identity of subject matter, number, price and delivery obligations (to the extent applicable) to those under the novated Registered Exchange Contract so that LCH's net position in respect of the novated Registered Exchange Contract and corresponding LCH-LIFFE Contract (assuming each were performed in accordance with its terms) is zero;
 - (b) provide that where LCH is the buyer under the novated Registered Exchange Contract, it shall be the seller under the related LCH-LIFFE Contract, and *vice versa*;
 - (c) shall apply the same choice of law as applies to such novated Registered Exchange Contract;
 - (d) be between the parties as principals and not as agents;
 - (e) create liabilities and obligations that extend only to, and are enforceable only by, the other party, and a person who is not a party to the LCH-LIFFE Contract (including without limitation the Clearing Member) shall have no rights under or in respect of such

LCH-LIFFE Contract and may not enforce any term of the LCH-LIFFE Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

4.3 The Parties each hereby agree to Default Novation, and agree not to object to the Default Novation or bring any claim against the other Parties under which it seeks to invalidate the Default Novation. The Parties further agree that the Default Novation will be made at the price referred to in the applicable section of the LIFFE Rules, notwithstanding that (in respect of the LCH-LIFFE Contract) the creation of such contract may give rise to an immediate liability of LCH towards LIFFE. Where such an immediate liability exists, LCH shall be deemed not to be in default under the LIFFE Rules provided that it discharges such liability in such manner as agreed with LIFFE from time to time.

4.4 By way of security for its obligations hereunder, the Clearing Member irrevocably appoints LIFFE as its attorney to carry out any actions and to execute on its behalf any documents that LIFFE considers necessary or expedient (or as directed by any regulatory authority) in connection with the Default Novation.

5. **Role of LCH as Clearing Service Provider**

5.1 The existing limitations on each of LIFFE and LCH's liability set out in the LIFFE Rules and LCH Rules, respectively, shall apply *mutatis mutandis* to the respective liability of LIFFE and LCH to the Clearing Member under this Agreement, and neither LIFFE nor LCH shall be liable to the Clearing Member in respect of any failure (in whole or in part) of the other to perform such other's obligations under this Agreement, the LIFFE Rules or the LCH Rules, as the case may be (save as may otherwise be expressly agreed).

5.2 The Clearing Member acknowledges that it may be required from time to time to provide Cover in accordance with the LIFFE Rules in respect of its business on the LIFFE Market.

5.3 LIFFE has appointed LCH as clearing service provider among other things to carry out those services listed in the Schedule to this Agreement (as the same may be amended from time to time via notices to the LIFFE Market agreed between LCH and LIFFE), and the rights and obligations of the Parties under the LIFFE Rules shall be interpreted in light of such appointment.

5.4 LIFFE shall owe no obligation to the Clearing Member in respect of Cover provided by that Clearing Member to LCH (acting on its own behalf or as agent of LIFFE). Without prejudice to the generality of the foregoing, the Clearing Member shall have no recourse against LIFFE for (and LIFFE shall have no obligation to pay or return to such Clearing Member any amount in connection with):

- (a) any Cover (or amount in respect thereof) posted by it and lost, incorrectly applied, or misappropriated by LCH; or
- (b) any failure to recover or any shortfall in the recovery of, any Cover (or amount in respect thereof) posted by it and owing to the Clearing Member on the insolvency or winding up of LCH,

and in each such circumstance LIFFE retains the right to require the Clearing Member to post replacement Cover to LCH, any replacement clearing service provider, or to LIFFE, in order for the Clearing Member to continue to qualify to trade as a LIFFE Clearing Member on the LIFFE Market, notwithstanding any such loss, failure to recover or shortfall. For the avoidance of doubt, this section shall not relieve LIFFE as central counterparty of the obligation to pay variation margin to a non-defaulting LIFFE Clearing Member in respect of Registered Exchange Contracts in accordance with the LIFFE Rules.

5.5 The Parties agree that (to the extent LCH acts as LIFFE's agent):

- (a) variation margin payments made to LCH by the Clearing Member in its capacity as LIFFE's agent shall be deemed to satisfy the Clearing Member's payment obligation towards LIFFE to the extent of such payment;
- (b) variation margin payments made by LCH to the Clearing Member in its capacity as LIFFE's agent shall be deemed to satisfy the Clearing Member's right to payment from LIFFE to the extent of such payment;
- (c) settlement payments or deliveries made to LCH by the Clearing Member in its capacity as LIFFE's agent shall be deemed to satisfy the Clearing Member's payment or delivery obligation towards LIFFE to the extent of such payment or delivery; and
- (d) settlement payments or deliveries made by LCH to the Clearing Member in its capacity as LIFFE's agent shall be deemed to satisfy the Clearing Member's right to payment or delivery from LIFFE to the extent of such payment or delivery,

and in each such case references to payment or delivery shall include the satisfaction of a payment or delivery obligation by means of set-off or netting against amounts or commodities otherwise owed by or to LCH (whether as principal or agent) for the account of the Clearing Member.

5.6 Where LCH collects cash or securities from the Clearing Member as principal, the Clearing Member shall, for the avoidance of doubt, have no obligation to pay such cash or securities to LIFFE.

6. General Provisions

6.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of the Parties to it.

6.2 No Party shall assign or transfer this Agreement or charge or encumber any rights, obligations or liabilities hereunder, whether in whole or in part, without the prior written consent of the other Parties, save that LIFFE or LCH may assign or transfer to a person that has been approved by the FSA to act as central counterparty or clearing services provider, respectively, to the LIFFE Market in its place as Party to this Agreement in which case LIFFE or LCH, respectively, may assign and transfer its rights and obligations hereunder without the consent of the other Parties (without prejudice to any obligation upon LIFFE and/or LCH agreed elsewhere) and the Clearing Member hereby agrees to such assignment and transfer (including,

without limitation, any associated transfer of rights and obligations under any Registered Exchange Contracts then outstanding in the name of the Clearing Member).

- 6.3 If any provision of this Agreement is held to be invalid or unenforceable, then that provision shall (to the extent that it is invalid or unenforceable) be of no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement. The Parties shall then use all reasonable endeavours to replace the invalid or unenforceable provisions by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.
- 6.4 A person who is not a party to this Agreement does not have any right under the Contracts (Rights of Third Parties) Act 1999 to rely on or enforce any provision any of its terms.
- 6.5 Nothing in this Agreement and no action taken by the Parties under this Agreement shall constitute a partnership, association or other cooperative entity between any of the Parties or (save where specifically set out herein) constitute any Party as agent of any other Party for any purpose.
- 6.6 Without prejudice to any other mode of service the Clearing Member (other than where it is incorporated or otherwise has an office in England and Wales) appoints the agent appointed pursuant to its Clearing Membership Agreement with LCH for the service of process under this Agreement in relation to any proceedings before the English courts.
- 6.7 This Agreement may be executed by the Parties to it on separate counterparts, each of which is an original but both of which together constitute one and the same instrument.
- 6.8 This Agreement and all non-contractual obligations arising out of or in connection with it are governed by English law, and the courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) or the consequences of its nullity.
7. **Transfer of existing positions**
- 7.1 If the Clearing Member was an existing clearing member of LIFFE immediately prior to the Go-Live Date, the terms of the Annex shall apply.

SCHEDULE 1

Services to be Provided by the CSP

- (a) To manage LIFFE Clearing Members' protected payment system accounts with LCH and to make cash calls on and cash payments to LIFFE Clearing Members through the protected payments system;
- (b) to undertake and manage the delivery of physically and cash settled transactions as agent on behalf of LIFFE;
- (c) to receive from LIFFE Clearing Members (in the form of cash or other permitted collateral), Cover in respect of initial margin (including any intra-day margin) as principal in order to collateralise obligations undertaken by LCH in respect of a LIFFE Clearing Member positions on default; and
- (d) to receive from or pay to LIFFE Clearing Members, as the case may be, Cover in respect of variation margin arising under Registered Exchange Contracts, as agent for LIFFE (or on its own behalf, following any Default Novation).

ANNEX

Novation of Existing Open Contracts

1. Novation of existing Open Contracts

- 1.1 Subject to paragraph 1.3 below, at 00:05 on the Go-Live Date (the “**Transfer Time**”), each ~~Trading Position (as defined below)~~contract of the Clearing Member which (i) is an open contract in the terms of a LIFFE exchange contract, or (ii) having been settled to market, would, but for this paragraph, be thereafter registered in accordance with the LCH Rules as an open contract with LCH as central counterparty (a “**Transferred Contract**”), shall be automatically novated so as to be discharged and replaced from the Transfer Time by a Registered Exchange Contract (or an obligation to register a Registered Exchange Contract) on identical terms, save that where LCH was previously party to the Transferred Contract as central counterparty, LIFFE shall be party to the replacement Registered Exchange Contract as central counterparty.

~~“Trading Position” means an Open Exchange Contract~~For the avoidance of doubt, the expression “Transferred Contract” shall include all outstanding contracts which are Market Contracts (as defined in the LCH LIFFE Rules) ~~in the terms of a LIFFE exchange contract to which the Clearing Member~~LCH ~~is then party with LCH as central counterparty at the Transfer Time.~~ For the avoidance of doubt, this shall include ~~any Event Protection Contract~~Contracts (as defined in the LCH Rules), but shall not include any delivery and/or payment obligation arising pursuant to an Open Exchange Contract to which LCH was party as central counterparty.Equity Related Security Contracts (as defined pursuant to the LIFFE Rules) and contracts arising on the exercise of a contract in the terms of an Equity Option Contract (as defined in the LIFFE Rules) and any other delivery obligations pursuant to a contract in the terms of a Registered Exchange Contract.

- 1.2 LCH shall remain responsible for the performance of all obligations as central counterparty under and in respect of each Transferred Contract up to the Transfer Time ~~(including, for the avoidance of doubt, any delivery and/or payment obligation arising under contracts to which LCH was party as central counterparty prior to the Transfer Time)~~, and shall remain liable in respect of any failure to perform such obligations up to the Transfer Time notwithstanding the novation set out in paragraph 1.1 above. For the avoidance of doubt, LIFFE shall be responsible for all obligations as central counterparty under the replacement Registered Exchange Contract from the Transfer Time.
- 1.3 If the Clearing Member has been declared in default by LIFFE or LCH as at the Transfer Time, then the novation described above shall not occur with respect to the Clearing Member, but there shall in addition arise an LCH-LIFFE Contract as if the Clearing Member had been declared a Defaulter under the LIFFE Rules following the Transfer Time as set out in Clause 4 of this Agreement and the LIFFE Rules.

2. Amounts held by LCH in respect of existing Open Contracts

- 2.1 As from the Transfer Time any collateral (whether in the form of cash, a charge over securities in favour of LCH, or a bank guarantee in favour of LCH) to satisfy variation, initial or intra-day

margin held by or made in favour of LCH in respect of a Transferred Contract, shall be held by or in favour of LCH (as principal or agent, as set out in the Schedule) and applied instead to satisfy the relevant obligations arising under or in respect of the replacement Registered Exchange Contract.

IN WITNESS WHEREOF this document has been executed and delivered as a deed the day and year first before written.

EXECUTED as a **DEED** by)
LIFFE ADMINISTRATION AND)
MANAGEMENT)
signed by a [Director and the Company Secretary]) (Director)
)
)
) (Secretary)

EXECUTED as a **DEED** by)
LCH.CLEARNET LIMITED)
signed by a [Director and the Company Secretary])
) (Director)
)
)
) (Secretary)

EXECUTED as a **DEED** by)
[CLEARING MEMBER])
signed by a [Director and the Company Secretary])
) (Director)
)
)
) (Secretary)

Address for notices: [●]

Fax number for notices: [●]