

**DIGITAL SERVICES MANUAL**

From time to time, Customer may enter into Orders with LCH to access and use certain Products. All Orders shall incorporate and be made subject to the terms of this DSM and the relevant Product Annex(es).

**LCH DRAWS CUSTOMER'S ATTENTION TO SECTION 4 (DISCLAIMER OF WARRANTIES) AND SECTION 7 (LIABILITY).**
**1. DEFINITIONS**

1.1 Terms defined in this DSM shall have the meanings ascribed to such terms in Schedule 1.

**2. LICENCE**

2.1 **LCH Licence Grant.** Subject to the terms and conditions of an Agreement, and conditioned on Customer's full compliance therewith, LCH grants to Customer the licence set forth in the relevant Product Annex to use the Product for the Permitted Use during the Agreement Term.

2.2 Any act or omission by any Authorised User, which, if it were an act or omission of Customer would be a breach of an Agreement, shall be deemed to be a breach of an Agreement by Customer.

2.3 **Scope of Licence.** The scope of the Customer's licence to use the Product is described in the relevant Product Annex.

2.4 **Use Restrictions.** Customer represents and warrants that Authorised Users shall only use the LCH Materials, Product and Output, as applicable for the Permitted Use. Notwithstanding the foregoing and unless specifically authorised under an Agreement (excluding for the purpose of such authorisation any purported authorisation in Orders) for the Permitted Use, Customer shall not, and shall not assist, encourage or permit any other person to:

- (a) subject to Section 2.3, copy or reproduce the LCH Materials, in whole or in part;
- (b) provide, display or make available the LCH Materials to a third party;
- (c) alter, modify, correct, adapt, enhance, translate, deface, decompile, disassemble or reverse engineer all or part of the LCH Materials, or attempt to do so, except to the extent permitted by law;
- (d) use the LCH Materials (wholly or in part) in combination with any data not supplied or specified by LCH;
- (e) directly or indirectly market, rent, link, distribute, transfer, license, sublicense, offer for sale, sell, or furnish to any third party: (1) the LCH Materials, (2) access to the Product, (3) any Output or (4) any software, product, documentation, content or other materials developed using the LCH Materials, including any Customer software or product based on, incorporating or otherwise using any portion of the Product;
- (f) bypass or breach any security device or protection used for or contained in the LCH Materials;
- (g) remove, delete, translate, combine, supplement, obscure, deface or otherwise alter any notice of confidentiality, trademark, proprietary rights, symbols, notices, marks or other indicia of ownership that may be contained in, on or relating to the LCH Materials or Output;
- (h) use the LCH Materials or Output, in whole or in part, other than in strict compliance with Applicable Law;

- (i) commercially exploit the LCH Materials or Output;
- (j) access or use the LCH Materials or Output in a way intended to avoid incurring fees or charges; or
- (k) use the LCH Materials or Output other than as strictly necessary for the Permitted Use(s), as determined in LCH's sole discretion, or in any manner or for any purpose not expressly provided for or permitted by an Agreement; or
- (l) use the LCH Materials or Output outside of the particular restrictions or metrics of any Plan.

2.5 Notwithstanding anything to the contrary in an Agreement, Customer (i) shall not use, (ii) shall not assist or encourage any person from using and (iii) shall prevent any person from using the LCH Materials or Output:

- (a) for any purpose other than the Permitted Use as set forth in Section 2.1;
- (b) for any of the purposes set out in the definition of "use" under Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 (or as retained in English law subject to section 3 of the European Union (Withdrawal) Act 2018) on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and
- (c) (where LCH Materials contain, incorporate or reference data or information relating to inflation-based Contracts presented at or registered for clearing with LCH) for any reason other than for clearing, valuation, settlement and risk management in respect of the Customer's inflation-based Contracts presented at or registered for clearing with LCH.

2.6 **No Solicitation or Investment Advice.**

2.6.1 Customer acknowledges that the provision by LCH of LCH Materials and Output is not, and shall not be treated as, any advertisement or offer for, or solicitation or recommendation to buy or sell, any securities or any other financial products. LCH's publication or provision of any LCH Materials or Output in no way suggests or implies an opinion by LCH or its third party licensors as to the attractiveness of investment in any securities or any other financial products.

2.6.2 Customer acknowledges and agrees that:

- (a) LCH has not given any investment advice or made any claim as to the suitability of any LCH Materials or Output for any use; and
- (b) Customer has or will make its own assessment as to the suitability of the LCH Materials or Output for any use Customer makes of it (and Customer is qualified to make such assessment or has received suitable independent advice), including its own assessment as to of the suitability of entering into any derivative contracts in connection with the use of a Product.

2.7 **PUBLICITY.**

2.7.1 Customer shall not refer to the Product in any promotional or marketing material unless expressly with the prior written consent of LCH.

2.7.2 Upon LCH's request, Customer shall cease use, access to, distribution or display of any promotional or marketing material relating to, referring to or incorporating the LCH Materials or Output, or that make reference to LCH's or any of its Affiliates' businesses, that, in LCH's sole discretion and notwithstanding LCH's prior approval or consent in relation to such material, (i) breaches an Agreement, (ii) has or may have an adverse impact on LCH's or any of its Affiliates' reputation or businesses or (iii) LCH believes may put LCH or any of its Affiliates at risk of breaching Applicable Law.

- 2.7.3 LCH shall not refer to Customer, or use Customer's name or logo, in any publicity material or on its website without obtaining the Customer's prior written consent.

### 3. AUDITS

- 3.1 During an Agreement Term, and for five (5) years following the termination of an Agreement, LCH or its nominee may, at its own expense and upon five (5) business days' prior written notice, inspect and audit Customer's compliance with an Agreement. LCH (or its nominee) shall conduct all audits during regular business hours and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all books, Customer Records, equipment, information and personnel, and provide all such cooperation and assistance, as may be requested by or on behalf of LCH in connection with an audit provided that nothing in this Agreement shall require the Customer to breach any confidentiality obligations it owes to any third party or disclose any legally privileged information.
- 3.2 If an audit under this Section 3 reveals Customer's underpayment of any amount due under an Agreement, Customer shall immediately pay such amount (plus any applicable interest under Section 5.4) to LCH, and Customer shall pay LCH's (or its nominee's) reasonable costs and expenses in performing such audit.

### 4. DISCLAIMER OF WARRANTIES

- 4.1 SUBJECT TO CLAUSE 4.4, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE LCH MATERIALS, OUTPUT, DATA, INFORMATION, MATERIALS OR SERVICES PROVIDED BY OR ON BEHALF OF LCH PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS IS," WITH REASONABLE SKILL AND CARE AND IN ACCORDANCE WITH APPLICABLE LAW.
- 4.2 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LCH HEREBY DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY AND NON-INFRINGEMENT.
- 4.3 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND WITHOUT LIMITING THE FOREGOING, LCH MAKES NO WARRANTY OF ANY KIND THAT ANY LCH MATERIALS, OUTPUT OR ANY OTHER LCH GOODS, SERVICES, TECHNOLOGIES OR MATERIALS, INCLUDING ANY SOFTWARE OR HARDWARE, OR ANY PRODUCT OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT OR PURPOSE, BE COMPATIBLE WITH OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES OR MATERIALS, INCLUDING ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK, EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, OR BE SECURE, ACCURATE, COMPLETE, (SUBJECT TO CLAUSE 4.5) FREE OF HARMFUL CODE, VIRUSES, WORMS, TROJAN HORSES, OTHER HARMFUL COMPONENTS OR BE ERROR FREE.
- 4.4 The Product will function or can be used substantially in accordance with the Documentation.
- 4.5 LCH will apply good industry standard to protect the LCH Portal from harmful code, viruses, worms, Trojan horse and other harmful components.

### 5. FEES, INVOICES AND PAYMENTS

- 5.1 Customer shall pay to LCH the undisputed Fees and any other costs or fees (including any tax, duty or assessment) specified on the Order annually in advance and within thirty (30) calendar days of Customer's receipt of the relevant invoice from LCH. Customer may nominate a third party payor on the Order to pay Fees on the Customer's behalf, provided that this does not relieve the Customer from the obligation to pay the Fees.
- 5.2 LCH shall, upon no fewer than thirty (30) calendar days' prior notice, have the unilateral right to amend the Fees at any time, including the foreign exchange rate applied to the Fees; **provided, however**, that

any amendment to the level of the Fees shall not take effect until the first calendar day of the subsequent Renewal Term following the date on which Customer receives the aforementioned notice.

5.3 Unless expressly stated in an Agreement, no refund of any Fees or any other fees or charges payable hereunder will be provided by LCH.

5.4 **Late Fees.** If Customer defaults in the payment when due of any sum payable under an Agreement (howsoever determined), the liability of Customer shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment at a rate per annum of the EONIA rate plus 1%. In the event that EONIA is no longer available, the Parties will use a rate of €STR (Euro Short Term Rate) in its place, or any other successor designated by the European Central Bank as the recommended risk-free rate for Euros. Such interest shall accrue daily from the date on which the payment was due.

5.5 **VAT/Sales Tax.**

5.5.1 All charges due and payable hereunder are exclusive of sales tax, purchase or turnover tax, levies, duties or its equivalent in each relevant jurisdiction, excluding taxes assessable against LCH based on its income, property or employees ("**Sales Tax**"), which, if applicable, shall be payable by Customer at the rate applicable at the time. Customer shall be liable for the payment of any taxes, charges or assessments imposed in connection with the payment of all charges.

5.5.2 In the event of any amendment to Sales Tax legislation or for any other reason the sums invoiced without Sales Tax in accordance with an Agreement become subject to Sales Tax, then the applicable invoices shall be deemed to be exclusive of Sales Tax (if any) and Customer shall, in addition to the sums payable, pay LCH the full amount of Sales Tax chargeable thereon on the provision of a valid invoice prepared in the format prescribed by the relevant taxing authority in the jurisdiction in which LCH is located.

5.5.3 Where Sales Tax or its equivalent has not been charged and it is later determined that Sales Tax or its equivalent should have been applied, the time limit for LCH to reissue the invoice with Sales Tax or its equivalent is three (3) years after the expiry of an Agreement.

5.6 **Withholding Taxes.**

5.6.1 In the event that Applicable Law requires that an amount in respect of any taxes, levies or charges be withheld from any payment by Customer to LCH under an Agreement, the amount payable to LCH shall be increased as necessary so that, after Customer has withheld amounts required by Applicable Law, LCH receives an amount equal to the amount it would have received had no such withholding been required. Customer shall withhold such taxes, levies or charges and pay such withheld amounts over to the applicable taxing authority in accordance with the requirements of the Applicable Law and provide LCH with a receipt confirming such payment. LCH shall reasonably cooperate with Customer to determine whether any such deduction or withholding applies to the services, and, if so, shall further cooperate to minimise applicable withholding taxes

5.6.2 Where LCH can demonstrate that, although a credit is permitted under the laws in force in the jurisdiction in which LCH is incorporated, it is not available to LCH, either in part or in full, the amount invoiced can be increased so that LCH receives an amount equal to that which it would have received had no such withholding been required. This includes the scenario where withholding tax is suffered at a rate higher than the tax rate payable in the United Kingdom.

**6. INTELLECTUAL PROPERTY RIGHTS**

6.1 **Intellectual Property Ownership.**

6.1.1 **General.** The rights granted hereunder are solely with respect to the Customer's use of the LCH Materials, and in no event shall there be an acquisition or implied licence under any LCH's or any of its Affiliates' Intellectual Property Rights.

- 6.1.2 LCH warranty. LCH warrants that it has all necessary rights, permissions and licences to make available the LCH Materials under the terms of an Agreement.
- 6.1.3 **LCH Ownership.** Customer acknowledges and agrees that:
- 6.1.4 the LCH Materials are licensed, not sold, to Customer, and Customer does not and will not have or acquire under or in connection with an Agreement any ownership interest in the, LCH Materials, Output or any related Intellectual Property Rights;
- 6.1.5 the LCH Materials were developed by LCH through the expenditure of substantial time, effort and money, and constitute valuable intellectual property and trade secrets of LCH;
- 6.1.6 LCH is and will remain the sole and exclusive owner of all rights, title and interest in and to the LCH Materials, including all Intellectual Property Rights relating thereto; and
- 6.1.7 Customer hereby unconditionally and irrevocably assigns to LCH its entire right, title and interest in and to any Intellectual Property Rights that Customer may now or hereafter have in or relating to the, LCH Materials and Output, whether held or acquired by operation of law, contract, assignment or otherwise.
- 6.2 **Cooperation and Infringement.**
- 6.2.1 Customer shall:
- (a) take all reasonable measures to safeguard the LCH Materials, Output and any copies thereof from infringement, misappropriation, theft, misuse or unauthorised access;
  - (b) take all such steps as LCH may require to assist LCH in maintaining the validity, enforceability and ownership of the Intellectual Property Rights in the LCH Materials and Output;
  - (c) promptly notify LCH in writing if Customer becomes aware of (A) any actual or suspected infringement, misappropriation or other violation of LCH's Intellectual Property Rights in or relating to the LCH Materials and Output or (B) any claim that the LCH Materials or Output, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any person; and
  - (d) fully cooperate with and assist LCH in the conduct of any Claim by LCH to prevent or abate any actual or threatened infringement, misappropriation or violation of LCH's rights in the LCH Materials or Output. Customer shall provide such cooperation and assistance at LCH's expense, save where such Claim is related to or in connection with Customer's breach of an Agreement.

## 7. LIABILITY

- 7.1 **LIMITATIONS OF LIABILITY.** SUBJECT TO CLAUSES 7.3 AND 7.4, NEITHER PARTY SHALL BE LIABLE UNDER OR IN CONNECTION WITH THIS DSM OR AN AGREEMENT TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), MISREPRESENTATION OR OTHERWISE FOR:
- (a) LOSS OF PROFITS;
  - (b) LOSS OF SALES, REVENUE OR ANTICIPATED SAVINGS;
  - (c) LOSS OF OR DAMAGE TO GOODWILL OR REPUTATION;
  - (d) LOSS OF OPPORTUNITY OR WASTED EXPENDITURE;

- (e) LOSS OF DATA OR LOSS OF USE DAMAGES; OR
  - (f) LOSS OR DAMAGE ARISING FROM ANY CLAIM MADE, OR LOSS INCURRED, BY AN AUTHORISED USER OR ANY OTHER OF CUSTOMER'S CLIENTS OR CUSTOMER'S AFFILIATES;  
  
in each case under clauses 7.1(a) to (f) (inclusive) whether such losses are direct or indirect; or
  - (g) ANY COSTS, CHARGES, EXPENSES OR DAMAGE, INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL LOSSES.
- 7.2 LIABILITY CAP. SUBJECT TO CLAUSES 7.1, 7.3 AND 7.4, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER PARTY WITH REGARD TO ALL LIABILITIES, LOSSES, CHARGES, DAMAGES, EXPENSES AND COSTS OF ANY KIND, INCLUDING LEGAL COSTS, IN ALL ACTIONS AND CLAIMS ARISING OUT OF OR IN CONNECTION WITH ANY AGREEMENT, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND BREACH OF STATUTORY DUTY), MISREPRESENTATION OR OTHERWISE (INCLUDING CONNECTED CLAIMS) SHALL BE THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THE RELEVANT AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
- 7.3 Nothing in this DSM or an Agreement limits or excludes either Party's liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) a breach of Section 14 (*Confidentiality*); or
  - (d) any liability that cannot be limited or excluded by Applicable Law.
- 7.4 Nothing in an Agreement limits or excludes Customer's liability for (i) Customer's obligations to pay to LCH the undisputed Fees and any other fees or charges in accordance with an Agreement or (ii) any amounts due and payable to LCH resulting from a breach of an Agreement.
- 8. SUSPENSION**
- 8.1 LCH may suspend or revoke all or part of Customer's or any Authorised User's right to access or use a Product, if LCH determines:
- (a) any of the LCH Materials or Output depends on the provision or availability of any third party information, data or services, and such third party does not supply or is incapable of supplying such information, data or services;
  - (b) any of the LCH Materials or Output cannot be provided to Customer or any Authorised User in accordance with Applicable Law; or
  - (c) to terminate or suspend access to or provision of any of the LCH Materials or Output across parts or all of its business.
- 8.2 LCH may suspend or revoke all or part of Customer's or any Authorised User's right to access or use all Products under all Agreements, if LCH determines:
- (a) access to or use of any Product (i) poses a security risk or threat to LCH, any of its Affiliates or any third party, (ii) could adversely impact LCH's or its Affiliates' systems or businesses or (iii) could subject LCH, its Affiliates or any third party to liability, including any third party Claim that the LCH Materials or Output infringes upon a third party's Intellectual Property Rights;
  - (b) Customer is in breach of any Agreement, including the payment of any Fees;

8.3 Upon any suspension or revocation under Section 8.1 or 8.2, LCH shall provide Customer reasonable information regarding the reason for suspension or revocation and, in the case of suspension, the expected period of suspension.

8.4 For the avoidance of doubt, LCH shall have no liability for any suspension under Section 8.1 or 8.2, **provided, however**, that LCH shall, upon Customer's request, refund any pre-paid Fees on a pro rata basis for the period of time relating to such suspension, save for a suspension arising pursuant to Section 8.2(b).

## **9. USE OF OPEN SOURCE SOFTWARE**

9.1 Customer acknowledges that a portion of the LCH Materials to be delivered under an Agreement may contain Permissive Open Source Code. Customer represents and warrants that Customer shall not take any action that would alter the status of such portions of LCH Materials as Permissive Open Source Code.

## **10. CUSTOMER OBLIGATIONS**

10.1 In addition to fulfilling all other obligations of Customer set forth in this DSM or an Agreement, Customer shall:

- (a) comply with all reasonable instructions from the LCH relating to the operation of the Product;
- (b) use only suitably trained employees and contingent workers in the use and operation of the Product;
- (c) within a reasonable time period, or such time period as prescribed by LCH, install and run any and all fixes, patches or other Updates released by the LCH in connection with the Product, its operation or the provision or use thereof; and
- (d) comply with any reasonable requirements or directions of the LCH from time to time with respect to disclaimers and attribution provisions to be displayed with any screen or other mechanism that Customer utilizes to provide, publish or display results calculated by the Product.

## **11. AGREEMENT TERM**

11.1 The term of the Agreement shall commence on its Order Effective Date and, shall continue in force for its Initial Term, unless and until terminated earlier in accordance with Section 12, and shall continue automatically thereafter for further Renewal Terms.

11.2 All Agreements shall have a Renewal Term unless stated otherwise on the Order Form.

11.3 Either party may terminate an Agreement with effect at the expiry of the Initial Term or Renewal Term upon service no less than ninety (90) calendar days' prior notice.

## **12. AGREEMENT TERMINATION/RENEWAL OPT OUT**

12.1 Either Party may terminate an Agreement with immediate effect by providing notice to the other Party if the other Party:

- (a) becomes unable to pay its debts in the ordinary course of business, passes a resolution for winding up or has a receiver or administrator appointed over all or any of its assets, becomes insolvent (whether voluntarily or involuntarily), is placed in liquidation or ceases to carry on business as a going concern or the equivalent occurs in any jurisdiction; or
- (b) is in material breach of any term of an Agreement and such material breach is uncured for a period of thirty (30) calendar days from receipt of notice by the other Party.

For purposes of Section 12.1(b), the complete unavailability of a Product for a period of ten (10) consecutive business days shall constitute a "material breach" of that Agreement by LCH. In such event,

Customer shall have the right to terminate that Agreement with immediate effect at the conclusion of such 10 business day period.

- 12.2 LCH may terminate an Agreement with immediate effect upon prior notice to Customer:
- (a) if charges or fees due and payable under that Agreement have remained unpaid for a period of sixty (60) calendar days following the due date of such Fees or other charges or fees under the relevant invoice;
  - (b) upon a breach by Customer of any representation or warranty under Section 15 (Representations and Warranties); or
  - (c) for any of the reasons set forth in Section 8.1 or 8.2 (inclusive).
- 12.3 LCH may terminate an Agreement upon giving no less than thirty (30) days' notice (or if such notice period is not possible, giving reasonable notice) if LCH determines or believes it cannot provide access to or use of a Product for commercial, legal, risk, compliance or regulatory reasons.
- 12.4 In the event LCH terminates an Agreement pursuant to Section 12.3, or Customer terminates an Agreement pursuant to Section 12.1(b) and the asserted material breach is the complete unavailability of a Product for ten (10) consecutive business days, LCH shall, upon Customer's request, refund any pre-paid Fees on a *pro rata* basis.
- 12.5 Termination of an Agreement shall not automatically terminate this DSM or any other Agreement between the Parties.

### 13. EFFECT OF TERMINATION

- 13.1 Upon the termination of an Agreement, all rights, licences and authorisations granted to Customer thereunder will immediately terminate and Customer shall:
- (a) immediately cease all use of, access to and all other activities related to the Product and LCH Materials;
  - (b) within seven (7) days deliver to LCH or, at LCH's request, destroy and permanently erase from all devices and systems Customer, directly or indirectly, controls, LCH Materials, including all documents, files and materials containing, reflecting, incorporating or based on any of the foregoing, whether or not modified or merged into other materials; and
  - (c) upon LCH's request, certify to LCH in a signed, written instrument that Customer has complied with the requirements of this Section 13.1.
- 13.2 Customer shall remain responsible for all fees and charges incurred through the date of termination of an Agreement.
- 13.3 **Surviving Terms.** The provisions set forth in the following sections, and any other right, obligation or provision under this DSM or an Agreement that, by its nature, should survive termination of this Agreement, will survive any termination of this Agreement: this Section 13.3, Section 1 (*Definitions*), Section 3 (*Audits*), Section 4 (*Disclaimer of Warranties*), Section 5 (*Fees, Invoices and Payments*), Section 6 (*Intellectual Property Rights*), Section 7 (*Liability*), Section 8 (*Suspension*),,, Section 10 (*Customer Obligations*), Section 13 (*Effect of Termination*), Section 14 (*Confidentiality*), Section 15 (*Representations and Warranties*), Section 16 (*Miscellaneous*), and Section 17 (*Governing Law, Submission to Jurisdiction, Dispute Resolution, Injunctive Relief*).

### 14. CONFIDENTIALITY

- 14.1 **Confidential Information.** In connection with this DSM or an Agreement, the Disclosing Party may disclose or make available Confidential Information to the Receiving Party.



- 14.2 **Exclusions and Exceptions.** Except as required by Applicable Law, “**Confidential Information**” shall not include information that:
- (a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this DSM or an Agreement by the Receiving Party or any of its Representatives;
  - (b) at the time of disclosure is, or thereafter becomes, available to the Receiving Party on a non-confidential basis from a third party, provided that such third party is not and was not prohibited from disclosing such Confidential Information by an obligation to the Disclosing Party;
  - (c) was known by or in the possession of the Receiving Party or its Representatives, as established by documentary evidence, before being disclosed by or made available by or on behalf of the Disclosing Party pursuant to this DSM or an Agreement; or
  - (d) was independently developed by the Receiving Party, as established by documentary evidence, without reference to or use of any of the Disclosing Party’s Confidential Information.
- 14.3 **Protection of Confidential Information.** The Receiving Party shall:
- (a) protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
  - (b) not disclose or use the Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than in the exercise and performance of its rights and obligations under this Agreement (the “**Confidentiality Purpose**”); and
  - (c) not disclose any Confidential Information to any person, except to the Receiving Party’s Representatives who (A) need to know such Confidential Information for the Confidentiality Purpose, (B) are informed by the Receiving Party of the confidential nature of such Confidential Information, and (C) are subject to confidentiality obligations to the Receiving Party that are no less restrictive than the terms and conditions of this DSM or an Agreement.
- 14.4 **Compelled Disclosures.** Before the Receiving Party (or its Representatives) makes any disclosure of any of the Disclosing Party’s Confidential Information under Applicable Law or in accordance with the Customer’s own internal procedures and processes regarding information storage and disclosure, the Receiving Party shall, to the extent permitted under Applicable Law, provide the Disclosing Party with:
- (a) prompt notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and
  - (b) reasonable assistance, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking such protective order or other limitation on disclosure.
- 14.5 **Return of Confidential Information.** At the request in writing of the Disclosing Party, the Receiving Party shall return all Confidential Information of the Disclosing Party and all materials that contain any of the Disclosing Party’s Confidential Information, including all specifications, drawings, designs, recording tapes, computer software, data and any other materials whatsoever and all copies made thereof, or if so requested by the Disclosing Party, the Receiving Party shall certify in writing that all copies of the Disclosing Party’s Confidential Information have been destroyed, except to the extent that the same form part of (i) the permanent records of the Receiving Party that it is bound by Applicable Law to preserve or where the Customer is bound by its own internal procedures and processes regarding information storage and disclose or (ii) any electronic records that are customarily backed up in the normal course of the Receiving Party’s business, in which event the Receiving Party may retain such Confidential Information in strictest confidence. Notwithstanding the return to the Disclosing Party of the Confidential Information pursuant

to this clause, the Receiving Party and its Representatives shall continue to be bound to their confidentiality and other obligations under this DSM or an Agreement.

14.6 **Breach.** The Receiving Party shall be responsible and liable for any breach of this Section 14 by any of its Representatives.

## 15. REPRESENTATIONS AND WARRANTIES

15.1 Each Party represents, warrants and covenants to the other Party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power and authority, including any required or necessary regulatory licences or authorisations, to enter into and perform its obligations under this Agreement, including to grant the rights and to provide the services contemplated by each Permitted Use;
- (c) the execution of this DSM or an Agreement has been duly authorised by all necessary corporate or organizational action of such Party; and
- (d) it shall comply with Applicable Law in carrying out its obligations under this DSM and any Agreement.

15.2 Without prejudice to Section 15.1, Customer warrants and undertakes that (i) it shall not knowingly undertake any activities which would amount to, or facilitate or otherwise result in another person committing, tax evasion and (ii) it shall maintain reasonable procedures designed to prevent any employees, agents or other persons who perform services for it or on its behalf from undertaking any such activities. Customer shall follow its internal reporting procedures where breaches of Section 15.2(i) are identified. The Customer shall answer, in reasonable detail, any written or oral inquiry from LCH related to Customer's compliance with this clause.

## 16. MISCELLANEOUS

16.1 **Force Majeure.** In no event will LCH be liable or responsible to Customer, or be deemed to have defaulted under or breached this DSM or an Agreement, for any failure or delay in fulfilling or performing any term of this DSM or an Agreement when and to the extent such failure or delay is caused by any circumstance beyond LCH's reasonable control, including acts of God, flood, fire, earthquake, pandemic, explosion, war, terrorism, invasion, riot or other civil unrest, embargoes, blockades, national or regional emergency, strikes, labour stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority or any complete or partial government shutdown or emergency. For the avoidance of doubt, the foregoing shall include any failure or delay in fulfilling or performing any term of this DSM or an Agreement as a result of or related to the COVID-19 pandemic.

16.2 **Further Assurances.** Each Party shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing as may be reasonably requested of it by the other Party by notice to implement this DSM or an Agreement.

16.3 **Assignment.** Either party may assign, novate or transfer any or all of its rights or obligations under this DSM or an Agreement:

- 16.3.1 to any of its Affiliates, provided that it serves no less than thirty (30) days' written notice of any such assignment, novation or transfer to the other party; or
- 16.3.2 to any other third party provided that it serves no less than ninety (90) days' written notice ("Transfer Notice") of any such assignment, novation or transfer to the other party. Following receipt of a Transfer Notice, the other party may terminate this DSM and all Agreements on giving no less than thirty (30) days' written notice prior to the expiry of the period of the Transfer Notice.

- 16.4 **Sub-Contracting.** LCH may sub-contract, delegate or outsource the performance of any or all of its obligations under this DSM or an Agreement, **provided**, however, that any such sub-contracting, delegation or outsourcing shall not relieve LCH from any such obligations.
- 16.5 **Notices.**
- Any notice, claim or demand in connection with this DSM or an Agreement or with any arbitration under this DSM or an Agreement (each, a “**Notice**”) shall be sufficiently given to the recipient at (i) its registered address, (ii) the address set out in an Order or (iii) an e-mail address as notified by the recipient to the notifying Party from time to time for purposes of this DSM or an Agreement.
- Any Notice shall be in writing in English and may be sent by messenger, courier or by email. Without prejudice to the foregoing, any Notice shall conclusively be deemed to have been received:
- (a) if delivered by messenger or courier, the date on which delivery is shown or evidenced to have occurred; or
  - (b) if sent by email, at the time of sending, provided that receipt shall not occur if the sender receives an automated message indicating that the email has not been delivered to the recipient.
- A notice under or in connection with this DSM or any Agreement shall be in writing in the English language. In the absence of evidence of earlier receipt, a notice is deemed given upon receipt.
- 16.6 **Amendment.** LCH shall give the Customer no less than thirty (30) days' notice ("**Notice Period**") of any variation to this Agreement. Such variation shall automatically come into effect at the end of the Notice Period. Where the variation affects (to the detriment of the Customer) the scope of the LCH Materials, the Fees, liability of either Party or any Customer obligations, the Customer may serve notice on LCH prior to the end of the Notice Period that the Customer wishes to terminate this Agreement. Where the Customer serves such notice, LCH shall refund a pro-rated amount of any Fees paid in advance for the current Initial Term or Renewal Term.
- 16.7 **Waiver.** No failure or delay by any Party in exercising any right or remedy provided under this DSM or an Agreement (including the invoicing of an amount payable to LCH by Customer) shall operate as a waiver of it, nor shall a single or partial exercise of any right or remedy preclude any other or further exercise of it or the exercise of any other right or remedy. Any waiver of a breach of this DSM or an Agreement shall not constitute a waiver of any subsequent breach.
- 16.8 **Bribery.** In pre-contract negotiations and in use of the licence granted under this DSM or an Agreement, LCH and Customer each confirms that it has and shall at all times comply with the terms of any applicable legislation in the jurisdiction in which LCH or the Customer is incorporated (as applicable) relating to bribery and corrupt practices.
- 16.9 **Contracts (Rights of Third Parties) Act 1999.** A person who is not a party to this DSM or an Agreement has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of this DSM or an Agreement. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this DSM or an Agreement are not subject to the consent of any person that is not a party to this DSM or an Agreement.
- 16.10 **Severability.** If at any time any part of this DSM or any Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this DSM or any Agreement and the validity and/or enforceability of the remaining provisions of this DSM or any Agreement shall not in any way be affected or impaired as a result of that omission.
- 16.11 **No Partnership.** Nothing in this DSM or any Agreement shall create a partnership between the Parties or make a Party the agent of another Party for any purpose. Neither Party may pledge the credit of the other party nor represent itself as being the other party nor an agent, partner, employee or representative of the other Party and neither Party may hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other.

- 16.12 **Counterparts.** This DSM or any Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this DSM or any Agreement by signing any such counterpart.
- 16.13 **Entire Agreement.** This DSM or any Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this DSM or any Agreement and contains the whole agreement between the Parties relating to the subject matter of this DSM or any Agreement at the date hereof to the exclusion of any terms implied by law, which may be excluded by contract. In the event of any conflict between an Agreement and any other agreement between the Parties, this DSM and the Agreement shall prevail to the extent of such conflict. The Parties acknowledge that they have not been induced to enter into this DSM by any representation, warranty or undertaking not expressly incorporated into it. An Agreement shall not supersede the Participant Data Access and Rights Agreement between the Parties (where such agreement exists) or any other written agreement between the Parties pertaining solely to the use and disclosure of LCH Materials and Outputs to Customer for purposes of the Customer pricing and valuing contracts presented to or registered with LCH by Customer or any investment fund for which the Customer acts as investment manager. Each Party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies (excluding in relation to fraudulent misrepresentation) but including any right to rescind this DSM or any Agreement which it might otherwise have had in relation to them.

## 17. GOVERNING LAW; SUBMISSION TO JURISDICTION; ARBITRATION INJUNCTIVE RELIEF

- 17.1 **Governing Law.** This DSM and any Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 17.2 **Arbitration.** Except for emergency judicial relief authorised under Section 17.3, any dispute arising out of or connected with this DSM or any Agreement that cannot be resolved amicably by the Parties thereto, including any dispute as to the validity, existence or termination of this DSM or any Agreement and/or this Section 17.2 and/or any non-contractual obligation arising out of or in connection with this DSM or any Agreement, shall be resolved in such manner as the Parties may agree or, failing agreement, by arbitration in London by a single arbitrator pursuant to the rules of the London Court of International Arbitration (which rules are deemed to be incorporated by reference into this Section) save that, unless the Parties agree or the arbitrator rules otherwise:
- (a) the claimant shall serve his written claim document within 14 days of the arbitrator's appointment. The defence shall be served 14 days after that and the reply 14 days thereafter. Each Party shall attach any documents relied upon;
  - (b) no statement of case, witness statement, expert report or submission shall exceed 10 pages plus attachments;
  - (c) factual witnesses shall give evidence in chief by witness statement. Cross-examination of any factual or expert witness shall not exceed half a day;
  - (d) there shall be no general disclosure of documents;
  - (e) there shall be no oral submissions, though the arbitrator may ask questions of the Parties orally or in writing;
  - (f) the arbitrator shall make his award, with reasons, as soon as practicable and in any event within four months of his appointment;
  - (g) each Party shall bear one half of the costs associated with the administration of the arbitration proceedings. and

(h) judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof.

17.3 **Injunctive Relief.** The parties acknowledge that violation by any Party of the provisions of Section 14 (Confidentiality) may cause irreparable harm to the other Party not adequately compensable by monetary damages. In addition to other relief, it is agreed that preliminary and permanent injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

**Schedule 1 – Interpretation; Definitions**

**1. INTERPRETATION**

- 1.1 For purposes of an Agreement, (a) the words "include," "includes" and "including" are not exclusive or exhaustive; and (b) the words "herein," "hereof," "hereto" and "hereunder" refer to an Agreement as a whole.
- 1.2 Unless the context otherwise requires, references herein:
- 1.2.1 to Sections and Schedules mean the sections of, and schedules attached to, this DSM;
- 1.2.2 to an agreement, instrument, or other document means such agreement, instrument, or other document; and
- 1.2.3 to a statute means such statute (as amended from time to time), any successor legislation thereto and any regulations promulgated thereunder.
- 1.3 This DSM or an Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedule(s) referred to herein shall be construed with, and as an integral part of, this DSM to the same extent as if they were set forth verbatim herein.
- 1.4 In the event of conflict between the DSM, the Product Annex and the Order, the following order of precedence shall apply:
- 1.4.1 DSM;
- 1.4.2 Product Annex; then
- 1.4.3 Order.
- 1.5 Except where expressly stated to the contrary, all times in this DSM or an Agreement are described using the twenty-four-hour clock and are London time.
- 1.6 The headings in this DSM and an Agreement are for reference only and do not affect the interpretation of this DSM or an Agreement.

"**Add-on**" means additional functionality identified as an add-on on the LCH Portal.

"**Agreement**" means an Order incorporating the relevant Product Annex and the DSM.

"**Agreement Term**" means the duration of an Agreement, including the Initial Term and any Renewal Terms.

"**Affiliate**" means (i) each and any subsidiary or holding company of a Party and each and any subsidiary of a holding company of the Party from time to time; or (ii) with respect to Customer, each and any subsidiary or holding company of Customer, and each and any subsidiary of a holding company of Customer from time to time that accessed, was provided access to or used the LCH Materials or LCH Service.

"**Applicable Law**" means any applicable statute, law, ordinance, regulation, rule and other instruments in force from time to time, including the rules, codes or practice of a Government Authority.

"**Authorised User**" means as defined in the relevant Product Annex.

"**Claim**" means any claim, legal or equitable, cause of action, suit, litigation, proceeding (including a regulatory or administrative proceeding), grievance, complaint, demand, charge, investigation, examination, audit, arbitration,

mediation or other process for settling disputes or disagreements, including any of the foregoing processes or procedures in which injunctive or equitable relief is sought.

**“Confidential Information”** means information in any form or medium (whether oral, written, electronic or other) that a Party (the **“Disclosing Party”**) discloses or makes available to the other Party (the **“Receiving Party”**) in connection with this DSM or an Agreement that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, trade data or details, know-how, business operations, plans, strategies, customers and pricing, whether or not marked designated or otherwise identified as “confidential”.

**“Contract”** means as defined by all or any of the General Regulations, Default Rules, Settlement Finality Regulations, Procedures, or any other regulations and procedures of LCH, as published on LCH’s website and amended from time to time.

**“Documentation”** means any and all documents, instructions, analyses, reports, materials, data and any other descriptions related to the LCH Materials or Output or Plan that LCH provides or makes available to Customer from time to time in any form or medium (including on the LCH Portal) related to the operation, use, support, installation or integration of the LCH Materials or Output.

**“DSM”** means this Digital Services Manual.

**“Fees”** means the fees exclusive of sales tax and costs payable by Customer to LCH for the relevant Plan or Product, as specified in the Order.

**“Government Authority”** means (i) any governmental, inter-governmental, parliamentary or supranational body, entity, agency or department or (ii) regulatory, self-regulatory or other authority, in each case with competent jurisdiction over a given Party.

**“Initial Term”** means a period of 12 months from the Order Effective Date unless stated otherwise on the Order Form.

**“Intellectual Property Rights”** means any and all rights, title and interest, presently or hereafter owned or acquired, under or related to any and all patents, inventions, copyrights, databases, design rights, trademarks and domain names, get-up, goodwill or rights to sue for passing off, computer software, know-how and trade secrets and any other intellectual property rights of whatever nature, in each case whether registered or unregistered and including all applications (or rights to apply) for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection that may now or in the future subsist in any part of the world.

**“LCH Materials”** means any and all of the Product, Documentation, Updates and any material in whatsoever form (including specifications, plans, methodologies, software, databases, reports, processes, designs, documentation, information and know-how) developed, provided or made available by LCH to Customer, or accessed by the Customer, any Authorised User or any Affiliate, under or in connection with this Agreement and as more specifically detailed in a Product Annex.

**“LCH Portal”** means the portal made available by LCH from time to time through which the Customer accesses the LCH Materials and submits Orders;

**“Order Effective Date”** means the date on which the Customer and LCH sign an Order.

**“Order”** means the document by which Customer orders Products, and which is signed by the Parties.

**“Output”** has the meaning given to it in each Product Annex for that Product (as relevant).

**“Party”** means either LCH or Customer; **“Parties”** means both LCH and Customer.

**“Permissive Open Source Code”** means any software program, or portion thereof, that is licensed under a licence that (a) grants the user the right to freely use, copy, modify, distribute and display the source code for a software program and (b) does not require as a condition of use, modification, and/or distribution of the software subject to the licence, that such software or other software combined and/or distributed with such software be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge. For purposes of clarity, software subject to the Berkeley Style Database licence available on the Open Source Initiative website ([www.opensource.org](http://www.opensource.org)) would be considered Permissive Open Source Code while software licensed under the General Public License (also available on the Open Source Initiative website) would not.

**“Permitted Use”** means use of the Product as set forth in the relevant Product Annex .

**“Plan”** means a Bronze, Silver or Gold licence for a set of Products as selected on an Order and as described on the LCH Portal, as amended or supplemented from time to time.

**“Product”** means an LCH subscription product or service or Add-On (and all their associated functionality and content) available via the LCH Portal from time to time, as specified in a relevant Product Annex and noted on an Order.

**“Product Annex”** means those terms agreed to by the Customer when submitting an Order relevant to the Product(s) noted on the Order, including all exhibits.

**“Renewal Term”** means periods of 12 months unless stated otherwise on the Order Form, in each case which shall commence on the first calendar day immediately following the expiry of the Initial Term or then current Renewal Term.

**“Representatives”** means, with respect to a Party, that Party and its Affiliates’ respective employees, officers, directors, consultants, contractors, service providers, sublicensees, subcontractors and advisors.

**“Updates”** means any amendment, bug fixes, service packs, hot fixes, updates, upgrades, enhancements, modifications, and new releases or versions, update or upgrade to the Product or Documentation, and any material in whatsoever form (including specifications, plans, methodologies, software, databases, reports, processes, designs, documentation, information and know-how) developed, provided or made available by LCH to Customer under or in connection with an Agreement.