

Turquoise Member Agreement

VERSION 2.1

Updated 11 July 2008

This agreement ("**Agreement**") sets out the terms and conditions that will govern the use and access by a firm using the trading platform ("**Turquoise**") operated by Turquoise Services Ltd ("**TSL**") in the event that the firm's application to become a member ("**Member**") of Turquoise is accepted by TSL, following completion and submission of the Turquoise Membership Application Form ("**Application Form**"). This Agreement will come into effect when TSL accepts the firm's application to become a Member and after TSL has become authorised and regulated by the Financial Services Authority to provide the services to which this Agreement relates. By signing and returning the attached copy of this agreement, the Member agrees to the terms set out below.

The Member's access to Turquoise is at all times subject to and governed by the rules of Turquoise (the "**Turquoise Rules**"). Capitalised terms used but not defined in this Agreement are as defined in the Turquoise Rules.

Both the member and TSL are also referred to herein individually as a "Party" and together as "Parties".

1 Capacity

1.1 TSL is authorised and regulated by the Financial Services Authority (the "**FSA**") to operate Turquoise.

1.2 The Member acknowledges that access to Turquoise is provided equally to each other member of Turquoise including those Members that are shareholders in the parent company of TSL and TSL has no level of responsibility to any one person (including the Member) over any other Member.

2 Licence

2.1 TSL hereby grants the Member a revocable, non-exclusive, non-transferable licence to access and use Turquoise during the term of the Member's participation for its own business within the European Economic Area and Switzerland solely in accordance with the provisions of this Agreement and the Turquoise Rules.

3 System requirements and maintenance

3.1 The Member will, at its own cost and expense, provide all equipment, operating platforms, and software (other than the software provided by TSL) to use Turquoise. Any minimum standards and requirements for such equipment, operating platforms, and software will be communicated to the Member prior to the Member being activated on Turquoise. The Member will also provide, at its own cost and expense, all connections from its own computer systems to Turquoise, and subject to

paragraph 6, TSL will have no liability for any such equipment or connections, nor any liability for any damage thereto.

3.2 Subject to the terms of this Agreement and the Turquoise Rules, TSL shall use reasonable efforts to make available, operate and maintain Turquoise during the term of this Agreement and to permit the Member to access and use Turquoise in accordance with this Agreement and the Turquoise Rules. TSL shall use reasonable efforts promptly to notify the Member of any difficulties experienced by TSL or other Members with respect to their access to or use of Turquoise, but only to the extent that TSL is aware of such difficulties and reasonably determines that they are material to the Member's access to or use of Turquoise. TSL shall have no obligation to verify, correct, complete or update any information displayed on Turquoise from time to time except where TSL is the author of such information as set out in paragraph 4.1 below.

3.3 The Member shall access and use Turquoise solely for its own internal purposes (including, without limitation, trading) and such access and use is conditional upon the Member's compliance with this Agreement and with the applicable terms of the Turquoise Information Licence Agreement ("**ILA**"). The Member shall ensure that persons authorised to use and access Turquoise on the Member's behalf are suitably trained and qualified to access and use Turquoise and, where applicable, have the appropriate authorisation to enter into a legally binding Transaction ("**Transaction**" means the execution of the binding contract when the Order is crossed) on behalf of the Member. The Member shall as soon as reasonably practicable notify TSL if it becomes aware of any material technical failures of or difficulties with Turquoise or upon becoming aware of any material breach (or any event which, with the giving of notice or the lapse of time or both, would constitute a material breach) by it of this Agreement.

4 Intellectual Property Rights and Member information

4.1 Intellectual Property Rights

All Intellectual Property Rights (as defined in the Annex to this Agreement) in and related to (i) Turquoise and (ii) any data (including without limitation bids, offers, prices, executions and volumes of Transactions on Turquoise, but excluding Member Information as defined in paragraph 4.2, below), analytics, research or other information contained in, displayed on or generated by the operation of Turquoise (collectively the "**Information**") shall be or remain, as between the Parties, the exclusive property of TSL, and the Member shall not obtain any Intellectual Property Rights in or to Turquoise or the Information except as expressly set out in this Agreement.

4.2 Member Information

Without limiting the scope of paragraph 4.1 the Member acknowledges and agrees that TSL shall be permitted,

and the Member grants TSL a non-exclusive, perpetual, royalty-free license (without warranties of any kind, express or implied), directly and through agents or contractors, to use, distribute, sub-license, disclose and sell for TSL's own benefit all order data, price, volume and other information regarding the Member's Transactions ("**Member Information**"); provided that, except as otherwise permitted hereunder, TSL may disclose Member Information only (i) where such Member Information has been aggregated with the same type of information of other Members (e.g. in disclosing transaction volumes for a particular security) or (ii) in describing the use of Turquoise generally by all Members (e.g. in disclosing the best bid or offer for a security) and, in either case, in a manner that does not directly or indirectly identify the Member as the specific source of such Information (it being understood and agreed that TSL may disclose to any person the list of the Members of Turquoise (including the Member) from time to time). Subject to the foregoing licence, as between TSL and the Member, the Member retains all ownership and Intellectual Property Rights with respect to the Member Information.

TSL agrees that it will not, without the prior written consent of the relevant Member in each instance, and except as reasonably necessary to operate Turquoise as contemplated in this Agreement, (i) use in advertising, publicity, marketing or other promotional materials or activities, the name, trade name, trademark, trade device, service mark or symbol, or any abbreviation, contraction or simulation thereof, of the relevant Member, its affiliates or their respective partners or employees, or (ii) represent, directly or indirectly, that any product or any service provided by TSL has been approved or endorsed by the relevant Member. This provision shall survive termination of the Agreement.

4.3 Use of Information and Intellectual Property Rights

The Member shall not sell, lease, licence, transfer, provide or otherwise make available to any third party any form of access to or the use of the Information (whether through written, electronic or other means) of Turquoise (whether as a demonstration or otherwise) other than as described in this agreement. The Member shall permit access to the Information only by those of its employees, affiliates, clients or agents that have been authorised by the Member to access and use Turquoise on the Member's behalf for the purposes of entering into Transactions or for performing related support functions ("**Authorised Persons**") and that are using the Information solely for such purposes. Nothing in this Agreement shall limit any rights the Member may acquire with respect to Information under a separate agreement between the Member and TSL or any third party distributing information pursuant to a licence or sub-licence granted by TSL. The Member shall protect and safeguard TSL's Intellectual Property Rights in and to the Turquoise and the Information by using the same degree of care that the Member generally uses to protect its own

confidential information and Intellectual Property Rights, but in any event with no less than a reasonable degree of care. The Member shall promptly notify TSL upon becoming aware of any infringement or misappropriation, or threatened infringement or misappropriation, of any Intellectual Property Rights of TSL. The Member shall comply with all reasonable requests made by TSL to protect and enforce TSL's Intellectual Property Rights in Turquoise and the Information. The Member shall not alter, enhance, make derivative works of, reverse engineer or decompile Turquoise or the Information, except to the extent explicitly permitted hereunder or required by the applicable law.

5 The role of TSL

5.1 The Member acknowledges and agrees that, notwithstanding anything to the contrary herein:

5.1.1 TSL shall not, directly or indirectly, be a principal to any Transaction or be responsible for, or otherwise guarantee performance of any Transaction entered into by the Member, and the Member shall not proceed against TSL, to collect or recover any amounts owed to it or to enforce any of its rights in connection with, or as a result of, such Transaction;

5.1.2 neither the relationship between the parties, nor the services provided by TSL, nor any other aspect of this Agreement shall give rise to any fiduciary or equitable duties on the part of TSL;

5.1.3 TSL may receive fees from both the Member and another Member in respect of a Transaction effected through Turquoise and TSL shall have no duty to account to either the Member or that other Member for such fees; and

5.1.4 the submission of any Information on Turquoise by TSL or any Member shall not be deemed a recommendation by TSL or such Member that the Member enter into any particular Transaction or that any particular Transaction is suitable or appropriate for the Member.

6 Indemnity and exclusion of liability

6.1 Except to the extent caused by TSL's own gross negligence, wilful default or fraud the Member will indemnify, protect and hold harmless TSL, its affiliates, and their respective directors, officers, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, penalties, damages or costs (including reasonable legal fees as incurred) resulting from or arising out of (i) the Member's breach of this Agreement and (ii) any claim asserted against TSL by any party for whom the Member acts or purports to act (including, without limitation, any asserted breach of fiduciary duty) in relation to the services provided to the Member in accordance with this agreement. TSL shall provide the Member with: (i) prompt written notice of each such claim received by TSL; (ii) control over the defence and settlement of such claim; and (iii) full information and reasonable assistance to settle or defend any such claim. Notwithstanding the foregoing, the

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Member shall not settle any such claim without TSL's prior written approval if such settlement requires TSL to take any action, refrain from taking any action or admit any liability.

- 6.2** TSL warrants that as at the effective date of this Agreement it has all rights, authorisations and licenses to provide Turquoise to Members as contemplated in this Agreement. TSL shall indemnify, protect and hold harmless the Member, its affiliates and their respective directors, officers, employees and agents from and against any and all losses, liabilities, judgments, suits, actions proceedings, claims, penalties, damages, or costs (including reasonable legal fees as incurred), resulting from or arising from a claim that use of Turquoise as contemplated in this Agreement infringes or violates the Intellectual Property Rights of a third party.
- 6.3** Subject to paragraph 6.7, TSL and its affiliates will not be liable for any loss incurred by the Member arising from or related to a loss of connectivity to Turquoise or any other systems failure on behalf of the Member or TSL nor any loss arising from a failure in the systems and controls of the Member or TSL governing access to Turquoise, including but not limited to the unauthorised use of the Member's user account.
- 6.4** The Member is solely responsible for confirming the accuracy and adequacy of information used by it and the resultant output. Subject to paragraph 6.7, neither TSL nor its affiliates, or any network provider under contract with TSL will be responsible to any party for any injuries however caused by the use of Turquoise or by any errors, delays or interruptions in the transmission or confirmation of transactions or information, or from the failure of TSL or its affiliates to process or confirm any Transaction initiated by the Member. Each party hereby acknowledges that it has not relied upon any warranty, condition, guarantee or representation made by the other, except as specifically set forth in this agreement or in any of the supplemental fee documents or Application Form.
- 6.5** Subject to paragraph 6.7, in no circumstances will TSL or its directors, officers, employees, affiliates or agents be liable to the Member or any person for whom the Member purports to act for any incidental, special or consequential damages (including but not limited to, loss of profits, loss of opportunity and loss of use) resulting from or arising out of the provision of access to Turquoise, regardless of whether such damages could have been foreseen or prevented.
- 6.6** Subject to the implementation of disaster recovery and business continuity measures by both parties, neither TSL nor the Member shall be liable for any failure or delay in the performance of any of their respective obligations hereunder (other than the payment by the Member of Member Fees) due to causes beyond their reasonable control, including but not limited to industrial disputes of any nature, work stoppages, civil disobedience, riots, rebellions, accidents, explosions, acts of God, acts of a public enemy, acts of government, interruptions or imperfections of telecommunications,

sabotage, pestilence, terrorism, lightning or electromagnetic disturbances, brown-outs or black-outs, earthquakes, storms, floods, fires or other casualty. During the time that any of the events specified above continue to exist, the obligations of each party hereunder, other than those affected by the events listed above, shall remain in full force and effect and each Party shall continue to perform such obligations. Notwithstanding the foregoing, nothing in this paragraph shall affect the Member's settlement obligations with respect to any Transaction.

- 6.7** Nothing in this Agreement will:
- 6.7.1** exclude or restrict any obligation TSL may have to the Member, nor any liability TSL may incur to the Member, in respect of a breach by TSL of the FSA Rules; or
- 6.7.2** exclude or restrict to an extent prohibited by law any duty or liability TSL may have to the Member; or
- 6.7.3** exclude or restrict any claim which can be directly attributable to the Parties' gross negligence, wilful default or fraud.

7 Fees

- 7.1** TSL will invoice the Member, where applicable, for, and the Member will pay to TSL, the aggregate of all the fees specified by Market Notice ("a notice issued by Turquoise Management from time to time and communicated to all Members"), as applicable ("**Member Fees**").
- 7.2** Member Fees shall be net of all taxes and duties and, in all cases; the Member shall pay the amount thereof to TSL in full without any deduction. In addition to the Member Fees, the Member will pay any sales, use, goods and services, value added, transfer, property or other taxes, any tax in the nature of withholding tax, and any duty or duties payable in respect of Member Fees or any part thereof and/or the provision of Turquoise or otherwise arising in respect of this Agreement, (excluding any taxes imposed on the income of TSL capital gains of TSL, net profits of TSL or any other similar taxes).
- 7.3** In order to pay charges and sums due to **TSL**, **TSL** may require a **Member** to execute and maintain in force a direct debit mandate in **TSL's** favour on a bank account in the **United Kingdom**. Where a **Member** fails to pay in accordance with these rules other than in the case of legitimate dispute, **TSL** may terminate its membership without prejudice to any other action which **TSL** may take. Turquoise relies on the data submitted to it to calculate charges. Trades submitted in error may incur a charge. Any invoice queries including, without limitation, any request by a Member for repayment of overpaid charges must be made within six months of the end of the month to which the relevant invoice relates. The Member shall not be entitled to query an invoice and/or claim repayment of any overpaid charges after this period. All charges are payable monthly in arrears.

8 Term and termination

8.1 This Agreement will remain in effect until the Member resigns membership under rule 3.3.1 of the Turquoise Rules or the Member's membership is terminated under rule 3.2.1 of the Turquoise Rules.

9 Assignment

9.1.1 This Agreement shall not be assigned or transferred by the Member, in whole or in part, without the prior written consent of TSL, provided, that TSL shall not unreasonably withhold its consent to an assignment of a Member's rights hereunder to an affiliate of it that would fulfil the entry criteria established by TSL from time to time to allow access to Turquoise and that agrees to be bound by this Agreement.

9.1.2 TSL may assign part or all of its rights, or transfer part or all of its obligations under this Agreement, upon the provision of written notice to the Members, to (i) any of its affiliates, provided that any such affiliate has regulatory approval, where necessary, and is permitted to provide and operate Turquoise, or (ii) a successor to substantially all of TSL's relevant assets or business, or to its corporate successor as a result of any merger, spin-off, consolidation, initial public offering or any similar corporate reorganisation. provided that any such entity has regulatory approval, where necessary, and is permitted to provide and operate Turquoise.

9.1.3 Any proposed assignment not in compliance with this paragraph shall be null and void.

9.1.4 The obligations under this Agreement bind, and the rights will be enforceable by, the parties and their respective successors and permitted assignees.

10 Governing Law

This Agreement and its enforcement shall be governed by and construed in accordance with the laws of England and Wales. The Parties consent to the exclusive jurisdiction of the courts of England and Wales for the purpose of any action or proceeding hereunder.

11 Representations of the Member

11.1 The Member represents and warrants that:

In witness whereof this Agreement has been entered into on:

Date: _____

SIGNED by _____

Print Name _____

for and on behalf of [*please insert Legal Entity name*]

11.1.1 the information it has provided to support the Application Form is complete and accurate and agrees to inform Turquoise of any material changes to the information in between now and approval of this application. The Member understands that a failure to provide complete and accurate information is a breach of the Turquoise Rules. The Member agrees to comply with, and be bound by, the Turquoise Rules which are, or may be in force, and may be amended from time to time;

11.1.2 it is an EEA or Swiss regulated investment firm or credit institution as defined in Directive 2004/39/EC, details of such regulator and type of institution as set out in Annex 2 to this Agreement;

11.1.3 it otherwise complies with the eligibility criteria set out in the Rules;

11.1.4 it is a General Clearing Member ("**GCM**") of EuroCCP or it will clear its business through the GCM named in Annex 2 of this Agreement;

11.1.5 its systems relevant to trading on Turquoise have been adequately tested and that they conform with TSL's own systems;

11.1.6 it has the power and authority to execute, deliver and perform this Agreement;

11.1.7 it has all necessary rights and licenses to submit the Member information to TSL as contemplated herein I, and its use of any software or equipment (other than those provided by TSL) to access Turquoise shall not violate any third party's Intellectual Property Rights; and

11.1.8 it is authorised to enter into the Transactions entered into by it through Turquoise and each of such Transactions, as confirmed by Turquoise, is the legal, valid and binding obligation of the Member, enforceable against the Member in accordance with its terms and the terms of this Agreement.

12 Survival

12.1.1 The terms and conditions of paragraphs 6, 10 and 12 shall survive any termination, cancellation, replacement, expiration, modification, rejection or cessation of the effectiveness of this Agreement.

Annex Intellectual Property Rights

“**Intellectual Property Rights**” means all title, interests and other proprietary rights in and to:

- (i) trademarks, service marks, brand names, certification marks, trade dress, trade names and other indications of origin, and the goodwill associated with the foregoing;
- (ii) inventions, discoveries and ideas, whether patentable or not;
- (iii) patents and all reissues, divisions, continuations-in-part, renewals and extensions thereof;
- (iv) trade secrets;
- (v) writings and other works, whether or not protectable by copyright or other law;
- (vi) copyrights, database rights, or mask works;
- (vii) know-how, technical information, processes, practices and systems, whether protectable by patent, copyright, trade secret or other law; and
- (viii) any other intellectual property or similar proprietary rights or interests which may exist in any jurisdiction

in each case, including all registrations thereof, applications therefor and renewals, modifications, translations and extensions thereof, in any jurisdiction, and any claims or causes of action arising out of or related to any infringement or misappropriation of any of the foregoing as described in paragraph 4 of this Agreement.

Annex 2 Member details referred to in paragraph 11.1

Name of regulator: _____

Type of institution: _____

Name of GCM: _____