

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
COMPANIES COURT (ChD)**

**No. CR-2018-003713**

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(in administration)**

**- and -**

**IN THE MATTER OF THE COMPANIES ACT 2006**

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**SCHEME OF ARRANGEMENT**

(under Part 26 of the Companies Act 2006)

BETWEEN

LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(in administration)

AND

THE SCHEME CREDITORS  
(as hereinafter defined)

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## PART I: RECITALS, DEFINITIONS AND INTERPRETATION

### Recitals

- (A) The Company was incorporated in England and Wales on 10 September 1990 under the Companies Act 1985 as a private limited company with registered number 02538254 under the name Lehman Brothers International Limited.
- (B) The Company was re-registered on 21 December 1992 under the Companies Act 1985 as a private unlimited company under the name Lehman Brothers International (Europe).
- (C) On 15 September 2008, on an application of the directors of the Company, the Company was placed into administration pursuant to Schedule B1 to the Insolvency Act.
- (D) On 15 September 2008, Anthony Victor Lomas and Steven Anthony Pearson, on 2 November 2011, Russell Downs and on 22 March 2013, Julian Guy Parr, each of PricewaterhouseCoopers LLP, were appointed as joint administrators of the Company pursuant to orders of the High Court.

## 1 Definitions and interpretation

### Definitions

- 1.1 In this Scheme, unless inconsistent with the subject or context, the following expressions bear the following meanings:

<b>“1992 ISDA Master Agreement”</b>	means the 1992 version of the Master Agreement (Multicurrency Cross Border) as published by the International Swaps and Derivatives Association, Inc.
<b>“2002 ISDA Master Agreement”</b>	means the 2002 version of the Master Agreement as published by the International Swaps and Derivatives Association, Inc.
<b>“8% Creditor”</b>	means a Scheme Creditor who holds legal title to one or more 8% Interest Claims
<b>“8% Interest Claim”</b>	means a Provable Claim other than a Higher Rate Claim, a Specified Interest Claim or the Subordinated Debt
<b>“8% Interest Rate”</b>	means a simple rate of interest at 8% per annum
<b>“8% Payment”</b>	means a payment to: <ul style="list-style-type: none"><li>(i) an 8% Creditor, of Statutory Interest in respect of its 8% Interest Claims; or</li><li>(ii) a Settlement Creditor, of Statutory Interest in respect of its Higher Rate Claims,</li></ul> in each case calculated in accordance with Clause 6.2
<b>“Additional Information Request”</b>	has the meaning given to it in Clause 11.2.4
<b>“Adequate Reserves”</b>	has the meaning given to it in Clause 4.1
<b>“Adjudication Costs”</b>	means all fees, costs and expenses (inclusive of any VAT) of the Adjudicator and his Support Team which are payable by the Company in respect of an Appeal

<b>“Adjudicator”</b>	means a person appointed as an adjudicator (including any replacement adjudicator) by the Company to determine an Appeal in accordance with Clause 23
<b>“Adjudicator’s Address for Service”</b>	has the meaning given to it in Clause 25.1.1
<b>“Administration”</b>	means the administration of the Company pursuant to an order of the High Court on the Administration Date
<b>“Administration Claim”</b>	means any Claim, pursuant to the Insolvency Act or otherwise, against the Administrators or the Released Third Parties where such Claim arises from actions taken (or failure to take action) by any such person on or after the Administration Date but prior to the Effective Date
<b>“Administration Date”</b>	means 15 September 2008
<b>“Administration Expenses”</b>	means any expenses, disbursements, remuneration or other costs and liabilities incurred in the course of the Administration including those set out in paragraphs (a) to (j) at Rule 3.51(2) of the Insolvency Rules and including all debts and liabilities referred to in paragraphs 99(4) and 99(5) of Schedule B1 to the Insolvency Act
<b>“Administrators”</b>	means the persons from time to time serving as joint administrators in the Administration who, as at the date of this Scheme, are Anthony Victor Lomas, Steven Anthony Pearson, Russell Downs and Julian Guy Parr of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability
<b>“Administrators’ Address for Service”</b>	has the meaning given to it in Clause 25.1.2
<b>“Admitted Certification Claim”</b>	means the amount of an Undetermined Certification Claim that is admitted for dividend by the Administrators pursuant to Rule 14.7 of the Insolvency Rules
<b>“Admitted Claim”</b>	means any ordinary unsecured claim against the Company (whether in respect of unpaid principal or unpaid interest accrued prior to the Administration Date) which is or has been admitted for dividend by the Administrators in accordance with either Rule 14.7 of the Insolvency Rules or Rule 2.77 of the Insolvency Rules 1986
<b>“Advisers”</b>	means: <ul style="list-style-type: none"> <li>(i) Linklaters LLP; and</li> <li>(ii) any other professional advisers to the Administrators</li> </ul>
<b>“AFB Master Agreement”</b>	means the AFB Master Agreement for Foreign Exchange and Derivatives Transactions (1994) (AFB)
<b>“AFB/BBF Agreed Position”</b>	means the agreed position in respect of issues concerning the

	Euro-denominated claims arising under the AFB/FBF French Master Agreements, as published on the Website on 14 September 2015
<b>“AFB/FBF French Master Agreements”</b>	means: (i) the AFB Master Agreement; (ii) the FBF Master Agreement; and (iii) any long-form confirmation which incorporates the terms of the AFB Master Agreement or the FBF Master Agreement
<b>“Affiliates”</b>	means, with respect to any person, any other person (other than an individual) directly or indirectly controlling or controlled by or under direct or indirect common control with such person
<b>“AFTB/AFTI French Master Agreements”</b>	means the AFTB Master Agreement for Repurchase Transactions with Delivery of Securities (1994) (AFTB) and the AFTI Master Agreement for Loans of Securities (1997) (AFTI)
<b>“AGFP Proceedings”</b>	means ongoing litigation with AG Financial Products Inc. before the Supreme Court of the State of New York (with Court Reference 653284/2011)
<b>“Appeal”</b>	means an appeal against a Rejection Notice to be determined by an Adjudicator in accordance with Part VI
<b>“Appeal Form”</b>	means a document in the same, or substantially the same, form as appended at Schedule 1
<b>“Appellant Certifying Creditor”</b>	has the meaning given to it in Clause 24.1.1
<b>“Appellant Certifying Creditor’s Case”</b>	has the meaning given to it in Clause 24.2.1
<b>“Applicable CI Payment”</b>	means a payment made to a Certifying Creditor of Statutory Interest in respect of a Certification Claim determined in accordance with Clauses 11, 13 and 24
<b>“Available Funds”</b>	means Cash and Cash Equivalents held in the House Estate together with such sum in respect of anticipated future realisations and receivables of the Company as the Administrators determine in their sole discretion
<b>“Bar Date”</b>	means the Effective Date
<b>“Benchmark Rate”</b>	means a variable reference rate of interest which is generally published on a daily basis (when banks are open for business) by Thomson Reuters or such other internationally recognised information service as the Administrators may in their sole discretion (acting reasonably) determine
<b>“Books and Records”</b>	means books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm and, for the avoidance of doubt, shall include information received by the Company from Scheme Parties through the Portal or otherwise

<b>“Business Day”</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York
<b>“Cash and Cash Equivalents”</b>	means, at the relevant time, all cash held in any bank or other accounts, and all investments in any short-term money market deposits, UK government or quasi-government debt securities and supranational debt, in each case held by the Company, in accordance with the investment strategy set out in the Nineteenth Progress Report
<b>“CASS”</b>	means the Client Assets Sourcebook of the FCA Handbook as it applies to the Company
<b>“CASS7”</b>	means Chapter 7 of CASS and, if and to the extent relevant, Chapter 7A of CASS as they apply to the Company
<b>“Certification”</b>	<p>means a statement submitted to the Company and identified by a Certifying Creditor as being a “Certification” stating the Higher Rate Claim to which it relates by reference to the relevant Claim Reference and:</p> <ul style="list-style-type: none"> <li>(i) in respect of an ISDA Master Agreement: <ul style="list-style-type: none"> <li>(a) the asserted Cost of Funding applicable from time to time for the period during which the relevant Higher Rate Claim was, or has been, outstanding, in whole or in part;</li> <li>(b) the asserted Certified Rate(s); and</li> <li>(c) the asserted Certified Sum; and</li> </ul> </li> <li>(ii) in respect of any Relevant Contract other than an ISDA Master Agreement, the asserted Certified Rate and the asserted Certified Sum,</li> </ul> <p>together with an electronic mail address to which Notices and any communications regarding the Certification may be sent, and any information, documents and submissions in support of such statement that a Certifying Creditor wishes in its discretion to submit</p>
<b>“Certification Claim”</b>	means a Higher Rate Claim that is the subject of a Valid Certification Election
<b>“Certification Deadline”</b>	means the Effective Date
<b>“Certification Option”</b>	means the option available to Higher Rate Creditors to submit a Certification
<b>“Certified Rate”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(i) in respect of an ISDA Master Agreement, the rate(s) per annum equal to the asserted Cost of Funding plus 1% per annum; or</li> <li>(ii) in respect of any Relevant Contract other than an ISDA Master Agreement, the rate(s) of interest stated in the</li> </ul>



	relevant Certification as the relevant interest rate(s), in each case in respect of the relevant Certification Claim
<b>“Certified Sum”</b>	means the amount in GBP of interest that a Certifying Creditor states in a Certification as being payable to it in respect of the relevant Certification Claim calculated by applying the relevant Certified Rate(s) set out in the Certification to the balance outstanding from time to time of the relevant Certification Claim (calculated in accordance with the Relevant Principles)
<b>“Certifying Creditor”</b>	means a Higher Rate Creditor in relation to the Higher Rate Claims held by it that are Certification Claims
<b>“Chapter 15 Order”</b>	means an order of the US Bankruptcy Court which, among other things, recognises this Scheme as a foreign main proceeding under Chapter 15 of the US Bankruptcy Code, enforces the Court Order within the territorial jurisdiction of the United States and enjoins Scheme Parties from commencing or continuing any action or Proceeding in the United States against the Company or its assets located within the territorial jurisdiction of the United States that is inconsistent with this Scheme
<b>“Civil Procedure Rules”</b>	means the civil procedure rules used by the High Court of England and Wales that are in force as at the Effective Date
<b>“Claim Reference”</b>	means: <ul style="list-style-type: none"> <li>(i) in respect of an Admitted Claim, the unique identifying number used by the Company to identify such Admitted Claim, as stated in the relevant UCC4; and</li> <li>(ii) in respect of an Undetermined Provable Claim, such reference number used by the Company to identify the relevant Undetermined Provable Claim as may be communicated by the Company to the relevant holder of such Undetermined Provable Claim prior to the Bar Date</li> </ul>
<b>“Claims”</b>	means all claims, actions, Proceedings, demands, rights or causes of action, be they known or unknown, incurred solely or jointly or as principal or surety or in any other capacity, present, future or contingent, of any nature whatsoever and howsoever arising, whether arising in equity, common law or statute or by reason of breach of contract or trust, as a result of a restitutionary claim, or in respect of any tortious or negligent act or omission (whether or not loss or damage caused thereby has yet been suffered) or otherwise, whether in existence now or coming into existence at some time in the future, whether the amount is fixed or liquidated or is capable of being ascertained by fixed rules or as a matter of opinion, including those which arise hereafter upon a change in the relevant law, whether or not in the contemplation of the relevant person at the date

hereof, and including:

- (i) any and all claims, actions, Proceedings, demands, rights or causes of action to, for or in respect of interest, late payment or a Shortfall;
- (ii) any and all claims, actions, Proceedings, demands, rights or causes of action arising by reason of, among other things, insolvency or the termination, whether voluntary or for cause, of any contractual obligation or for any failure of a person to perform any contractual, legal or regulatory obligation or otherwise;
- (iii) any and all claims, actions, Proceedings, demands, rights or causes of action for, among other things, the enforcement of any right to, or any Liability in respect of a right to:
  - (a) seek or enforce a judgment;
  - (b) exercise any remedy (for damages or otherwise), indemnity and/or contribution, whether for losses (including consequential loss, economic loss, loss of bargain, loss of value, or other losses computed by reference to value which may have been available had an obligation been duly performed in a timely manner, or otherwise), or for costs and expenses of any nature; or
  - (c) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or Liability whatsoever;
- (iv) any and all claims, actions, Proceedings, demands, rights or causes of action in respect of any Loss;
- (v) any "Debt" as defined in Rule 14.1(3) of the Insolvency Rules; and
- (vi) any "liability" as defined in Rule 14.1(6) of the Insolvency Rules

**"Clearance"**

has the meaning given to it in Clause 18.2.1(ii)

**"Client Money"**

means "client money" as defined in the FCA Rules for the purposes of, *inter alia*, CASS7

**"Client Money Entitlement"**

means a "client money entitlement" as such term is used in CASS, by reference to which the quantum of a beneficial interest in the Client Money Estate arising under the statutory trust created by CASS7, is calculated in accordance with CASS7

**"Client Money Estate"**

means the notional pool of Client Money constituted at the date

	of the Company's primary pooling event (as defined in CASS7)
<b>"Companies Act"</b>	means the Companies Act 2006
<b>"Company"</b>	means Lehman Brothers International (Europe) (in administration), a private unlimited company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ
<b>"Company's Case"</b>	has the meaning given to it in Clause 24.3.1
<b>"Compounding Principle"</b>	means, where: <ul style="list-style-type: none"> <li>(i) Statutory Interest in respect of a Higher Rate Claim or Specified Interest Claim is calculated (subject to the terms of this Scheme) by reference to a contractual compounding rate(s) of interest; and</li> <li>(ii) prior to being paid in full, such Higher Rate Claim or Specified Interest Claim was discharged in part by the payment of one or more interim dividends,</li> </ul> <p>the principle to be applied for the purpose of calculating the amount of Statutory Interest that accrues on the balance of the relevant claim outstanding from the date(s) of payment of the relevant interim dividend(s) to the date on which the relevant Claim was paid in full, being that any accrued Statutory Interest referable to the amount(s) by which the relevant claim was discharged by the relevant interim dividend(s) shall continue to compound in accordance with the terms of the relevant Specified Interest Contract or Relevant Contract (as applicable)</p>
<b>"Conflict of Interest"</b>	means any agreement, arrangement, affiliation, interest, understanding or activity which conflicts or has a significant risk of conflicting with the Adjudicator's or a member of his Support Team's ability to perform their respective roles
<b>"Consultation Period"</b>	has the meaning given to it in Clause 11.2
<b>"Contributory Claim"</b>	means any call, claim, action, proceeding, demand, right or cause of action that may be made or brought by a future liquidator of the Company against any contributory (as defined in section 79 of the Insolvency Act) arising pursuant to section 74 or section 165 of the Insolvency Act
<b>"Control"</b>	means the right to determine Voting and Elections in respect of a Higher Rate Claim whether by way of a sub-participation agreement or otherwise, and <b>"Controlled"</b> shall be construed accordingly
<b>"Cost of Funding"</b>	means the cost to the relevant party (i) if it were to fund or (ii) of funding, the relevant Certification Claim, as certified by the Certifying Creditor
<b>"Counteroffer"</b>	means a counteroffer, setting out an amount in GBP of Statutory Interest that the Company states as being payable to

	a Certifying Creditor in respect of its Certification Claim
<b>“Counteroffer Sum”</b>	the amount in GBP of Statutory Interest stated in a Counteroffer
<b>“Court of Appeal”</b>	means the Court of Appeal of England and Wales
<b>“Court Order”</b>	means an order of the High Court sanctioning this Scheme under Section 899 of the Companies Act
<b>“Courts”</b>	means the High Court, Court of Appeal and/or Supreme Court
<b>“Creditor Challenge Right”</b>	means a right, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to challenge the quantum or validity of an Admitted Claim whether by bringing a Claim against the relevant Scheme Party, the Company, the Administrators and/or any future liquidator of the Company and/or issuing an application in the Administration and/or any future liquidation of the Company
<b>“Creditor Contributory Claim Right”</b>	means a right, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to request or require a future liquidator of the Company to make a Contributory Claim
<b>“Creditors’ Committee”</b>	means the committee of creditors of the Company constituted under paragraph 57 of Schedule B1 to the Insolvency Act
<b>“De Minimis Distribution”</b>	has the meaning given to it in Clause 21.1.1
<b>“Decision Notice”</b>	has the meaning given to it in Clause 11.2
<b>“Delegate”</b>	means any person appointed as a delegate pursuant to Clause 29.2.2
<b>“Direction”</b>	has the meaning given to it in Clause 18.2.1(i)
<b>“Directions Application”</b>	means an application by the Administrators to the High Court pursuant to paragraph 63 of Schedule B1 to the Insolvency Act
<b>“Dispute Resolution Procedure”</b>	means the dispute resolution procedure described in Part VI for determining the Applicable CI Payment in respect of a Rejected Certification that is the subject of an Appeal
<b>“Disputed Claim”</b>	means a Retained Claim (other than Excluded Proceedings), where: <ul style="list-style-type: none"> <li>(i) the amount claimed by the holder of such Retained Claim is stated to be either (a) a certain sum equal to or greater than GBP 20,000,000; or (b) an uncertain sum that in the Company’s opinion (acting reasonably) could give rise to a liability of the Company equal to or greater than GBP 20,000,000; and</li> <li>(ii) such claim has not been agreed by the Administrators</li> </ul>
<b>“DRP Election”</b>	has the meaning given to it in Clause 11.9
<b>“Effective Date”</b>	means the date upon which a copy of the Court Order is delivered to the Registrar of Companies in England and Wales
<b>“Election”</b>	means the election by a Scheme Creditor, made at the time it

submitted its Vote, for either the Settlement Payment Option or the Certification Option in respect of its Higher Rate Claims and “Elect” and “Elected” shall be construed accordingly

**“Election Deadline”**

means, where a Higher Rate Creditor is Voting by proxy submitted via the Portal, the Proxy Deadline or, in all other cases, the date and time of Voting at the relevant Scheme Meeting

**“Equity Distribution”**

means any distribution (including a distribution *in specie*) or dividends paid, or return of capital (whether ordinary or preferred) made by the Company or any office holder appointed in respect of it to the Shareholder, in accordance with the Insolvency Act, the Insolvency Rules, and, if applicable, the Companies Act

**“Excluded Claims”**

means (exclusively) any:

- (i) Undetermined Provable Claim (but excluding for the avoidance of doubt any entitlement, right to or interest in Statutory Interest in respect of such claim);
- (ii) proprietary claim or trust entitlement of a Scheme Creditor to Client Money held by the Company (but excluding, for the avoidance of doubt, any Provable Claim arising from or in connection with a Client Money Entitlement);
- (iii) Non-Provable Claim, the details of which have been notified to the Company by the holder of such claim prior to the Bar Date;
- (iv) Expense Claim, the details of which have been notified to the Company by the holder of such claim prior to the Bar Date;
- (v) UCC Challenge, the details of which have been notified to the Company prior to the Bar Date;
- (vi) Administration Claim, the details of which have been notified to the Company and the relevant person against whom such Claim is being asserted or brought, prior to the Bar Date; and
- (vii) Creditor Challenge Rights in respect of any Admitted Claim that is admitted by the Administrators on or after the Record Date

**“Excluded Proceedings”**

means any of the following:

- (i) the WHT Proceedings;
- (ii) the LBA Proceedings; and
- (iii) the AGFP Proceedings,

but only to the extent that such Proceedings do not seek to

	determine the calculation of Statutory Interest in a manner that is inconsistent with the payment of Statutory Interest pursuant to this Scheme
<b>“Exclusion Application”</b>	means an application to the High Court pursuant to Rule 14.11(1)(a) of the Insolvency Rules to exclude a proof of debt or to reduce the amount claimed by a Scheme Party in respect of an Admitted Claim
<b>“Expense Claims”</b>	means Claims that rank as Administration Expenses
<b>“Explanatory Statement”</b>	means the statement dated 14 May 2018, as may be amended or supplemented (and the appendices thereto), explaining the effect of this Scheme in compliance with Section 897 of the Companies Act
<b>“FBF Master Agreement”</b>	means the FBF Master Agreement Relating to Transactions on Forward Financial Instruments (2001) (FBF)
<b>“FCA”</b>	means the Financial Conduct Authority of the United Kingdom
<b>“FCA Handbook”</b>	means the handbook containing rules, principles and guidance made by the FCA under powers given to it by FSMA as applicable to the Company from time to time
<b>“FCA Rules”</b>	means FSMA and the FCA Handbook
<b>“Final Certification”</b>	has the meaning given to it in Clause 16.1.2
<b>“Final Certification Deadline”</b>	has the meaning given to it in Clause 16.1.2
<b>“Fixed Rate”</b>	means a fixed rate of interest expressed as a percentage
<b>“Floating Rate”</b>	means a rate of interest expressed as a Benchmark Rate or as a Benchmark Rate plus X, where X is a number or a percentage
<b>“FSMA”</b>	means the Financial Services and Markets Act 2000
<b>“Full SI Payment Statement”</b>	means a statement confirming that the Company’s Net Available Funds are sufficient to allow for the payment in full of the High Case Scheme Distribution
<b>“Governance Protocol”</b>	means a protocol in respect of the formation, rights and obligations of the Operating Committee as set out in Schedule 2
<b>“High Case Scheme Distribution”</b>	means a notional amount equal to the aggregate of all Scheme Distributions to be made under this Scheme, assuming (where relevant) for the purposes of such calculation that: <ul style="list-style-type: none"> <li>(i) any Undetermined Provable Claims are admitted by the Administrators for the full amount proved for (or, if relevant, in the amount ordered by the Court to be reserved for in respect of such claim(s)) and the principal amount of such claim(s) is paid in full on 15 September 2021; and</li> <li>(ii) the Applicable CI Payment in respect of any</li> </ul>

Certification that is, at the relevant time, yet to be determined will be the Certified Sum set out in such Certification

<b>“High Court”</b>	means the High Court of Justice in England and Wales
<b>“Higher Rate Claim”</b>	means a Provable Claim (or the component part thereof) derived from a Relevant Contract
<b>“Higher Rate Creditor”</b>	means a Scheme Creditor who holds the legal title to one or more Higher Rate Claims
<b>“HMRC”</b>	means HM Revenue & Customs and any other authority, body or official in the United Kingdom competent to assess, demand, impose, administer or collect Tax or amounts in respect of Tax or make any decision or ruling on any matter relating to Tax
<b>“House Estate”</b>	means all of the Company’s cash, property and assets which do not form part of the Client Money Estate or which are not otherwise held on trust for another person
<b>“Income Tax Act”</b>	means the Income Tax Act 2007
<b>“Increased Voting Rights Decision”</b>	means the decision of the chairman of the Scheme Meetings in respect of a request by a Higher Rate Creditor for Voting Rights in respect of its Higher Rate Claims in excess of those stated in its UCC4 (or as otherwise communicated to it by the Company prior to the Scheme Meetings)
<b>“Initial Certification”</b>	means a Certification in respect of an Undetermined Certification Claim prepared and submitted in accordance with Clause 16
<b>“Insolvency Act”</b>	means the Insolvency Act 1986
<b>“Insolvency Rules”</b>	means the Insolvency (England & Wales) Rules 2016
<b>“Insufficient Funds Statement”</b>	means a statement confirming that the Company’s Net Available Funds are insufficient to allow for either a part payment or the full payment of the High Case Scheme Distribution
<b>“ISDA Master Agreement”</b>	means: <ul style="list-style-type: none"><li>(i) the 1992 ISDA Master Agreement;</li><li>(ii) the 2002 ISDA Master Agreement; and</li><li>(iii) any long-form confirmation which incorporates the terms of the 1992 ISDA Master Agreement or the 2002 ISDA Master Agreement</li></ul>
<b>“Issued Scheme Outcome Statement”</b>	means a Scheme Outcome Statement that has been published on the Website and is not subject to a Retraction Notice in accordance with Clause 3.3
<b>“KYC Information”</b>	means information requested by the Company to ensure compliance with any relevant regulatory and anti-money

	laundrying requirements
<b>“Lacuna Application”</b>	means the application issued on 28 November 2017 by the Administrators, with the Subordinated Creditor as respondent, seeking directions in relation to a request, made by the Subordinated Creditor, that the Administrators seek a decision of creditors, pursuant to paragraph 56(1) of Schedule B1 to the Insolvency Act, to bring about the termination of the Administration and the commencement of a liquidation of the Company
<b>“LBA Proceedings”</b>	means an application issued by Lehman Brothers Australia Limited – in liquidation on 20 December 2016 pursuant to paragraph 74 of Schedule B1 to the Insolvency Act seeking to vary the amount of its Provable Claim
<b>“LBEL”</b>	means Lehman Brothers Europe Limited (in administration), a company incorporated in England and Wales with registered number 03950078 whose registered address is 7 More London Riverside, London SE1 2RT
<b>“LBH PLC”</b>	means Lehman Brothers Holdings PLC (in administration), a company incorporated in England and Wales with registered number 01854685 whose registered address is 7 More London Riverside, London SE1 2RT
<b>“LBHI”</b>	means Lehman Brothers Holdings Inc., a corporation incorporated under the laws of the State of Delaware, United States of America with registered number 2024634 whose registered address is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, United States of America, and whose principal place of business is at 277 Park Avenue, 46th Floor, New York, NY 10172, United States of America as Plan Administrator (as defined in the Chapter 11 Plan) under the Chapter 11 Plan, on behalf of itself
<b>“LBHI2”</b>	means LB Holdings Intermediate 2 Limited (in administration), a company incorporated in England and Wales with registered number 05957878 whose registered address is 7 More London Riverside, London SE1 2RT
<b>“LBL”</b>	means Lehman Brothers Limited (in administration), a company incorporated in England and Wales with registered number 00846922 whose registered address is 7 More London Riverside, London SE1 2RT
<b>“Leap Year”</b>	means a 12-month period (beginning on 15 September) that includes 29 February



<b>“Liabilities”</b>	means all liabilities, duties and obligations of every description, whether deriving from contract, common law, case law, legal provisions, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed and whether owed or incurred severally or jointly or as principal or surety and <b>“Liability”</b> means any one of them
<b>“Liquidation Event”</b>	means either an order by the High Court to compulsorily wind up the Company or the commencement of a voluntary winding-up in respect of the Company (both pursuant to the Insolvency Act and the Insolvency Rules)
<b>“Lock-Up Agreement”</b>	means a lock-up agreement dated 22 December 2017 made between (among others) the Company, the Administrators, Burlington Loan Management DAC, Wentworth Sons Senior Claims S.à r.l., LBHI and the Subordinated Creditor
<b>“Locked Up Parties”</b>	means: <ul style="list-style-type: none"> <li>(i) each of the parties (other than the Company and the Administrators) to the Lock-Up Agreement and their respective professional advisers; and</li> <li>(ii) in respect of (i) above, their respective members, partners, investment managers, directors, officers, employees and any of their respective agents, professional advisers or their employees</li> </ul>
<b>“Loss”</b>	means any loss (including loss of profit or loss of earnings), damage, cost, charge, penalty, expense or Liability of whatever nature
<b>“Lugano Convention”</b>	means the convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed in Lugano on 30 October 2007 and published in the Official Journal of the European Union on 21 December 2007
<b>“Minimum Sum”</b>	means an amount sufficient for a payment of at least GBP 0.01 to each Scheme Creditor (save for the Subordinated Creditor) and Storm in respect of the Scheme Distributions
<b>“Net Available Funds”</b>	means from time to time the sum in GBP calculated by deducting the aggregate amount of Adequate Reserves from the amount of Available Funds
<b>“Nineteenth Progress Report”</b>	means the nineteenth progress report dated 10 April 2018 prepared by the Administrators in accordance with Rule 18.3 of the Insolvency Rules
<b>“Non-Provable Claims”</b>	means Claims which are not Provable Claims or Expense Claims, but which are payable in the Administration of the Company from the Surplus after the payment of Statutory Interest and before payment of the Subordinated Debt
<b>“Notice”</b>	means any notice given in accordance with Clause 41 and

	<b>“Notify”</b> and <b>“Notified”</b> shall be construed accordingly
<b>“Olivant Application”</b>	means the application pursuant to Rule 14.8(3) of the Insolvency Rules issued in the Administration by the Subordinated Creditor on 19 September 2017 challenging the decision of the Administrators to admit the proof of debt filed in the Administration by Olivant Investments Switzerland S.A. and the associated joinder application brought by Lehman Brothers Opportunity Holdings Inc.
<b>“Operating Committee”</b>	means a committee to be formed following the dissolution of the Creditors’ Committee pursuant to Clause 34 whose rights and obligations against the Company and the Administrators are described in the Governance Protocol
<b>“Other Proceedings”</b>	means any and all Proceedings (other than Excluded Proceedings) of any nature, however arising, whether brought directly or indirectly, in any jurisdiction or forum, which have been formally commenced against the Company on or prior to the Bar Date
<b>“Part SI Payment Rate”</b>	means the rate of distribution set out in a Part SI Payment Statement or such updated rate of distribution as may be published on the Website from time to time in accordance with Clause 3.4
<b>“Part SI Payment Statement”</b>	means a statement confirming (i) that the Company’s Net Available Funds are sufficient to allow for a part payment of the High Case Scheme Distribution and (ii) the rate of Scheme Distributions to be paid by reference to the Net Available Funds as a percentage of the High Case Scheme Distribution
<b>“Payment”</b>	means a payment by the Company of a Scheme Distribution, Subordinated Distribution (other than the Subordinated Principal) or any other amount pursuant to this Scheme but excluding, for the avoidance of doubt, a WHT Repayment
<b>“Portal”</b>	means a secure online facility made available to Scheme Creditors with Admitted Claims on the website of PricewaterhouseCoopers LLP at <a href="https://dm.pwc.com/LBIE_CIP/login.aspx">https://dm.pwc.com/LBIE_CIP/login.aspx</a>
<b>“Practice Statement Letter”</b>	means the letter sent to creditors of the Company on 18 April 2018 in accordance with the practice statement issued by the High Court on 15 April 2002 in relation to schemes of arrangement proposed under the Companies Act
<b>“Preferential Debts”</b>	has the meaning given to that term in Section 386 of the Insolvency Act
<b>“Proceedings”</b>	means any process, action, application, legal or other proceeding, including any administrative, judicial or quasi-judicial proceeding, any regulatory process, arbitration, alternative dispute resolution, mediation, judicial review, adjudication, forfeiture, re-entry, seizure, distraint, execution,

	enforcement of judgment or any other step taken for the purpose of creating or enforcing a lien
<b>“Provable Claim”</b>	means a Claim provable in the Administration, in accordance with Rule 14.2 of the Insolvency Rules including, for the avoidance of doubt, any Shortfall Claim
<b>“Proxy Deadline”</b>	means 5.00 p.m. on the day falling one Business Day prior to the Scheme Meetings, being the deadline by which creditors wishing to submit a form of proxy via the Portal must do so in order to Vote and (where applicable) make an Election
<b>“Recast Jurisdiction and Judgments Regulation”</b>	means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
<b>“Record Date”</b>	means 5.00 pm London time on 24 May 2018
<b>“Rejected Certification”</b>	has the meaning given to it in Clause 11.9
<b>“Rejection Date”</b>	means the date of delivery of a Rejection Notice in accordance with Clause 11
<b>“Rejection Notice”</b>	means a Decision Notice informing a Higher Rate Creditor of its Rejected Certification pursuant to Clause 11.2.2, 11.7.2, 11.8.1 or 11.8.2
<b>“Released Administration Claims”</b>	has the meaning given to it in Clause 28.1.4
<b>“Released Claims”</b>	means the Claims released and waived by the Scheme Parties pursuant to Clause 28
<b>“Released Scheme Implementation Claims”</b>	<p>means any Claims against the Company, the Administrators, the Released Third Parties or the Locked Up Parties where such Claims arise from or in connection with an action taken by any such person on or after 1 November 2017 with respect to:</p> <ul style="list-style-type: none"> <li>(i) the negotiation, preparation, implementation and/or consummation of this Scheme; or</li> <li>(ii) the execution of any documents required in order to implement this Scheme and the carrying out of the actions, steps and transactions contemplated by such documents,</li> </ul> <p>but excluding (a) Claims by the Locked Up Parties against each other or the Shareholder, or by the Shareholder against any Locked Up Party, under contracts in existence prior to the Bar Date, and (b) for the avoidance of doubt, any Scheme Breach Claims</p>
<b>“Released Third Parties”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(i) the Administrators’ firm;</li> <li>(ii) the Advisers;</li> <li>(iii) in respect of paragraphs (i) and (ii) above, their</li> </ul>

	<p>respective members, partners, directors, officers, employees and any of their respective agents, professional advisers or their employees; and</p> <p>(iv) current and former employees of the Company</p>
<b>“Released Third Party Claims”</b>	means the Released Administration Claims and the Released Scheme Implementation Claims
<b>“Relevant Contracts”</b>	<p>means certain pre-administration contracts, the counterparties to which may be entitled to Statutory Interest calculated at a rate in excess of the 8% Interest Rate, being:</p> <p>(i) ISDA Master Agreements;</p> <p>(ii) AFB/FBF French Master Agreements; and</p> <p>(iii) AFTB/AFTI French Master Agreements</p>
<b>“Relevant Employees”</b>	means (in relation only to Claims relating to their individual contracts of employment) employees or former employees of the Company who are domiciled in a Relevant State and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date
<b>“Relevant Jurisdiction Clause Creditors”</b>	means (in relation only to Claims arising in connection with such contracts) any person domiciled in a Relevant State who holds a contractual claim against the Company under a contract which is in writing or evidenced in writing and which contains an agreement that the courts of a Relevant State are to have exclusive jurisdiction to settle any disputes which have arisen or which may arise in connection with that contractual relationship and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date
<b>“Relevant Principles”</b>	<p>means:</p> <p>(i) in respect of ISDA Master Agreements, the principles set out in the Tranche C Judgment as set out in the declarations contained in the Tranche C Order;</p> <p>(ii) in respect of AFB/FBF French Master Agreements, the AFB/FBF Agreed Position;</p> <p>(iii) in respect of all Statutory Interest Claims, the Courts’ decisions in Tranche A; and</p> <p>(iv) in respect of Certification Claims and Specified Interest Claims, the Compounding Principle (if applicable)</p>
<b>“Relevant State”</b>	means a state other than the United Kingdom which is a party to the Recast Jurisdiction and Judgments Regulation or the Lugano Convention
<b>“Retained Claims”</b>	means Excluded Claims, Excluded Proceedings and Retained

	Expense Claims
<b>“Retained Expense Claim”</b>	means any Expense Claim held by a Scheme Party, which: <ul style="list-style-type: none"> <li>(i) was a contingent claim as at the Bar Date and which became payable on or after the Bar Date under a contract that was entered into by the Company between the Administration Date and the Bar Date;</li> <li>(ii) relates to the Company’s payment obligations under a contract that was continuing to be performed as at the Bar Date;</li> <li>(iii) arises from an action or activity of the Company that takes place on or after the Bar Date (including a Scheme Breach Claim) or a contract entered into by the Company after the Bar Date; or</li> <li>(iv) arose within 10 days prior to the Bar Date in circumstances where (in the Administrators’ sole discretion (acting reasonably)) the relevant Scheme Party could not reasonably have been expected to notify the Company or the Administrators of the Expense Claim prior to the Bar Date</li> </ul>
<b>“Retained Unclaimed Scheme Distribution”</b>	means an Unclaimed Scheme Distribution that is not a De Minimis Distribution
<b>“Retraction Notice”</b>	has the meaning given to it in Clause 3.3.1
<b>“Revised Scheme Outcome Statement”</b>	has the meaning given to it in Clause 3.3.2
<b>“Scheme”</b>	means this scheme of arrangement in its present form or with or subject to any modification, addition or condition approved or imposed pursuant to Clause 42
<b>“Scheme Breach Claims”</b>	means any Claims against the Company or the Administrators arising out of or in connection with a breach by the Company or the Administrators of the terms of this Scheme
<b>“Scheme Creditor”</b>	means any person who holds a Provable Claim against the Company (including, for the avoidance of doubt, (i) any Admitted Claim whether unpaid or paid in full or in part; and (ii) the Subordinated Debt), save for: <ul style="list-style-type: none"> <li>(i) Storm;</li> <li>(ii) any Relevant Employees; and</li> <li>(iii) any Relevant Jurisdiction Clause Creditors</li> </ul>
<b>“Scheme Distribution”</b>	means (as the context requires) a payment by the Company in respect of: <ul style="list-style-type: none"> <li>(i) the 8% Payment;</li> <li>(ii) the Specified Interest Payment;</li> </ul>

	(iii) the Storm Payment;
	(iv) the Settlement Premium; and/or
	(v) the Applicable CI Payment
<b>“Scheme Meetings”</b>	means the separate meetings of the relevant classes of Scheme Creditors convened by order of the High Court pursuant to Section 896 of the Companies Act for the purpose of considering and, if thought appropriate, approving this Scheme, including any adjournment thereof
<b>“Scheme Outcome Statement”</b>	means (as relevant):
	(i) a Full SI Payment Statement;
	(ii) a Part SI Payment Statement;
	(iii) an Insufficient Funds Statement; or
	(iv) a Revised Scheme Outcome Statement
<b>“Scheme Party”</b>	means each Scheme Creditor and Storm
<b>“Settled Proceedings”</b>	means :
	(i) the Waterfall Proceedings;
	(ii) the Lacuna Application;
	(iii) the Olivant Application; and
	(iv) any Other Proceedings
<b>“Settlement Creditor”</b>	means a Higher Rate Creditor in relation to any Higher Rate Claim(s) held by it that is not subject to a Valid Certification Election
<b>“Settlement Higher Rate Claim”</b>	means a Higher Rate Claim that is not subject to a Valid Certification Election
<b>“Settlement Instructions”</b>	means a Scheme Party’s settlement instructions that meet the Company’s minimum requirements in respect of settlement instructions as set out in the Portal (from time to time)
<b>“Settlement Payment”</b>	means, in respect of a Settlement Creditor, the 8% Payment and the Settlement Premium together
<b>“Settlement Payment Option”</b>	means the option available to Higher Rate Creditors to receive the Settlement Payment in respect of their Higher Rate Claims
<b>“Settlement Premium”</b>	means a settlement sum to be paid to a Settlement Creditor equal to 2.5% of the amount admitted for dividend by the Administrators in respect of its Settlement Higher Rate Claim(s)
<b>“Shareholder”</b>	means LBHI2 in its capacity as a shareholder of the Company
<b>“Shareholder Undertaking”</b>	means a deed of undertaking to be entered into prior to the Effective Date between the Company and the Shareholder in connection with this Scheme in the form set out in Schedule 3

<b>“Shareholder Undertaking Claim”</b>	means any Claims against the Shareholder arising out of a breach by the Shareholder of the terms of the Shareholder Undertaking
<b>“Shortfall”</b>	means, where the total distributions received by a client of the Company from the Client Money Estate (X) are less than its Client Money Entitlement (Y), the difference between X and Y
<b>“Shortfall Claim”</b>	means any unsecured claim against the House Estate to recover any Shortfall
<b>“Specified Countries”</b>	means the Netherlands, France, Italy, Germany, Switzerland, the United Arab Emirates, Qatar, Spain, Sweden, Israel and South Korea
<b>“Specified Interest Claim”</b>	means a Provable Claim (or the component part thereof) that is derived from a Specified Interest Contract
<b>“Specified Interest Contract”</b>	means a contract other than a Relevant Contract or a Subordinated Debt Agreement which stipulates a Specified Interest Rate which, when applied to the balance outstanding from time to time under such contract (in accordance with Relevant Principles), would give rise to an amount of Statutory Interest that is greater than the amount of Statutory Interest that would be calculated if the 8% Interest Rate were to have applied in place of such Specified Interest Rate
<b>“Specified Interest Creditor”</b>	means a Scheme Creditor who holds legal title to one or more Specified Interest Claims
<b>“Specified Interest Payment”</b>	means a payment to a Specified Interest Creditor of Statutory Interest in respect of its Specified Interest Claims calculated in accordance with Clause 7.2
<b>“Specified Interest Rate”</b>	means either: <ul style="list-style-type: none"> <li>(i) a Fixed Rate; or</li> <li>(ii) a Floating Rate,</li> </ul> whether such rate is applied on a simple or compound basis
<b>“SSI Deadline”</b>	means the later of: <ul style="list-style-type: none"> <li>(i) 20 Business Days from the date on which all Scheme Distributions other than Unclaimed Scheme Distributions have been paid in full by the Company; and</li> <li>(ii) 12 months from the Effective Date</li> </ul>
<b>“Statutory Interest”</b>	means any statutory interest payable by the Company pursuant to Rule 14.23 of the Insolvency Rules
<b>“Statutory Interest Claims”</b>	means Claims in respect of Statutory Interest
<b>“Storm”</b>	means Storm Funding Limited (in administration), a company incorporated in England and Wales with registered number

	02682306 whose registered address is 7 More London Riverside, London SE1 2RT
<b>“Storm Payment”</b>	means a payment in the amount of GBP 20,955,623.55 to Storm in full and final settlement of its rights to Statutory Interest in respect of its Admitted Claim
<b>“Storm Undertaking”</b>	means a deed of undertaking to be entered into prior to the Effective Date between the Company and Storm pursuant to which Storm agrees to be bound by and perform certain of the terms of this Scheme, in the form set out in Schedule 4
<b>“Subordinated Creditor”</b>	means Wentworth Sons Sub-Debt S.à r.l., a private limited liability company ( <i>société à responsabilité limitée</i> ) incorporated and existing under the laws of the Grand Duchy of Luxembourg and registered with the Luxembourg Trade and Companies’ Register under number B 179. 340, whose registered office is 6 Rue Eugène Ruppert, L 2453 Luxembourg, Grand Duchy of Luxembourg
<b>“Subordinated Debt”</b>	means Claims in respect of the subordinated liabilities of the Company arising pursuant to the Subordinated Debt Agreements
<b>“Subordinated Debt Admittance Date”</b>	has the meaning given to it in Clause 32.2
<b>“Subordinated Debt Agreements”</b>	means any of the three intercompany loan agreements entered into between the Company and LBHI2, each dated 1 November 2006 and which have been assigned by LBHI2 to the Subordinated Creditor pursuant to a deed of assignment dated 31 January 2014
<b>“Subordinated Debt SI Payment”</b>	has the meaning given to it in Clause 32.5
<b>“Subordinated Distributions”</b>	means any payment in respect of the Subordinated Debt (whether in respect of principal, interest accrued prior to the Administration Date, Statutory Interest or otherwise) made in accordance with the terms of this Scheme
<b>“Subordinated Interest”</b>	has the meaning given to it in Clause 32.3
<b>“Subordinated Principal”</b>	means the part of the Subordinated Creditor’s Provable Claim that relates to the principal amount of the Subordinated Debt, in the sum of GBP 1,240,452,696, and excluding any part that relates to interest on the Subordinated Debt accrued prior to the Administration Date
<b>“Support Team”</b>	means one or more appropriately qualified and trained, technically competent and independent professionals (with relevant market and/or financial experience) engaged by the Adjudicator to support and assist the Adjudicator with his understanding of the Appellant Certifying Creditor’s Case and the Company’s Case
<b>“Supreme Court”</b>	means the Supreme Court of the United Kingdom



<b>“Surplus”</b>	means the Company’s assets remaining after the provision for or payment in full of Expense Claims, Preferential Debts and Admitted Claims and before the payment of Statutory Interest, Non-Provable Claims, the Subordinated Debt and Equity Distributions, but excluding any Contributory Claim
<b>“Tax”</b>	means all forms of taxation, whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or otherwise and shall further include payments in respect of or on account of such forms of taxation (including any interest and/or penalties in relation to such taxation), in each case whether of the United Kingdom or elsewhere in the world whenever imposed and whether chargeable directly or primarily against or attributable directly or primarily to the Company, a Scheme Party or any other person
<b>“Tax Authority”</b>	means any taxing or other authority, whether of the United Kingdom or elsewhere in the world, competent to impose any liability in respect of Tax, or responsible for the administration and/or collection of Tax or enforcement of any law in relation to Tax
<b>“Third Party”</b>	means a person that is not the Company, a Scheme Party, an Administrator, a Released Third Party or a Locked Up Party
<b>“Tranche A”</b>	means “Tranche A” of Waterfall II as described in the definition of Waterfall II
<b>“Tranches A and B Costs Principle”</b>	means, in relation to any costs payable by the Company pursuant to Clause 28.3, the limitation imposed by the High Court in paragraph 2 under the heading “Costs” in the order of David Richards J dated 17 October 2016 in relation to Tranche A and Tranche B
<b>“Tranche B”</b>	means “Tranche B” of Waterfall II as described in the definition of Waterfall II
<b>“Tranche C”</b>	means “Tranche C” of Waterfall II as described in the definition of Waterfall II
<b>“Tranche C Judgment”</b>	means Lomas & Ors v Burlington Loan Management Limited & Ors [2016] EWHC 2417 (Ch)
<b>“Tranche C Order”</b>	means the declarations made by Hildyard J in the order of the High Court dated 12 December 2016 in respect of the Tranche C Judgment
<b>“UCC Challenge”</b>	means a challenge in writing to the Company by a Scheme Creditor of the allocation or composition of its Admitted Claim(s) between any combination of 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) set out in its UCC4 (or as otherwise communicated to it in writing by the Company), where such challenge includes a statement as to the allocation or composition of 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) (as relevant)

	claimed by that Scheme Creditor as constituting its Admitted Claim(s)
<b>“UCC4”</b>	means the certificate provided by the Company to a Scheme Creditor on or around the date of the Explanatory Statement setting out, among other things, the disaggregation of such Scheme Creditor’s Admitted Claim(s) between 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) (as relevant)
<b>“Unclaimed Scheme Distribution”</b>	means any Scheme Distribution which (i) would be payable by the Company to a Scheme Party but for that Scheme Party’s failure to provide the Company with Settlement Instructions and/or KYC Information (or confirm such information) in accordance with Clause 19.4 or (ii) was paid by way of a cheque that is cancelled by the Company pursuant to Clause 19.6.3
<b>“Unclaimed Scheme Distribution Application”</b>	has the meaning given to it in Clause 21.2
<b>“Undetermined Certification Claim”</b>	means a Certification Claim that is an Undetermined Provable Claim
<b>“Undetermined Provable Claim”</b>	means, as at any given date, a Provable Claim in respect of which a proof of debt has been submitted in accordance with Rules 14.3 and 14.4 of the Insolvency Rules prior to the Bar Date, where such proof of debt is still to be finally adjudicated upon by the Administrators or is the subject of determination by the Court or in respect of which the 21-day period in Rule 14.8(2) of the Insolvency Rules has not expired
<b>“US Bankruptcy Code”</b>	means Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.
<b>“US Bankruptcy Court”</b>	means the United States Bankruptcy Court for the Southern District of New York or other court of competent jurisdiction presiding over any case filed under Chapter 15 of the US Bankruptcy Code seeking, among other things, recognition of this Scheme as a foreign main proceeding and enforcement of the Court Order in the United States
<b>“Valid Certification Election”</b>	means an Election by a Higher Rate Creditor that is: <ul style="list-style-type: none"> <li>(i) for the Certification Option in relation to one or more Higher Rate Claims;</li> <li>(ii) made prior to the Election Deadline; and</li> <li>(iii) made contemporaneously with a representation by that Scheme Creditor to the Company (such representation being true and accurate as at the date it is made) that: <ul style="list-style-type: none"> <li>(a) it has made the same Election in respect of all Higher Rate Claims which it legally owns and Controls; and</li> </ul> </li> </ul>

- (b) where it has Elected for the Certification Option in respect of Higher Rate Claim(s) which are Controlled by a third party, it has made the same Election in respect of all Higher Rate Claim(s) that are Controlled by such party

**“VAT”** means, within the European Union, such tax as may be levied in accordance with (but subject to derogations from) the Directive 2006/112/EC and, outside the European Union, any tax of a similar nature levied by reference to added value or sales

**“Voting”** means the exercise of a Scheme Creditor’s vote to approve or reject this Scheme at a meeting of Scheme Creditors convened for that purpose and **“Vote”** shall be construed accordingly

**“Voting Rights”** means the value attributed to 8% Interest Claims, Specified Interest Claims and Higher Rate Claims for the purpose of Voting at the relevant Scheme Meeting(s)

**“Waterfall I”** means a joint application issued on 14 February 2013 by the respective administrators of the Company, LBL and LBHI2, with LBHI as a respondent, seeking a determination as to, among other things, the existence and priority ranking of certain claims in respect of the Surplus, and the rights and obligations of the Company as against its contributories, heard by the High Court, the Court of Appeal and the Supreme Court, the Supreme Court judgment being given on 17 May 2017

**“Waterfall II”** means the application issued on 12 June 2014 (as amended pursuant to the orders of David Richards J dated 9 March 2015 and Hildyard J dated 9 October 2015) by the Administrators, with Burlington Loan Management Limited, CVI GVF (Lux) S.à r.l., Hutchinson Investors, LLC, the Subordinated Creditor and York Global Finance BDH, LLC as respondents, seeking determination of issues that impact the potential entitlements of the Company’s creditors to payments from the Surplus, split into Tranche A and Tranche B (with case citation, in respect of the Court of Appeal decision, [2017] EWCA Civ 1462), and Tranche C (with case citation, in respect of the first instance decision, [2016] EWHC 2417 (Ch))

**“Waterfall III”** means the application issued on 25 April 2016 by the Administrators with the respective joint administrators of LBHI2, LBL and LBEL as respondents, seeking determination of issues relating to the rights and obligations of the Company, LBHI2, LBL, LBEL and LBH PLC arising out of (i) the Company’s status as an unlimited liability company and (ii) certain recharge arrangements among those entities, and the associated cross-application issued on 17 October 2016 by the administrators of LBL

**“Waterfall Proceedings”** means Waterfall I, Waterfall II and Waterfall III as the context

	requires
<b>“Website”</b>	means the website which can be accessed at <a href="https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html">https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html</a>
<b>“Wentworth Parties”</b>	means: <ul style="list-style-type: none"> <li>(i) LBHI;</li> <li>(ii) Wentworth Sons Senior Claims S.à. r.l.;</li> <li>(iii) the Subordinated Creditor;</li> <li>(iv) the Shareholder;</li> <li>(v) King Street Capital Management, L.P.;</li> <li>(vi) Elliott Management Corporation; and</li> <li>(vii) in respect of (v) and (vi) above, their respective Affiliates that are parties to the Lock Up Agreement</li> </ul>
<b>“WHT Deduction”</b>	has the meaning given to it in Clause 18.1.1
<b>“WHT Deduction Certificate”</b>	has the meaning given to it in Clause 18.1.3(ii)
<b>“WHT Determination Event”</b>	has the meaning given to it in Clause 18.3
<b>“WHT Proceedings”</b>	means the application issued by the Administrators on 22 December 2015, with HMRC as respondent, seeking directions of the High Court in relation to the application of section 874 of the Income Tax Act to payments of Statutory Interest (with case citations, in respect of the first instance decision, [2016] EWHC 2492 (Ch), and in respect of the Court of Appeal decision, [2017] EWCA Civ 2124)
<b>“WHT Repayment”</b>	has the meaning given to it in Clause 18.3.1
<b>“WHT Repayment Event”</b>	has the meaning given to it in Clause 18.3.2

## **Interpretation**

**1.2** In this Scheme, unless the context otherwise requires or unless otherwise expressly provided:

**1.2.1** references to any specified provision of this Scheme shall be construed as references to that provision subject to any modification, addition or condition approved or imposed pursuant to Clause 42;

**1.2.2** references to a person include any company, unincorporated association or partnership whether or not having separate legal personality, and references to a company include any company, corporation or body corporate, wherever incorporated;

**1.2.3** references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;

- 1.2.4 all monetary amounts stated in this Scheme are in GBP unless expressly stated otherwise;
  - 1.2.5 a reference to “**GBP**” is to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland;
  - 1.2.6 references to specific Insolvency Rules shall include references to the equivalent provisions of the Insolvency Rules 1986 (if the context so allows);
  - 1.2.7 a reference to a “**judgment**” includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
  - 1.2.8 a reference to a “**law**” includes common or customary law and any constitution, decree, judgment, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever;
  - 1.2.9 words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
  - 1.2.10 headings are for ease of reference only and shall not affect the interpretation of this Scheme;
  - 1.2.11 the words “**include**” and “**including**” mean include and including without limitation (and “**includes**” shall be construed accordingly);
  - 1.2.12 the words “**prior to**” before a stated date shall be construed to mean “prior to and not including” the stated date; and
  - 1.2.13 references to Clauses, Parts and Schedules are to Clauses and Parts of and Schedules to this Scheme, and references to time are to London time.
- 1.3** In determining whether any action is “**reasonably practicable**” for the Company and/or the Administrators for the purposes of this Scheme, regard shall be had to:
- 1.3.1 the fact that the Company is in administration;
  - 1.3.2 the limitations on access to Books and Records of the Company and other resources; and
  - 1.3.3 the materiality of the likely impact of such action on the Company's aim to manage costs appropriately and to deal with matters arising under this Scheme expeditiously.

## **PART II: EFFECTIVE DATE AND INITIAL SCHEME STEPS**

### **2 Scheme Effective Date**

- 2.1** This Scheme shall become effective on and from the Effective Date and shall be binding on the Company, the Administrators and the Scheme Creditors and their respective successors and assigns on and from the Effective Date.
- 2.2** Storm has consented to, and agreed to be bound by, the terms of this Scheme, on and from the Effective Date, pursuant to the terms of the Storm Undertaking.
- 2.3** The Shareholder has consented to this Scheme and, on and from the Effective Date, undertaken certain obligations in connection with this Scheme pursuant to the Shareholder Undertaking in consideration for being entitled to enforce each of the rights conferred on it pursuant to this Scheme.
- 2.4** The Company shall notify the Scheme Parties and the Shareholder of the occurrence of the Effective Date by:
- 2.4.1** immediately publishing a Notice on the Website confirming the occurrence of the Effective Date;
  - 2.4.2** promptly arranging for the publication of a notice in the following publications in relation to the same:
    - (i) the Financial Times (United Kingdom and International editions);
    - (ii) the London Gazette;
    - (iii) The Times Newspaper; and
    - (iv) the Wall Street Journal (US National Edition); and
  - 2.4.3** promptly arranging for the publication of the notice specified at Clause 2.4.2 to be published in such other publications (if any) as the Company may in its sole discretion consider appropriate in each of the countries in which Company branches operated, including the Specified Countries.
- 2.5** A Scheme Party's entitlement to Statutory Interest (if any) shall be quantified, provided for, paid and fully satisfied in accordance with the provisions of this Scheme only, such that Scheme Parties shall have no entitlement to Statutory Interest save as set out in this Scheme.

### **3 Scheme Outcome Statements**

- 3.1** As soon as is reasonably practicable, the Company shall:
- 3.1.1** determine the High Case Scheme Distribution;
  - 3.1.2** determine the Adequate Reserves in accordance with Clause 4;
  - 3.1.3** determine the Net Available Funds; and
  - 3.1.4** publish a Scheme Outcome Statement on the Website in accordance with Clause 3.2.

- 3.2** Where:
- 3.2.1** the Net Available Funds are the same as or greater than the High Case Scheme Distribution, the Company shall publish a Full SI Payment Statement on the Website;
  - 3.2.2** the Net Available Funds are the same as or greater than the amount required in order to distribute the Minimum Sum but less than the High Case Scheme Distribution, the Company shall publish a Part SI Payment Statement on the Website; and
  - 3.2.3** the Net Available Funds are insufficient to distribute the Minimum Sum, the Company shall publish an Insufficient Funds Statement on the Website.
- 3.3** Subject to Clause 3.4, if at any time there is a change in the Net Available Funds, such that the Company determines (in its sole discretion) that an Issued Scheme Outcome Statement does not accurately reflect whether Scheme Distributions can be paid in full, in part or at all, in accordance with Clause 3.2, the Company shall:
- 3.3.1** promptly upon becoming aware of the relevant change, publish on the Website a notice confirming (i) that the Company has determined that the Issued Scheme Outcome Statement is no longer valid and (ii) the reason for such conclusion (a “**Retraction Notice**”); and
  - 3.3.2** within five Business Days of the Company publishing a Retraction Notice, publish on the Website an updated Scheme Outcome Statement that reflects the relevant change in the Net Available Funds (a “**Revised Scheme Outcome Statement**”).
- 3.4** If an Issued Scheme Outcome Statement is a Part SI Payment Statement, the Company shall:
- 3.4.1** make further Scheme Distributions as soon as is reasonably practicable following an increase in the Part SI Payment Rate, on account of a change in the Net Available Funds; and
  - 3.4.2** Notify the Scheme Parties of any changes to the Part SI Payment Rate on or before the payment of any further Scheme Distribution.

## **4 Adequate Reserves**

- 4.1** Subject to Clause 4.2, the Administrators shall as soon as is reasonably practicable and from time to time, in their sole discretion, set aside from the Available Funds such amounts as they consider necessary in order to adequately reserve for:
- 4.1.1** the Retained Claims (other than Non-Provable Claims); and
  - 4.1.2** any other matters that the Administrators consider it necessary to reserve for in accordance with their statutory duties,
- (each an “**Adequate Reserve**” and, together, the “**Adequate Reserves**”).
- 4.2** Subject to Clause 4.4, in respect of any Retained Claim that is a Disputed Claim as at 30 September 2018, the Administrators shall promptly take one of the actions specified in Clause 4.3.

- 4.3** In respect of a Disputed Claim referred to in Clause 4.2 that is:
- 4.3.1** an Undetermined Provable Claim, the Administrators shall:
- (i) either admit or reject such Undetermined Provable Claim (in whole or in part); and/or
  - (ii) issue a Directions Application (on an expedited basis if in the Administrators' opinion (acting reasonably) it is reasonable to do so), which seeks determination of the Undetermined Provable Claim and/or the appropriate amount to be set aside by way of an Adequate Reserve in respect of such Undetermined Provable Claim;
- 4.3.2** an Expense Claim or a Non-Provable Claim, the Administrators shall issue a Directions Application (on an expedited basis if in the Administrators' opinion (acting reasonably) it is reasonable to do so), which seeks determination of:
- (i) the validity and quantum of such Claim;
  - (ii) in respect of an Expense Claim, the appropriate amount to be set aside by way of an Adequate Reserve in respect of such Expense Claim; and
  - (iii) in respect of a Non-Provable Claim, the appropriate amount to be reserved for in respect of such Non-Provable Claim for the purposes of making any Subordinated Distribution.
- 4.4** The Company will not be required to take any of the actions referred to in Clause 4.3 in respect of a Disputed Claim that is, as at 30 September 2018, subject to extant proceedings before the Courts that seeks to determine the amount to be held by way of a reserve (including an Adequate Reserve) in respect of such Retained Claim.
- 4.5** Nothing in Clauses 4.2 or 4.3 shall delay the determination of Adequate Reserves under Clause 4.1 and/or the publication of a Scheme Outcome Statement unless a Disputed Claim would, if allowed in full, prevent the Company from publishing a Full SI Payment Statement or a Part SI Payment Statement.

## **5 Higher Rate Claims, 8% Interest Claims and Specified Interest Claims**

- 5.1** The amount of each Scheme Creditor's Higher Rate Claim(s), 8% Interest Claim(s) and/or Specified Interest Claim(s) (as relevant) for the purposes of this Scheme shall be:
- 5.1.1** if the Scheme Creditor has not notified the Company of a UCC Challenge prior to the Bar Date, the amounts stated in its UCC4 or, if it did not receive a UCC4, such amounts as have been communicated in writing to it by the Company prior to the Bar Date;
- 5.1.2** if the Scheme Creditor has notified the Company of a UCC Challenge prior to the Bar Date, such amounts as may be agreed between it and the Company in accordance with Clause 20.1 or as are determined by the High Court in accordance with Clause 20.2; and
- 5.1.3** in respect of any Retained Claim that is an Undetermined Provable Claim that is admitted by the Administrators after the Bar Date, such amount as may be communicated in writing to the holder of such Claim by the Company at the time of the relevant admittance by the Administrators.



## **PART III: SCHEME DISTRIBUTIONS TO 8% CREDITORS, SETTLEMENT CREDITORS AND SPECIFIED INTEREST CREDITORS**

### **6 The 8% Payment**

**6.1** Subject to Clause 9 and the provisions of Part V, the Company shall pay the 8% Payment to:

**6.1.1** each 8% Creditor in full and final satisfaction of its rights to Statutory Interest in respect of its 8% Interest Claims; and

**6.1.2** each Settlement Creditor in full and final satisfaction of its rights to Statutory Interest in respect of its Settlement Higher Rate Claims.

**6.2** In respect of the Admitted Claim to which it relates, the Company shall calculate the relevant 8% Payment applying the Relevant Principles and accordingly:

**6.2.1** any and all dividends paid in respect of the relevant Admitted Claim from time to time in the Administration shall be treated as having discharged the amount of the relevant Admitted Claim(s) before discharging any Statutory Interest in respect thereof;

**6.2.2** the 8% Interest Rate shall be applied to such portion of the relevant Admitted Claim as remained outstanding from time to time (having regard to Clause 6.2.1) from the Administration Date until the date on which the amount of such Admitted Claim was paid in full by the Company; and

**6.2.3** where any amount of the relevant Admitted Claim remained outstanding for a period falling partly or wholly within a Leap Year, the daily rate for the relevant period shall be calculated by dividing the 8% Interest Rate by 366.

### **7 The Specified Interest Payment**

**7.1** Subject to Clause 9 and the provisions of Part V, the Company shall pay the Specified Interest Payment to each Specified Interest Creditor in full and final satisfaction of its rights to Statutory Interest in respect of its Specified Interest Claims.

**7.2** In respect of an Admitted Claim to which it relates, the Company shall calculate the Specified Interest Payment applying the Relevant Principles and accordingly:

**7.2.1** any and all dividends paid in respect of the relevant Admitted Claim from time to time in the Administration shall be treated as having discharged the amount of the relevant Admitted Claim(s) before discharging any Statutory Interest in respect thereof;

**7.2.2** the relevant Specified Interest Rate shall be applied to such portion of the relevant Admitted Claim as remained outstanding from time to time (having regard to Clause 7.2.1 and, if relevant, the Compounding Principle) from the Administration Date (or, if later, the date on which the entitlement to interest arises under the relevant Specified Interest Contract) until the date(s) on which the amount of such Admitted Claim was paid in full by the Company; and

**7.2.3** where any amount of the relevant Admitted Claim remained outstanding for a period falling partly or wholly within a Leap Year, the daily rate for the relevant period shall be calculated by dividing the Specified Interest Rate by 366.

## **8 The Settlement Premium**

Subject to Clause 9 and the provisions of Part V, and in consideration of each Settlement Creditor not having exercised its right to Elect for the Certification Option, the Company shall pay the Settlement Premium to each Settlement Creditor.

## **9 Timing of the 8% Payment, the Specified Interest Payment and the Settlement Premium**

**9.1** Subject to the provisions of Part V, the Company shall pay:

**9.1.1** the 8% Payment in accordance with Clause 6;

**9.1.2** the Specified Interest Payment in accordance with Clause 7; and

**9.1.3** the Settlement Premium in accordance with Clause 8,

within 20 Business Days of the publication of an Issued Scheme Outcome Statement (other than an Insufficient Funds Statement).

## PART IV: SCHEME DISTRIBUTIONS TO CERTIFYING CREDITORS

### 10 Applicable CI Payments

Subject to Clause 15 and the provisions of Part V, the Company shall pay the Applicable CI Payment to each Certifying Creditor in full and final satisfaction of its rights to Statutory Interest in respect of each of its Certification Claims.

### 11 Determination of Applicable CI Payments

11.1 Subject to Clause 16, each Certifying Creditor shall provide the Company with a Certification prior to the Certification Deadline.

11.2 Subject to Clauses 11.4 and 15.3, where a Certifying Creditor has duly provided the Company with a Certification prior to the Certification Deadline, within 20 Business Days of the Effective Date (the “**Consultation Period**”), the Company shall Notify the Certifying Creditor that it has decided to take one of the following actions in respect of the relevant Certification:

11.2.1 accept the Certification;

11.2.2 reject the Certification;

11.2.3 propose a Counteroffer that contains a Counteroffer Sum that is lower than the Certified Sum; or

11.2.4 request that the Certifying Creditor provides additional information in support of its Certification (an “**Additional Information Request**”),

(each a “**Decision Notice**”).

11.3 During the Consultation Period, the Company may engage in confidential, without prejudice, settlement discussions with a Certifying Creditor, with the intention of reaching agreement as regards the action to be taken by the Company pursuant to Clause 11.2. Subject to Clause 27, any communication or request for information between the Company and a Certifying Creditor during the Consultation Period, that is expressed as being made pursuant to this Clause 11.3, shall remain private and confidential, shall not constitute an Additional Information Request or Counteroffer for the purposes of Clauses 11.7 and 11.8, and shall not be disclosable to any other Scheme Party or the Adjudicator save that it will be disclosable by the Company to the Subordinated Creditor in accordance with Clause 12.

11.4 The Company and a Certifying Creditor may agree in writing to an extension to the Consultation Period of up to 15 Business Days.

11.5 In taking any of the actions set out in Clause 11.2, the Company shall have regard to, where applicable, the Relevant Principles.

11.6 If the Company accepts a Certifying Creditor's Certification in respect of a Certification Claim pursuant to Clause 11.2.1 or following an Additional Information Request pursuant to Clause 11.2.4, the Applicable CI Payment in respect of that Certification Claim shall be the Certified Sum.

11.7 If the Company proposes a Counteroffer pursuant to Clause 11.2.3, the relevant Certifying Creditor shall Notify the Company of its acceptance or rejection of such Counteroffer within

10 Business Days of the date on which it receives the Decision Notice containing the Counteroffer, and:

11.7.1 where the relevant Certifying Creditor accepts the Counteroffer or fails to respond within the 10 Business Day period specified in this Clause 11.7, the Applicable CI Payment shall be the Counteroffer Sum; or

11.7.2 where the relevant Certifying Creditor rejects the Counteroffer within the 10 Business Day period specified in this Clause 11.7, the Company shall automatically reject the Certification to which the Counteroffer relates and shall promptly Notify the relevant Certifying Creditor of such decision by way of a Decision Notice (which shall include details of the rejected Counteroffer) in accordance with Clause 11.2.2.

**11.8** If the Company makes an Additional Information Request pursuant to Clause 11.2.4, the Certifying Creditor to whom the Additional Information Request is made shall provide the relevant information to the Company within 10 Business Days of receipt of the Decision Notice containing the Additional Information Request and:

11.8.1 where the Certifying Creditor does not provide the information set out in the Additional Information Request within the 10 Business Day period specified in this Clause 11.8, the Company shall automatically reject the Certification to which the Additional Information Request relates and shall promptly Notify the relevant Certifying Creditor of such decision by way of a Decision Notice in accordance with Clause 11.2.2; or

11.8.2 where the Certifying Creditor provides the requested additional information within the 10 Business Day period specified in this Clause 11.8, the Company shall, having considered such additional information, take one of the actions described in Clauses 11.2.1 to 11.2.3 within 10 Business Days of receiving the relevant additional information and shall promptly Notify the relevant Certifying Creditor of such decision by way of a Decision Notice in accordance with Clause 11.2.1, 11.2.2 or 11.2.3 as applicable.

**11.9** If the Company rejects a Certification pursuant to Clause 11.2.2, 11.7.2 or 11.8 (a “**Rejected Certification**”), the relevant Certifying Creditor may elect to have the Rejected Certification determined by an Adjudicator pursuant to the provisions of Part VI (a “**DRP Election**”).

**11.10** If a Certifying Creditor does not make a **DRP Election** in accordance with Clause 24.1.1, the Applicable CI Payment in respect of the Certification Claim to which the Rejected Certification relates shall be an amount equal to the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim.

**11.11** For the avoidance of doubt, in no circumstances shall the Applicable CI Payment in respect of a Certification Claim:

11.11.1 exceed the Certified Sum; or

11.11.2 be less than the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim (subject to any deductions made pursuant to Clause 26.4 (if applicable)).

## **12 Consultation with the Subordinated Creditor**

- 12.1** Notwithstanding any provision to the contrary, the Company shall consult with the Subordinated Creditor prior to issuing any Decision Notice pursuant to Clause 11.2; however, the final decision regarding which Decision Notice to issue pursuant to Clause 11.2 shall be made by the Company in its sole discretion.
- 12.2** Without prejudice to the generality of Clause 12.1, in the event that the Company determines to make a Counteroffer pursuant to Clause 11.2.3, it shall first agree the terms of the Counteroffer with the Subordinated Creditor and, in the absence of such agreement, shall issue a Decision Notice containing such Counteroffer as the Subordinated Creditor recommends to the Company to propose to the relevant Certifying Creditor.

## **13 Failure to submit a Certification**

Where a Certifying Creditor fails to submit a Certification in respect of a Certification Claim that it holds by the Certification Deadline, the Applicable CI Payment in respect of the relevant Certification Claim shall be an amount equal to the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim.

## **14 Forfeit of entitlement to Settlement Premium**

No Settlement Premium shall be payable in respect of any Certification Claim, including any Certification Claim in respect of which the relevant Certifying Creditor fails to submit a Certification by the Certification Deadline.

## **15 Timing of payment of Applicable CI Payment**

- 15.1** Subject to the provisions of Part V and Part VI the Company shall pay the Applicable CI Payment to the relevant Certifying Creditor in respect of the Certification Claim to which it relates within 20 Business Days of the later of:
- 15.1.1** the Applicable CI Payment in respect of such Certification Claim being determined in accordance with Clause 11 or 13; and
  - 15.1.2** publication of an Issued Scheme Outcome Statement (other than an Insufficient Funds Statement).
- 15.2** For the avoidance of doubt, the Company shall pay the Applicable CI Payment in respect of a Certification Claim in accordance with Clause 15.1, notwithstanding that, at the time of such payment, an Applicable CI Payment may not have been determined in respect of all of such Certifying Creditor's Certification Claims.
- 15.3** Where a Certifying Creditor has notified the Company of a UCC Challenge prior to the Bar Date, the determination of its Certification(s) pursuant to this Part IV shall be stayed, and any time periods set out in this Part IV shall be suspended, until such time as the UCC Challenge has been either agreed in accordance with Clause 20.1 or finally determined by the Courts in accordance with Clause 20.2 (as applicable).

## **16 Undetermined Certification Claims**

### **16.1** Where a Certifying Creditor holds an Undetermined Certification Claim:

**16.1.1** it shall provide an Initial Certification to the Company in respect of that Undetermined Certification Claim prior to the Certification Deadline; and

**16.1.2** to the extent the Undetermined Certification Claim is admitted for dividend (in whole or in part) by the Administrators, it shall update its Initial Certification to include all Certified Rates applicable to the Admitted Certification Claim up to the date of payment in full of the principal amount of the Admitted Certification Claim and a revised Certified Sum (a "**Final Certification**") to the Company in respect of the relevant Admitted Certification Claim within 10 Business Days of the Admitted Certification Claim having been paid in full by the Company (the "**Final Certification Deadline**").

### **16.2** The provisions of this Part IV and Part VI shall apply to any Initial Certification or Final Certification submitted in accordance with Clause 16.1, subject to the following modifications:

**16.2.1** subject to Clause 16.2.3, references to a Certification shall be construed to mean both the Initial Certification and the Final Certification;

**16.2.2** references to a Certification Claim shall be construed to mean the relevant Admitted Certification Claim;

**16.2.3** references in Clause 13 to a Certification shall be construed to mean an Initial Certification;

**16.2.4** an Initial Certification shall be prepared on the assumption that the relevant Undetermined Certification Claim is an Admitted Claim and was paid in full by the Company on the date of such Initial Certification; and

**16.2.5** determination of the Initial Certification pursuant to Clause 11.2.2 shall be stayed until such time as the company receives the Final Certification and all time periods specified in this Part IV will commence from that date.

### **16.3** Where a Certifying Creditor fails to submit a Final Certification by the Final Certification Deadline in accordance with Clause 16.1.2, its Initial Certification shall be deemed to be its Final Certification for the purposes of this Clause 16.

## **PART V: GENERAL PROVISIONS APPLICABLE TO SCHEME DISTRIBUTIONS AND SUBORDINATED DISTRIBUTIONS**

### **17 General**

- 17.1** Any Scheme Distribution or Subordinated Distribution payable by the Company pursuant to this Scheme shall be paid in GBP.
- 17.2** The Company shall not be required to pay any Scheme Distribution or Subordinated Distribution at any time when an Issued Scheme Outcome Statement is an Insufficient Funds Statement.
- 17.3** In calculating the amount of any Scheme Distribution pursuant to this Scheme, the Company shall treat any and all dividends paid in respect of Admitted Claims from time to time in the Administration as having discharged the component parts of such Admitted Claim (whether 8% Interest Claims, Higher Rate Claims and/or Specified Interest Claims) pro rata.
- 17.4** If at the time the Company makes a Scheme Distribution in accordance with this Scheme, the Issued Scheme Outcome Statement is:
- 17.4.1** a Full SI Payment Statement, the Scheme Distribution shall be paid in full; and
  - 17.4.2** a Part SI Payment Statement, the Scheme Distribution shall be paid in part and rateably at the Part SI Payment Rate set out in the relevant Part SI Payment Statement.
- 17.5** The Company shall, from time to time following the publication of a Part SI Payment Statement, make such further payments of Scheme Distributions, subject to the terms of this Scheme, as it considers necessary to ensure that all Scheme Creditors receive Scheme Distributions rateably at the prevailing Part SI Payment Rate.
- 17.6** Where a Full SI Payment Statement or a Part SI Payment Statement is subject to a Retraction Notice, no Scheme Party shall have a Claim against the Company (or any other Scheme Party) in relation to or arising from any Scheme Distribution that was effected prior to the issuance of the Retraction Notice and will not be entitled to disturb or otherwise challenge the payment of such Scheme Distribution(s).
- 17.7** Notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distributions or Subordinated Distributions or Equity Distribution at any time when a Retraction Notice has been published and a Revised Scheme Outcome Statement has not been published in accordance with Clause 3.3.2.
- 17.8** Scheme Distributions shall rank equally between themselves and shall be paid rateably if not otherwise paid in full.
- 17.9** The Company shall be entitled to effect the payment of any Scheme Distribution to a Scheme Party in accordance with such Scheme Party's Settlement Instructions.

### **18 Tax**

#### **18.1 Payments and Withholding Tax**

- 18.1.1** Subject to Clause 18.2 below, on making a Payment to any Scheme Party, the Company shall deduct from the Payment a sum representing United Kingdom

income tax at the basic rate in force for the year in which the Payment is made as if the Payment were a payment of yearly interest arising in the United Kingdom for the purposes of Section 874 of the Income Tax Act and Section 874(2) of the Income Tax Act required such deduction (a "**WHT Deduction**").

**18.1.2** For the purposes of this Clause 18, a Payment shall be treated as made where a Payment which would otherwise be due from the Company is set off against a liability which is owed to the Company and Clause 18.1.1 shall apply accordingly.

**18.1.3** Where the Company makes a WHT Deduction, the Company shall:

- (i) pay to HMRC the amount of the WHT Deduction in accordance with Chapter 15 of Part 15 of the Income Tax Act; and
- (ii) issue to the relevant Scheme Party, within 10 Business Days of the date of the payment in paragraph (i) above, a statement showing the gross amount of the Payment, the amount of the WHT Deduction and the actual amount paid to the Scheme Party (a "**WHT Deduction Certificate**").

## **18.2 Exceptions from WHT Deduction**

**18.2.1** Notwithstanding Clause 18.1:

- (i) if not less than seven Business Days prior to making a Payment to a Scheme Party, the Company has received a written direction from HMRC to the Company's satisfaction (a "**Direction**") that the Company may make that Payment (or any part thereof) to that Scheme Party without a WHT Deduction pursuant to an applicable double tax treaty or with a WHT Deduction at a reduced rate of deduction under an applicable double tax treaty, the Company shall make that Payment (or the relevant part thereof) to that Scheme Party without a WHT Deduction or with a WHT Deduction at a reduced rate of deduction, as the case may be, and in compliance with the Direction (and for the avoidance of doubt the Company shall be under no obligation (other than as provided in Clause 18.3) to pay or repay to any Scheme Party any amounts in respect of any WHT Deduction in respect of any Payment paid to a Scheme Party prior to the receipt of such Direction with respect to that Scheme Party); or
- (ii) if not less than seven Business Days prior to making a payment of a Settlement Premium, the Company has received written confirmation from HMRC to the Company's satisfaction that the Settlement Premium does not constitute yearly interest for the purposes of Section 874 of the Income Tax Act and that it may be paid without withholding or deduction in respect of United Kingdom income tax (the "**Clearance**"), the Company shall pay that Settlement Premium without any deduction for or on account of United Kingdom income tax (and for the avoidance of doubt the Company shall be under no obligation (other than as provided in Clause 18.3 below) to pay or repay to any Scheme Party any amounts in respect of any WHT Deduction in respect of any Settlement Premium paid to a Scheme Party prior to the receipt of the Clearance).

**18.2.2** The Company shall, at a Scheme Party's written request and expense, provide that Scheme Party with such information and assistance as is reasonably requested by that Scheme Party to enable it (or any person deriving beneficial ownership of the



relevant Payment through it) to obtain a Direction or to obtain any available refund with respect to a WHT Deduction, provided that such request is made prior to the SSI Deadline and further provided that such provision of information or assistance is not materially disadvantageous to the Company, the Administrators or any other creditor (including a former creditor) of the Company, and would not require the disclosure of identifying information regarding other creditors (or former creditors) of the Company, in each case as determined by the Company.

### **18.3 WHT Repayments**

In the event that the Company makes a WHT Deduction as provided for under Clause 18.1 and either (i) it is finally determined as a consequence of the WHT Proceedings that the Payment in respect of which the WHT Deduction was made was not a payment of yearly interest for the purposes of Section 874 of the Income Tax Act; or (ii) the Company receives the Clearance to its satisfaction (each a **“WHT Determination Event”**):

- 18.3.1** if and to the extent that the Company is entitled to claim from HMRC a repayment of the whole or any part of the WHT Deduction (and any interest or repayment supplement thereon) attributable to a Payment (a **“WHT Repayment”**) in circumstances where (i) the Scheme Party in question is not entitled to claim such WHT Repayment directly from HMRC; and (ii) that Scheme Party has not already received a refund or credit in respect of that WHT Deduction, the Company shall, at the Scheme Party’s written request and expense, use reasonable efforts to claim such WHT Repayment;
- 18.3.2** if and to the extent that HMRC makes a WHT Repayment to the Company following the WHT Determination Event (a **“WHT Repayment Event”**), the Company shall pay to the Scheme Party to whom the Company paid the Payment from which the relevant WHT Deduction was made, within 20 Business Days of the relevant WHT Repayment Event, an amount equal to the WHT Repayment received from HMRC, provided that if HMRC subsequently seeks to recover all or any part of the WHT Repayment from the Company, the Scheme Party to whom the Company paid the WHT Repayment shall promptly reimburse the Company in respect of all or any part of the WHT Repayment recovered by HMRC from the Company upon receipt of a copy of HMRC’s notice seeking recovery;
- 18.3.3** if HMRC does not make a WHT Repayment to the Company following the WHT Determination Event, there shall be no obligation on the Company to (i) pay or repay any amounts in respect of the WHT Deduction to any Scheme Party; or (ii) other than as provided in Clause 18.3.1 above, to recover any amount in respect of any WHT Deduction from HMRC; and
- 18.3.4** following a WHT Determination Event, each Scheme Party shall provide the Company and/or HMRC with such information as the Company and/or HMRC may require in order to determine whether, or to what extent, HMRC shall make a WHT Repayment to the Company or to that Scheme Party.

### **18.4 Other Withholding Taxes**

- 18.4.1** The Company shall withhold, deduct or retain any amount for or on account of Tax which is required by any applicable law (other than Section 874(2) of the Income Tax Act) to be withheld, deducted, retained or otherwise accounted for in respect of, or in connection with, any Payment made or treated as made as a result of the

implementation and operation of this Scheme and the Company shall account for the amount of such withholding, deduction or retention to the appropriate Tax Authority as may be required by applicable law, provide evidence reasonably requested by a Scheme Party that the relevant Tax has been withheld, deducted or retained and accounted for to the appropriate Tax Authority, and take such other steps as may be required by applicable law.

**18.4.2** For the purposes of Clause 18.4.1, a Payment shall be treated as made where a Payment which would otherwise be due from the Company is set off against a liability which is owed to the Company and Clause 18.4.1 shall apply accordingly.

**18.4.3** Except as permitted by this Clause 18 or required by any applicable law, the Company shall not withhold, deduct or retain any amount for or on account of Tax from any Payment.

### **18.5 No Compensation**

Except as provided in Clause 18.3 and without prejudice to any remedies available to Scheme Parties for Scheme Breach Claims, the Company shall be under no obligation to pay, repay or compensate any Scheme Party in respect of any WHT Deduction, or other deduction or withholding permitted under this Scheme, from any Payment.

### **18.6 Reporting**

The Company and the Administrators (acting in accordance with the Administrators' statutory duties) may make any disclosures or reports to any Tax Authority as such Tax Authority reasonably requests in respect of any matters which are the subject of, or arise as a result of the implementation and operation of, this Scheme.

### **18.7 Other Taxes**

Any stamp duty, stamp duty reserve tax or other transfer taxes, VAT or other Tax liabilities or costs (including any penalties and interest thereon) arising out of or in connection with any Payment shall be borne by the Scheme Party to whom such Payment is made, whether chargeable directly or primarily against or attributable directly or primarily to the Scheme Party or any other person.

## **19 Conditions to payment of Scheme Distributions and Subordinated Distributions**

**19.1** The Scheme Distributions are payable in respect of Admitted Claims that have been paid in full only.

**19.2** Notwithstanding any other term of this Scheme, no Scheme Distribution (or part of a Scheme Distribution, if relevant) shall be payable by the Company until 10 Business Days following the date on which the Provable Claim(s) to which such Scheme Distribution relates has/have been admitted by the Administrators.

**19.3** Notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distribution or Subordinated Distribution (as applicable) to a Scheme Party that has taken any action that is inconsistent with the releases, waivers and undertakings set out in this Scheme until such time that such action has been remedied by such Scheme Party to the Company's sole satisfaction.

- 19.4** Subject to Clause 19.5 and notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distribution or Subordinated Distribution to a Scheme Party until 15 Business Days following the date on which the Company receives to its sole satisfaction from such Scheme Party (i) Settlement Instructions and KYC Information or (ii) confirmation that the Settlement Instructions and KYC Information previously provided by it to the Company are still valid.
- 19.5** Any Settlement Instructions and KYC Information to be provided or confirmed to the Company by a Scheme Party pursuant to Clause 19.4, shall be provided to the Company as follows:
- 19.5.1** Settlement Instructions shall be provided through the Portal; and
- 19.5.2** KYC Information shall be provided by electronic mail to [compliancequeries@lbia-eu.com](mailto:compliancequeries@lbia-eu.com).
- 19.6** To the extent that a Scheme Party's Settlement Instructions specify that it is to receive payment of any Scheme Distribution or Subordinated Distribution by cheque:
- 19.6.1** the Company shall effect payment of the relevant Scheme Distribution or Subordinated Distribution (or any part thereof) by posting a cheque for the relevant amount by first class post to the address provided by such Scheme Party in its Settlement Instructions;
- 19.6.2** the date of payment of the relevant Scheme Distribution or Subordinated Distribution (or any part thereof) for the purposes of the Company satisfying its payment obligations within a specified time period pursuant to this Scheme shall be the date of posting, or leaving with, delivering to or collection by, the relevant postal service provider;
- 19.6.3** any such cheques that are not cashed by the SSI Deadline will be cancelled; and
- 19.6.4** without prejudice to Clause 19.6.2, and subject to Clause 19.6.3, the Company shall, within 20 Business Days of a request to do so by such Scheme Party (provided that such request is made prior to the SSI Deadline), cancel and reissue any uncashed cheque and effect payment of the relevant Scheme Distribution or Subordinated Distribution in accordance with Clause 19.6.1.

## **20 UCC Challenges**

- 20.1** Where a Scheme Creditor has notified the Company of a UCC Challenge prior to the Bar Date, the Scheme Creditor and the Company shall negotiate in good faith in order to resolve the UCC Challenge by agreement.
- 20.2** If a UCC Challenge has not been resolved by agreement within 20 Business Days of the Effective Date, either the Company or the relevant Scheme Creditor shall be at liberty to commence Proceedings seeking the determination of the UCC Challenge by the High Court.
- 20.3** Notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distribution to any Scheme Creditor that has notified the Company of a UCC Challenge prior to the Bar Date, until such UCC Challenge has been finally resolved by agreement in accordance with Clause 20.1 or finally determined by the Courts (as applicable).

## **21 Unclaimed Scheme Distributions**

### **21.1** Upon the SSI Deadline:

**21.1.1** each Scheme Creditor shall be deemed to have irrevocably waived any right to receive an Unclaimed Scheme Distribution the amount of which is less than GBP 1,000,000 (a “**De Minimis Distribution**”);

**21.1.2** the Company shall be deemed to have satisfied its obligation to pay such De Minimis Distribution to the relevant Scheme Creditor; and

**21.1.3** all De Minimis Distributions shall automatically form part of the Available Funds.

**21.2** To the extent that any Retained Unclaimed Scheme Distribution remains unpaid after the SSI Deadline, the Administrators shall, within 30 Business Days of the SSI Deadline, issue a Directions Application which seeks determination as to how the Company shall deal with such Retained Unclaimed Scheme Distribution (an “**Unclaimed Scheme Distribution Application**”) and the Scheme Creditors hereby acknowledge that such determination may result in the rights of the relevant Scheme Creditor to a Retained Unclaimed Scheme Distribution being extinguished.

**21.3** Subject to Clause 21.4, the Company's and/or the Administrators' costs in respect of an Unclaimed Scheme Distribution Application (including in respect of legal fees) shall, unless ordered otherwise by the Courts, be borne in equal shares by the Scheme Creditors to whom the Retained Unclaimed Scheme Distribution(s) are payable as at the SSI Deadline, and shall be payable from such Retained Unclaimed Scheme Distributions, and to the extent such Retained Unclaimed Scheme Distribution are insufficient to meet the relevant costs, the relevant costs shall be paid as an Administration Expense.

**21.4** If, prior to receiving directions of the High Court in relation to an Unclaimed Scheme Distribution Application, the Company receives to its sole satisfaction, (i) KYC Information and/or (ii) Settlement Instructions (or confirmation of such information) that specify a method of payment other than cheque, from a Scheme Creditor to whom a Retained Unclaimed Scheme Distribution is payable (as relevant), the Company shall pay such Retained Unclaimed Scheme Distribution to such Scheme Creditor in accordance with Clause 19.4 less such proportional amount in respect of the Company's and/or the Administrators' costs (including legal fees) in respect of the Unclaimed Scheme Distribution Application as the Administrators may determine in their sole discretion (acting reasonably).

**21.5** Each Scheme Party undertakes and agrees to be bound by the directions of the High Court in relation to any Unclaimed Scheme Distribution Application.

## **22 Representations by Scheme Creditors**

In paying Scheme Distributions to Scheme Creditors, the Company and the Administrators shall be entitled to rely on the representations made by Scheme Creditors at the time of Voting or making their Election(s).

## **PART VI: DISPUTE RESOLUTION PROCEDURE**

### **23 The Adjudicator**

#### **23.1 Engagement**

23.1.1 In respect of each Appeal, the Company shall use reasonable endeavours to appoint one of (in the following order of priority):

- (i) Sir Bernard Rix;
- (ii) Michael Brindle QC; or
- (iii) Tim Howe QC

as the Adjudicator, to act in the capacity of an expert and not as an arbitrator.

23.1.2 In the event that none of the persons named in Clause 23.1.1 is able to accept an appointment as Adjudicator in respect of an Appeal, the Company and the Subordinated Creditor shall negotiate with each other in good faith to agree the name of an alternative suitably qualified, independent Adjudicator and the Company shall use reasonable endeavours to appoint such person as Adjudicator in respect of the relevant Appeal. Where agreement on the same cannot be reached as between the Company and the Subordinated Creditor, the Company shall appoint in its sole discretion an alternative former member of the England & Wales judiciary and/or English law qualified Queen's Counsel as Adjudicator.

23.1.3 Any person appointed as an Adjudicator shall be engaged by the Company on such reasonable terms as may be agreed by the Company, which terms shall be consistent with the provisions of this Part VI.

#### **23.2 Support Team**

23.2.1 The Adjudicator may engage the services of a Support Team if he deems that this is necessary to enable him to understand fully the type of funding asserted in the Appellant Certifying Creditor's Case and/or the Company's Case and/or any accompanying calculations.

23.2.2 The Support Team shall be engaged by the Adjudicator on such reasonable terms as may be agreed by the Adjudicator, in consultation with the Company.

23.2.3 The Support Team shall not be permitted to conduct their own factual investigations.

#### **23.3 Independence and conflicts of interest**

23.3.1 The Adjudicator must be independent and must not have any Conflict of Interest as regards the Company, the Administrators, PricewaterhouseCoopers LLP, the Appellant Certifying Creditor or the Wentworth Parties.

23.3.2 In the event the Adjudicator becomes aware that he has a Conflict of Interest in respect of an Appeal, the Adjudicator must as soon as reasonably practicable serve upon the Company a notice of resignation from the role of Adjudicator for the Appeal in respect of which the Conflict of Interest has been identified and ensure that all documentation relating to the relevant Appeal in his possession is destroyed or returned to the Company or, as applicable, the relevant serving Appellant Certifying Creditor.

**23.3.3** All members of the Support Team must be independent and must not have any Conflict of Interest as regards the Company, the Administrators, PricewaterhouseCoopers LLP, the Appellant Certifying Creditor or the Wentworth Parties.

**23.3.4** In the event the Adjudicator becomes aware that a member of the Support Team has a Conflict of Interest in respect of any Appeal, the Adjudicator must as soon as reasonably practicable inform the Company and the relevant Appellant Certifying Creditor of the Conflict of Interest, terminate the retainer of the relevant member of the Support Team in respect of the relevant Appeal only, and ensure that all documentation relating to the relevant Appeal in the possession of that member of the Support Team is destroyed or returned to the Adjudicator.

#### **23.4 Liability**

**23.4.1** Save in circumstances of fraud or bad faith, the Adjudicator shall not be liable to any Scheme Creditor for any act or omission arising from any Appeal, and Scheme Creditors shall not bring any claims against the Adjudicator in respect of any Appeal.

**23.4.2** The Adjudicator shall not provide details or copies of any documents or information arising from an Appeal to any person other than members of the Support Team, the Company, the Administrators and the relevant Appellant Certifying Creditor, unless he is under a legal obligation to provide oral or written evidence, documents or other details, including where he has been ordered to do so by a court of competent jurisdiction.

#### **23.5 Incapacity, resignation or death**

**23.5.1** If the Adjudicator is unable to make a determination in an ongoing Appeal due to incapacity, resignation or death:

- (i) the Adjudicator (if possible) and the Company shall use reasonable endeavours to arrange for documents provided to the Adjudicator to be destroyed, or returned to the Appellant Certifying Creditor or the Company, as the case may be;
- (ii) a replacement Adjudicator shall be appointed in accordance with Clause 23.1; and
- (iii) as soon as reasonably practicable following the appointment of the replacement Adjudicator:
  - (a) the Company shall provide the replacement Adjudicator with copies of any documentation served on the previous Adjudicator, the Company and/or the Appellant Certifying Creditor in accordance with Clause 24; and
  - (b) the replacement Adjudicator shall use reasonable endeavours to engage the same Support Team as retained by the previous Adjudicator, on substantially the same terms.

## **24 The Appeal**

### **24.1 Initiating an Appeal**

- 24.1.1 A Certifying Creditor who wishes to appeal against a Rejection Notice (an “**Appellant Certifying Creditor**”) must serve a completed Appeal Form on the Company within 10 Business Days of the Rejection Date to initiate an Appeal.
- 24.1.2 The Company shall use reasonable endeavours to appoint an Adjudicator in respect of the Appeal in accordance with Clause 23.1 as soon as reasonably practicable following service of the Appeal Form.
- 24.1.3 As soon as reasonably practicable following the appointment of the Adjudicator, the Company shall notify the Appellant Certifying Creditor of that appointment.

### **24.2 Appellant Certifying Creditor’s Case**

- 24.2.1 Within 10 Business Days of receiving notice of the Adjudicator’s appointment, the Appellant Certifying Creditor shall serve upon the Adjudicator and the Company copies of the following documents:
- (i) its Certification as lodged with the Company prior to the Certification Deadline;
  - (ii) any information provided to the Company pursuant to an Additional Information Request;
  - (iii) the Appeal Form; and
  - (iv) any further information or documents, and/or written submissions upon which the Appellant Certifying Creditor wishes to rely to support the Certified Rate and Certified Sum as set out in the Certification,
- (together, the “**Appellant Certifying Creditor’s Case**”).
- 24.2.2 If for any reason the Adjudicator appointed in relation to the Appeal is no longer engaged at the point at which the Appellant Certifying Creditor’s Case should be served, the Appellant Certifying Creditor shall serve the Appellant Certifying Creditor’s Case on the Company alone.

### **24.3 The Company’s Case**

- 24.3.1 Within 20 Business Days of the service of the Appellant Certifying Creditor’s Case in accordance with Clause 24.2, the Company shall, following consultation with the Subordinated Creditor but in its sole discretion, serve upon the Adjudicator and the Appellant Certifying Creditor:
- (i) the Rejection Notice (and, where relevant, the Counteroffer) issued by the Administrators in respect of the Certification relevant to the Appeal;
  - (ii) any further information, documents and/or written submissions upon which the Company wishes to rely to support:
    - (a) where the Company made a Counteroffer in accordance with Clause 11.2.3, the Counteroffer Sum proposed by the Company in its Counteroffer; or

- (b) where the Company made no Counteroffer in accordance with Clause 11.2.3, the Company's decision to reject the Appellant Certifying Creditor's Certification; and/or
  - (iii) any further information, documents and/or written submissions upon which the Company wishes to rely in response to the Appellant Certifying Creditor's Case,
- (together, the "**Company's Case**").

**24.3.2** If for any reason the Adjudicator appointed in relation to the Appeal is no longer engaged at the point at which the Company's Case should be served, the Company shall serve the Company's Case on the Appellant Certifying Creditor alone.

#### **24.4 Increased Voting Rights Decisions**

Neither the Appellant Certifying Creditor's Case nor the Company's Case may include any reference to any Increased Voting Rights Decision.

#### **24.5 Oral hearing**

There shall be no oral hearing in respect of the Appeal.

#### **24.6 The Adjudicator's procedural discretion**

The Adjudicator may, having regard to the Relevant Principles where relevant:

- 24.6.1** vary the timetable provided for in this Clause 24 including, for the avoidance of doubt, the time period specified for service of the Adjudicator's determination in Clause 24.7.9, in respect of any Appeal;
- 24.6.2** require the Appellant Certifying Creditor to serve further information, documents and/or written submissions in order to clarify his understanding of the Appellant Certifying Creditor's Case; and/or
- 24.6.3** require the Company to serve further information, documents and/or written submissions in order to clarify his understanding of the Company's Case,

should the Adjudicator think it necessary to do so in order to determine the Appeal.

#### **24.7 Determination of the Appeal**

**24.7.1** The Adjudicator shall determine each Appeal by:

- (i) considering the Appellant Certifying Creditor's Case, the Company's Case, any information provided by the Support Team to assist the Adjudicator's understanding of the Appellant Certifying Creditor's Case and/or the Company's Case (as relevant) and any further information provided pursuant to a request under Clause 24.6.2 and/or 24.6.3; and
- (ii) having regard to, where applicable, the Relevant Principles.

**24.7.2** In making a determination in an Appeal, the Adjudicator shall not be permitted to have regard to any Increased Voting Rights Decision.

**24.7.3** In making a determination in an Appeal, the Adjudicator shall not be permitted to conduct his own factual investigations.



- 24.7.4** Save as provided in Clauses 24.7.6 and 24.7.7, upon making a determination in accordance with Clause 24.7.5, the Adjudicator shall either:
- (i) uphold the Appellant Certifying Creditor's Case in its entirety; or
  - (ii) uphold the Company's Case in its entirety.
- 24.7.5** The Adjudicator shall uphold the Company's Case if he is satisfied on the balance of probabilities (with the burden of proof resting on the Company) that the Certification of the Appellant Certifying Creditor has been made in bad faith, irrationally or other than in accordance with the Relevant Principles. If he is not so satisfied, the Adjudicator must uphold the Appellant Certifying Creditor's Case (save as provided in Clause 24.7.6).
- 24.7.6** Where the Adjudicator (including through his Support Team) identifies a mathematical or numerical error in either the Appellant Certifying Creditor's Case or the Company's Case, he shall consult with the Appellant Certifying Creditor and the Company and following such consultation he shall be permitted to correct such error and replace an erroneous number or rate in a calculation or document.
- 24.7.7** Where the Adjudicator (including through his Support Team) identifies that a Certified Sum stated in a Certification has been calculated in a manner that is inconsistent with Clause 5, the Adjudicator shall be permitted to correct such error and replace the Certified Sum with a figure calculated by applying the Certified Rate(s) stated in the Certification to the relevant Certification Claim (in accordance with Clause 5).
- 24.7.8** Where the Adjudicator:
- (i) upholds the Appellant Certifying Creditor's Case in its entirety, the Applicable CI Payment shall be the Certified Sum (corrected as necessary in accordance with Clause 24.7.6 or 24.7.7);
  - (ii) upholds the Company's Case in its entirety where the Company made a Counteroffer, the Applicable CI Payment shall be the Counteroffer Sum (corrected as necessary in accordance with Clause 24.7.6); or
  - (iii) upholds the Company's Case in its entirety where the Company did not make a Counteroffer, the Applicable CI Payment shall be an amount equal to the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim.
- 24.7.9** The Adjudicator shall use reasonable endeavours to serve his determination in writing on the Appellant Certifying Creditor and the Company as soon as practicable after service of the Company's Case on the Adjudicator (or the provision of further information pursuant to a request in accordance with Clause 24.6.2 and/or 24.6.3) and in any event within 20 Business Days of service of the Company's Case on the Adjudicator (or the provision of further information, if applicable).
- 24.7.10** The Adjudicator shall not provide the reasons behind his determination and the Appellant Certifying Creditor and the Company shall not request the Adjudicator to provide such reasons following his determination.

24.7.11 Where the Adjudicator's determination contains a clerical mistake, an accidental error or omission, a miscalculation or a mistake in the description of any item or matter, the Adjudicator may correct the determination within 20 Business Days of service of that determination. The Company and the Appellant Certifying Creditor shall notify the Adjudicator of any such errors, mistakes, omissions or miscalculations within 10 Business Days of service of the determination.

## 24.8 Exclusivity and finality

24.8.1 The process described in this Part VI of this Scheme shall be the exclusive method for the determination of the subject matter of any Appeal, and the Adjudicator shall have exclusive jurisdiction to make a determination on the subject matter of any Appeal.

24.8.2 Insofar as the law allows, the Adjudicator's determination is final and binding on the Company, the Administrators, the Appellant Certifying Creditor and all other Scheme Parties.

24.8.3 For the avoidance of doubt, insofar as the law allows, the Adjudicator's determination is final and binding regardless of whether it was served within 20 Business Days of service of the Company's Case.

## 25 Service of documents and other communications

### 25.1 Service of documents

25.1.1 As soon as practicable following the Adjudicator's appointment under Clause 23.1, the Adjudicator shall provide to the Company an email address for service of documents on, and any other communications with, the Adjudicator in relation to any Appeal (the "**Adjudicator's Address for Service**").

25.1.2 Upon receipt of the Adjudicator's Address for Service, the Company shall communicate:

- (i) the Adjudicator's Address for Service; and
- (ii) an email address for service of documents on, and any other communications with, the Company in relation to any Appeal (the "**Administrators' Address for Service**"),

to the Appellant Certifying Creditor.

25.1.3 Any document to be served upon each of the following in relation to any Appeal must be delivered in electronic format by email to:

- (i) in respect of the Adjudicator, the Adjudicator's Address for Service;
- (ii) in respect of the Company, the Administrators' Address for Service; and
- (iii) in respect of the Appellant Certifying Creditor, the address specified by the Appellant Certifying Creditor in its Certification.

### 25.2 Other communications

25.2.1 The Adjudicator, the Company and the Appellant Certifying Creditor shall ensure that any communications (including notices) in respect of an Appeal shall be copied to:

- (i) in the case of communications sent by the Appellant Certifying Creditor to the Adjudicator, the Administrators' Address for Service;
- (ii) in the case of communications sent by the Company to the Adjudicator, save for communications in relation to the Adjudicator's retainer and/or the engagement of the Support Team, the address specified by the Appellant Certifying Creditor in its Certification;
- (iii) in the case of communications sent by the Adjudicator to the Company, save for communications in relation to the Adjudicator's retainer and/or the engagement of the Support Team, the address specified by the Appellant Certifying Creditor in its Certification; and
- (iv) in the case of communications sent by the Adjudicator to the Appellant Certifying Creditor, the Administrators' Address for Service.

## **26 Adjudication Costs**

### **26.1** If the Adjudicator upholds the Appellant Certifying Creditor's Case:

- 26.1.1** the reasonable legal costs of the Appellant Certifying Creditor in relation to the Appeal; and
- 26.1.2** the Company's and the Administrators' costs (including the Adjudication Costs) in relation to the Appeal,

shall be borne on an indemnity basis (in accordance with the principles in Part 44.3 of the Civil Procedure Rules) by the Company as an expense of the Administration.

### **26.2** If the Adjudicator upholds the Company's Case, the Appellant Certifying Creditor shall bear on an indemnity basis (in accordance with the principles in Part 44.3 of the Civil Procedure Rules):

- 26.2.1** its own legal and professional costs in relation to the Appeal; and
- 26.2.2** the Company's and the Administrators' reasonable legal costs (including the Adjudication Costs, which would otherwise be payable by the Company) in relation to the Appeal.

### **26.3** If the Adjudicator upholds the Appellant Certifying Creditor's Case:

- 26.3.1** the Appellant Certifying Creditor must serve upon the Company a statement of costs; and
- 26.3.2** in the event that there is disagreement between the Company and the Appellant Certifying Creditor as to the amount of costs to be paid, the matter shall be referred to the Adjudicator that heard the Appeal to determine an appropriate amount of costs payable in respect of the Appeal (which determination shall be in his sole discretion, final and binding).

### **26.4** If the Adjudicator upholds the Company's Case:

- 26.4.1** the Company must serve upon the Appellant Certifying Creditor a statement of its costs;
- 26.4.2** in the event that there is disagreement between the Company and the Appellant Certifying Creditor as to the amount of the costs to be paid, the matter shall be

referred to the Adjudicator that heard the Appeal to determine an appropriate amount of costs payable (which determination shall be in his sole discretion, final and binding);

**26.4.3** the Company shall deduct the amount payable in respect of its costs and the Administrators' costs in relation to the Appeal from the Appellant Certifying Creditor's Scheme Distribution; and

**26.4.4** in the event that the amount payable in costs exceeds the Appellant Certifying Creditor's Scheme Distribution entitlement, the Appellant Certifying Creditor shall pay the balance to the Administrators within 15 Business Days of written demand by the Company.

## **27 Confidentiality**

**27.1** Each Appellant Certifying Creditor, the Company, the Adjudicator and the Support Team shall maintain the confidentiality of any Appeal and any documentation or information provided to it pursuant to Clause 11.3 and shall not disclose to any person save for the Subordinated Creditor and/or the Operating Committee the Adjudicator's determination or any information concerning or documentation provided exclusively in the course of the Appeal or pursuant to Clause 11.3, save where:

**27.1.1** the Appellant Certifying Creditor and the Company have agreed otherwise in writing;

**27.1.2** the information is already in the public domain;

**27.1.3** the disclosure is necessary in connection with legal proceedings or is otherwise required by law or any regulatory body;

**27.1.4** the disclosure is required by current insolvency practice or to enable the Administrators properly to carry out the duties of their office;

**27.1.5** the disclosure is made by the Administrators to any subsequent supervisor, liquidator or other officeholder of the Company;

**27.1.6** the Administrators consider it desirable in the course of carrying out the duties of their office to disclose the Adjudicator's determination in respect of an Appeal; or

**27.1.7** the disclosure is made to a professional adviser that is bound by professional duties of confidentiality.

**27.2** Each of the Subordinated Creditor and each member of the Operating Committee shall maintain the confidentiality of any Appeal disclosed to it and any documentation or information provided to it pursuant to Clause 11.3 and shall not disclose to any person the Adjudicator's determination or any information concerning or documentation provided exclusively in the course of the Appeal or pursuant to Clause 11.3, save where:

**27.2.1** the Appellant Certifying Creditor and the Company have agreed otherwise in writing;

**27.2.2** the information is already in the public domain;

**27.2.3** the disclosure is necessary in connection with legal proceedings (including any Chapter 11 case, if relevant) or is otherwise required by law or any regulatory body;

- 27.2.4** the disclosure is made to a professional adviser that is bound by professional duties of confidentiality; or
- 27.2.5** the disclosure is made to an Affiliate that has, prior to any such disclosure, entered into a confidentiality undertaking in favour, and to the satisfaction, of the relevant Appellant Certifying Creditor and/or the Company (as applicable).

## PART VII: SETTLEMENT OF PROCEEDINGS AND RELEASE OF CLAIMS

### 28 Settlement of Proceedings and release of Claims

**28.1** Without prejudice to a Scheme Party's right to receive Scheme Distributions and/or Subordinated Distributions (as applicable), and save in respect of any Retained Claim, with effect from the Effective Date, each Scheme Party hereby irrevocably and unconditionally:

**28.1.1** agrees to the Settled Proceedings being brought to an end;

**28.1.2** releases and waives in favour of the Company and each other Scheme Party (and, in respect of Clause 28.1.2(v) only, the Shareholder) all its rights, entitlements and interest in any Claims against the Company including:

- (i) subject to Clause 38, any Claims arising from, or in connection with, the subject matter of any of the Settled Proceedings;
- (ii) any Provable Claims;
- (iii) any Non-Provable Claims;
- (iv) any Expense Claims;
- (v) any Creditor Contributory Claim Rights;
- (vi) subject to Clause 18.3, any Claims arising from, or in connection with, any WHT Deduction; and
- (vii) any Shortfall Claims;

**28.1.3** releases and waives in favour of the Company, the Administrators and each other Scheme Party all its rights, entitlements and interest in any Creditor Challenge Rights in respect of any Admitted Claim that was admitted by the Administrators prior to the Record Date;

**28.1.4** releases and waives in favour of the Administrators and the Released Third Parties all its rights, entitlements and interest in any Administration Claims to the extent that the Administrators or the Released Third Parties would have an indemnity or other similar claim against the Company arising in respect of such Administration Claim(s) (the "**Released Administration Claims**");

**28.1.5** releases and waives in favour of the Administrators, the Released Third Parties and the Locked Up Parties all its rights, entitlements and interest in any Released Scheme Implementation Claims; and

**28.1.6** undertakes and agrees not to commence, voluntarily aid, or in any way prosecute against the Company, the Administrators, the Released Third Parties, the Locked Up Parties or the Scheme Parties (as applicable) in any jurisdiction whatsoever, any Claim which seeks recovery or a determination in respect of or arising out of any Released Claim.

**28.2** The Company and the Administrators shall be authorised by the Scheme Parties to take such steps as they consider necessary or expedient to bring an end to the Settled Proceedings. The costs of any such actions taken by the Company or the Administrators in respect of the Settled Proceedings (excluding Other Proceedings) shall be payable as an Administration Expense.

- 28.3** The terms of any costs orders made by the Courts in respect of the Settled Proceedings prior to the Effective Date shall remain in full force and effect and remain binding on the parties to the Settled Proceedings. The costs of the parties to any Settled Proceedings (excluding Other Proceedings) in respect of which no costs order has been made by the Courts prior to the Effective Date shall be paid by the Company as Administration Expenses in such amounts as may be agreed between the Administrators and the relevant parties to such Settled Proceedings (subject to assessment on the standard basis (pursuant to the Civil Procedure Rules) if not otherwise agreed).
- 28.4** Provided that the Settled Proceedings (excluding Other Proceedings) are brought to an end in accordance with Clause 28.2 and the costs of the parties to the Settled Proceedings (excluding Other Proceedings) are paid by the Company in accordance with Clause 28.3, each Scheme Party hereby undertakes and agrees not to seek any further order for its costs in respect of the Settled Proceedings.
- 28.5** Save in respect of any Excluded Proceedings and any Scheme Breach Claims, each of the Scheme Parties, the Company and the Administrators hereby (i) irrevocably and unconditionally releases and waives, insofar as the law allows, all its rights of appeal in respect of any first instance decision of any court of competent jurisdiction in any jurisdiction whatsoever (save in the event of fraud or bias by the relevant court) which relates to a function or power exercisable or exercised by the Administrators and which is made after the Effective Date (including in respect of any Directions Application issued by the Administrators or any appeal of the Administrators' adjudication of a proof of debt) and each of the Scheme Parties, the Company and the Administrators hereby undertakes and agrees to be bound by any such first instance decision; and (ii) undertakes not to pursue any such rights of appeal.
- 28.6** No Scheme Party shall take any action that is inconsistent with the releases, waivers and undertakings set out in this Clause 28.
- 28.7** Each Scheme Party shall hold on trust for the benefit of the Company, the Administrators any Released Third Party and/or any Locked Up Party (as applicable) any recovery made against such person after the Effective Date, pursuant to any Released Claim in breach of this Clause 28, and the Scheme Party shall turn over any such recovery to the Company, the Administrators, the Released Third Party and/or the Locked Up Party (as applicable) without set-off, counterclaim or deduction. To the extent that the asset comprising the recovery cannot be held on trust by the Scheme Party, the Scheme Party shall pay to the Company, the Administrators, the Released Third Party and/or the Locked Up Party (as applicable) an amount equal to that recovery immediately upon demand being made by the Company, the Administrators, the Released Third Party and/or the Locked Up Party (as applicable) without set-off, counterclaim or deduction and, to the extent such amount is paid to the Company, such amount shall form part of the Available Funds.
- 28.8** The Company and the Administrators undertake and agree not to make an Exclusion Application in respect of any Scheme Party's Admitted Claims which were admitted as at the Effective Date.

## **PART VIII: ADMINISTRATORS' POWERS AND REMUNERATION AND SUBORDINATED DISTRIBUTIONS**

### **29 Powers of the Company and the Administrators**

**29.1** The Company and the Administrators shall in their sole discretion (acting reasonably) deal with any Scheme Party or any group of them in such order as the Administrators see fit, provided that this does not conflict with the terms of this Scheme or the Administrators' statutory duties.

**29.2** In carrying out its functions under this Scheme, the Company shall (without prejudice to the terms of this Scheme) be empowered, to the extent that such powers are necessary for or reasonably incidental to the implementation of this Scheme, to:

**29.2.1** employ and remunerate its Advisers in connection with this Scheme; and

**29.2.2** delegate in writing to any person all or any of the functions, rights, authorities, powers and discretions conferred upon the Company under this Scheme, and from time to time to revoke any such delegation, provided that the Company shall be responsible for any act or omission of any such Delegate to the same extent as if the Company had itself exercised the relevant functions, rights, authorities, powers and discretions.

**29.3** The Administrators have undertaken and agreed to be bound by this Scheme as it applies to them and to execute or do, or to procure to be executed or done, all documents (including any deeds of release in favour of Third Parties), acts or things as may be necessary, or as the High Court may order necessary, to be executed or done by the Company or on its behalf to implement and to give effect to this Scheme (in all cases, without prejudice and in addition to the general powers afforded to the Administrators pursuant to Schedule 1 to the Insolvency Act).

**29.4** Each Scheme Party hereby authorises the Administrators to carry out all acts and exercise all discretions, authorities, powers and duties conferred upon the Company by this Scheme in order to facilitate its implementation.

**29.5** Each Scheme Party hereby irrevocably authorises the Company and the Administrators so that any of them, acting individually or jointly, may, as true and lawful agent and attorney of that Scheme Party, with express power of delegation and substitution sign, execute, seal and deliver any documents in such form as the Company or the Administrators may deem appropriate on behalf of such Scheme Party and generally do any other act, matter or thing, that is, in each case in the reasonable opinion of the Company or the Administrators, desirable, necessary, ancillary or expedient in order to:

**29.5.1** bring an end to the Settled Proceedings;

**29.5.2** give effect to the release of Released Third Party Claims pursuant to Clauses 28.1.4 and 28.1.5;

**29.5.3** bring an end to any Proceedings brought in contravention of Clause 28.5; and

**29.5.4** subject to Clause 29.6 and without prejudice to the foregoing, facilitate the implementation of this Scheme on its terms,

in the same manner and as fully and effectually as that Scheme Party could have done.



- 29.6** Not less than three Business Days prior to exercising its or their powers pursuant to Clause 29.5.4, the Company or the Administrators (as applicable) shall send a Notice to the relevant Scheme Party that includes: (i) a statement of its intention to exercise such powers; (ii) a description of the relevant act, matter or thing it intends to do in their name or on their behalf; and (iii) a request that the relevant Scheme Party does the relevant act, matter or thing prior to the Company or the Administrators exercising its or their powers pursuant to Clause 29.5.4.
- 29.7** Each Scheme Party hereby ratifies any act whatsoever that the Company or the Administrators may do in their name or on their behalf by exercising its or their powers pursuant to Clause 29.5 and the costs of any such actions taken by the Company or the Administrators shall be payable as an Administration Expense.
- 29.8** The authority granted in Clause 29.5 shall be treated, for all purposes whatsoever and without limitation, as having been granted by each Scheme Party to the Company and the Administrators by deed.
- 29.9** All actions and determinations by the Company or the Administrators under this Scheme shall be made in good faith.
- 29.10** Subject to any applicable provision of the Insolvency Act, no Scheme Party shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Company, the Administrators or any Delegate, in pursuance of its functions or duties under this Scheme, or the exercise or non-exercise by the Company, the Administrators or any Delegate, in good faith, of any power or discretion conferred upon it for the purposes of this Scheme, and neither the Company, the Administrators nor any Delegate shall be liable for any Loss whatsoever and howsoever arising out of any such act or omission, exercise or non-exercise of any power or discretion, unless such Loss is attributable to the wilful default, fraud or dishonesty of the Company or to the wilful default, fraud or dishonesty of the Administrators or Delegate (as applicable).
- 29.11** The Administrators shall be entitled to claim their remuneration as an Administration Expense in relation to actions taken by them in respect of this Scheme.
- 29.12** The Administrators have agreed to carry out their roles and functions and exercise their powers as provided for in this Scheme as agents for and on behalf of the Company and neither they, their firm, partners, employees, agents, advisers or representatives shall incur any personal liability whatsoever in respect of any of the obligations undertaken by the Company; or in respect of any failure on the part of the Company to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Scheme.
- 30 Retained Expense Claims**
- 30.1** The Administrators shall establish an Adequate Reserve in respect of a Retained Expense Claim upon the Company being Notified of such Retained Expense Claim.
- 30.2** No Scheme Party that holds a Retained Expense Claim shall be entitled to disturb or in any way challenge any payments (in whole or part) of any Scheme Distribution or Subordinated Distribution made by the Company prior to the Company receiving Notice of such Retained Expense Claim from the relevant Scheme Party.

## **31 The Storm Payment**

- 31.1** Subject to Clause 31.3 and the provisions of Part V, the Company shall pay the Storm Payment to Storm in full and final satisfaction of its rights to Statutory Interest in respect of its Admitted Claim.
- 31.2** The provisions of Part V shall be construed to apply to Storm as if it were a Scheme Creditor.
- 31.3** The Company shall pay the Storm Payment within the time period specified in relation to the payment of the 8% Payment, the Specified Interest Payment and the Settlement Premium pursuant to Clause 9.1.

## **32 The Subordinated Debt**

- 32.1** The Company shall not make any Subordinated Distributions prior to the Subordinated Debt Admittance Date.
- 32.2** On the Business Day following the earlier of:
- 32.2.1** the date falling 20 Business Days from the date on which a Full SI Payment Statement has been published and not withdrawn in accordance with Clause 3.3.1; and
  - 32.2.2** the day on which the Company makes the final payment which results in it having paid in full the 8% Payment, the Settlement Premium and the Specified Interest Payment to the Scheme Creditors in accordance with the provisions of Part III, and the Storm Payment to Storm in accordance with Clause 31,
- (the “**Subordinated Debt Admittance Date**”), the Administrators shall admit the Subordinated Principal.
- 32.3** The Administrators shall not be required to admit, on the Subordinated Debt Admittance Date, the part of the Subordinated Creditor’s Provable Claim that relates to interest on the Subordinated Debt accrued prior to the Administration Date (“**Subordinated Interest**”), and Subordinated Interest shall be determined at a future time by the Administrators without prejudice to the Subordinated Principal admitted pursuant to Clause 32.1.
- 32.4** On the date that is 10 Business Days after the Subordinated Debt Admittance Date, the Company shall make payments to the Subordinated Creditor in respect of the Subordinated Principal and, to the extent it has been admitted by the Administrators prior to such date, any Subordinated Interest from the Net Available Funds (and after setting aside reserves in respect of (i) the High Case Scheme Distribution (to the extent unpaid); and (ii) any Non-Provable Claims notified to the Company prior to the Bar Date).
- 32.5** Following the date on which the Company has paid in full the Subordinated Principal and Subordinated Interest the Company shall pay to the Subordinated Creditor Statutory Interest on the Subordinated Principal and the Subordinated Interest at a rate to be determined at a future date (the “**Subordinated Debt SI Payment**”) from the Net Available Funds (and after setting aside reserves in respect of (i) the High Case Scheme Distribution (to the extent unpaid); and (ii) any Non-Provable Claims notified to the Company prior to the Bar Date).

**32.6** Any Statutory Interest payable in respect of the Subordinated Debt (whether in respect of Subordinated Principal or Subordinated Interest) shall be calculated in accordance with the Relevant Principles.

### **33 Equity Distributions**

**33.1** The Company shall not make any Equity Distributions prior to the Subordinated Debt Admittance Date.

**33.2** Subject to Clause 33.1 and the relevant provisions of the Companies Act and Insolvency Act, the Company may make Equity Distributions at the Company's discretion.

### **34 Dissolution of the Creditors' Committee**

**34.1** With effect from the Subordinated Debt Admittance Date:

**34.1.1** the Company's existing Creditors' Committee shall be dissolved;

**34.1.2** thereafter, the Operating Committee shall be constituted in accordance with the Governance Protocol; and

**34.1.3** the Administrators' remuneration shall be approved by the Operating Committee in accordance with the Governance Protocol, without any recourse to the remaining creditors of the Company, except for Scheme Creditors that are members of the Operating Committee (if any).

## **PART IX: MISCELLANEOUS PROVISIONS**

### **35 Third Party rights and enforcement**

- 35.1** Save as expressly provided for in this Scheme and as identified in this Clause 35, nothing in this Scheme or the Explanatory Statement is intended to confer any rights on, or to be enforceable by, any Third Party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 35.2** The Administrators and Storm shall be entitled to enforce each of the terms of this Scheme as if they were a party to it.
- 35.3** Each of the Released Third Parties, the Locked Up Parties and the Shareholder shall be entitled to enforce the releases and undertakings expressed to be granted in their favour in this Scheme.
- 35.4** Any Adjudicator shall be entitled to enforce Clause 23.4.1.
- 35.5** The Company hereby undertakes to and agrees with each Scheme Party to take such actions as it considers to be reasonable and appropriate to bring any Shareholder Undertaking Claim.
- 35.6** In the event that the Company fails to take actions to bring a Shareholder Undertaking Claim within a reasonable period of such claim arising, the Company shall, if requested to do so by a Scheme Party, bring the relevant Shareholder Undertaking Claim provided that it has received to its satisfaction an indemnity from such Scheme Party in respect of the associated legal costs (including fees and disbursements of legal advisers and all costs associated with attending Proceedings).

### **36 Chapter 15**

To the extent it has not already done so prior to the Effective Date, the Company may file a petition for recognition of this Scheme under Chapter 15 of the US Bankruptcy Code.

### **37 Governing law and jurisdiction**

- 37.1** This Scheme shall be governed by, and construed in accordance with, English law and the Scheme Parties hereby severally agree that the courts of England shall (save as otherwise provided in the Dispute Resolution Procedure set out at Part VI of this Scheme) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of or in connection with the Explanatory Statement or this Scheme, or the operation of this Scheme, and the Scheme Parties hereby severally submit to the exclusive jurisdiction of the courts of England for such purposes. The Scheme Parties also waive any objections to Proceedings in the courts of England that are based on the grounds of venue or that the Proceedings have been brought in an inconvenient forum.
- 37.2** Notwithstanding the provisions of Clause 37.1, the Company and the Administrators retain the right to bring Proceedings, in the name of the Company or otherwise, in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.
- 37.3** The US Bankruptcy Court shall have exclusive jurisdiction to hear and determine any dispute, suit, action or Proceeding (including any settlement thereof) which may arise out of or in connection with any Chapter 15 Order relating to the Company or its assets located within the territorial jurisdiction of the United States.

## **38 Duration of this Scheme**

- 38.1** Subject to Clause 38.3, the Scheme Parties, the Company and the Administrators hereby undertake in favour of each other not to take any action or step to initiate a Liquidation Event until (i) all Scheme Distributions and (ii) any other payments in respect of Statutory Interest contemplated by this Scheme (including the Subordinated Debt SI Payment (unless the Subordinated Creditor agrees otherwise)) have been paid in full by the Company or some other arrangement has been made, which in the Company's opinion (acting by the Administrators), ensures that Scheme Distributions, the Subordinated Debt SI Payment and any other payments of Statutory Interest contemplated by this Scheme will be in no way adversely affected by a Liquidation Event.
- 38.2** If on the date falling 90 days prior to the expiry of the Administration, (i) all Scheme Distributions and (ii) any other payments in respect of Statutory Interest contemplated by this Scheme have not been paid in full, the Administrators shall apply to Court for an order extending the period of the Administration.
- 38.3** The Administrators may initiate a Liquidation Event one Business Day prior to the expiry of the Administration.
- 38.4** If the Company shall become subject to a Liquidation Event, this Scheme shall not terminate and shall continue in full force and effect.
- 38.5** In the event of any inconsistency between the provisions of this Scheme and the Companies Act, the Insolvency Act or the Insolvency Rules or the FCA Rules as they apply to the Company following a Liquidation Event in accordance with Clause 38.1, for the purposes of this Scheme the provisions of this Scheme shall prevail to the extent that the law allows.

## **39 Limit on Company's obligations**

Notwithstanding any other provision of this Scheme, each Scheme Party hereby acknowledges and agrees that the Company's payment obligations in respect of the Scheme Distributions, Non-Provable Claims and the Subordinated Distributions shall be no greater than an amount equal to the value from time to time of the Surplus.

## **40 Partial invalidity**

If at any time any provision of this Scheme is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of this Scheme under the law of that jurisdiction shall in any way be affected or impaired thereby.

## **41 Notices**

### **41.1 General provisions**

- 41.1.1** Subject to Clause 41.1.3, any Notice, document or other communication to be given, delivered or served pursuant to or in connection with this Scheme, except where this Scheme otherwise provides, shall be in writing and in English and shall be delivered in accordance with this Clause 41.

41.1.2 The non-receipt by any Scheme Party of any Notice, communication or document delivered or sent in accordance with this Clause 41, shall not affect the provisions of this Scheme or the validity of such Notice.

41.1.3 In the event of a conflict between this Clause 41 and Clause 25, insofar as they relate to the provisions of Part VI of this Scheme, Clause 25 shall prevail.

## 41.2 Electronic mail addresses

41.2.1 Subject to Clause 19.5, any Notice, document or communication shall be given, delivered or served pursuant to or in connection with this Scheme to the Company by electronic mail to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com).

41.2.2 Subject to Clause 41.2.3, any Notice, document or communication shall be given, delivered or served pursuant to or in connection with this Scheme, by the Company to a Scheme Party by electronic mail to:

- (i) the electronic mail address from which any Notice, document or communication under or in connection with this Scheme has been sent by or on behalf of that Scheme Party to the Company and/or the Administrators; or
- (ii) such other electronic mail address as the Scheme Party may Notify to the Company from time to time.

41.2.3 The Scheme Parties shall provide details of an electronic mail address and maintain such electronic mail account at their own risk and shall be responsible for informing the Company of any changes to the electronic mail address and/or providing an alternative electronic mail address (as appropriate).

## 41.3 Notices by electronic mail

Any Notice, document or communication given, delivered or served by electronic mail shall be deemed to have been received:

41.3.1 if delivered to the Company, at the time recorded on the response email that will be automatically generated by the Company's electronic mail system; or

41.3.2 otherwise at the time recorded on the computer of the person to whom the electronic mail is addressed,

provided that if such receipt occurs on a day which is not a Business Day or after 5.00 p.m. on any Business Day, such Notice, communication or document shall be deemed to have been received at 9.30 a.m. on the next Business Day.

## 41.4 Notices by upload to the Website

41.4.1 Any Notice, document or communication shall be deemed to be given, delivered or served (as applicable) by the Company to all Scheme Parties by the Company publishing such Notice, document or communication on the Website.

41.4.2 Any Notice, document or communication uploaded to the Website in accordance with Clause 41.4.1 shall state on its face a date and time of upload.

41.4.3 Any Notice, document or communication given, delivered or served by upload to the Website shall be deemed to have been received at the time of upload stated in such Notice, document or communication provided that if the date of upload stated

in such Notice, document or communication is not a Business Day or the time of upload stated in such Notice, document or communication is, or is after, 5.00 p.m. on any Business Day, such Notice, document or communication shall be deemed to have been received by Scheme Parties at 9.30 a.m. on the next Business Day.

#### **41.5 Authority to sign notices and documents**

In the case of a Notice, document or communication which is signed on behalf of a Scheme Party, neither the Company, the Administrators nor the Adjudicator (as applicable) shall be required to make any enquiry as to the authority of the signatory of that Notice, document or communication to sign such Notice, document or communication on behalf of such Scheme Party.

#### **42 Modifications**

**42.1** The Company may, at any hearing to sanction this Scheme, consent on behalf of the Scheme Parties to any modification of the Scheme or terms or conditions that the High Court may think fit to approve or impose. However, if such modifications could reasonably be expected directly or indirectly to have a material adverse effect on the interests of a Scheme Party or the Shareholder, then the Company shall not be entitled to provide such consent without the prior written consent of that Scheme Party or the Shareholder respectively.

**42.2** The Company shall inform the Scheme Parties, by publishing a Notice on the Website in accordance with Clause 41, of any modification of, addition to or condition imposed by the Courts on this Scheme approved in accordance with this Clause 42.

**42.3** Modifications, additions or conditions approved or imposed pursuant to this Clause 42 shall be binding on the Scheme Parties, the Company and the Administrators and this Scheme shall be amended accordingly.

**42.4** The Company shall be entitled, in its sole discretion, to amend the form of any Notice to be provided to the Scheme Parties under this Scheme provided that such modifications shall not adversely affect the rights of any class of Scheme Creditors as a whole.

#### **43 Extension and calculation of deadlines**

Subject to Clause 42.1, all or any of the deadlines laid down by this Scheme for the taking of any step by the Administrators or the Company or by any Scheme Party, save in respect of: (i) the Dispute Resolution Procedure; (ii) Clauses 9.1 and 15.1; and (iii) the Bar Date, may be postponed or extended for such period or periods as may be determined by the Company and Notified to the Scheme Parties in accordance with Clause 41.

#### **44 Conflict**

In the event of a conflict or inconsistency between the provisions of this Scheme, the Companies Act, the Insolvency Act, the Insolvency Rules and/or the FCA Rules, for the purposes of this Scheme, and to the extent such acts and/or rules permit, the provisions of this Scheme shall prevail.

#### **45 Modification of foreign law contracts**

Where this Scheme purports to modify any contract which is governed by a law other than English law, the modification will be effective to the maximum extent permitted under the proper law of the contract and the Company and Scheme Parties will each take any necessary steps to ensure that such modifications are effective to the fullest extent possible under such governing law.

#### **46 FCA Notices**

Copies of the Practice Statement Letter, the Explanatory Statement and this Scheme have been sent to the FCA in accordance with Section 362 of FSMA.



## Schedule 1 Appeal Form<sup>1</sup>

### Appeal Form

Capitalised terms used in this document shall have the meaning given to them in the scheme of arrangement between Lehman Brothers International (Europe) (in administration) and the Scheme Creditors (as defined therein), as sanctioned by the High Court on \_\_\_\_\_ 2018 (the “**Scheme**”).

Name of Certifying Creditor: \_\_\_\_\_

Claim Reference to which the Certification relates: \_\_\_\_\_

Date of Certification being appealed: \_\_\_\_\_

Date of Rejection Notice: \_\_\_\_\_

The above-named Certifying Creditor hereby:

- (a) acknowledges that it has received a Rejection Notice from the Company;
- (b) confirms that it wishes to make a DRP Election pursuant to Clause 11.9 of the Scheme;
- (c) confirms that this Appeal Form has been served within 10 Business Days of the Rejection Date in accordance with Clause 24.1.1 of the Scheme; and
- (d) accepts that the Applicable CI Payment in respect of its Certification Claim shall be determined by an Adjudicator in accordance with the provisions of Part VI of the Scheme.

Signed:

\_\_\_\_\_

Name:

Position:

Dated:

\_\_\_\_\_

<sup>1</sup> This Appeal Form is to be served upon the Company in accordance with Clause 25.1.3(ii) of the Scheme.

## **Schedule 2**

### **Governance Protocol**

This Governance Protocol summarises the guidelines for the formation and governance of the Operating Committee with respect to the Scheme and assisting with the management of the Administration.

In this Schedule 2 only, the following words and expressions shall have the following meanings:

<b>"Elliott Delegate"</b>	means any representative of Elliott Management Corporation appointed by the Subordinated Creditor as its delegate(s) from time to time
<b>"King Street Delegate"</b>	means any representative of King Street Capital Management, L.P. appointed by the Subordinated Creditor as its delegate(s) from time to time
<b>"LBHI Delegate"</b>	means any representative of LBHI appointed by the Subordinated Creditor as its delegate(s) from time to time;
<b>"LBHI2 Delegate"</b>	means the joint administrators of LBHI2 from time to time (or any one of them) and/or their representative, in each case appointed by the Subordinated Creditor as its delegate(s) from time to time
<b>"Subordinated Creditor Delegates"</b>	means the Elliott Delegate, the King Street Delegate, the LBHI Delegate and the LBHI2 Delegate as notified by the Subordinated Creditor to the Administrators from time to time
<b>"Unsecured Creditor Representative"</b>	means a Scheme Creditor whose Claim has not been paid or provided for by the Company, if any

#### **1 Operating Committee**

**1.1** With effect from the Subordinated Debt Admittance Date, a new, informal, oversight body called the Operating Committee shall be constituted in place of the Creditors' Committee. For the avoidance of any doubt, the Operating Committee is not a creditors' committee for the purposes of Rule 18 of the Insolvency Rules but it will have a similar purpose and function in the context of the Scheme.

**1.2** The Administrators will manage the Administration in a manner consistent with the statutory objective. In performing their duties, the Administrators shall (among other things) take all reasonable steps in order to:

- 1.2.1 give effect to the Scheme;
  - 1.2.2 expedite the realisation of the Company's residual assets;
  - 1.2.3 finalise the Company's client money and trust estates;
  - 1.2.4 accelerate (where possible) the run-off of indemnities provided by the Company after the commencement of the Administration;
  - 1.2.5 adjudicate any unagreed creditor claims;
  - 1.2.6 manage distributions to stakeholders;
  - 1.2.7 wind-down operations of people, systems and data in an orderly manner; and
  - 1.2.8 comply with statutory formalities and regulatory requirements (including document retention and destruction).
- 1.3 The Operating Committee will assist the Administrators in performing their functions and act in accordance with the relevant guidelines (as summarised in this Governance Protocol) and the Scheme. In particular, the Operating Committee shall be empowered to:
- 1.3.1 consider and approve actions and decisions taken by the Administrators, where such approval is sought; and
  - 1.3.2 authorise the remuneration of the Administrators.
- 1.4 The Operating Committee will comprise a maximum of five members:
- 1.4.1 one Elliott Delegate;
  - 1.4.2 one King Street Delegate;
  - 1.4.3 one LBHI Delegate; and
  - 1.4.4 one LBHI2 Delegate, (as the Subordinated Creditor Delegates); and
  - 1.4.5 at the Administrators' election, one Unsecured Creditor Representative.
- (each an "**OC Member**" and together the "**OC Members**").
- 1.5 The Subordinated Creditor Delegates will not be entitled to payment of their (or their representatives') fees or expenses in attending meetings or otherwise in respect of their membership of the Operating Committee.
- 1.6 The Unsecured Creditor Representative shall be entitled to be reimbursed for reasonable travel expenses directly incurred by the Unsecured Creditor Representative or its representative in attending meetings of the Operating Committee (but not, for the avoidance of doubt, the fees or expenses of the Unsecured Creditor Representative's advisers).
- 1.7 The Operating Committee shall remain in effect until the Company exits administration.

## 2 Meetings, voting etc.

- 2.1 Subject to appropriate confidentiality arrangements being put in place, meetings of the Operating Committee shall be called for the participation of the Subordinated Creditor Delegates on a monthly basis to discuss (as applicable) the following:
- 2.1.1 a report of receipts and payments;

- 2.1.2 an update on the position of unsecured claims, including:
  - (i) any new Claims notified,
  - (ii) Certifications;
  - (iii) the resolution of disputes through the adjudication process provided by the Scheme; and
  - (iv) reserving for Claims;
- 2.1.3 an update on the realisation of assets;
- 2.1.4 an update on the run-off of priority claims and indemnities;
- 2.1.5 an update on ongoing litigation and settlement;
- 2.1.6 a report on progress of matters relating to the Scheme;
- 2.1.7 an update on anticipated future distributions to the Subordinated Creditor;
- 2.1.8 a qualitative update in respect of other matters e.g. budgeting and staffing; and
- 2.1.9 the strategy for ending the Administration.

**2.2** The following will be permitted to attend meetings of the Operating Committee:

- 2.2.1 the Administrators, one of whom (or a person appointed by them) will act as chairperson;
- 2.2.2 each OC Member;
- 2.2.3 each OC Member's legal advisors;
- 2.2.4 the FCA where relevant and for so long as the Company remains FCA regulated and where the FCA wishes to attend as an observer at a meeting; and
- 2.2.5 a fee advisor, to be appointed by the Administrators, with the agreement of the Operating Committee.

**2.3** In respect of all meetings of the Operating Committee:

- 2.3.1 if voting is necessary:
  - (i) each OC Member has one vote; and
  - (ii) a resolution is passed when a majority of the OC Members attending, or represented at, the meeting have voted in favour of it;
- 2.3.2 meetings may take place in person or by phone. In respect of meetings held by phone, the Administrators shall make appropriate arrangements to:
  - (i) verify the identity of those attending the meeting; and
  - (ii) (enable those attending the meeting to exercise their rights to speak or vote;
- 2.3.3 physical meetings shall take place every six months (unless agreed otherwise between the Administrators and the Subordinated Creditor Delegates) at a venue to be chosen by the Administrators. In respect of all physical meetings, notice of the date and venue shall be provided to each OC Member at least 5 Business Days in advance of the relevant meeting;

2.3.4 meetings may be called on 5 Business Days' notice if so requested by at least two OC Members; and

2.3.5 a quorum of at least two Subordinated Creditor Delegates must be present at each meeting, one of whom must be an Elliott Delegate or a King Street Delegate and one of whom must be an LBHI Delegate or an LBHI2 Delegate.

2.4 In the event that an Unsecured Creditor Representative is appointed, the Administrators and the Subordinated Creditor Delegates will agree the information to be provided to the Unsecured Creditor Representative in order to enable it to meaningfully participate in the meeting (or part thereof).

### **3 Amendment or waiver**

Any term of this Governance Protocol may be amended or waived only with the written consent of the Subordinated Creditor and the Company.

### **4 Disputes**

4.1 The Administrators and the Operating Committee shall negotiate in good faith in order to resolve any disputes between them in relation to the matters referred to above.

4.2 If it is not possible for the Administrators to reach agreement with the Subordinated Creditor Delegates as regards actions proposed by the Administrators, save where expressly agreed otherwise (including under the terms of the Scheme), the Administrators shall not be bound to follow a course of action directed by the Subordinated Creditor Delegates, where they consider such a direction to be contrary to their statutory duties.

4.3 In the event that the Operating Committee refuses to authorise the Administrators' remuneration, the Administrators shall be entitled to have recourse to the courts as provided for by Rule 18 of the Insolvency Rules or pursuant to paragraph 63 of Schedule B1 to the Insolvency Act.

**Schedule 3**  
**Shareholder Undertaking**

Dated [●] 2018

LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)  
and  
LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

## DEED OF UNDERTAKING

**Linklaters**

Ref: L-245528

Linklaters LLP

**THIS DEED OF UNDERTAKING** is made on [●] 2018

**By:**

- (1) **LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 05957878 whose registered address is 7 More London Riverside, London SE1 2RT (the “**Shareholder**”) acting by its joint administrators Gillian Eleanor Bruce, Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell and Julian Guy Parr, each of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the “**LBH12 Administrators**”);

**In favour of:**

- (2) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ (the “**Company**”) acting by its joint administrators Anthony Victor Lomas, Steven Anthony Pearson, Julian Guy Parr and Russell Downs, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the “**LBIE Administrators**”); and
- (3) **THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES** (the “**High Court**”).

**Whereas**

- (A) The Company proposes to enter into a scheme of arrangement under Part 26 of the Companies Act 2006 with certain of its creditors (the “**Scheme Creditors**”) in the terms set out in Appendix 1 to this Deed.
- (B) The Scheme Creditors are creditors with Provable Claims against the Company. The primary purpose of the Scheme is to facilitate payments to Scheme Creditors in full and final settlement of their rights to Statutory Interest which has accrued on their Admitted Claims during the Administration. The Scheme also provides the basis on which the Subordinated Creditor is to be paid Subordinated Distributions.
- (C) The Shareholder is the sole shareholder of the Company.

**Definitions**

Unless otherwise defined in this Deed or the context otherwise requires, words and expressions used in this Deed shall have the meanings given to them in the Scheme Document.

References in this Deed to the “**Scheme**” or the “**Scheme Document**” are to a scheme of arrangement in the terms set out in Appendix 1 to this Deed with or subject to any modification approved or imposed pursuant to clause 42.1 of the terms set out in Appendix 1 to this Deed.

**This Deed witnesses** and it is hereby declared as follows:

- 1 From and with effect from the Effective Date, the Shareholder hereby irrevocably:
- 1.1 consents to the Scheme;
- 1.2 acknowledges that the Company may make Equity Distributions at the Company’s discretion, however, no Equity Distribution will be made prior to the Subordinated Debt



Admittance Date or otherwise than in accordance with the relevant provisions of the Companies Act and Insolvency Act;

**1.3** in consideration of the Scheme being implemented in accordance with its terms, agrees and undertakes that it shall not:

**1.3.1** take any action or step to initiate a Liquidation Event until (i) all Scheme Distributions; and (ii) any other payments in respect of Statutory Interest contemplated by the Scheme (including the Subordinated Debt SI Payment (unless the Subordinated Creditor agrees otherwise)), have been paid in full by the Company or some other arrangement has been made, which in the Company's opinion, ensures that Scheme Distributions, the Subordinated Debt SI Payment and any other payments of Statutory Interest contemplated by the Scheme will be in no way adversely affected by a Liquidation Event;

**1.3.2** seek to disturb or otherwise challenge:

- (i) any Decision Notice, the Company's Case or any decision made by the Adjudicator in respect of a Certification;
- (ii) any Scheme Outcome Statement;
- (iii) any petition for recognition of the Scheme under Chapter 15 of the US Bankruptcy Code;
- (iv) the Company's determination of the Available Funds, the Net Available Funds, the High Case Scheme Distribution or the Adequate Reserves;
- (v) the Settled Proceedings being brought to an end;
- (vi) the payment of costs in relation to the Settled Proceedings, pursuant to the terms of the Scheme;
- (vii) the payment (in whole or in part) of any Scheme Distribution;
- (viii) the payment (in whole or in part) of any Subordinated Distribution;
- (ix) any payment of Tax in relation to a Scheme Distribution or a Subordinated Distribution;
- (x) the release and waiver of the Released Claims,  
in each case, made or given in accordance with the terms of the Scheme;
- (xi) insofar as the law allows, any first instance decision of any court of competent jurisdiction in any jurisdiction whatsoever (save in the event of fraud or bias by the relevant court) which relates to a function or power exercisable by the Administrators and which is made after the Effective Date (including in respect of any Directions Application issued by the Administrators or any appeal of the Administrators' adjudication of a proof of debt but excluding any Claim arising out of a breach of this Deed); or
- (xii) without prejudice to the foregoing, the validity of any act done or omitted to be done in good faith by the Company, the LBIE Administrators or any Delegate in pursuance of its or their powers, functions or duties under the Scheme; and

**1.4** unconditionally releases and waives:

- 1.4.1 all its rights, entitlements and interest in any Creditor Challenge Rights in respect of any Admitted Claim that was admitted by the Administrators for dividend prior to the Record Date; and
- 1.4.2 any Released Third Party Claims.
- 2** From and with effect from the Effective Date, the Company undertakes to the Shareholder to implement the Scheme in accordance with its terms (as amended from time to time).
- 3** The LBHI2 Administrators have signed this Deed as agents for and on behalf of the Shareholder, and neither they, their firm, its members, partners, directors, officers or employees nor any of their respective agents, advisers or representatives shall incur any personal liability whatever in respect of this Deed, any of the obligations undertaken by the Shareholder in respect of any failure by the Shareholder to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Deed or in connection with it or in relation to any related matter or claims, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum.
- 4** The LBIE Administrators have signed this Deed as agents for and on behalf of the Company, and neither they, their firm, its members, partners, directors, officers or employees nor any of their respective agents, advisers or representatives shall incur any personal liability whatever in respect of this Deed, any of the obligations undertaken by the Company in respect of any failure by the Company to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Deed or in connection with it or in relation to any related matter or claims, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum.
- 5** The exclusions of liability set out in Clauses 3 and 4 above shall arise and continue notwithstanding the termination of the agency of the LBHI2 Administrators and the LBIE Administrators respectively and shall operate as a waiver of any and all claims including, but not limited to, claims in tort, equity and common law as well as under the laws of contract.
- 6** If requested by the Company in writing before the earlier of: (a) the conclusion of the administration of the Shareholder; (b) the Shareholder being placed into liquidation; and (c) the expiry of twelve months from the Effective Date, the Shareholder (acting by the LBHI2 Administrators) shall (at the expense of the Company) enter into documents or agreements necessary to give effect to the terms of this Deed, provided that any such documents or agreements: (i) shall be prepared by the Company or its advisers at the Company's expense and all reasonable legal and other external costs of the Shareholder and the LBHI2 Administrators shall be payable as an Administration Expense; (ii) do not impose any liabilities on the Shareholder or the LBHI2 Administrators; (iii) do not require the Shareholder or the LBHI2 Administrators to commence or continue or be joined as any party to any Proceedings; (iv) do not require the LBHI2 Administrators to be made a separate party thereto; and (v) contain an exclusion of the LBHI2 Administrators' liability on terms substantially similar to the exclusion terms set out in Clauses 3 and 4 above.
- 7** No party may assign, grant any security over, hold on trust or otherwise transfer the benefit of the whole or any part of this Deed.
- 8** The consent and undertakings set out in this Deed are given strictly on the basis of the terms of this Deed and without prejudice to the rights of the parties otherwise.

- 9** No variation of this Deed or any waiver of any term of this Deed shall be effective unless in writing and signed by or on behalf of the Shareholder and the Company.
- 10** The terms of this Deed shall remain in full force and effect if the Company makes minor or procedural modifications to the operation of the Scheme after the Effective Date, for the purposes of the implementation of the Scheme, provided that such modifications do not adversely affect the rights of the Shareholder.
- 11** This Deed together with any documents or agreements expressly referred to in this Deed or entered into by the Shareholder in connection with it after the Effective Date in accordance with Clause 6 represents the entire understanding and constitutes the whole agreement in relation to its subject matter and supersedes any previous agreement or understanding, whether oral or in writing, between the parties with respect to such subject matter and, without prejudice to the generality of the foregoing, excludes any express or implied representation, warranty, condition or other undertaking or assurance implied at law or by custom, usage or course of dealing.
- 12** Clauses 1.2 (*Definitions and interpretation*), 41 (*Notices*) and 44 (*Conflict*) of the Scheme Document are incorporated *mutatis mutandis* in this Deed, with references to "this Scheme" being understood to refer to this Deed.
- 13** A person who is not a party to this Deed shall not have any right by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term (express or implied) of this Deed, except that: (i) the LBHI2 Administrators, their firm, its members, partners, directors, officers, employees and any of their respective agents, advisers and representatives and (ii) the LBIE Administrators, their firm, its members, partners, directors, officers, employees and any of their respective agents, advisers and representatives shall each be entitled to rely on this Deed as if they were a party to this Deed.
- 14** This Deed may be executed in any number of separate counterparts, each of which is an original but all of which taken together shall constitute one and the same instrument.
- 15** Nothing in this Deed is intended or shall be deemed to waive or release any right and/or entitlement of the Shareholder:
- 15.1** subject to Clause 1.2 above, to receive any Equity Distribution;
- 15.2** to exercise set-off, defend or make a counterclaim in respect of any Contributory Claim;
- 15.3** in respect of any Claim arising out of a breach of this Deed; and
- 15.4** to claim for costs arising out of future litigation in respect of the matters referred to in Clauses 15.1 to 15.3 above.
- 16** Nothing in this Deed is intended to or shall be deemed to constitute any submission by the Shareholder to the jurisdiction of the US Bankruptcy Court.
- 17** This Deed and any non-contractual obligations arising out of or in connection with this Deed shall be governed by, and construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and/or decide any claim, action or proceedings and to settle any disputes arising out of or in connection with this Deed.

**In witness whereof** this Deed has been delivered on the date first stated above.

**Appendix 1**  
**Scheme Document**

**The Shareholder**

SIGNED as a DEED by  
**LB HOLDINGS INTERMEDIATE 2 LIMITED**  
**(IN ADMINISTRATION)**  
acting by:

[\_\_\_\_\_] Joint administrator acting as agent for and on behalf of LB Holdings Intermediate 2 Limited (in administration) without personal liability

in the presence of

Name:

Address:

Occupation:

**The Company**

SIGNED as a DEED by  
**LEHMAN BROTHERS INTERNATIONAL**  
**(EUROPE) (IN ADMINISTRATION)**  
acting by:

[\_\_\_\_\_] Joint administrator acting as agent for and on behalf of Lehman Brothers International (Europe) (in administration) without personal liability

in the presence of

Name:

Address:

Occupation:

**Schedule 4**  
**Storm Undertaking**

Dated [●] 2018

STORM FUNDING LIMITED (IN ADMINISTRATION)  
and  
LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

DEED OF UNDERTAKING

**Linklaters**

Ref: L-245528

Linklaters LLP



**THIS DEED OF UNDERTAKING** is made on [●] 2018

**By:**

- (1) **STORM FUNDING LIMITED (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 02682306 whose registered address is 7 More London Riverside, London SE1 2RT (the “**Grantor**”) acting by its joint administrators Dan Schwarzmann, Anthony Victor Lomas, Steven Anthony Pearson, and Julian Guy Parr, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the “**Storm Administrators**”);

**In favour of:**

- (2) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ (the “**Company**”) acting by its joint administrators Anthony Victor Lomas, Steven Anthony Pearson, Julian Guy Parr and Russell Downs, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the “**Administrators**”);
- (3) **THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES** (the “**High Court**”); and
- (4) **THE SCHEME PARTIES** as defined in the Scheme Document.

**Whereas**

- (A) The Company proposes to enter into a scheme of arrangement under Part 26 of the Companies Act 2006 (the “**Scheme**”) with certain of its creditors (the “**Scheme Creditors**”) substantially in the terms set out in Appendix 1 of this Deed (the “**Scheme Document**”).
- (B) The Scheme Creditors are persons with Provable Claims against the Company. The primary purpose of the Scheme is to facilitate Scheme Distributions in full and final settlement of the relevant recipients’ rights to Statutory Interest which has accrued on their Admitted Claims during the Administration.
- (C) The Grantor is Storm, as such term is defined in the Scheme Document.

**Definitions**

Unless otherwise defined in this Deed or the context otherwise requires, words and expressions used in this Deed shall have the meanings given to them in the Scheme Document.

**This Deed witnesses** and it is hereby declared as follows:

- 1** From and with effect from the Effective Date, the Grantor hereby irrevocably:
- 1.1** consents to the Scheme;
- 1.2** agrees and undertakes that it shall be bound by the Scheme and each of the waivers, releases and restrictions expressed to apply to Storm under the Scheme, and shall perform each of the obligations expressed to apply to Storm under the Scheme;

- 1.3** authorises the Company and the Administrators so that any of them, acting individually or jointly, may, as true and lawful agent and attorney of the Grantor, with express power of delegation and substitution, sign, execute, seal and deliver any documents on behalf of the Grantor that are in the reasonable opinion of the Company or the Administrators desirable or necessary in order to facilitate the implementation of the Scheme and generally to do any other act, matter or thing which the Company or the Administrators shall consider ancillary or expedient for such purposes or any of the acts authorised by this power of attorney in the same manner and as fully and effectually as the Grantor could have done;
- 1.4** ratifies any act whatsoever that the Company or the Administrators may do in the name or on behalf of the Grantor by exercising its powers pursuant to paragraph 1.3 above; and
- 1.5** agrees that the costs of any actions taken by the Company or the Administrators pursuant to paragraph 1.3 above shall be payable as an Administration Expense.
- 2** The Storm Administrators have signed this Deed as agents for and on behalf of the Grantor, and neither they, their firm, its members, partners, directors, officers or employees nor any of their respective agents, advisers or representatives shall incur any personal liability whatever in respect of this Deed, any of the obligations undertaken (including representations given) by the Grantor or in respect of any failure by the Grantor to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Deed or in connection with it or in relation to any related matter or claims, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum.
- 3** The exclusions of liability set out in paragraph 2 above shall arise and continue notwithstanding the termination of the agency of the Storm Administrators and shall operate as a waiver of any and all claims including, but not limited to, claims in tort, equity and common law as well as under the laws of contract.
- 4** A person who is not a party to this Deed shall not have any right by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term (express or implied) of this Deed, except that: (i) the Storm Administrators, their firm, its members, partners, directors, officers, employees and any of their respective agents, advisers and representatives; (ii) the Administrators; and (iii) the Released Parties shall each be entitled to rely on this Deed as if they were a party to this Deed.
- 5** This Deed and any non-contractual obligations arising out of or in connection with this Deed shall be governed by, and construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and/or decide any claim, action or proceedings and to settle any disputes arising out of or in connection with this Deed.
- 6** This Deed may be executed in any number of separate counterparts, each of which is an original but all of which taken together shall constitute one and the same instrument.

**In witness whereof** this Deed has been delivered on the date first stated above.

**Appendix 1**  
**Scheme Document**

**The Grantor**

SIGNED as a DEED by **STORM FUNDING LIMITED  
(IN ADMINISTRATION)**

acting by:

[\_\_\_\_\_]

Joint administrator acting as agent for and on behalf  
of Storm Funding Limited (in administration) without  
personal liability

in the presence of

Name:

Address:

Occupation: