

## RESOLUTION

*Capitalised terms used in this Resolution but not otherwise defined have the meanings ascribed to them in the notice dated 28 February 2013 from the Company to certain Signatories to the Claim Resolution Agreement.*

## RESOLUTION

I, being a CRA Omnibus Beneficiary, subject to the conditions of the Resolution set out below, hereby irrevocably approve, in accordance with Part II (*Written Resolutions*) of Schedule 4 (*Written Resolutions and Meetings of Signatories*) of the Agreement, the Agreement being amended and restated as set out in the schedule to this written resolution (the “**Amended and Restated CRA**”).

## CONDITIONS OF THE RESOLUTION

The Amended and Restated CRA (including the incorporated Common Terms) will become effective and binding on all Signatories on the first date on or after the Date of the Resolution on which both of the following conditions have been satisfied:

- 1 the Company receives and accepts OSA Offers pursuant to the OSA in respect of Best Claims of OSA Eligible Offerors sufficient to equal or exceed 40 per cent. of the aggregate of Best Claims of all OSA Eligible Offerors; and
- 2 all conditions to the effectiveness of the Settlement Agreement have been satisfied or waived in accordance with the terms thereof, such that the Settlement Agreement is fully effective, provided that, the “100% Conditions” as defined in Section 11.06(b)(i) of the Settlement Agreement are satisfied and not waived,

save that the following provisions of the Amended and Restated CRA will become effective and binding on all CRA Omnibus Beneficiaries from the Date of the Resolution:

- 1 clause 17.1 (*Initial Representations*) of the Common Terms;
- 2 clauses 17.2.1(i) (where applicable) to 17.2.1(iii) (*Information Representations*) of the Common Terms; and
- 3 clause 17.8 (*Withholding tax acknowledgment*) of the Common Terms.

If the Amended and Restated CRA does not become effective, the provisions listed above (namely clause 17.1 (*Initial Representations*), clauses 17.2.1(i) (where applicable) to 17.2.1(iii) (*Information Representations*) and clause 17.8 (*Withholding tax acknowledgment*) of the Common Terms) will cease to be effective.

**SCHEDULE**  
**AMENDED AND RESTATED CRA**

Dated the Effective Date  
as amended and restated on ~~8 December 2011~~ [the Common Terms Effective Date](#)

LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(IN ADMINISTRATION)

and

THE SIGNATORIES  
(as defined in this Agreement)

CLAIM RESOLUTION AGREEMENT

Linklaters

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**This Claim Resolution Agreement** (this “**Agreement**”) is made on the Effective Date, as amended and restated on the Common Terms Effective Date, between:

- (1) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)**, a company incorporated in England and Wales with registered number 2538254 whose registered address is 25 Bank Street, London E14 5LE, acting by its administrators on the Effective Date, Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Dan Yoram Schwarzmann and Derek Anthony Howell of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT; and
- (2) each person who has:
  - (i)
    - (a) validly accepted the Offer by the Company to enter into this Agreement in accordance with the terms of such Offer; and
    - (b) been given an Accession Notice by the Company on or after the Effective Date; or
  - (ii)
    - (a) otherwise become a Signatory to this Agreement by operation of this Agreement; and
    - (b) been given a confirmation to such effect by the Company,(each, a “**Signatory**” and, together, the “**Signatories**”).

**Background:**

- (A) ~~The Administrators~~ Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann and Michael John Andrew Jervis were appointed to act as joint administrators of the Company on the Administration Date by an order of the High Court of Justice, Chancery Division. Derek Anthony Howell was appointed as a further joint administrator on 30 November 2009 and Paul David Copley and Russell Downs were both appointed as additional joint administrators on 2 November 2011. Michael John Andrew Jervis and Dan Yoram Schwarzmann ceased to act as administrators of the Company on 2 November 2011.
- (B) The Company and Signatories have entered into this Agreement to release, modify and agree all Claims of the Signatories relating to the Trust Assets and Financial Contracts (other than certain specified Excluded Claims) in exchange for mechanisms to:
  - (i) determine the Asset Claims to Trust Assets and to effect Distributions and Appropriations of Distributable Trust Assets of TA Signatories;
  - (ii) allocate and make provision for the costs of managing Trust Assets and Allocating Distributable Trust Assets to TA Signatories;
  - (iii) retain any Retention Amount of TA Signatories;
  - (iv) determine, quantify and crystallise the value of unsecured claims (including any Asset Shortfall Claim, Pre-Administration Client Money Shortfall Claim and Net Financial Claim) of TA Signatories;
  - (v) determine the Net Financial Liability, Pre-Administration Client Money Shortfall Claim and Net Financial Claim of all Signatories; and
  - (vi) determine certain other Liabilities owed to the Company by Signatories, including Ascertained Non-Financial Contract Liabilities,

(together, the “**purposes**”).

- (C) The Company's registered address was changed on 11 March 2010 from 25 Bank Street, London E14 5LE to Level 23, 25 Canada Square, London E14 5LQ.
- (D) Minor amendments were made to the Agreement on 30 December 2009, 15 March 2010, 8 December 2010 and 8 December 2011.

**It is agreed** as follows:

## **PART 1: GENERAL PROVISIONS**

### **1 Effective Date**

#### **1.1 Effectiveness of this Agreement**

This Agreement shall be effective on and from the Effective Date.

#### **1.2 Terms and Conditions of the Offer**

The terms and conditions set out in Schedule 1 apply to the Offer (and to any Further Offer, as may be applicable) to enter into this Agreement and, once this Agreement is effective, form part of this Agreement unless otherwise stated in this Agreement.

#### **1.3 Notification of the Effective Date**

The Company shall, on or as soon as practicable following the Effective Date, Notify each Signatory of the Effective Date of this Agreement.

### **2 Eligibility of Signatories**

#### **2.1 Persons acting as Representative Signatory**

The Company shall have the power to amend the terms of this Agreement to enable potential Representative Signatories to enter into this Agreement. The amendments to be made by the Company in accordance with this Clause 2.1 shall be made on a bilateral basis between the Company and each such Representative Signatory, respectively, but the effect of such bilateral arrangements is that the Representative Signatories shall be Signatories to this Agreement as amended or varied by the terms of such bilateral arrangements. The bilateral arrangements may vary in detail from one Representative Signatory to another provided that the terms of such bilateral arrangements shall, for the sole purpose of ensuring that all the provisions of this Agreement described in Clause 18, apply separately to the Net Contractual Position and Ownership Claims of each Beneficiary represented by each such Representative Signatory and shall permit all Distributions (after any applicable Appropriations) to be made to the Representative Signatory on behalf of the Beneficiary, and the Company may require specific representations, warranties and undertakings from and tailored to such Representative Signatory. The Company has the right to request any further information from potential Representative Signatories for the purposes of entering into such bilateral arrangements, including information on: (i) the identities of the Beneficiaries; and (ii) any Liabilities of the Beneficiaries to the Company or any Retention Creditors.

#### **2.2 Effect of Further Offer**

If the Company makes a Further Offer to Eligible Offerees (pursuant to paragraph 7.10 of Schedule 1), each of the Signatories agrees that if an Eligible Offeree validly accepts such Further Offer by the Company in accordance with the terms of such Further Offer, such Eligible Offeree shall become a Party to this Agreement and have all the rights, benefits and obligations under this Agreement as if it were an original Signatory to this Agreement.

#### **2.3 Consequence of excluding Excluded Parties**

If the Company determines that a person who has submitted a Form of Acceptance to the Company will be excluded from being a Signatory to this Agreement (pursuant to paragraph

13.5 of Schedule 1, an “**Excluded Party**”), then Clause 49 of this Agreement shall apply to any Signatory who suffers any direct losses as a result of this Clause 2.3.

## **2.4 Determination of TA Signatory and NTA Signatory**

The Company shall, as soon as reasonably practicable, determine whether a Signatory is a TA Signatory or an NTA Signatory. The Company shall make such determination initially and, notwithstanding that, the Company may change such determination from time to time thereafter so that a TA Signatory may become, and be treated as, an NTA Signatory for the purposes of this Agreement, and vice versa.

## **3 Effect of other agreements on this Agreement**

### **3.1 Effect of other agreements**

This Agreement shall not affect the terms of any Pre-Agreement Contract made with any Signatory prior to its Accession Date, save as otherwise agreed between the Company and that Signatory. The Company shall have the right to vary or amend the terms of this Agreement as they apply to any Signatory that has entered into such Pre-Agreement Contract for the sole purpose of rendering the application of this Agreement to such Signatory consistent with such Pre-Agreement Contract.

### **3.2 Pre-Agreement Asset Contracts**

Each Pre-Agreement Provisionally Returned Asset Recipient shall:

**3.2.1** for the purposes of Part 10, be treated as if:

- (i) it had not received any Pre-Agreement Provisionally Returned Assets, so that Distributable Trust Assets shall include all Pre-Agreement Provisionally Returned Assets;
- (ii) it is a Signatory whether or not it is, in fact, a Non-Signatory; and
- (iii) the amount or value of any Claim finally agreed in the associated Pre-Agreement Asset Contract (if applicable) shall have been determined in accordance with this Agreement; and

**3.2.2** for the purposes of Part 7, have a Close-Out Amount and Net Contractual Position for any Financial Contract(s), which is/are the subject of a Pre-Agreement Asset Contract, equal to any value(s) so agreed.

The provisions of this Clause 3.2 are solely for the purpose of determining whether any Pre-Agreement Provisionally Returned Assets under any Pre-Agreement Asset Contract should become Recovered Assets, and the notional Allocations under this Agreement. Any actual Distribution or Appropriation under this Agreement to a Signatory that is a Pre-Agreement Provisionally Returned Asset Recipient shall be determined in accordance with Clause 61.

### **3.3 Effect of the Common Terms**

In relation to the LBI Asset Claims, Common Terms Claims and Legal Claims and Legal Liabilities affected by the provisions of clause 13.1.3(ii) of the Common Terms only, the Common Terms (set out in Schedule 5) form part of this Agreement. In the event of a conflict or inconsistency between any other provision of this Agreement and a provision of the Common Terms and in relation to LBI Asset Claims, Common Terms Claims and Legal Claims and Legal Liabilities affected by the provisions of clause 13.1.3(ii) of the Common Terms only, the

Common Terms shall prevail. The Company shall give Notice to the Signatories of the occurrence of the Common Terms Effective Date.

## **4 Effect of this Agreement on Signatories' Claims**

### **4.1 Claims modified by Signatories**

With effect from its Accession Date, each Signatory's Asset Claims to Trust Assets against the Released Parties shall (to the extent that they are not Excluded Claims, and subject to Clause 4.3) be modified and amended (together, the "**Modified Claims**") so they constitute the New Claims described in Clause 4.4.

### **4.2 Claims released by Signatories**

With effect from its Accession Date, each Signatory shall waive and release the following Claims against the Released Parties (to the extent that they are not Excluded Claims, and subject to Clause 4.3):

- 4.2.1** all Claims for or in respect of any payment for or on account of any Asset which is or was at any time the subject of an Asset Claim;
  - 4.2.2** all Claims for consequential or economic loss (including Claims for loss of bargain, loss of value or other losses computed by reference to the value which may have been available to a Signatory had any obligation of the Company to the Signatory been duly performed in a timely manner in accordance with its terms) in respect of any Asset which is or was at any time the subject of an Asset Claim; and
  - 4.2.3** all Claims (apart from, for the avoidance of doubt, Modified Claims) in respect of any Financial Contract,
- (together, the "**Released Claims**").

### **4.3 Qualifications to modification and release**

The Modified Claims and the Released Claims shall not include:

- 4.3.1** any Post-Administration Client Money Claim (pursuant to Clause 4.8);
- 4.3.2** Excluded Claims (although Signatories shall be required to account to the Company for the benefit of any such Ownership Claims to Non-Trust Assets in accordance with Clause 7.3);
- 4.3.3** Claims against the Company for breach of any of the terms of this Agreement or for any failure on the part of the Company to discharge its obligations under this Agreement; and
- 4.3.4** any counter-claims against the Company for or in respect of any Ascertained Non-Financial Contract Liabilities that the Company may assert against any Signatory.

### **4.4 New Claims of Signatories**

#### **4.4.1 Modified Claims**

The Modified Claims of each Signatory shall remain unaffected, save that:

- (i) upon any Distribution pursuant to this Agreement:
  - (a) the Signatory shall receive full title (to the extent that the Company and/or the other Signatories are able to convey such title) to those Assets and

[Net Distributions](#) delivered to the Signatory as the Distribution, free and clear of any liens, charges, Claims or encumbrances to which the Company or any other Signatory would otherwise be entitled to benefit, and which (in conjunction with Clause 4.4.1(ii) and Clause 4.4.1(iii)) shall be in full and final satisfaction of the Signatory's Modified Claims; and

- (b) each other Signatory shall waive and release all their Ownership Claims against the Released Parties, to those Assets [and Net Distributions](#) delivered to the Signatory as the Distribution; and
- (ii) upon any Appropriation pursuant to this Agreement:
  - (a) the Company shall receive full title (to the extent that the Signatories are able to convey such title) to those Assets [and Reduced Gross Distributions](#) so Appropriated by the Company, free and clear of any liens, charges, Claims or encumbrances to which any Signatory would otherwise be entitled to benefit; and
  - (b) each Signatory shall waive and release all their Ownership Claims against the Released Parties, to those Assets [and Reduced Gross Distributions](#) of the Signatory so Appropriated; and
- (iii) upon any retention, transfer or disposition of Surplus Assets pursuant to this Agreement:
  - (a) the Company shall receive full title (to the extent that the Signatories are able to convey such title) to those Surplus Assets, free and clear of any liens, charges, Claims or encumbrances to which any Signatory would otherwise be entitled to benefit; and
  - (b) each Signatory shall waive and release all their Ownership Claims against the Released Parties, to those Surplus Assets so retained, transferred or disposed ~~;~~ [and](#)

[\(iv\) any LBI Asset Claim shall be further modified as provided in the Common Terms.](#)

#### **4.4.2 Released Claims**

All Signatories shall have their Released Claims exchanged for the following, as appropriate:

- (i) the right to have their Net Contractual Position, Allocations, Distributions and Appropriations determined on the basis set out in this Agreement;
- (ii) the right to claim as a new obligation of the Company their Net Financial Claim (if any); and
- (iii) an Ascertained Claim (if any) for such amount as is determined under this Agreement [\(including any Capped Net 19/9 Shortfall Claim, in accordance with clause 5 \(19/9 Shortfall Claim\) of the Common Terms\),](#)

(together with the Modified Claims as modified by Clause 4.4.1, the “**New Claims**”).

#### **4.5 Conveyance**

For the purpose of any Distribution, Appropriation, retention, transfer or disposition of any Assets contemplated by Clause 4.4.1 (or otherwise by this Agreement) in relation to a Signatory,



such Signatory hereby transfers and assigns those Assets, and all its right, title and interest in those Assets, to the recipient specified in this Agreement; and agrees, so far as permitted by applicable law, to sign and execute all such documents and do all such further acts and things as may be necessary, in the opinion of the Company, to give effect to each such transfer and assignment.

#### **4.6 Third Party Obligations**

##### **4.6.1 Surviving Claims**

If the release of a Claim against the Company by a Signatory pursuant to Clause 4.2 would affect a guarantee, indemnity or other obligation given by a Third Party in respect of that Claim (a “**Third Party Obligation**”), such that the Third Party Obligation would be extinguished by such release, then, notwithstanding Clause 4.2, that Released Claim (a “**Surviving Claim**”) shall not be released by the Signatory but shall continue to exist to the extent necessary for the Third Party Obligation to remain effective despite the acquisition of a corresponding New Claim.

##### **4.6.2 No entitlement to enforce Surviving Claims**

Notwithstanding Clause 4.6.1, no Signatory or any person who may derive a Claim in respect of a Surviving Claim, whether by reason of subrogation or otherwise, shall be entitled to make, enforce or prove any Claim against the Company in respect of such Surviving Claim, whether in any legal proceedings, by way of proof in any insolvency proceedings affecting the Company or by way of set-off, netting, counterclaim or attachment.

##### **4.6.3 Signatories’ rights in respect of Surviving Claims**

Surviving Claims shall be taken into account by the Company for the purposes of calculating the New Claims of the relevant Signatory against the Company in accordance with this Agreement as though they were Released Claims that are not Surviving Claims.

##### **4.6.4 Discharge of Surviving Claims**

Satisfaction by the Company of a New Claim in respect of a Surviving Claim of the Signatory shall constitute a valid discharge pro tanto of the Surviving Claim against the Company.

#### **4.7 Waiver of Claims relating to Intermediary and Sub-Intermediary**

Each Signatory irrevocably waives any Claims it may have against:

- 4.7.1** any Intermediary or Sub-Intermediary for or in respect of Assets held by that Intermediary or Sub-Intermediary at the Time of Administration that have been Appropriated by the Company to Reduce such Signatory’s Distribution Liabilities pursuant to Clause 60; and
- 4.7.2** any Intermediary, Sub-Intermediary or the Company for or in respect of any Intermediary Retention.

#### **4.8 Post-Administration Client Money comprising Derived Assets**

- 4.8.1** Each Signatory hereby irrevocably:

- (i) effects an absolute assignment to AssignCo of all and any Post-Administration Client Money Claims which comprise Derived Assets ("**Assignable Post-Administration Client Money Claims**") and all of its rights with respect thereto. The Company, acting as authorised agent of AssignCo, hereby accepts such assignment;
- (ii) directs the Company to pay any Post-Administration Client Money relating to, or proceeds of, an Assignable Post-Administration Client Money Claim ("**Assignable Post-Administration Client Money**") that would, but for Clause 4.8.1(i), have been made to the Signatory to a bank account opened in the name of AssignCo (such account, the "**Post-Administration Client Money Collection Account**") and the Signatory agrees that AssignCo shall be entitled to retain such amount absolutely for its own account without any obligation to account for it to the Signatory; and
- (iii) agrees that each payment by the Company in accordance with Clause 4.8.1(ii) in respect of Assignable Post-Administration Client Money held on the Statutory Trust shall constitute a valid discharge pro tanto of the Statutory Trust upon which the Company held the relevant amount of Assignable Post-Administration Client Money for the Signatory and the Company's obligations with respect to the distribution of Derived Assets comprised of such amount of Assignable Post-Administration Client Money.

**4.8.2** The modification, waiver and release pursuant to Clause 4.1 and Clause 4.2 shall not affect a Signatory's Assignable Post-Administration Client Money Claims (if any) and, to the extent (if any) necessary to preserve such Assignable Post-Administration Client Money Claims, shall also not affect the obligations giving rise to such Assignable Post-Administration Client Money Claims.

**4.8.3** Each Signatory:

- (i) undertakes that if, notwithstanding the assignment in Clause 4.8.1, it receives any amount or benefit in relation to an Assignable Post-Administration Client Money Claim, it shall promptly upon receipt and without need for any demand pay such amount or, as the case may be, the fair value of such benefit to the Post-Administration Client Money Collection Account for AssignCo's account, except to the extent such amounts form part of any Pre-Agreement Returned Asset;
- (ii) irrevocably authorises the Company, AssignCo and the Administrators to take all such action as they may reasonably consider appropriate in the name of, and on behalf of, the Signatory to establish, pursue or enforce any Assignable Post-Administration Client Money Claims;
- (iii) agrees to promptly render such assistance and take such action as the Company, AssignCo or the Administrators may reasonably request in relation to any Assignable Post-Administration Client Money Claims including, without limitation, action to enforce any of the Assignable Post-Administration Client Money Claims to the extent that the assignment in Clause 4.8.1 is, for any reason, ineffective; and
- (iv) agrees not to take any action in relation to any Assignable Post-Administration Client Money Claim (save as provided in this Agreement) or to waive,

compromise, dispose of, charge, encumber or otherwise deal with the same except as so requested.

## **5 Effect of this Agreement on the Company's Claims**

### **5.1 Claims released by the Company**

**5.1.1** With effect from the Accession Date of each Signatory, the Company shall, subject to Clause 5.1.2, release the Claims against the relevant Signatory for, or in respect of, all rights in respect of any Financial Contracts (together, the **"Company Released Claims"**).

**5.1.2** The Company Released Claims shall not include:

- (i) any Claim (including, but not limited to, Claims in respect of, or under, any guarantee) that the Company may have against any person other than the Signatories, whether arising in respect of any Trust Assets, any other Asset or any other contract;
- (ii) Claims against the Signatories for breach of any of the terms of this Agreement or for any failure on the part of the Signatories to discharge their obligations under this Agreement; and
- (iii) any Antecedent Transaction Liabilities.

### **5.2 New Claims**

The Company shall have its Company Released Claims exchanged for the following:

- 5.2.1** the right to determine the Net Contractual Position, Allocations, Appropriations, Distributions and Ascertained Claims of each Signatory on the basis set out in this Agreement;
- 5.2.2** the right to Claim as a new obligation of the Signatory the Distribution Liabilities, as calculated under this Agreement, from the Signatory; and
- 5.2.3** the right to appropriate such part of the Distributable Trust Assets as is Allocated to a Signatory in or towards the discharge of that Signatory's Distribution Liabilities to the Company, as provided for under this Agreement.

## **6 Transfer of Positions**

### **6.1 Transfer of Entire Position to a Signatory**

Nothing in this Agreement shall prevent a Signatory from Transferring its Entire Position to any other Signatory after the Time of Administration. Such Transferee shall be treated as a Signatory in respect of the Entire Position Transferred to it by the Transferor. The Transferor shall cease to be a Signatory.

### **6.2 Transfer of Entire Position to a Non-Signatory after the Accession Date**

Subject as provided in Clause 6.6, a Signatory shall not Transfer all or any part of its Entire Position to a Non-Signatory after its Accession Date, unless such Non-Signatory becomes a Signatory at or before the time such Transfer is effective, in which case Clause 6.1 shall apply.

### **6.3 Transferred Position**

- 6.3.1** A Signatory who is a Transferee in respect of one or more Transferred Positions shall be treated as a separate Signatory in respect of: (i) its Original Position; and (ii) each such Transferred Position, for the purposes of calculating its rights and Liabilities under the Agreement, such that its Claims against the Company and Liabilities owed to the Company pursuant to each such Transferred Position shall not be aggregated with its Claims against the Company, and Liabilities owed to the Company, comprising its Original Position, or any Claims against the Company, and Liabilities owed to the Company, arising under other Transferred Positions.
- 6.3.2** The Distribution Assets and the Distribution Liabilities under the Original Position and each Transferred Position may be applied towards the Reduction or Appropriation of, or collateralised against, each other in the same way and to the same extent as the Transferor would have been entitled to had it been a Signatory, but, for the avoidance of doubt, such Distribution Assets and such Distribution Liabilities shall not be applied under this Agreement towards the Reduction or Appropriation of, or collateralised against:
- (i) any Distribution Liabilities or any Distribution Assets (as applicable) of the Transferee in respect of the Transferee's Original Position; or
  - (ii) any Distribution Liabilities or any Distribution Assets (as applicable) of the Transferee in respect of any other Transferred Position.

### **6.4 Transfers of Trust Assets to the Company**

Nothing in this Agreement shall restrict any Signatory or Non-Signatory from Transferring any Trust Asset (or interest in a Trust Asset) to the Company for such consideration as may be agreed between the Company and such Signatory or Non-Signatory, including the Reduction of any Liability of such Signatory or Non-Signatory to the Company, whether or not under this Agreement.

### **6.5 Notice of Transfer**

Each Signatory who is a Transferor, or who is a Transferee, undertakes to Notify the Company of the relevant Transfer, including sufficient detail for the Company to determine what Positions have been so Transferred by, or to, it respectively.

### **6.6 Transfer of Agreed Claims**

Nothing in this Agreement shall restrict any Signatory from Transferring an Agreed Claim to another person (whether Signatory or Non-Signatory) where such Transfer is made in accordance with the transfer provisions agreed between the Company and the relevant Signatory in relation to such Agreed Claim. The Company, acting in good faith, shall choose the order in which the Company agrees any Agreed Claims with any Claimant as the Company sees fit, in its sole discretion. For the avoidance of doubt, the transfer of an Agreed Claim to a Non-Signatory shall not have the effect of making such a person a Signatory.

### **6.7 Transfer under the Common Terms**

Nothing in this Clause 6 shall restrict the application of clause 28 (*Transfer of Trust Entitlement Positions to the Company*) of the Common Terms.

## **7 No double counting**

### **7.1 Intermediary Distribution**

If a Signatory receives or has received an Intermediary Distribution, whether before or after its Accession Date, any subsequent Allocation Amount(s) which would have been Allocated to such Signatory up to the Excess Value shall be Allocated to other Signatories in respect of the same Asset Pool in accordance with Clause 45.3.7.

### **7.2 Intermediary Retention**

If the Company receives or has received an Intermediary Retention in respect of a Signatory whether before or after its Accession Date, the relevant Intermediary Retention shall Reduce pro tanto the Distribution Liabilities of that Signatory in accordance with Clause 55.4.3.

### **7.3 Breach of moratorium in relation to Non-Trust Assets**

If a Signatory successfully asserts a Claim, whether in breach of Clause 8.1 or otherwise, against Non-Trust Assets in respect of a Liability owed to it by the Company which has been taken into account in the determination of that Signatory's Net Contractual Position, Asset Shortfall Claim or Ascertained Claim, then the value (as determined by the Company) of any benefits which have been received by or on behalf of that Signatory from the Company by way of delivery of Securities, payment of cash, set-off or otherwise, as a result of the successful assertion of such Claim, as at the date upon which the Company makes such delivery or payment or applies such set-off, shall be applied in or towards discharge or reduction of any Net Financial Claim, Asset Shortfall Claim or Ascertained Claim which that Signatory has against the Company. If the value of such benefits exceeds such relevant Net Financial Claim, Asset Shortfall Claim or Ascertained Claim, then such excess shall be a Non-Financial Contract Liability, except to the extent of that Signatory's receipts under any Third Party Obligation.

### **7.4 Breach of moratorium in relation to a Released Claim or a Modified Claim**

If a Signatory obtains against the Company in relation to a Released Claim or a Modified Claim, an order, judgment, decision or award of a court or tribunal, whether in contravention of Clause 8.1 or otherwise, and the Company is required by such court or tribunal to deliver, or otherwise pay the realisation proceeds of, any Distributable Trust Assets of an Asset Pool in or towards the satisfaction of such order, judgment, decision or award, the Value of such Distributable Trust Assets so delivered or realised, as at the date of delivery or realisation, shall be a "**Recoverable Delivery Value**" and any subsequent Allocation Amount(s) which would have been Allocated to such Signatory up to the Excess Value shall be Allocated to another Signatory in respect of the same Asset Pool in accordance with Clause 45.3.7. To the extent that the sum of: (i) the Recoverable Delivery Value; and (ii) the aggregate Value, as at the Provisional Valuation Date, of all the Assets which have been Allocated to that Signatory in respect of the relevant Asset Pool exceeds the sum of the Value as at the Provisional Valuation Date and of each Asset that is included in its TA Claimant Amount in respect of that Asset Pool, such excess shall be a Non-Financial Contract Liability.

### **7.5 No double counting in respect of same Asset or Claim**

To the extent not already provided for in Clause 7.1 to Clause 7.4, no Signatory will be entitled to recover more than once in respect of the same Asset or Claim, except in the case of recoveries pursuant to any Third Party Obligation (provided that the full amount recovered shall not exceed the original Claim).

## **8 Moratorium**

### **8.1 No Proceedings against the Company or Creditors' Committee Group**

Upon and with effect from the Effective Date, absent any fraud, no Signatory shall be entitled to take, commence or continue any Proceedings against the Company, the Creditors' Committee Group, the Administrators, the Advisers, or their firms, members, agents, partners or employees in any jurisdiction whatsoever in relation to any Released Claim or any Modified Claim except as expressly agreed by the Company or, in the case of any Proceedings against the Creditors' Committee Group, as expressly agreed by the Creditors' Committee.

### **8.2 No Asset Claim and no double counting**

If and to the extent that a Signatory obtains against the Company in relation to a Released Claim or a Modified Claim, an order, judgment, decision or award of a court or tribunal in contravention of Clause 8.1, such order, judgment, decision or award shall not give rise to an Asset Claim and shall, subject to Clause 7.3, be disregarded when determining the Liability of the Company under this Agreement.

### **8.3 Enforcement of Agreement by Signatory**

Nothing in this Clause 8 shall prejudice the enforcement by a Signatory of its rights under this Agreement or preclude a Signatory or the Company from applying to the Court to determine any matter arising under it or in relation to this Agreement (save to the extent that the Dispute Resolution Mechanism [or the Common Terms Dispute Resolution Mechanism](#) provides otherwise).

### **8.4 Enforcement of Agreement by Company**

Nothing in this Agreement shall preclude the Company from taking, commencing or continuing any Proceedings against a Signatory to the extent that they do not comply with their obligations under this Agreement, or in respect of any dispute regarding New Claims or Excluded Claims.

## **9 Release of Liability**

### **9.1 Release and waiver by Signatories**

Each Signatory hereby waives and releases fully and absolutely:

- 9.1.1 each and every Ownership Claim it may have in respect of any Pre-Agreement Provisionally Returned Assets and Pre-Agreement Returned Assets and each and every Claim in respect of such Assets that it may have against any person to whom the Company shall have returned such Assets other than in its capacity as the Pre-Agreement Provisionally Returned Asset Recipient;
- 9.1.2 the members of the Creditors' Committee Group in their capacity as such from any Liability (whether present, future, actual, prospective or contingent) that they may have to any Signatory or the Company arising in connection with the preparation and negotiation of this Agreement and in connection with their acts, omissions or defaults under this Agreement as members of the Creditors' Committee Group;
- 9.1.3 each and every Claim the Company and each of the Signatories may have in connection with the negotiation and preparation of this Agreement against the members of the Creditors' Committee Group;

9.1.4 the Administrators, the Advisers and their firms, members, agents, partners and employees from any Liability (whether present, future, actual, prospective or contingent) that they may have to any Signatory arising in connection with the preparation and negotiation of this Agreement and in connection with their acts, omissions or defaults under or in connection with this Agreement; and

9.1.5 each and every Claim each of the Signatories may have in connection with the negotiation and preparation of this Agreement against the Administrators, the Advisers and their firms, members, agents, partners and employees.

## **9.2 Creditors' Committee Group indemnity**

The Company shall indemnify the members of the Creditors' Committee Group against all costs, charges, expenses and Liabilities suffered or properly incurred by each of them, in such capacity, as a result of a breach by any Signatory of its obligations under Clause 8.1.

## **9.3 LBI Asset Claims**

Further releases, by CRA Omnibus Beneficiaries only, are made under part 2 (*Entitlement to Common Terms Claims and release of other Legal Claims*) of the Common Terms.

## **10 Priorities of the Company under this Agreement**

The Company may, in its absolute discretion:

- (i) determine the Asset Claims, Net Contractual Positions, Allocations, Retention Claims, Distributions, Appropriations and deliveries in respect of TA Signatories first, prior to determining the Net Contractual Positions of the NTA Signatories;
- (ii) deal with the Disputes from TA Signatories first, prior to those of NTA Signatories; and
- (iii) deal with any Signatory, or any group of them, within each group of TA Signatories, or NTA Signatories, in such order as the Company sees fit,

provided that this does not conflict with the terms of this Agreement.

## **PART 2: ASSET CLAIMS AND BAR DATE**

### **11 Asset Claims and Bar Date**

#### **11.1 Notification of Bar Date**

The Company shall, as soon as practicable following the Effective Date, Notify each TA Signatory in accordance with Clause 89 and place an advertisement in accordance with Clause 91 to inform the TA Signatories of the Bar Date of this Agreement.

#### **11.2 Procedures for TA Signatories to provide information in relation to Asset Claims**

**11.2.1** Each TA Signatory may submit any information in relation to its Asset Claims by amending or confirming the information that is available on the Portal in accordance with Clause 89.1.1 and, where necessary, provide any supplementary information in order for the Company to determine its Asset Claims. To the extent not so confirmed or amended by such TA Signatory, the Company shall treat such information as true and accurate.

**11.2.2** A TA Signatory may submit any information in relation to its Asset Claim other than in accordance with Clause 89.1.1, subject to the consent of the Company (such consent not to be unreasonably withheld or delayed), provided that, for the purposes of this Clause 11.2.2, it shall not be unreasonable for the Company to withhold its consent where submission of such information by a TA Signatory other than in accordance with Clause 89.1.1 would require the Company to expend disproportionate costs, time or effort in dealing with such information.

**11.2.3** Any TA Signatory who has not received a User ID and Password for the Portal from the Company shall contact the Company in accordance with Clause 89.3 as soon as practicable after its relevant Accession Date to obtain a User ID and Password for the Portal.

#### **11.3 Failure to submit Asset Claims**

**11.3.1** Subject to Clause 12, to the extent that a TA Signatory does not submit any information in relation to its Asset Claims in accordance with Clause 11.2.1 and Clause 11.2.2 to the Company by 5.00 p.m. (London time) on the Bar Date, the Company shall determine such Signatory's entitlements under this Agreement at any time after the Bar Date using Relevant Information relating to such Signatory that is available to the Company at the time of such determination.

**11.3.2** The Company shall, subject to Clause 12.3 and Clause 50, still take into account any Relevant Information relating to a Stock Line or Asset Pool submitted by a TA Signatory on any day after the Bar Date, for the purpose of Allocation for that Stock Line or Asset Pool, but any Assets for which instructions for settlement in respect of their Distribution or Appropriation have already been given will not be taken into account as Distributable Trust Assets of that Stock Line or Asset Pool.

#### **11.4 Superseding**

If a TA Signatory has previously submitted any information in respect of its Asset Claims, such TA Signatory may only submit new or further information in respect of its Asset Claims that was previously submitted by such TA Signatory by amending such information via the Portal (or otherwise as the Company directs).



### **11.5 Withdrawal of Asset Claims**

A TA Signatory may withdraw its Asset Claims and any related information at any time by giving a Notice to the Company by electronic mail.

## **PART 3: RELEVANT INFORMATION**

### **12 Information**

#### **12.1 Relevant Information**

For the purposes of making a determination in respect of a Signatory pursuant to this Agreement, the Company shall have regard to the following information to the extent available to it at the time of such determination:

- 12.1.1 information that is capable of being ascertained by the Company from its Books and Records;
- 12.1.2 information made available to the Company by a TA Signatory in relation to its Asset Claims in accordance with Clause 11.2, including any information that has been uploaded by the Company on the Portal in relation to a TA Signatory;
- 12.1.3 any information made available by a Signatory or Non-Signatory to the Company before or after the Bar Date;
- 12.1.4 information contained in Notices received by the Company pursuant to this Agreement;
- 12.1.5 information made available to the Company by Intermediaries, Sub-Intermediaries and Affiliates;
- 12.1.6 information made available to the Company by any relevant exchanges; and
- 12.1.7 information which may be taken into account when determining any Close-Out Amount of any Financial Contract and any Value of any Relevant Asset in accordance with this Agreement, whether provided by a Signatory or a Third Party or otherwise available to the Company, which shall include, for the avoidance of doubt, any information provided by a Signatory pursuant to Clause 14,

(together, the “**Relevant Information**”).

#### **12.2 Discretion to use any information**

The Company may, in its absolute discretion, take into account any information which is not Relevant Information for the purposes of making determinations in respect of a Signatory pursuant to this Agreement, and may, in its absolute discretion, take into account any information which comes into its possession after making such determinations, whether in response to a request for supplementary information or otherwise.

#### **12.3 Disregarding information due to costs, time or effort**

Notwithstanding Clause 12.2 and Clause 14, the Company shall be entitled to disregard information received after the Bar Date, from a Signatory or any other person, where it would not be reasonably practicable for the Company to take such information into account because of the disproportionate costs, time or effort required to interpret such information.

#### **12.4 Incomplete or missing information in Asset Claims**

- 12.4.1 Each Signatory shall be solely responsible for the cost of providing any information to the Company, including any information in relation to its Asset Claims, which shall be submitted at the Signatory's risk. The Company shall have no obligation, responsibility or Liability for incomplete or missing information or any errors in information, including information relating to its Asset Claims.

**12.4.2** If any information provided by a Signatory is ambiguous, unclear or insufficient, the Company may request by Notice that the relevant Signatory provides supplementary information, at the cost of such Signatory. In the absence of a satisfactory response to such a request within 20 Business Days of the Notice, the Company may disregard such unclear or ambiguous information or may, acting in a commercially reasonable manner, attribute a clarificatory meaning. Where the information provided by the Signatory is insufficient, the Company may use its Relevant Information.

## **12.5 Reversal of Failed Trade Entry**

Any Failed Trade Entry shall be reversed, unless such Failed Trade Entry recorded a Connected Trade (or Connected Trades) as well as a Failed Trade, in which case, such Failed Trade Entry shall be replaced with a new entry in the Books and Records of the Company to reflect the status of such Connected Trade (or Connected Trades) without regard to the Failed Trade.

## **13 Confidentiality**

In relation to LBI Assets and LBI Asset Claims only, to the extent that the provisions of this Clause 13 and clause 16 (Confidentiality) of the Common Terms differ, the provisions of clause 16 (Confidentiality) of the Common Terms will prevail.

### **13.1 Waiver of confidentiality by Signatories**

All Signatories hereby waive, to the maximum extent permitted by law, any breach of confidentiality arising from the operation of this Agreement and authorise the Company to disclose to any other person any information which the Company is required to disclose or considers to be necessary or desirable to disclose to enable this Agreement to be administered effectively and/or for the purposes of disclosure as set out in Clauses 13.2, 13.3 and 13.4.

### **13.2 Deletion of identity of Signatories**

Where the Company discloses any Relevant Information to any other person in accordance with this Clause 13.1, the Company shall have all references to the identity of a Signatory deleted unless the Company determines that references to the identity of a Signatory are necessary to assist the purpose of disclosure.

### **13.3 Disclosure of information to authorities and CAPCO**

Clause 13.2 shall not restrict or prevent:

**13.3.1** any disclosure required by law or by any court of competent jurisdiction, the rules and regulations of any regulatory body or stock exchange or any enquiry or investigation by any governmental, official or regulatory body which is lawfully entitled to require such disclosure; or

**13.3.2** any disclosure by the Company to CAPCO of any information received or generated by the Company pursuant to this Agreement to the extent that such information is requested or required by CAPCO.

### **13.4 Disclosure of identity of Signatories bringing Claims in breach of this Agreement**

Clause 13.2 shall not restrict or prevent any disclosure by the Company to a Signatory against whom Proceedings in any court of competent jurisdiction have been brought, of whether the person bringing such Proceedings is a Signatory.

## **14 Incompletely Documented Agreement**

### **14.1 Incompletely Documented Agreement**

If, in respect of any contract, agreement or arrangement between the Company and a Signatory, it is not possible to ascertain solely from the Books and Records of the Company the terms applicable to that contract, agreement or arrangement (an “**Incompletely Documented Agreement**”), then the Company shall have regard to all Relevant Information and shall use its reasonable endeavours to make enquiry of the Signatory to determine if any, or any further, information is available to ascertain the terms of such Incompletely Documented Agreement. If any such information is available and the Signatory provides such information so that it is received by the Company within 10 Business Days of the Company’s enquiry, the Company and the Signatory shall then use their reasonable endeavours to agree the terms and conditions which apply to such Incompletely Documented Agreement.

### **14.2 Standard Terms**

If no further information is available and provided within 10 Business Days of the Company’s enquiry by the relevant Signatory or if the Company and the relevant Signatory are unable to agree on the terms and conditions that apply to an Incompletely Documented Agreement, then the terms and conditions of such Incompletely Documented Agreement shall be determined by the Company, based on any information it then has in its possession, as supplemented by those terms and conditions which customarily applied at the relevant time to any contract, agreement or arrangement of a substantially similar type which the Company had entered into with other comparable counterparties (the “**Standard Terms**”).

## PART 4: MANAGEMENT OF ASSETS PRIOR TO DISTRIBUTION

This Part 4 does not apply in relation to any Omnibus Settlement Asset and Trust Financial Assets. Part 8 (Management of Trust Financial Assets by Company) of the Common Terms sets out the relevant provisions that will apply in respect of the management of Trust Financial Assets prior to distribution.

### 15 Corporate Events, Corporate Actions and Derived Assets

#### 15.1 Corporate Actions

The Company shall deal with Corporate Actions occurring in relation to Relevant Securities which are Trust Assets subject to the conditions set out in this Clause 15.

#### 15.2 Information relating to Corporate Actions

If a Corporate Action arises in respect of Relevant Securities which are Trust Assets and either:

- (i) it is of the type described in Clause 15.7; or
- (ii) a TA Signatory has Notified the Company in writing of an instruction regarding such Corporate Action,

then the Company will use reasonable endeavours to identify the following information:

- 15.2.1 the identity of the Relevant Securities;
- 15.2.2 the nature of the Corporate Action, including its commercial terms;
- 15.2.3 the amounts of the Relevant Securities held in different Intermediaries or Sub-Intermediaries and the nature of such accounts;
- 15.2.4 the identity of TA Signatories and TA Non-Signatories to which such holdings appear to be attributable and the amounts of the Relevant Securities attributable thereto; and
- 15.2.5 whether any Failed Trades are outstanding in relation to the Relevant Securities.

#### 15.3 No obligation on the Company

The Company shall be under no obligation to take any steps with regard to any Corporate Action save as provided in this Clause 15.

#### 15.4 Conditions for Corporate Actions

In the case of a Corporate Action which falls within Clause 15.2(ii), the Company will not take any action in relation to such Corporate Action unless:

- 15.4.1 the Company has received clear and unambiguous instructions from a TA Signatory in relation to such action ("**Instructions**");
- 15.4.2 the relevant TA Signatory has agreed to pay a fee (the "**Corporate Action Fee**") to the Company in consideration of the Company agreeing to use reasonable endeavours to follow the Instructions;
- 15.4.3 the Company, acting in a commercially reasonable manner, considers that there are reasonable grounds to believe that such TA Signatory may be Allocated the Securities which are the subject of the Instructions (the "**Relevant Securities**"). Any view taken by the Company is without prejudice to any final determination under this Agreement as to whether the Relevant Securities are ultimately Allocated to the relevant TA Signatory;

- 15.4.4** the Company has been indemnified to its satisfaction against any loss, Liability, cost, Claim, action, demand or expense which may be incurred or made against it in connection with such action. The Company shall exercise its discretion in respect of these matters as it sees fit having regard to the interests of the creditors of the Company as a whole; and
- 15.4.5** the Company has determined that it is reasonably practicable for the Company to effect the Instructions in the time available.

## **15.5 Corporate Action Fee**

The Corporate Action Fee referred to in Clause 15.4.2 will be US\$3,000 (plus any applicable VAT) and is payment in or towards reimbursement of the costs incurred by the Company in dealing with the Instructions. The Company reserves the right to increase the Corporate Action Fee if the Company, acting in a commercially reasonable manner, concludes that the costs relating to the Instructions will be materially higher than US\$3,000.

## **15.6 Procedure for carrying out Instructions**

Unless modified by bilateral agreement between the Company and the TA Signatory, any TA Signatory that provides the Company with Instructions in relation to a Corporate Action shall also be deemed to have acknowledged and confirmed to the Company that, by providing such Instructions, it thereby:

- 15.6.1** indemnifies all of the Company Released Parties from and against any Claims and losses, Liabilities, costs (including, without limitation, legal costs and experts' and consultants' fees), charges, expenses, actions, proceedings, Claims and demands arising out of or in connection with the carrying out of the Instructions; and
- 15.6.2** acknowledges and agrees that:
- (i) it waives any right of action it may have against the Company Released Parties arising out of, in connection with, or as a result of the carrying out of the Instructions;
  - (ii) the Company shall be entitled to deal with any proceeds realised as a result of carrying out the Instructions (the "**Realisation**") as the Company sees fit (in its absolute discretion) until such time as the Company has ascertained to its satisfaction the extent of the relevant TA Signatory's entitlement (if any) to the Realisation;
  - (iii) by carrying out the Instructions, the Company does not:
    - (a) make any admission that the Company is or was obliged to carry out the Instructions;
    - (b) agree that the Company will carry out any other instructions received from the relevant TA Signatory;
    - (c) accept that the relevant TA Signatory has any entitlement to the Realisation of the Relevant Securities; or
    - (d) make any admissions that any part or whole of the Realisation constitutes Trust Assets;
  - (iv) in carrying out the Instructions, the Company reserves all rights in relation to the foregoing and that, in particular, the Company's carrying out of the Instructions

and all steps relating thereto are without prejudice to this Agreement or any other agreements between the relevant TA Signatory and the Company;

- (v) the Corporate Action Fee shall be payable within three Business Days of the date upon which the relevant TA Signatory agrees to pay it and, if not so paid, shall, at the election of the Company, be deductible from any combination of: (a) any Realisation; (b) any amount that the Company determines to be payable by it to the relevant TA Signatory; or (c) the proceeds of sale of such relevant Trust Assets as may be required, and, for these purposes, the Company may make any necessary currency conversion. The Corporate Action Fee shall be payable without set-off, deduction, counterclaim or the exercise of any liens, any right to which is waived by the relevant TA Signatory;
- (vi) the Administrators act as agents for and on behalf of the Company, and in doing so they and their firms, members, agents, partners, employees and their representatives shall not incur any personal liability whatsoever in relation to steps taken by the Company in connection with the Instructions. This acknowledgement of the exclusion of liability shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any Claims in tort as well as under the laws of contract and each of the Administrators, their firms, members, agents, partners and employees shall be entitled to rely on, enforce and enjoy the benefit of this acknowledgement;
- (vii) the Company Released Parties shall not be responsible for any failure on the part of any person to comply with any instruction the Company may give to them or carry out or make any transaction or payment contemplated in the Instructions; and
- (viii) if the Relevant Securities are held through an Intermediary or Sub-Intermediary over which the Company has no or restricted access, it may not be possible to effect the Instructions or to ascertain if the Instructions have been effected.

## **15.7 Corporate Action without Instructions**

If no Instructions have been received and the relevant Corporate Action is:

- 15.7.1** subject to Clause 15.7.2, the grant of tradable subscription rights to holders of the relevant Securities, then, if not otherwise automatically sold in the relevant market, such rights shall be sold by the Company at a price and time determined by it in its absolute discretion; or
- 15.7.2** the grant of bonus rights to holders of the Relevant Securities which require no payment to be made, then such rights shall be taken up.

## **15.8 No action to be taken if payment is required**

The Company shall not be required to take any action regarding Trust Assets in respect of Corporate Actions to the extent that it requires a payment to be made by the Company. The Company may take such action in any event if the Company considers that to do so will ultimately be more beneficial to the creditors of the Company as a whole.

### **15.9 No Corporate Action if below de minimis level**

The Company shall not be required to take any action regarding Trust Assets in respect of Corporate Actions to the extent that the Company determines, acting in a commercially reasonable manner, that the value (as determined by the Company) of such Corporate Action is below a de minimis level determined by the Company from time to time.

### **15.10 Failed Trades**

If, in relation to a Corporate Action, any Failed Trades are outstanding in respect of Trust Assets and the relevant TA Signatory would, were it not for such failure to settle, have sold or transferred the Relevant Securities to one or more Third Parties, no action will be taken in respect of that Corporate Action unless each such Third Party gives, in a form satisfactory to the Company, its written consent to the proposed Corporate Action and waives any right of action against the Company Released Parties arising out of, in connection with, or as a result of, the carrying out of the Instructions.

### **15.11 Corporate Event**

Each of the following shall be a Corporate Event:

15.11.1 payment of a dividend;

15.11.2 payment of a coupon;

15.11.3 payment of a redemption amount;

15.11.4 an exchange of a security for a security, of a security for cash, of a security for any other securities or assets, or of a security for any combination of these; and

15.11.5 any other analogous or similar event,

in each case, where the relevant event would not qualify as a Corporate Action.

### **15.12 Derived Assets form part of Trust Assets**

To the extent that any Derived Assets are actually received by the Company (or otherwise constitute Distributable Trust Assets) as a result of the occurrence of a Corporate Action or a Corporate Event, such Derived Assets will be accounted for as part of the Trust Assets from which they are derived.

## **16 Undertakings by the Company in respect of the Trust Assets**

### **16.1 Standard of care of the Company**

The Company shall act in accordance with the standard of care imposed on a fiduciary in respect of the Trust Assets to the TA Signatories. Consistent with that standard of care, the Company shall not, save as provided in this Agreement:

16.1.1 take, or (to the extent that, in its capacity as fiduciary, it has the power to control) permit another person to take, any action which would result in any Distributable Trust Assets ceasing to be Distributable Trust Assets; or

16.1.2 omit to take, or (to the extent that, in its capacity as fiduciary, it has the power to control) permit another person to omit to take, any action the omission of which would result in Distributable Trust Assets ceasing to be Distributable Trust Assets.



## **16.2 Exceptions to the standard of care**

However, notwithstanding Clause 16.1:

- 16.2.1** nothing in this Agreement shall impose on the Company more extensive obligations than its obligations prior to Administration; and
- 16.2.2** the Company shall not be obliged to take any action, or omit to take any action, or procure the same in respect of any other person (to the extent it has power in its capacity as fiduciary to do so), unless the Company has been indemnified to its satisfaction against any loss, Liability, cost, Claim, action, demand or expense which may be incurred or made against it in connection with such action or omission.

## **16.3 The Company acting as trustee of the Trust Assets**

The Company shall, to the extent that it is able to do so in its capacity as trustee, use all reasonable endeavours to gather in Trust Assets and to remove any impediment on Assets being Distributable Trust Assets, provided that the Company shall not be required to transfer any asset to which the Company is absolutely entitled nor to expend any amount on discharging any Liability unless and to the extent that the Company will be indemnified for, and on behalf of, the Signatories for the expense of so doing or where the net value of the Assets of the Company will not be decreased as a result.

## **16.4 Appropriation Rights of the Company**

From the Effective Date, the Company shall not appropriate for itself any Trust Assets save in accordance with, and to the extent of, its Appropriation Rights or as otherwise permitted by this Agreement.

## PART 5: ASSET VALUATION METHODOLOGY

### 17 Asset Valuation Methodology

[This Clause 17 does not apply in relation to any LBI Asset Claim, LBI Asset, Omnibus Settlement Asset or Trust Financial Asset.](#)

#### 17.1 Asset Valuation Methodology

The Value of: (i) any Unpaid Amount Deliverable; and (ii) any other Security (each such Security being Valued, a “**Relevant Asset**”) as at the relevant Asset Valuation Date shall be an amount in US dollars determined by the Company in accordance with the following provisions (the “**Asset Valuation Methodology**”):

**17.1.1 Proceeds of sale:** if the Company sells or has sold on that date a Security that is fungible with, or otherwise substantially economically equivalent to, the Relevant Asset, the proceeds of sale; or

**17.1.2 Reported price:** if Clause 17.1.1 does not apply, subject to Clause 17.1.6(i) to Clause 17.1.6(v):

(i) **Reported mid-market price:** if a single price (not being a bid price or an offer price) for the Relevant Asset is quoted on a generally recognised exchange or quotation system or published by a generally recognised price source for the Relevant Asset and the quotation or publication of such price is not suspended on the relevant Asset Valuation Date, the single price for the Relevant Asset so quoted or published at 5.00 p.m. in the relevant market on the relevant Asset Valuation Date; or

(ii) **Arithmetic mean of reported bid price and offer price:** if a bid price and an offer price for the Relevant Asset are both quoted on a generally recognised exchange or quotation system or published by a generally recognised price source for the Relevant Asset and the quotation or publication of such bid price and offer price is not suspended on the relevant Asset Valuation Date, the arithmetic mean of the bid price and the offer price so quoted or published at 5.00 p.m. in the relevant market on the relevant Asset Valuation Date; or

**17.1.3 Mid-market value using firm quotations:** if Clause 17.1.1 and Clause 17.1.2 do not apply, subject to Clause 17.1.6(i) to Clause 17.1.6(v), if the Company has obtained one or more firm bid quotations and one or more firm offer quotations in respect of the Relevant Asset from market makers or regular dealers in an appropriate market for such Asset on the Asset Valuation Date, then the mid-point between: (i) such bid quotation (or, if there are two or more such bid quotations, the arithmetic mean of such bid quotations); and (ii) such offer quotation (or, if there are two or more such offer quotations, the arithmetic mean of such offer quotations); or

**17.1.4 Mid-market value using indicative quotations:** if Clauses 17.1.1 to 17.1.3 do not apply, subject to Clause 17.1.6(i) to Clause 17.1.6(v), if the Company has obtained one or more indicative bid quotations and one or more indicative offer quotations in respect of the Relevant Asset from market makers or regular dealers in an appropriate market for such Asset on the Asset Valuation Date, then the mid-point between: (i) such bid quotation (or, if there are two or more such bid quotations, the arithmetic mean of such bid quotations); and (ii) such offer quotation (or, if there are two or more such offer quotations, the arithmetic mean of such offer quotations); or

**17.1.5 Fallback valuation:** if Clauses 17.1.1 to 17.1.4 do not apply, subject to Clause 17.1.6(i) to Clause 17.1.6(v), the fair market value (which shall be based on mid-market pricing and may be zero) for the Relevant Asset on the relevant Asset Valuation Date, as determined by the Company, for which purpose the Company may take into account any Relevant Information, including, without limitation, one or more of the following types of information:

- (i) any bid or offer prices on or about the relevant Asset Valuation Date in respect of the Relevant Asset or Assets which are comparable to the Relevant Asset, customary bid-offer spreads for the Relevant Asset or Assets which are comparable to the Relevant Asset and any historical trading prices in respect of the Relevant Asset or Assets which are comparable to the Relevant Asset, as published by any exchange or quotation system or other generally recognised price source;
- (ii) market data in respect of the relevant market supplied by one or more third parties or derived from internal sources, including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads and correlations; and
- (iii) the results of the operation of any models or other pricing methodologies, including manual or automated calculations performed by the Company's personnel using existing or reinstated systems of the Company (including the use of statistical inference techniques) or the proprietary pricing models of, or information supplied by, one or more third parties selected by the Company.

**17.1.6 Provisos to Asset Valuation Methodology:** Clauses 17.1.2 to 17.1.5 are subject to the following:

- (i) the Company has no obligation to solicit or obtain a specific number of quotations, values or prices and may seek any number of quotations, values or prices that it considers appropriate;
- (ii) the Company may discard quotations, values or prices that it has obtained where it determines this to be appropriate in the circumstances, in particular where the Company believes that the discarded quotations, values or prices would have a distorting effect on any arithmetic mean;
- (iii) the time as at which quotations are to be obtained will be selected by the Company;
- (iv) if only bid quotations, values or prices or only offer quotations, values or prices are made available to the Company, then the Company may determine the mid-market value for the Relevant Asset by reference to the historical bid-offer spreads for the Relevant Asset or customary bid-offer spreads for Assets comparable to the Relevant Asset, as determined by the Company; and
- (v) notwithstanding Clause 17.1.6(i) to Clause 17.1.6(iv) above, if the Company determines that: (a) it would not be commercially reasonable to determine the Value in accordance with Clause 17.1.2, Clause 17.1.3 or Clause 17.1.4; or (b) the Value that would otherwise have been determined under Clause 17.1.2, Clause 17.1.3 or Clause 17.1.4 does not represent the fair market value of the Relevant Asset, then the Company may determine the Value of the Relevant Asset in accordance with Clause 17.1.5.

**17.2 Valuations as at the Date before Administration**

For the avoidance of doubt, valuations required to be made as at the Date Before Administration shall disregard all subsequent Corporate Actions and Corporate Events and all Derived Assets.

**17.3 Adjustment for size**

For the avoidance of doubt, the Company may adjust any quotation, value or price obtained or determined in accordance with Clauses 17.1.1 to 17.1.5 to reflect the fact that the amount of the Relevant Asset being Valued in accordance with Clause 17.1 is unusually large or unusually small for such Asset in the relevant market, or where different quotations have been received in smaller amounts to produce an aggregate equivalent to the amount of the Relevant Asset.

**17.4 Determinations by the Company**

All determinations, valuations and calculations of the Company for the purpose of this Clause 17 shall be performed in a commercially reasonable manner.

**17.5 Conversion to US dollars**

For the purpose of this Clause 17, amounts denominated in a currency other than US dollars shall be converted into US dollars using the Spot Rate at the Relevant FX Conversion Time.

## PART 6: OVERVIEW OF DISTRIBUTION

### 18 Overview of Distribution mechanism

#### 18.1 Distribution mechanism

Parts 7 to 12 of this Agreement set out the mechanism for determining: (i) in respect of each Signatory, the Net Contractual Position; and (ii) in respect of each TA Signatory:

- 18.1.1 any Retention Amount;
- 18.1.2 its Ascertained Non-Financial Contract Liabilities (including its Limited Ascertained Non-Financial Contract Liabilities);
- 18.1.3 its TA Claimant Amount to each Asset Pool;
- 18.1.4 the Identification of Assets that constitute Distributable Trust Assets for each Asset Pool;
- 18.1.5 Allocations of Distributable Trust Assets;
- 18.1.6 Distributions and Appropriations of Distribution Assets;
- 18.1.7 any Asset Shortfall Claim in respect of an Asset Pool; and
- 18.1.8 the delivery and payment of Distributions.

[The Common Terms set out the mechanism for determining Gross Distributions, the Cumulative Gross Allocation and the 19/9 Shortfall Claim in respect of each CRA Omnibus Beneficiary.](#)

#### 18.2 Determination procedure

- 18.2.1 In respect of each TA Signatory, the Net Contractual Position, any Retention Amount, Ascertained Non-Financial Contract Liabilities (including its Limited Ascertained Non-Financial Contract Liabilities) and any Allocation, [Cumulative Gross Allocation and/or Gross Distribution](#) may be determined independently of each other prior to Distribution and Appropriation of Distribution Assets to such TA Signatory.
- 18.2.2 In respect of each TA Signatory, any Net Contractual Position, Retention Amount and Ascertained Non-Financial Contract Liabilities (including its Limited Ascertained Non-Financial Contract Liabilities) will be determined on a per TA Signatory basis. Allocations of Distributable Trust Assets to TA Signatories will be determined on a per Stock Line basis (other than for Affected Intermediaries). Allocations of Distributable Trust Assets of a Stock Line are dependent upon: (i) the Identification of Trust Assets of that Stock Line that constitute Distributable Trust Assets for that Stock Line; and (ii) determination of the TA Claimant Amount of all TA Signatories and Non-Signatories to that Stock Line. Interim Allocations for a Stock Line may be determined pending the resolution of any Dispute over the Company's determination of a TA Claimant Amount. Allocations of Distributable Trust Assets from Affected Intermediaries to TA Signatories shall be done on a per Affected Intermediary basis. [The Cumulative Gross Allocation and Gross Distributions will be determined in accordance with the Common Terms.](#)
- 18.2.3 Distributions and Appropriations will only be determined in respect of a TA Signatory and an Asset Pool, when the following have been ascertained: (i) that TA Signatory's Net Contractual Position; (ii) whether that TA Signatory has a Retention Amount and, if so, its amount; (iii) that the Allocation of Assets of the same Asset Pool is not a De Minimis Allocation; and (iv) whether any Non-Financial Contract Liabilities as described in Clause 33.1 and Clause 33.4 have become Ascertained Non-Financial Contract

Liabilities and which of those are Limited Ascertained Non-Financial Contract Liabilities. Any Asset Shortfall Claim will only be determined in respect of a TA Signatory and an Asset Pool, when all Assets of that Asset Pool have been Allocated pursuant to a Last Allocation.

18.2.4 The Net Contractual Position will be determined in respect of each NTA Signatory.

### **18.3 Determination of Net Contractual Position**

18.3.1 Each Open Contract between the Company and a Signatory shall be terminated in accordance with Clause 19.

18.3.2 A Close-Out Amount in respect of each Financial Contract between the Company and a Signatory shall be determined in accordance with Part 7.

18.3.3 A Net Contractual Position in respect of all Financial Contracts between the Company and a Signatory shall be determined in accordance with Clause 24 and Clause 25.

### **18.4 Determination of Retention Amounts**

18.4.1 The Company shall determine the Retention Amount in respect of each TA Signatory, from time to time, in accordance with Clause 28.

18.4.2 The handling of Retention Amounts and payments of Retention Amounts to Retention Creditors will be dealt with in accordance with Part 8.

### **18.5 Determination of Ascertained Non-Financial Contract Liabilities**

The Company shall determine from time to time any Ascertained Non-Financial Contract Liabilities in respect of each TA Signatory in accordance with Part 9.

### **18.6 Determination of Allocation and Asset Shortfall Claim**

18.6.1 The Company shall, from time to time, Identify Assets that constitute Distributable Trust Assets for each Asset Pool in accordance with Clause 43.

18.6.2 The Company shall, from time to time, Allocate an amount of Assets which are Distributable Trust Assets to each TA Signatory with a relevant Asset Claim in accordance with Clause 41, Clause 45 or Clause 47, as the case may be.

18.6.3 The Company shall determine the Asset Shortfall Claim of a TA Signatory in accordance with Clause 46 or Clause 48, as the case may be.

### **18.7 Determination of Appropriations and Distributions**

18.7.1 A TA Signatory may elect to discharge its Net Financial Liability and its other Distribution Liabilities in full or in part by Payment to the Company in accordance with Clause 55.4.2.

18.7.2 A TA Signatory may elect to reduce its outstanding Net Financial Liability by the amount of any Collateral Amount that it may have against the Company in accordance with Clause 55.4.4.

18.7.3 A Signatory may elect to make a Collateralisation Election under Clause 59.

18.7.4 After determining the Net Contractual Position of a TA Signatory and one or more Allocations to that TA Signatory in respect of an Asset Pool, the Company will determine Appropriations and Distributions to such TA Signatory in respect of its Allocations in accordance with Part 11.

18.7.5 ~~After determining the Net Contractual Position of a CRA Omnibus Beneficiary and a Gross Distribution to that CRA Omnibus Beneficiary, the Company will determine Appropriations, deductions and Distributions to such CRA Omnibus Beneficiary in respect of its Gross Distribution in accordance with clause 10.3.2(i) of the Common Terms in relation to the Tax Burden Liability, in accordance with clause 10.3.2(ii) of the Common Terms in relation to any Recoverable Turnover Value, and in accordance with Part 11.~~

18.7.6 ~~18.7.5~~ Appropriations of Distribution Assets of a TA Signatory to Reduce a Signatory's Distribution Liabilities will be effected in accordance with Clause 60.

- (i) Distributions and Appropriations in relation to a TA Signatory with a Net Financial Claim against the Company will be determined in accordance with Clause ~~60.1~~60.1 and 60.9.
- (ii) Distributions and Appropriations in relation to a Signatory with a Net Financial Liability to the Company will be determined in accordance with Clauses 60.2 to ~~60.8~~60.8 and Clauses 60.10 and 60.11.
- (iii) Distributions and Appropriations in relation to Affected Stock Lines that are the subject of an Affected Intermediary Collateralisation Election shall be determined in accordance with Clause 60.3 and Clause 60.6.
- (iv) Distributions and Appropriations in relation to a Signatory who has made a Client Money Collateralisation Election shall be determined in accordance with Clause 60.4, Clause 60.7 and Clause 60.8.

18.7.7 ~~18.7.6~~ Deliveries and payments of Distributions to Signatories will be made in accordance with Clause ~~63~~63 and, with respect to CRA Omnibus Beneficiaries, part 4 (Common Terms Distributions out of Omnibus Trust) of the Common Terms.

## **PART 7: NET CONTRACTUAL POSITION**

### **19 Termination of Financial Contracts**

#### **19.1 Effect of this Agreement on Open Contracts**

All Open Contracts between the Company and a Signatory shall be terminated in accordance with this Clause 19.

#### **19.2 Defective Notice of Termination**

The Company shall have the right to deem any Defective Notice of Termination as having validly terminated the relevant Financial Contract between the Company and the Signatory on the date specified in that Defective Notice of Termination or otherwise in accordance with the terms of the relevant Financial Contract, despite any defect in or uncertainty about the effect of such notice.

#### **19.3 Termination of Open Contracts**

Each Open Contract not terminated pursuant to Clause 19.2 shall be deemed to be terminated as between the Company and the relevant Signatory on the relevant Open Contract Termination Date without any action being required to be taken by the Company, notwithstanding any action by or on behalf of the Signatory before the Open Contract Termination Date purporting to terminate such Open Contract.

#### **19.4 General provisions in relation to termination**

**19.4.1** Any termination of an Open Contract otherwise than pursuant to this Clause 19 shall be void.

**19.4.2** The termination of any Open Contract under this Clause 19 shall not prejudice any Ownership Claims of the Signatory which may have existed prior to such termination, which shall survive to the extent that any Ownership Claims survive (subject to any modification) under this Agreement, including those rights that survive pursuant to Clause 93, subject always to any Appropriation Rights.

**19.4.3** Subject to Clause 93, no termination of any Open Contract under this Clause 19 shall modify any contract or rights between a Signatory and any Third Party.

### **20 Close-Out Amount**

#### **20.1 Determination of the Close-Out Amount**

The Close-Out Amount in respect of each Financial Contract shall be determined by the relevant Determining Party in accordance with the applicable Financial Contract Valuation Methodology. For the avoidance of doubt, the Overriding Valuation Provisions form part of each Financial Contract Valuation Methodology.

#### **20.2 Financial Contract Valuation Methodologies**

Without prejudice and subject to the other provisions set out in this Part 7, the Close-Out Amount in respect of a Financial Contract shall be determined:

**20.2.1** first, in accordance with the Contractual Valuation Methodology, insofar as it is possible to do so under Clause 21;



**20.2.2** secondly, in the circumstances as further set out in Clause 22, in accordance with the Agreed Valuation Methodology; and

**20.2.3** thirdly, if neither the Contractual Valuation Methodology nor the Agreed Valuation Methodology is applicable as further described in Clause 23, in accordance with the Fallback Valuation Methodology,

(each of the Contractual Valuation Methodology, the Agreed Valuation Methodology and the Fallback Valuation Methodology, a “**Financial Contract Valuation Methodology**”).

### **20.3 Positive Close-Out Amounts and negative Close-Out Amounts**

A Close-Out Amount (or a Close-Out Component) representing an amount payable by the Signatory to the Company shall be expressed as a negative number. A Close-Out Amount (or a Close-Out Component) representing an amount payable by the Company to the Signatory shall be expressed as a positive number.

### **20.4 Overriding Valuation Provisions**

Each of the following shall be an “**Overriding Valuation Provision**”:

**20.4.1 Exclusion of Asset Claim:** any Asset Claim which is the subject of a Financial Contract shall be disregarded in the Valuation of the Close-Out Amount;

**20.4.2 Open Contracts:** the Close-Out Amount, in respect of each Open Contract, except to the extent that it relates to Short Positions and Rehypothesized Securities, shall be determined as at the Open Contract Termination Date;

**20.4.3 Short Positions and Rehypothesized Securities:** for the purpose of determining the Close-Out Amount of a Financial Contract:

(i) the Value of:

(a) any Security which is the subject of a Short Position; and

(b) any Rehypothesized Security,

shall be the market closing price as quoted on a generally recognised price source for such Security as at the relevant Asset Valuation Date, provided that, if it is impossible or otherwise not reasonably practicable for the Company to obtain such market closing price, the Value of such Security shall be determined in accordance with the Asset Valuation Methodology in Clause 17; and

(ii) any other payment or delivery obligation arising under the Financial Contract in relation to Clause 20.4.3(i)(a) or Clause 20.4.3(i)(b) (including, for example, the payment obligation of manufactured dividends in respect of Clause 20.4.3(i)(a) or Clause 20.4.3(i)(b)) which become payable or deliverable on or after the Administration Date shall not be taken into account in the determination of the relevant Close-Out Amount;

**20.4.4 Flawed Asset Provisions:** any term of a Financial Contract which provides that an obligation of a party is subject to a condition precedent that an event of default, failure to pay or deliver, act of insolvency, breach of contract or other similar event has not occurred and/or is not continuing with respect to the other party (any such term, a “**Flawed Asset Provision**”) shall be disregarded in the calculation of the Close-Out Amount;

**20.4.5 Walk away provisions:** any term of a Financial Contract which:

- (i) provides that an amount which, but for such term, would be payable by one party to the other party as a result of termination of such Financial Contract would not be payable to such other party as a result of an event of default, failure to pay or deliver, act of insolvency, breach of contract or other similar event having occurred with respect to such other party; or
- (ii) provides that only the party which is not subject to an event of default, failure to pay or deliver, act of insolvency, breach of contract or other similar event is entitled to receive a payment following the termination of such Financial Contract,

shall be disregarded by the Determining Party in the calculation of the Close-Out Amount;

**20.4.6 Exclusion of Pre-Administration Client Money Claim:** any Pre-Administration Client Money Claim shall be disregarded in the Valuation of any Close-Out Amount but without prejudice to the calculation in Clause 59;

**20.4.7 Accrual of interest:** in determining the Close-Out Amount in respect of a Financial Contract, no interest shall accrue on any unpaid Liability of the Company from the Administration Date save to the extent that such interest would accrue under Rule 2.88 of the Insolvency Rules;

**20.4.8 Third Party Liabilities:** in determining the Close-Out Amount in respect of each Financial Contract, no account will be taken of any Liabilities which are asserted to be due from that Signatory to persons other than the Company or due to that Signatory from persons other than the Company; and

**20.4.9 Antecedent transactions:** in determining the Close-Out Amount in respect of a Financial Contract, no account will be taken of any amounts which might be, or in due course become, Antecedent Transaction Liabilities.

## **20.5 Disapplication of Overriding Valuation Provisions**

The Company may in its absolute discretion disapply any of the Overriding Valuation Provisions if it deems that it is not reasonably practicable to apply such Overriding Valuation Provision, provided that this shall result in a greater Net Contractual Position in respect of a Financial Contract than would otherwise have been the case, and shall not affect any Signatory's Asset Claim.

## **20.6 The Determining Party**

**20.6.1** The party determining the calculation of the Close-Out Amount in respect of a Financial Contract in accordance with this Part 7 shall be referred to as the **"Determining Party"**.

**20.6.2** If the Contractual Valuation Methodology applies, the Determining Party shall be determined in accordance with Clause 21.7. Where the Determining Party in respect of a Financial Contract is:

- (i) a Signatory, such Signatory shall submit a Valuation Statement to the Company; and
- (ii) a Third Party, the relevant Signatory shall request the Third Party to submit a Valuation Statement to the Company,

in each case, in accordance with Clause 21.

- 20.6.3 If the Agreed Valuation Methodology applies, the Determining Party shall be the Company, in accordance with Clause 22.
- 20.6.4 If the Fallback Valuation Methodology applies, the Determining Party shall be the Company, in accordance with Clause 23.
- 20.6.5 Where the Determining Party is the Company, the Company may deal with any Signatory or group of them in such order as the Company sees fit, provided that this does not prejudice or unduly delay meeting the objectives and purposes of this Agreement.

## **21 Contractual Valuation Methodology**

### **21.1 Contractual Valuation Provisions**

In respect of each Financial Contract, “**Contractual Valuation Provisions**” shall be any terms in such Financial Contract which provide for the calculation of an amount or amounts payable by one party to the other as a result of the termination of such Financial Contract.

### **21.2 Application of the Contractual Valuation Provisions and the Overriding Valuation Provisions**

- 21.2.1 Subject to the other provisions of this Clause 21, in respect of each Financial Contract, the Close-Out Amount shall be determined in accordance with the relevant Contractual Valuation Provisions, as modified and supplemented by the Overriding Valuation Provisions.
- 21.2.2 If there is any conflict between any Contractual Valuation Provision and the Overriding Valuation Provisions, Clause 21.6 shall apply.
- 21.2.3 The Contractual Valuation Provisions in respect of a Financial Contract, as modified and supplemented by the Overriding Valuation Provisions, shall be the “**Contractual Valuation Methodology**” in respect of such Financial Contract.

### **21.3 Close-Out Amount**

- 21.3.1 Where the Contractual Valuation Methodology contains provisions for calculating a single amount payable by one party to the other as a result of the termination of a Financial Contract, such amount shall be the Close-Out Amount in respect of such Financial Contract.
- 21.3.2 Where the Contractual Valuation Methodology contains provisions for calculating more than one amount payable by one party to the other as a result of the termination of a Financial Contract (each such amount, a “**Close-Out Component**”), the aggregate of each Close-Out Component, as determined by the Company, shall be the Close-Out Amount in respect of such Financial Contract.

### **21.4 Election of the relevant Contractual Valuation Provisions within a Financial Contract**

Where the Contractual Valuation Provisions of a Financial Contract differ depending upon the reason for the termination of such Financial Contract:

- 21.4.1 if a valid election between such differing provisions has been made by the Signatory in accordance with the relevant Financial Contract (including as a result of any defect in the election having been waived by the Company), then the Contractual Valuation Provisions shall apply on the basis of that election; or

- 21.4.2 if no such valid election has been made, then the Contractual Valuation Provisions that, in the opinion of the Company, are applicable following an event that most closely corresponds to an act of insolvency with respect to the Company shall apply to such Financial Contract.

## **21.5 Valuation postponement provisions**

21.5.1 Subject to Clause 21.5.2, if any Contractual Valuation Provisions in respect of a Signatory would require or permit the Close-Out Amount to be determined 30 Business Days after the relevant Open Contract Termination Date of that Signatory, they shall be amended such that the Close-Out Amount may be determined no later than the 30 Business Days after the relevant Open Contract Termination Date of such Signatory. The Company shall determine the nature and extent of the amendments necessary to achieve this and Notify the Signatory of such amendments.

21.5.2 If the Company determines that it is not reasonably practicable to effect such amendments, the Close-Out Amount in respect of such Financial Contract shall be determined in accordance with the Fallback Valuation Methodology in Clause 23, unless:

- (i) the Close-Out Amount in respect of such Financial Contract is the aggregate of the Close-Out Components; and
- (ii) the Contractual Valuation Provisions enable some of the Close-Out Components to be determined on or before the Valuation Submission Date (the “**Unaffected Close-Out Components**”),

then such Financial Contract shall be treated as two separate Financial Contracts, comprising:

- (a) one Financial Contract in respect of the transactions to which the Unaffected Close-Out Components relate, the Close-Out Amount of which shall be determined in accordance with the Contractual Valuation Methodology; and
- (b) one Financial Contract in respect of all other transactions, the Close-Out Amount of which shall be determined in accordance with the Fallback Valuation Methodology in Clause 23.

The Company shall Notify the Signatory of its determination to treat a Financial Contract as two separate Financial Contracts in accordance with this Clause 21.5.2.

## **21.6 Conflict between Contractual Valuation Provisions and the Overriding Valuation Provisions**

21.6.1 Subject to Clause 21.6.2, if a Contractual Valuation Provision conflicts with any of the Overriding Valuation Provisions such that a determination of the Close-Out Amount in accordance with such Contractual Valuation Provision would result in a non-compliance with any Overriding Valuation Provisions, the latter shall prevail and such Contractual Valuation Provision shall be amended only to the extent necessary to enable the Close-Out Amount to be determined without such conflict. The Company shall determine the nature and extent of the amendments necessary to achieve this and Notify the Signatory of such amendments.

21.6.2 If the Company determines that it is not reasonably practicable to effect such amendments, the Close-Out Amount in respect of such Financial Contract shall be determined in accordance with the Fallback Valuation Methodology in Clause 23.

## **21.7 The Determining Party under the Contractual Valuation Methodology**

### **21.7.1 The Contractual Determining Party**

The party which is entitled or required under the Contractual Valuation Provisions of a Financial Contract to determine the amount or amounts payable by one party to the other as a result of the termination of such Financial Contract shall be the “**Contractual Determining Party**” in respect of such Financial Contract.

### **21.7.2 The Contractual Determining Party conditional upon occurrence of event of default**

Where the Contractual Valuation Provisions of an Open Contract which is terminated in accordance with Clause 19.3 require an event of default, act of insolvency, failure to pay or deliver, breach of contract or other similar event to have occurred in respect of one party in order to ascertain the Contractual Determining Party, then such an event of default, act of insolvency, breach of contract or other similar event shall be deemed to have occurred in respect of the Company for this purpose only.

### **21.7.3 General rule**

The Contractual Determining Party in respect of a Financial Contract shall be the Determining Party in respect of such Financial Contract, provided that:

- (i) if the Contractual Determining Party is a person other than the Company and that person fails to deliver a Valuation Statement on or before the Valuation Submission Date, the Company shall be the Determining Party;
- (ii) if there is more than one Contractual Determining Party, each such party shall be a Determining Party to the extent that, pursuant to the Contractual Valuation Provisions, it is entitled or required to contribute to the determination of the amount or amounts payable by one party to the other as a result of the termination of such Financial Contract (such extent, the “**Contribution to Determination**”) subject to Clause 21.7.4; and
- (iii) if the Contractual Valuation Provisions do not specify any Contractual Determining Party, the Company shall be the Determining Party.

### **21.7.4 Multiple Contractual Determining Parties**

Where there is more than one Contractual Determining Party, this Clause 21.7.4 shall apply to each such Contractual Determining Party with respect to its relevant Contribution to Determination as if: (i) it were the sole Contractual Determining Party in respect of such Financial Contract; and (ii) its Contribution to Determination represented the entire right or obligation under the Contractual Valuation Provisions of a Financial Contract to determine the amount or amounts payable by one party to the other as a result of the termination of such Financial Contract.

## **21.8 Valuation Statements**

### **21.8.1 Signatory to submit Valuation Statement**

If the Signatory is the Determining Party in respect of a Financial Contract, then, to the extent not already required by the Contractual Valuation Provisions, the Signatory shall submit a Valuation Statement for such Financial Contract to the Company on or before the Valuation Submission Date.

### **21.8.2 Third Party to submit Valuation Statement**

If a Third Party is the Determining Party in respect of a Financial Contract, then, to the extent not already required by the Contractual Valuation Provisions, the Signatory shall request the Third Party to provide a Valuation Statement for such Financial Contract to the Company on or before the Valuation Submission Date.

**21.8.3 Company may consider Valuation Statement not in compliance with the Overriding Valuation Provisions**

Where the calculation of a Close-Out Amount contained in a Valuation Statement is not in compliance with any of the Overriding Valuation Provisions, the Company may give consideration to such calculation, notwithstanding such non-compliance, after making such adjustments to the calculation to the extent it considers necessary in order to rectify such non-compliance, provided that if additional information not already contained in such Valuation Statement is required to be taken into account in order to make such adjustments, the Company may request the relevant Signatory or Third Party to provide supplementary information in accordance with Clause 21.8.5.

**21.8.4 New Valuation Statement or amendment to previously submitted Valuation Statement**

If a Signatory or Third Party has previously submitted a Valuation Statement in respect of a Financial Contract, such Signatory or Third Party may only submit a new Valuation Statement superseding such previously submitted Valuation Statement, or an amendment to such previously submitted Valuation Statement:

- (i) if such new Valuation Statement or amendment is submitted prior to the Valuation Submission Date; and
- (ii)
  - (a) if the previously submitted Valuation Statement was submitted prior to the Effective Date and the new Valuation Statement or amendment is being submitted to ensure compliance of the Close-Out Amount with the provisions of this Agreement; or
  - (b) with the consent of the Company.

**21.8.5 Company may request supplementary information**

Notwithstanding Clause 21.8.4 where, in the opinion of the Company, the information on a Valuation Statement is ambiguous, unclear or insufficient (including for the purpose of making any adjustments in accordance with Clause 21.8.3), the Company may request the relevant Signatory or Third Party to provide supplementary information and, in the absence of a satisfactory response to such a request on or before the twentieth Business Day after the request has been made, the Company may disregard such unclear or ambiguous information or treat such Valuation Statement as invalid to the extent of the insufficiency of the information, or may attribute a clarificatory meaning which shall be binding on such Signatory.

**21.9 Failure to apply the Contractual Valuation Methodology**

If the Determining Party is the Signatory or a Third Party and it fails to determine the Close-Out Amount or a Contribution to Determination in accordance with the Contractual Valuation Methodology, the Company shall, subject to Clause 22.1, determine the Close-Out Amount or the Contribution to Determination in respect of such Financial Contract in accordance with the Contractual Valuation Methodology as if it were the Determining Party. In such circumstances, the Company's determination shall prevail over any determination that the Signatory or a Third

Party has made, even if it purports to be in compliance with the Contractual Valuation Methodology. For the avoidance of doubt, the Contractual Valuation Methodology shall be applied by the Company as if the Contractual Determining Party were still the Signatory or a Third Party.

## **21.10 Unclear or ambiguous Contractual Valuation Provision**

### **21.10.1 The Company as Determining Party**

Where the Determining Party is the Company and the Company determines that the Contractual Valuation Provision in respect of a Financial Contract is unclear, ambiguous or incapable of strict compliance due to a technicality, the Company shall: (i) determine the modifications to the Contractual Valuation Provision to the extent (and only to the extent) as are necessary or desirable to eliminate such uncertainty, ambiguity or incapacity; and (ii) Notify the relevant Signatory of such modifications (which may be in the Net Contractual Position Statement). If the Company has not received a Notice from the Signatory that it objects to such modifications by 5.00 p.m. in London on the tenth Business Day following the day on which the Company Notifies such Signatory of such modifications, the Signatory shall be deemed to have accepted such modifications to the Contractual Valuation Provision. If the Company receives a Notice from the Signatory that it objects to such modifications before 5.00 p.m. in London on the tenth Business Day following the day on which the Company Notifies such Signatory of such modifications, subject to Clause 21.10.3, the Company and the Signatory may agree such modifications to the Contractual Valuation Provision as are necessary or desirable to eliminate such uncertainty, ambiguity or incapacity, provided that such modification is not, in the opinion of the Company, materially prejudicial to the interests of other Signatories as a whole or the unsecured creditors of the Company as a whole.

### **21.10.2 Signatory or Third Party as Determining Party**

Subject to Clause 21.10.3, where the Company determines that the Contractual Valuation Provision in respect of a Financial Contract is unclear or ambiguous or incapable of strict compliance due to a technicality, such that the Company is unable to determine whether the Signatory or a Third Party has determined the Close-Out Amount or a Contribution to Determination in accordance with such Contractual Valuation Methodology, the Company and the Signatory or that Third Party may agree such modifications to the Contractual Valuation Provision as are necessary or desirable to eliminate such uncertainty, ambiguity or incapacity, provided that such modification is not, in the opinion of the Company, materially prejudicial to the interests of other Signatories as a whole or the unsecured creditors of the Company as a whole.

### **21.10.3 Inability to agree modifications**

If the Company determines that it cannot agree with the Signatory or a Third Party to such modifications to the Contractual Valuation Provision, the Company shall be deemed to be the Determining Party and shall determine the Close-Out Amount in respect of that Financial Contract in accordance with the Fallback Valuation Methodology. In such circumstances, the Company's determination shall prevail over any determination made by the Signatory or a Third Party, whether or not it complies with the Contractual Valuation Methodology.

## **22 Agreed Valuation Methodology**

### **22.1 Circumstances where Agreed Valuation Methodology may be applicable**

**22.1.1** Where the Company is the Determining Party in respect of a Financial Contract (including, for the avoidance of doubt, where the Company is deemed to be the Determining Party pursuant to Clause 21.9) and the Contractual Valuation Methodology would otherwise apply but the Company determines that it is not reasonably practicable for it to calculate such Close-Out Amount in accordance with the Contractual Valuation Methodology, the Company shall Notify the Signatory of this determination.

**22.1.2** If the Company has not received a Notice from the Signatory that it objects to the determination under Clause 22.1.1 by 5.00 p.m. in London on the tenth Business Day following the day on which the Company Notifies the Signatory of such determination (the "**Fallback Notification Date**"), the Signatory shall be deemed to have accepted such determination and the Company shall determine the Close-Out Amount in respect of the relevant Financial Contract in accordance with the Fallback Valuation Methodology.

**22.1.3** If the Company receives a Notice from the Signatory that it objects to the determination under Clause 22.1.1 before 5.00 p.m. in London on the tenth Business Day following the day on which the Company Notifies the Signatory of such determination, the Company and the Signatory may:

- (i) agree an alternative valuation methodology for determining the Close-Out Amount in respect of that Financial Contract; or
- (ii) agree a Close-Out Amount for that Financial Contract,

provided that such alternative valuation methodology or agreed Close-Out Amount (each an "**Agreed Valuation Methodology**") complies with the Overriding Valuation Provisions and such Agreed Valuation Methodology is not materially prejudicial to the interests of other Signatories as a whole or the unsecured creditors of the Company as a whole.

### **22.2 Determination of the Agreed Valuation Methodology**

If the Company agrees with the Signatory on the Agreed Valuation Methodology, the Company shall determine the Close-Out Amount in respect of the relevant Financial Contract in accordance with the Agreed Valuation Methodology.

### **22.3 Failure to reach an Agreed Valuation Methodology**

If the Company determines that it cannot agree with the Signatory on an Agreed Valuation Methodology, the Company shall: (i) Notify the Signatory of this determination; and (ii)



determine the Close-Out Amount in respect of the relevant Financial Contract in accordance with the Fallback Valuation Methodology.

## **23 Fallback Valuation Methodology**

### **23.1 Applicability of the Fallback Valuation Methodology**

Where:

- 23.1.1** a Financial Contract does not contain any Contractual Valuation Provisions;
- 23.1.2** the terms of a Financial Contract (or the terms of any Contractual Valuation Provisions that it may contain) cannot be ascertained; or
- 23.1.3** the Company determines that it is not reasonably practicable to apply the Contractual Valuation Methodology (including where the Signatory or a Third Party, having initially been the Determining Party, has failed to determine a Close-Out Amount in accordance with the Contractual Valuation Methodology and the Company is deemed to be the Determining Party pursuant to Clause 21.9) and (i) if the Signatory does not Notify the Company before 5.00 p.m. in London on the Fallback Notification Date that it objects to the determination under Clause 22.1.1; or (ii) the Company and the relevant Signatory cannot agree to an Agreed Valuation Methodology in accordance with Clause 22, then the Company shall determine the Close-Out Amount of that Financial Contract in accordance with the Fallback Valuation Methodology.

### **23.2 Lack of Contractual Valuation Provisions or governing terms of Financial Contract**

For the avoidance of doubt, for the purpose of determining whether a Financial Contract contains any Contractual Valuation Provisions or whether the terms of a Financial Contract (or the terms of any Contractual Valuation Provisions that it may contain) can be ascertained, the provisions of Clause 14 shall apply.

### **23.3 The Fallback Valuation Methodology**

- 23.3.1** The “**Fallback Valuation Methodology**” refers to the calculation of a Close-Out Amount in accordance with the Overriding Valuation Provisions, being an amount equal to:
  - (i) the Mid-Market Value; plus
  - (ii) the Unpaid Amounts owing to the Signatory; less
  - (iii) the Unpaid Amounts owing to the Company.
- 23.3.2** All determinations, valuations and calculations of the Company for the purpose of this Clause 23 shall be performed in a commercially reasonable manner.

### **23.4 Determination of the Mid-Market Value**

- 23.4.1** “**Mid-Market Value**” means, with respect to one or more Positions under a Financial Contract, a value (which may be zero) equal to the arithmetic mean of:
  - (i) one or more amounts, if any, that would be paid to the Company (expressed as a negative number) or by the Company (expressed as a positive number) in consideration for entering into a transaction between the Company and a Hypothetical Counterparty in respect of such Position or group of Positions under the Financial Contract on terms which are the same, in all material

respects, as those of the Financial Contract on the Fallback Valuation Date, other than any terms that require a payment to be made or assets to be delivered on or prior to the Fallback Valuation Date (or would have done so but for any Flawed Asset Provision); and

- (ii) one or more amounts, if any, that would be paid to the Signatory (expressed as a positive number) or by the Signatory (expressed as a negative number) in consideration for entering into a transaction between the Signatory and a Hypothetical Counterparty in respect of such Position or group of Positions under the Financial Contract on terms which are the same, in all material respects, as those of the Financial Contract on the Fallback Valuation Date, other than any terms that require a payment to be made or assets to be delivered on or prior to the Fallback Valuation Date (or would have done so but for any Flawed Asset Provision),

provided that, for the purpose of determining the Mid-Market Value, both the Company and the Signatory shall be assumed to have a creditworthiness of prime quality.

#### **23.4.2 Relevant Information for determining the Mid-Market Value**

In determining the Mid-Market Value, the Company may consider any Relevant Information, including, without limitation, one or more of the following types of information:

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties;
- (ii) market data in respect of the relevant market supplied by one or more third parties or derived from internal sources, including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads and correlations; and
- (iii) the results of the operation of any models or other pricing methodologies, including manual or automated calculations performed by the Company's personnel using existing or reinstated systems of the Company (including the use of statistical inference techniques) or the proprietary pricing models of, or information supplied by, one or more third parties selected by the Company.

#### **23.4.3 Discretions in determining the Mid-Market Value**

In determining the Mid-Market Value:

- (i) subject to the Overriding Valuation Provisions, the date and time as of which the quotations are to be obtained will be selected by the Company;
- (ii) the Company may discard values or prices where it determines appropriate in the circumstances, in particular where the Company reasonably believes that the discarded values or prices would have a distorting effect on any arithmetic mean; and
- (iii) the Company shall not be required to: (a) enter, or seek to enter, into any replacement contract(s) or transaction(s); or (b) transfer, or seek to transfer, any contract(s) or transaction(s).

### **23.5 Determination of Unpaid Amounts**

"Unpaid Amounts" owing to any party means, with respect to a Financial Contract, the aggregate of:

**23.5.1** any amounts that became payable (or that would have become payable but for any Flawed Asset Provision) to such party under the terms of such Financial Contract on or prior to the Fallback Valuation Date and which remain unpaid on such Fallback Valuation Date; and

**23.5.2** for each obligation which was (or would have been but for any Flawed Asset Provision) required to be settled by delivery of assets (the “**Unpaid Amount Deliverables**”) to such party on or prior to such Fallback Valuation Date and which has not been so settled on the Fallback Valuation Date, an amount equal to the Value of such Unpaid Amount Deliverables as at the relevant Asset Valuation Date.

**23.6** The Company shall not take any action against a Signatory to recover any outstanding Collateralised Net Financial Liability at any time.

## **24 Net Contractual Position**

### **24.1 Conversion of Close-Out Amounts into US dollars**

All Close-Out Amounts shall be denominated in US dollars. To the extent that a Close-Out Amount is denominated in a currency other than US dollars, the Company shall convert such Close-Out Amount into US dollars using the Spot Rate as of the Relevant FX Conversion Time.

### **24.2 Determining the Net Contractual Positions**

**24.2.1** If there is only one Financial Contract between the Company and a Signatory, the Close-Out Amount in respect of that Financial Contract shall be the Net Contractual Position in respect of that Signatory.

**24.2.2** Subject to Clause 24.2.3, if there is more than one Financial Contract between the Company and a Signatory, the Company shall aggregate the Close-Out Amounts in respect of those Financial Contracts. The aggregate of such Close-Out Amounts shall be the Net Contractual Position in respect of that Signatory.

**24.2.3** The Company shall not aggregate the Close-Out Amounts in respect of the Post-Administration Financial Contracts of a Signatory with Close-Out Amounts in respect of Pre-Administration Financial Contracts of that Signatory. A Signatory that has had a Post-Administration Financial Contract Transferred to it from a Transferor after the Time of Administration shall aggregate the Close-Out Amounts in respect of those Post-Administration Financial Contracts that have been Transferred to it after the Time of Administration from the same Transferor. The operation of this Clause 24.2.3 may result in a Signatory having more than one Net Contractual Position.

### **24.3 Netting agreements disregarded**

Any term in any contract between the Company and the Signatory which purports to, or which would, but for this Clause 24.3, have the effect of aggregating or setting off two or more Close-Out Amounts in a way that is inconsistent with the determination of the Net Contractual Position under this Clause 24 shall be disregarded.

### **24.4 Net Contractual Position Statement**

The Company shall, as soon as reasonably practicable following the determination of the Net Contractual Position in respect of a Signatory, provide a statement (“**Net Contractual Position Statement**”) to such Signatory showing the Net Contractual Position and the Close-Out Amount for each Financial Contract in respect of such Signatory.

## **25 Determination of Net Financial Claim and Net Financial Liability**

### **25.1 Net Financial Claim**

A Net Contractual Position in respect of a Signatory expressed as a positive number will represent an amount due and owing by the Company to that Signatory, which shall constitute an ascertained unsecured claim of that Signatory in the winding-up of the Company or any distribution of the Company's assets to its unsecured creditors (such Claim, a "**Net Financial Claim**"). For the avoidance of doubt, no interest shall accrue on any Net Financial Claim, save to the extent provided in Rule 2.88 of the Insolvency Rules.

### **25.2 Net Financial Liability**

A Net Contractual Position in respect of a Signatory expressed as a negative number will represent an amount due and owing by that Signatory to the Company. Interest shall accrue daily in respect of such amount from the Administration Date on any Gross Uncollateralised Liability and be calculated as the Net Financial Interest Amount from time to time determined in accordance with Clause 25.3. The aggregate of such amounts due and owing by the Signatory to the Company and the Net Financial Interest Amount from time to time shall constitute a debt due and payable from that Signatory to the Company (such debt, a "**Net Financial Liability**"); provided that, if the Net Financial Interest Amount would, but for the operation of this Clause 25.2, otherwise be a value expressed as a negative number, then the Net Financial Liability shall be Reduced by the absolute value of that Net Financial Interest Amount.

### **25.3 Net Financial Interest Amount**

**25.3.1** The "**Net Financial Interest Amount**", in respect of any date for which it is required to be determined (the "**Current Date**"), is an amount determined by the Company that is equal to:

- (i) the amount of Gross Uncollateralised Liability Interest due and payable on the Current Date in respect of the period from (and including) the immediately preceding Distribution Value Date [or Cut-Off Date](#) (or if none, the Administration Date; in each case, the "**Prior Date**") to (but excluding) the Current Date; less
- (ii)
  - (a) unless the Prior Date is the Administration Date, the absolute value equal to the difference between:
    - (x) the amount of Gross Uncollateralised Liability Interest that would have been due and payable on the Prior Date in respect of the period from (and including) the Administration Date to (but excluding) the Prior Date (such period, the "**Previous Period**"), determined using the Greatest Pre-Administration Admitted Client Money Amount relevant to the Prior Date; and
    - (y) the amount of Gross Uncollateralised Liability Interest that would have been due and payable on the Prior Date in respect of the Previous Period, determined using the Greatest Pre-Administration Admitted Client Money Amount relevant to the Current Date; or
  - (b) if the Prior Date is the Administration Date, zero.

**25.3.2** To determine the Net Financial Interest Amount, and in respect of each Signatory:

- (i) the “**Gross Uncollateralised Liability Interest**” shall be an amount of interest on the Gross Uncollateralised Liability calculated on a daily basis at the then prevailing Applicable Rate, from the Administration Date until the date on which such Gross Uncollateralised Liability is reduced to zero (the “**Relevant Period**”) in accordance with Part 11;
- (ii) the “**Gross Uncollateralised Liability**” on each day is an amount (subject to a minimum of zero) equal to: (a) its outstanding Net Financial Liability (excluding any Net Financial Interest Amount) on such day; less (b) the greatest amount of all its Pre-Administration Admitted Client Money Amounts (the “**Greatest Pre-Administration Admitted Client Money Amount**”) that is admitted or determined in accordance with Clause 59.2.3 during the Relevant Period; less (c): (x) for the period from the Administration Date to the date on which an Affected Intermediary Admitted Claim Amount is admitted or determined in accordance with Clause 59.4.3, such Affected Intermediary Admitted Claim Amount; and (y) thereafter, the Affected Intermediary Claim Amount from time to time during the Relevant Period; less (d) in respect of any day, the amount by which the Total Collateralisation Amount as at that day exceeds the sum of: (x) the Greatest Pre-Administration Admitted Client Money Amount (if any); and (y) the amount determined in accordance with the preceding sub-paragraph (c) (if any); and
- (iii) the “**Applicable Rate**” means a simple rate of interest equal to the lesser of (a) USD-LIBOR plus 1 per cent.; and (b) the highest rate of interest applicable to any sum due from that Signatory to the Company, where the Signatory is not the defaulting party, as specified in any Financial Contract between that Signatory and the Company.

For the avoidance of doubt, interest shall accrue daily, payable in arrear, from the Administration Date on any Gross Uncollateralised Liability notwithstanding that the relevant Greatest Pre-Administration Admitted Client Money Amount or Affected Intermediary Admitted Claim Amount is established after the Administration Date.

#### **25.4 Reduction of Net Financial Liability**

Any Reduction of Net Financial Liability shall first be deemed to Reduce the portion comprising any Net Financial Interest Amount until that has been Reduced in full, and then the portion not comprising any Net Financial Interest Amount.

#### **25.5 Collateralised Net Financial Liability**

In respect of a Signatory who has made a Collateralisation Election, the element of the Net Financial Liability comprising the Net Financial Interest Amount shall be deemed attributed to the Uncollateralised Net Financial Liability, unless the Net Financial Interest Amount exceeds the Uncollateralised Net Financial Liability, in which case such excess portion of the Net Financial Interest Amount shall be deemed attributed to the Collateralised Net Financial Liability.

## PART 8: RETENTION AMOUNTS

### 26 Retention Claims and Retention Creditors

#### 26.1 Retention Claims

A “**Retention Claim**” in respect of a Signatory is a Claim of a person:

- 26.1.1 who is a Security Interest Claimant in respect of a Security Interest over Assets in respect of which the Signatory is the Pledgor; and
- 26.1.2 to whom the Company is under a fiduciary obligation to account for the Liabilities of such Signatory due and owing to that person out of the Trust Assets by reason of such Security Interest.

#### 26.2 Retention Creditors

A person who has a Retention Claim is a “**Retention Creditor**”.

### 27 Identification of Trust Assets subject to Retention Claim

The Company shall use its reasonable endeavours to identify, in respect of each Signatory, any Retention Claim according to the Relevant Information and any other information provided to the Company from time to time (including, for the avoidance of doubt, information provided to the Company by a Signatory, a Retention Creditor or a competent court) until such time (the “**Retention Claim Identification Cut-Off Time**”) as: (i) the Company in its absolute discretion determines that it does not expect to identify any (or any further) Retention Claims in respect of such Signatory; or (ii) a Court confirms that the Company is at liberty to make Distributions and Appropriations of Distributable Trust Assets [or Reduced Gross Distributions](#) to the Signatory without regard to Retention Claims that have not yet been identified or resolved. The Company may postpone a Retention Claim Identification Cut-Off Time determined under limb (i) above if that test ceases to be correct.

### 28 Determination of Retention Amount

#### 28.1 Retention Amount

The “**Retention Amount**”, in respect of a Signatory, from time to time, is equal to the aggregate of one or more of the following:

- 28.1.1 all amounts determined by a competent court, whose rulings are binding upon the Company and which are not then subject to appeal, as being Liabilities of the Signatory due and owing to a Retention Creditor which are secured by Trust Assets (the “**Judgment Amounts**”);
- 28.1.2 if not represented by a Judgment Amount, all amounts agreed between the relevant Signatory and a Retention Creditor as being Liabilities of the Signatory due and owing to such Retention Creditor which are secured by Trust Assets (the “**Agreed Amounts**”); and
- 28.1.3 all amounts as alleged by a Retention Creditor to be the total Liabilities of the Signatory due and owing to such Retention Creditor which are secured by Trust Assets which, at such time, have not been (i) agreed with the relevant Signatory; or (ii) determined by a competent court whose rulings are binding upon the Company and which are not then subject to appeal (the “**Alleged Amounts**”),

(any Judgment Amount, Agreed Amount or Alleged Amount, a “**Retention Claim Amount**”). Solely for the purpose of calculating the Retention Amount, a Retention Claim Amount denominated in a currency other than US dollars shall be converted into US dollars using the Spot Rate as of the Relevant FX Conversion Time.

## **28.2 Timing of determination**

The Company shall determine the Retention Amount of each Signatory:

**28.2.1** as soon as reasonably practicable following the Retention Claim Identification Cut-Off Time in respect of such Signatory;

**28.2.2** in relation to a Signatory falling within Clause 28.2.1, as soon as reasonably practicable following:

- (i) the Company being notified of any additional Retention Claim not previously identified in respect of such Signatory; and
- (ii) the Company being notified that an Alleged Amount has become a Judgment Amount or an Agreed Amount; and

**28.2.3** on each Distribution Value Date [and each Cut-Off Date](#) with respect to such Signatory.

## **29 Unfunded Retention Amount and Funded Retention Amount**

### **29.1 Unfunded Retention Amount**

In respect of each Signatory, the amount of Retention Amount determined by the Company as soon as reasonably practicable following the Retention Claim Identification Cut-Off Time shall notionally be designated as the “**Unfunded Retention Amount**”. Once established, an Unfunded Retention Amount shall only be: (i) decreased following a Reduction of the Unfunded Retention Amount in accordance with Clause 55.4 together with a corresponding increase of the Funded Retention Amount in accordance with Clause 29.2; or (ii) increased or decreased following a change in the Retention Amount in accordance with Clause 29.3, Clause 29.4 or Clause 29.5.

### **29.2 Conversion of Unfunded Retention Amount to Funded Retention Amount**

**29.2.1** On each occasion on which the Unfunded Retention Amount is Reduced in accordance with Clause 55.4, the Funded Retention Amount in respect of each currency in which any Retention Claim Amount is denominated shall be increased by an amount equal to a portion of such Reduction (where the Unfunded Retention Amount is Reduced by an Appropriation of Securities, after deducting any costs and expenses relating to the realisation of such Securities), converted into such currency using the Spot Rate as of the Relevant FX Conversion Time, pro rata to the Unfunded Retention Amount Component in respect of such currency relative to the Unfunded Retention Amount (immediately before such Reduction).

**29.2.2** Once established, a Funded Retention Amount shall only be: (i) increased together with a corresponding Reduction of the Unfunded Retention Amount in accordance with this Clause 29.2; or (ii) increased or decreased in accordance with Clause 29.5 and Clause 30.

### **29.3 Changes in Retention Amount due to exchange rate fluctuation**

At any time when, and to the extent that, there is an increase or decrease in the Retention Amount as determined by the Company which is due to the fluctuation of the exchange rate of the currency in which a Retention Claim Amount is denominated, the Unfunded Retention Amount shall correspondingly be increased or decreased by an amount equal to a portion of such increase or decrease (as applicable) pro rata to the Unfunded Retention Amount relative to the Retention Amount (immediately before such increase or decrease).

### **29.4 Increase in Retention Amount otherwise than due to exchange rate fluctuation**

At any time when, and to the extent that, there is an increase in the Retention Amount as determined by the Company which is not due to the fluctuation of the exchange rate of the currency in which a Retention Claim Amount is denominated, the Unfunded Retention Amount shall be increased by the same amount.

### **29.5 Decrease in Retention Amount otherwise than due to exchange rate fluctuation**

At any time when, and to the extent that, there is a decrease in the Retention Amount as determined by the Company (the amount of such decrease, denominated in US dollars, the “**Retention Decrease Amount**”) which is due to a decrease of the aggregate Retention Claim Amount denominated in a currency (the “**Relevant Currency**”) for reasons other than: (i) the fluctuation of the exchange rate of the Relevant Currency against the US dollar; or (ii) payment to a Retention Creditor:

**29.5.1** the Unfunded Retention Amount Component in respect of the Relevant Currency shall be decreased by an amount equal to the lesser of (a) the Retention Decrease Amount and (b) such Unfunded Retention Amount Component; and

**29.5.2** if there is any surplus of the Retention Decrease Amount over the Unfunded Retention Amount Component in respect of the Relevant Currency (immediately prior to the most recent determination of the Retention Amount), the Funded Retention Amount in respect of the Relevant Currency shall be decreased by an amount equal to such surplus, and:

- (i) in the case where the surplus is less than the remaining Unfunded Retention Amount (immediately after the decrease in accordance with Clause 29.5.1):
  - (a) the Unfunded Retention Amount Component in respect of each currency other than the Relevant Currency shall be decreased in an amount equal to a portion of such surplus pro rata to the Unfunded Retention Amount Component in respect of such currency relative to the remaining Unfunded Retention Amount; and
  - (b) the Funded Retention Amount in respect of each currency other than the Relevant Currency shall be increased by an amount equal to the reduction of the Unfunded Retention Amount Component in respect of such currency converted into such currency using the Spot Rate as of the Relevant FX Conversion Time; or
- (ii) in the case where the surplus is equal to or greater than the remaining Unfunded Retention Amount (immediately after the decrease in accordance with Clause 29.5.1):



- (iii) the Unfunded Retention Amount shall be decreased to zero;
  - (a) the Funded Retention Amount in respect of each currency other than the Relevant Currency shall be increased to the aggregate Retention Claim Amount denominated in such currency; and
  - (b) such excess surplus (if any) shall, if such surplus is not attributable to a Funded Retention Amount arising from a Reduced Gross Distribution, be deemed to form part of the Distributable Trust Assets to be Allocated to such Signatory on its next Allocation Date ~~(such Allocation~~ or shall, if such surplus is attributable to a Funded Retention Amount arising from a Reduced Gross Distribution, be distributed or Appropriated, as applicable, together with the next Reduced Gross Distribution to be determined, or if no further Reduced Gross Distribution is expected as soon as reasonably practical after such excess surplus is determined (such Allocation or determination, as relevant, a “Retention Allocation”).

## **29.6 No interest on Funded Retention Amount**

The Company shall have no obligation to account to any Retention Creditor or any Signatory for any interest accruing from time to time on the Funded Retention Amount, which may be retained by the Company absolutely for its own account.

## **30 Payment to Retention Creditor**

### **30.1 Decrease in Funded Retention Amount**

A Funded Retention Amount shall only be decreased: (i) in accordance with Clause 29; or (ii) by a payment to a Retention Creditor in accordance with this Clause 30. The Company shall have no responsibility to ensure that any Retention Creditor applies any amount so received for any particular purpose.

### **30.2 In respect of a Funded Retention Amount**

#### **30.2.1 One Retention Claim in respect of a Funded Retention Amount**

If the Company is only aware of one Retention Claim in respect of a Funded Retention Amount which has not been discharged in full, the Company may only make a payment (denominated in the Relevant Currency) up to an amount equal to the relevant Funded Retention Amount to the relevant Retention Creditor to discharge the Retention Claim in full or in part, provided that the Retention Claim is not in respect of an Alleged Amount.

#### **30.2.2 Multiple Retention Claims in respect of a Funded Retention Amount**

If the Company is aware of more than one Retention Claim in respect of a Funded Retention Amount which has not been discharged in full:

- (i) if none of the Retention Claims is in respect of an Alleged Amount, the Company may make a payment (denominated in each Relevant Currency, respectively) to discharge each such Retention Claim (a) in full, if such Funded Retention Amount is greater than or equal to the aggregate Retention Amounts denominated in the Relevant Currency (converted into the Relevant Currency using the Spot Rate as of the Relevant FX Conversion Time) or (b) in part, pro rata to their respective Agreed Amounts or Judgment Amounts, as applicable, if such Funded Retention Amount is less than the aggregate Retention Amounts

denominated in the Relevant Currency (converted into the Relevant Currency using the Spot Rate as of the Relevant FX Conversion Time); and

- (ii) if at least one of the Retention Claims is in respect of an Alleged Amount, the Company may only make a payment (denominated in each Relevant Currency, respectively) from any excess of the Funded Retention Amount above the aggregate amount of all such Alleged Amounts denominated in the Relevant Currency, to discharge each such Retention Claim which is not in respect of an Alleged Amount: (a) in full, if the amount of such excess is greater than or equal to the aggregate of the Judgment Amounts and/or Agreed Amounts denominated in the Relevant Currency; or (b) in part, pro rata to their respective Judgment Amounts or Agreed Amounts, as applicable, if the amount of such excess is less than the aggregate of the Judgment Amounts and/or Agreed Amounts denominated in the Relevant Currency.

### **30.3 An order of a Court of competent jurisdiction**

After making such adjustments to the Unfunded Retention Amount and Funded Retention Amount in accordance with Clause 29.5, the Company may make a payment (denominated in each Relevant Currency, respectively) to discharge each Retention Claim in respect of each Funded Retention Amount of which the Company is aware: (i) in full, if the relevant Funded Retention Amount is greater than or equal to the aggregate of the Judgment Amounts and/or Agreed Amounts denominated in the Relevant Currency; or (ii) otherwise, in part, pro rata to their respective Agreed Amounts or Judgment Amounts, as applicable (unless there is a legally binding order of priorities in relation to such Retention Claims that is different, in which case such legally binding order of priorities shall apply).

### **30.4 No payments in discharge of Alleged Amounts**

The Company shall not make a payment at any time to discharge a Retention Claim in respect of an Alleged Amount.

## **31 Appropriation for Reduction of Unfunded Retention Amount**

### **31.1 Realisation of Securities**

Any Assets that are Appropriated to Reduce any Unfunded Retention Amount under Clause 60 shall be realised for cash (if not already in cash) by the Company as soon as reasonably practicable following such Appropriation, provided that the Signatory shall be first given the option to purchase such Securities for a purchase price equal to the Value of such Securities as at the relevant Distribution Value Date. For the purpose of this Clause 31.1, the Company shall not take into account the proceeds of sale of such Security to such Signatory in applying Clause 17.1.1 of the Asset Valuation Methodology.

### **31.2 Conversion into the currency denomination of the Funded Retention Amount**

If: (i) the realisation proceeds of the Appropriated Securities; or (ii) any Appropriated Assets which comprise cash or Reduced Gross Distributions that are Appropriated, are not denominated in the currency of the relevant Funded Retention Amount which shall be increased in accordance with Clause 29.2, then the Company shall convert such proceeds or Assets or Reduced Gross Distribution (as applicable) into such currency at the actual rate of exchange available to the Company at the time of receipt of such proceeds or Assets or Reduced Gross Distribution (as applicable).

## **32 Parallel Debt**

### **32.1 Payment of debt by Signatory**

Each Signatory hereby irrevocably and unconditionally undertakes to pay to the Company amounts equal to any Retention Claim Amount.

### **32.2 Corresponding Debt and Parallel Debt**

Each Signatory and the Company acknowledge that the obligations of each Signatory under this Clause 32 are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of that Signatory to any Retention Creditor in respect of any Retention Claim (its “**Corresponding Debt**”) nor shall the amounts for which each Signatory is liable under this Clause 32 (its “**Parallel Debt**”) be limited or affected in any way by its Corresponding Debt provided that:

**32.2.1** the Parallel Debt of each Signatory shall be decreased to the extent that its Corresponding Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and

**32.2.2** the amount of the Parallel Debt of a Signatory shall at all times be equal to the amount of its Corresponding Debt.

### **32.3 Company not a trustee**

For the purpose of this Clause 32, the Company acts in its own name and not as a trustee, and its Claims in respect of the Parallel Debt shall not be held on trust.

## **PART 9: NON-FINANCIAL CONTRACT LIABILITIES**

### **33 Non-Financial Contract Liabilities**

#### **33.1 Meaning of Non-Financial Contract Liabilities**

The Non-Financial Contract Liabilities of a Signatory are all its outstanding Liabilities to the Company, whether arising under this Agreement or otherwise, but excluding:

33.1.1 Net Financial Liability;

33.1.2 Costs Amount; and

33.1.3 Unfunded Retention Amount.

#### **33.2 Ascertained Non-Financial Contract Liabilities**

The Company shall: (i) determine from time to time whether there are any Non-Financial Contract Liabilities in respect of each Signatory; and (ii) as soon as reasonably practicable thereafter, determine or otherwise ascertain whether such Non-Financial Contract Liabilities comprise an obligation to pay an ascertained amount of money that is due and payable. Non-Financial Contract Liabilities that have been so determined or ascertained shall be the “**Ascertained Non-Financial Contract Liabilities**” in respect of the relevant Signatory.

#### **33.3 Conversion of Ascertained Non-Financial Contract Liabilities into US dollars**

For the purpose of Part 11, Ascertained Non-Financial Contract Liabilities shall be denominated in US dollars. To the extent that any Ascertained Non-Financial Contract Liabilities are denominated in a currency other than US dollars, the Company shall convert such Ascertained Non-Financial Contract Liabilities into US dollars using the Spot Rate as of the Relevant FX Conversion Time. For the avoidance of doubt, the conversion of such Ascertained Non-Financial Contract Liabilities into US dollars for the purpose of Part 11 shall not prejudice any of the Company's rights to take any action against the Signatory outside this Agreement in respect of any Non-Financial Contract Liabilities denominated in their Original Currency.

#### **33.4 Certain Non-Financial Contract Liabilities**

Non-Financial Contract Liabilities shall include, without limitation, any of the following:

33.4.1 any amounts payable from a Signatory to the Company arising from a Claim for damages made by the Company against the Signatory for breach of any Representation and Warranty or failure to comply with any Undertaking;

33.4.2 any Antecedent Transaction Liabilities;

33.4.3 the value of the relevant benefits which have been received by or on behalf of that Signatory in excess of its Net Financial Claim, Asset Shortfall Claim or Ascertained Claim as set out in Clause 7.3, except to the extent of that Signatory's receipts under any Third Party Obligation;

33.4.4 the excess described in Clause 7.4, without prejudice to Clause 63.7; and

33.4.5 any costs and expenses incurred by the Company as a result of a Signatory's failure to make a Payment as set out in Clause 55.4.2.

### 33.5 Limited Ascertained Non-Financial Contract Liabilities

Where a TA Signatory's Ascertained Non-Financial Contract Liabilities include any amount arising from the Antecedent Transaction Liabilities, the Company shall exclude such Antecedent Transaction Liabilities from the Ascertained Non-Financial Contract Liabilities (the Ascertained Non-Financial Contract Liabilities following such exclusion, the "**Limited Ascertained Non-Financial Contract Liabilities**") for the purpose of Appropriation of such TA Signatory's Net Financial Claim to reduce any Ascertained Non-Financial Contract Liabilities under ~~Clause 60.1~~[Clauses 60.1 and 60.9](#).

## PART 10: ALLOCATION OF ASSETS AND ASSET SHORTFALL CLAIM

This Part 10 only applies in relation to Assets other than Trust Financial Assets. Part 4 (*Common Terms Distributions out of Omnibus Trust*) and part 2 (*Entitlement to Common Terms Claims and release of other Legal Claims*) of the Common Terms set out the relevant provisions that apply in relation to the distribution of Trust Financial Assets. For the purposes of this Agreement LBI shall be deemed not to be an Affected Intermediary, except in respect of Clause 34.2.2 and Stock Lines determined in accordance with Clause 34.2.2 will not include any LBI Assets.

### 34 General principles

#### 34.1 Allocation of Distributable Trust Assets

The Company shall allocate Distributable Trust Assets by identifying them in the Books and Records of the Company as belonging to a particular Stock Line and, where applicable, a particular Asset Pool, and being available in due course for Appropriation or Distribution in relation to the Asset Claim of a particular Signatory, in accordance with this Part 10 for the purpose of determining: (i) the Appropriation and/or Distribution of such Distributable Trust Assets to the Company or, as the case may be, such Signatory under Part 11; and (ii) the Asset Shortfall Claim of such Signatory in relation to such Distributable Trust Assets (such an allocation for this purpose, an “**Allocation**” and “**Allocate**”, “**Allocated**”, “**Unallocated**” and “**Allocating**” shall be construed accordingly).

#### 34.2 Stock Lines

**34.2.1** Subject to Clause 34.2.2, a “**Stock Line**” means a group of fungible Securities, often identified by a unique ISIN or CUSIP number and, in relation to the Asset of an Asset Pool, includes all Derived Assets of such a group of fungible Securities.

**34.2.2** Where a group of fungible Securities is held through more than one Intermediary and one or more of those Intermediaries is an Affected Intermediary, the portion of fungible Securities that is held through each Affected Intermediary shall be deemed to form a separate Stock Line.

**34.2.3** Where a group of fungible Securities is deemed to form more than one Stock Line in accordance with Clause 34.2.2 and the Relevant Information available to the Company at such time is not sufficiently adequate or reliable for the Company to Identify the Stock Line(s) in respect of an amount of Asset that is subject to a particular Asset Claim, then the Assets that are subject to such Asset Claim shall be apportioned between each of such Stock Lines pro rata to the amount of Distributable Trust Assets that have been Identified by the Company in respect of such Stock Lines at such time.

#### 34.3 Allocation on a Stock Line-by-Stock Line basis

The Company shall determine the Allocation of Distributable Trust Assets following the Bar Date on a Stock Line-by-Stock Line basis. Stock Lines shall be chosen by the Company in its absolute discretion in such order as it sees fit.

#### 34.4 Reallocation following the receipt of new Relevant Information

If the Company receives or otherwise becomes aware of any new Relevant Information that relates to an Asset Claim in respect of a Stock Line or an Asset Pool (as applicable) after any determination in relation to Allocation has been made by the Company in respect of such Stock

Line or Asset Pool, the Company shall redetermine the Allocation in respect of such Stock Line or Asset Pool in accordance with Clause 50.

#### **34.5 Affected Intermediary and Affected Stock Lines**

An Intermediary is an “**Affected Intermediary**” if it is required or permitted by any applicable law to return Trust Assets comprising more than one Stock Line (each, an “**Affected Stock Line**”) to the Company, or to the Company on behalf of other people, on the basis that the aggregate of any shortfall in respect of each Affected Stock Line shall be borne by all people having an Asset Claim to any of the Affected Stock Lines (each, an “**Affected Claimant**”) pro rata to: (i) their Asset Claims to all Affected Stock Lines held through that Affected Intermediary (an “**Asset Claim Intermediary**”); or (ii) any other Claims of (or derived from) such Affected Claimants against the Affected Intermediary, as determined by, or on behalf of, such Affected Intermediary (a “**Net Equity Intermediary**”).

#### **34.6 Affected Stock Line**

Clause 40, Clause 41 and Clause 42 shall not apply in respect of an Affected Stock Line.

#### **34.7 Maximum Allocation**

The aggregate Allocation of Assets in respect of an Asset Pool to any Asset Pool Signatory under this Part 10 shall not be greater than the maximum of its TA Claimant Amount, without prejudice to Clause 63.7.

### **35 Identification of Distributable Trust Assets for each Stock Line**

In respect of each Stock Line, the Company shall determine:

- (i) whether an Asset comprises Trust Assets;
- (ii) whether any Trust Assets comprise Distributable Trust Assets by reference to the definition of “Trust Assets” and “Distributable Trust Assets”, including whether such Assets have been located or identified; and
- (iii) the Asset Pool or Asset Pools into which each Stock Line falls.

The process of any such determination in relation to a Stock Line is referred to as the “**Identification**” of the Distributable Trust Assets relating to that Stock Line, and “**Identified**” and “**Identify**” shall be construed accordingly.

### **36 Individual Claim Amount, Net Equity Amount and TA Claimant Amount**

#### **36.1 Individual Claim Amount**

The Company shall determine the amount (i.e. number) of Assets in a Stock Line which are the subject of an Asset Claim based on the Relevant Information available to the Company at the time of such determination (in respect of each person having an Asset Claim and in respect of each Stock Line, its “**Individual Claim Amount**”).

#### **36.2 Net Equity Amount**

The Company shall determine the Net Equity Amount of each Affected Claimant in respect of a Net Equity Intermediary once it has received sufficient information from the relevant Net Equity Intermediary in order to do so. The “**Net Equity Amount**” for each such Affected Claimant is the amount of the Claims of (or derived from) the Affected Claimant against the Net Equity

Intermediary that the Net Equity Intermediary recognises or acknowledges for the purpose of quantifying that Affected Claimant's Asset Claim in respect of Trust Assets held by such Net Equity Intermediary. If the Company determines that it cannot determine the Net Equity Amount for all Affected Claimants in respect of a Net Equity Intermediary, then no further Allocation shall be made in respect of any Distributable Trust Assets returned to the Company from such Net Equity Intermediary unless:

- 36.2.1** the Company is subject to an order made by a court of competent jurisdiction, which:
- (i) requires the Company to make an Allocation in respect of such Distributable Trust Assets;
  - (ii) determines the entitlements of TA Claimants to the relevant Distributable Trust Assets; or
  - (iii) permits the Company to make an Allocation, Distribution or Appropriation in respect of such Distributable Trust Assets without incurring a liability to the TA Claimants in doing so,
- provided that either:
- (a) the order is not capable of being appealed; or
  - (b) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought);
- 36.2.2** the proposed Allocation has been agreed between: (i) the Company; and (ii) each Affected Claimant in relation to such Net Equity Intermediary; or
- 36.2.3** this Agreement has been modified in accordance with Clause 80 to provide for an alternative method of Allocation which takes into account such insufficiency of information.

### **36.3 TA Claimant Amount**

**"TA Claimant Amount"** means:

- 36.3.1** in relation to: (i) a Stock Line which is not an Affected Stock Line; or (ii) an Affected Stock Line in respect of an Asset Claim Intermediary, an Individual Claim Amount; and
- 36.3.2** in relation to a Net Equity Intermediary, a Net Equity Amount.

### **36.4 Asset Claims of Non-Signatories**

Where a Non-Signatory asserts an Asset Claim on a Stock Line, the Company may, in its absolute discretion based on its own Books and Records, disregard such Asset Claim in whole or part if the Company determines that such Non-Signatory has no Asset Claim to such Stock Line or if the Company considers that an Asset Claim to such Stock Line has been overstated.

### **36.5 Claim Amount Notice**

As soon as reasonably practicable after determining: (i) all the Individual Claim Amounts in respect of a Stock Line; or (ii) all the Net Equity Amounts in respect of a Net Equity Intermediary, the Company shall send a Notice (a **"Claim Amount Notice"**) to:

- 36.5.1** each person whom the Company determines as having an Asset Claim to such Stock Line or Asset Pool, specifying its TA Claimant Amount; and



- 36.5.2** each person who alleges to the Company (in its information provided via the Portal, or through other means of communication) that it has an Asset Claim with respect to the relevant Stock Line but for whom the Company determines that it does not have an Asset Claim with respect to such Stock Line, specifying a TA Claimant Amount of zero.

The Company may provide a TA Signatory's TA Claimant Amount by uploading such information onto the Portal of such Signatory and such provision of information via the Portal shall be deemed to be a Claim Amount Notice to such TA Signatory.

## **37 Determination of Intermediary Distribution Value**

### **37.1 Intermediary Distribution Notice**

As soon as reasonably practicable and in no event later than 20 Business Days after receiving an Intermediary Distribution (where a Signatory receives an Intermediary Distribution after its Accession Date), or within twenty Business Days of its Accession Date (where a Signatory has received an Intermediary Distribution prior to its Accession Date), the relevant Asset Pool Signatory shall send a Notice (an **"Intermediary Distribution Notice"**) to the Company specifying:

**37.1.1** the date on which it has received the Intermediary Distribution;

**37.1.2** the Asset Claim to which such Intermediary Distribution relates; and

**37.1.3** information on the composition of the Intermediary Distribution in reasonable detail, including:

- (i) the identity and number of Securities (where such Intermediary Distribution comprises delivery of Securities);
- (ii) the amount of money (where such Intermediary Distribution comprises payment of money); and/or
- (iii) the amount of Liability owed by such Signatory to the relevant Intermediary that has been set off (where such Intermediary Distribution comprises a set-off of Liabilities between such Signatory and the relevant Intermediary).

### **37.2 Company may request further information**

Where the information in an Intermediary Distribution Notice of an Asset Pool Signatory is ambiguous, unclear or insufficient, the Company may request in writing that the relevant Signatory provides supplementary information and, in the absence of a satisfactory response to such request within 10 Business Days of its receipt, the Company may disregard such unclear or ambiguous information or may, in a commercially reasonable manner, attribute a clarificatory meaning which shall be binding on all Signatories.

### **37.3 Intermediary Distribution Value**

As soon as reasonably practicable after the Company receives an Intermediary Distribution Notice from an Asset Pool Signatory, the Company shall: (i) determine the Value of each Intermediary Distribution as at the date on which such Intermediary Distribution was received by the Signatory (the **"Intermediary Distribution Value"**); and (ii) send a Notice (the **"Intermediary Distribution Value Notice"**) to such Asset Pool Signatory notifying it of the Intermediary Distribution Value as determined by the Company.

## **38 Dispute between a TA Signatory and a Net Equity Intermediary**

### **38.1 Information about Net Equity Amount**

The Company shall use reasonable endeavours to provide a TA Signatory with the relevant information received from the Net Equity Intermediary which the Company takes into account in determining the Net Equity Amount.

### **38.2 Challenge by TA Signatory of Intermediary determination**

If a TA Signatory Notifies the Company that it wishes to challenge: (i) the accuracy of any information provided to it in accordance with Clause 38.1; or (ii) any other determination by the Net Equity Intermediary in connection with its Asset Claim, and it requests the Company's assistance in connection with such challenge, the Company shall, subject to Clause 38.3, use reasonable endeavours to assist such TA Signatory in making such challenge, including towards establishing a direct line of communication between the TA Signatory and the Net Equity Intermediary in order to enable the difference to be resolved directly.

### **38.3 Conditions to assistance from Company**

The Company shall not take any action to assist a TA Signatory under Clause 38.2 unless:

- 38.3.1** the Company has received a clear and unambiguous request from a TA Signatory in relation to such action;
- 38.3.2** the Company has been indemnified to its satisfaction against any loss, Liability, cost, Claim, action, demand or expense which may be incurred or made against it in connection with such action. The Company shall exercise its discretion in respect of these matters as it sees fit having regard to the interests of the creditors of the Company as a whole; and
- 38.3.3** the Company has determined that it is reasonably practicable for the Company to take such action.

### **38.4 Limit to Company's duties**

The Company shall not be required to take any other action in relation to a challenge by a TA Signatory of the determination of a Net Equity Amount by a Net Equity Intermediary.

## **39 Dispute over the TA Claimant Amount or the Intermediary Distribution Value**

### **39.1 Alleged TA Claimant Amount**

If a TA Signatory who has received a Claim Amount Notice, but not a related Dispute Trigger Notice, disagrees with its Individual Claim Amount specified in such Claim Amount Notice, it must Notify the Company by way of a written Notice (the "Counterclaim Notice") to be received by the Company on or before 5.00 p.m. (London time) on the Counterclaim Notice Deadline specifying its Alleged TA Claimant Amount. Notwithstanding any provisions to the contrary in Part 16, if a TA Signatory submits a Counterclaim Notice and subsequently issues a Dispute Notice in relation to the relevant Claim Amount Notice, it may not specify an Alleged TA Claimant Amount higher than the amount specified in the Counterclaim Notice.

Any TA Signatory who fails to serve a Counterclaim Notice within the time period specified within this Agreement (except where Clause 67.4 applies) shall be deemed to have accepted the Individual Claim Amount specified in the relevant Claim Amount Notice and to have given up any rights of objection or Dispute in relation to the same, whether under this Agreement or

otherwise. No subsequent Dispute may be raised by the TA Signatory in respect of that Claim Amount Notice if it does not serve a Counterclaim Notice in respect of that Claim Amount Notice, except where Clause 67.4 applies.

### **39.2 Suspension of Allocation**

No Distributable Trust Assets of a Stock Line or an Asset Pool (as applicable) will be Allocated to a Signatory until any Dispute over its Individual Claim Amount or Intermediary Distribution Value in respect of that Stock Line, or, in the case of a Multiple Stock Line Pool, all Disputes over all of its TA Claimant Amounts or Intermediary Distribution Values in respect of that Multiple Stock Line Pool, is or are resolved.

### **39.3 TA Claimant Amount or Intermediary Distribution Value following the resolution of a Dispute**

Following the final resolution of a Dispute between the Company and a Signatory relating to a TA Claimant Amount or an Intermediary Distribution Value, the amount so settled as a result of the resolution of the Dispute shall become the TA Claimant Amount or the Intermediary Distribution Value (as applicable).

## **40 Identification of Stock Lines with potential shortfall**

As soon as reasonably practicable after: (i) all of the Individual Claim Amounts or Alleged Individual Claim Amounts to a Stock Line that is not an Affected Stock Line have been determined; and (ii) such time when the Company determines that it does not expect to Identify any further Distributable Trust Assets in respect of such Stock Line, the Company shall compare:

- (a) the amount of Distributable Trust Assets Identified in respect of such Stock Line; and
- (b) the sum of each Individual Claim Amount or, if applicable, Alleged Individual Claim Amount in respect of that Stock Line (such sum, the “**Total Claim Amount**”).

## **41 Allocation for Stock Line with no potential shortfall**

For each Stock Line that is not an Affected Stock Line in respect of which the amount of Distributable Trust Assets Identified is greater than or equal to the Total Claim Amount:

- (i) subject to Clause 39.2, the Company shall Allocate to each Signatory with an Asset Claim to such Stock Line an amount of Distributable Trust Assets (each, an “**Allocation Amount**”) equal to its Individual Claim Amount, less the sum of: (a) any Intermediary Distribution Value; and (b) any Recoverable Delivery Value, in each case converted into an amount of Securities of the relevant Stock Line based on the Value of such Securities as at the Date Before Administration; and
- (ii) the remainder of this Part 10 shall not apply in respect of that Stock Line, other than Clause 50, which shall apply.

## **42 Allocation for Stock Line with potential shortfall**

For each Stock Line in respect of which the amount of Distributable Trust Assets Identified is less than the Total Claim Amount of such Stock Line and that is not an Affected Stock Line, the Company shall proceed to determine the Asset Pool in which the Distributable Trust Assets belong, and the remainder of this Part 10 shall apply.

## **43 Identification of Distributable Trust Assets into Asset Pools**

### **43.1 Asset Pools**

**43.1.1** The Company shall Identify the Distributable Trust Assets that comprise the Assets in each Asset Pool for each Stock Line falling within Clause 42. All Distributable Trust Assets of each such Stock Line shall be divided into one of two pools:

- (i) Distributable Trust Assets which comprise Custody Securities and/or Derived Assets arising from such Custody Securities (in respect of each Stock Line, a **“Custody Securities Pool”**); and
- (ii) Distributable Trust Assets which comprise Non-Custody Securities and/or Derived Assets arising from such Non-Custody Securities (in respect of each Stock Line, a **“Non-Custody Securities Pool”**).

**43.1.2** The Company shall Identify the Distributable Trust Assets that comprise the Assets in each Asset Pool for each Affected Stock Line. All Distributable Trust Assets in respect of each Affected Stock Line for an Affected Intermediary shall either fall into:

- (i) one of a group of Single Customer Pools; or
- (ii) the same Multiple Stock Line Pool,

as determined by the Company in accordance with Clause 43.2.

### **43.2 Determining the relevant Asset Pool for an Affected Stock Line**

**43.2.1** If the Company determines that it has received, or it is likely that it will receive, sufficient information from such an Affected Intermediary to enable the Company to Identify all the particular TA Claimants to which all Distributable Trust Assets returned, or proposed to be returned, from such Affected Intermediary relate (each such TA Claimant, a **“Single Customer”**), all such Distributable Trust Assets that relate to a specific Single Customer shall fall into a separate pool (each a **“Single Customer Pool”**) in respect of each such Single Customer.

**43.2.2** If the Company cannot determine that all such Distributable Trust Assets fall within one or more Single Customer Pools, then the Distributable Trust Assets in all of the Affected Stock Lines that are held by that Affected Intermediary shall fall into a single pool (such Asset Pool, a **“Multiple Stock Line Pool”**).

**43.2.3** For the avoidance of doubt, after any Allocation has been made with respect to any Distributable Trust Assets that have been returned from an Affected Intermediary, the determination by the Company in accordance with Clause 43.2.1 or Clause 43.2.2 shall be irrevocable.

### **43.3 Each Asset Pool to be Allocated independently**

**43.3.1** The Company shall Allocate the Assets in each Asset Pool independently of any Allocation of Assets in respect of another Asset Pool, including, for the avoidance of doubt, where such Assets of such other Asset Pool are of the same Stock Line.

**43.3.2** To the extent that any Assets remain Unallocated in an Asset Pool following the Last Allocation of such Asset Pool, such excess Assets shall be Surplus Assets for the purpose of Clause 63.7 and shall not form part of any other Asset Pool.

#### **43.4 Determination of the Asset Claim relating to each Asset Pool**

The Company shall determine the Asset Pool which is the subject of the Individual Claim Amount of each TA Signatory before making any Allocation of Assets in respect of that Asset Pool. Where an Individual Claim Amount of a TA Signatory in respect of a single Stock Line may be in respect of a Custody Securities Pool and/or a Non-Custody Securities Pool, the Company shall apportion the Asset Claim between Individual Claim Amounts in accordance with the Relevant Information. If the Relevant Information is not sufficiently adequate or reliable to do this, the Company shall apportion the entire Asset Claim to the relevant Non-Custody Securities Pool.

#### **44 Reservation of Assets from a Custody Securities Pool, a Non-Custody Securities Pool or a Multiple Stock Line Pool for TA Non-Signatories**

This Clause 44 does not apply to any Single Customer Pool and any reference to an “**Asset Pool**” in this Clause 44 shall not be construed as a reference to any Single Customer Pool.

##### **44.1 TA Non-Signatory**

Any Non-Signatory that: (i) the Company determines has an Asset Claim to a Stock Line; or (ii) alleges to the Company that it has an Asset Claim with respect to a Stock Line, is a “**TA Non-Signatory**” in respect of that Stock Line.

##### **44.2 Reserved Asset from an Asset Pool**

The Company shall designate as “**Reserved Assets**” an amount of Distributable Trust Assets in each Asset Pool for which there is at least one TA Non-Signatory in respect of a Stock Line to which such Asset Pool relates. Such designation shall be made before any Allocation is determined in respect of such Asset Pool in an amount equal to the lesser of:

- 44.2.1** the sum of each TA Non-Signatory’s TA Claimant Amount or, if applicable, Alleged TA Claimant Amount in respect of that Asset Pool; and
- 44.2.2** from time to time, the total amount of Distributable Trust Assets in such Asset Pool (as applicable).

##### **44.3 Distributable Trust Assets ceasing to be designated as Reserved Assets**

**44.3.1** The Company shall cease to designate an amount of Distributable Trust Assets as Reserved Assets in respect of a TA Claimant Amount or Alleged TA Claimant Amount (as the case may be) of a TA Non-Signatory in accordance with this Clause 44.3.

**44.3.2** If the Company:

- (i) has agreed with a TA Non-Signatory the amount of Distributable Trust Assets of a Stock Line which would be required to satisfy such TA Non-Signatory’s Asset Claim; or
- (ii) determines the maximum amount (which may be zero) of Distributable Trust Assets of a Stock Line that would be required to enable such TA Non-Signatory’s Asset Claims to be satisfied,

and such amount is less than the amount of the Reserved Assets, the excess of any Distributable Trust Assets which has been designated as Reserved Assets in respect of such TA Non-Signatory’s Asset Claim over such amount in Clause 44.3.2(i) or Clause 44.3.2(ii), as the case may be, shall cease to be designated as Reserved Assets.

**44.3.3** If the Accession Date of a TA Non-Signatory that becomes a Signatory falls on a date after Reserved Assets have been designated in respect of its Asset Claim, all of the Distributable Trust Assets which have been designated as Reserved Assets in respect of that TA Non-Signatory's Asset Claim shall cease to be designated as Reserved Assets.

#### **45 Allocation of Assets in respect of a Custody Securities Pool, a Non-Custody Securities Pool or a Multiple Stock Line Pool**

This Clause 45 does not apply to any Single Customer Pool and any reference to an “**Asset Pool**” in this Clause 45 shall not be construed as a reference to any Single Customer Pool.

##### **45.1 Determination of Provisional Allocation Percentage**

The “**Provisional Allocation Percentage**” of each Asset Pool Signatory at any time shall be determined by the Company in accordance with the following formula:

$$\text{Provisional Allocation Percentage} = 100\% \times \frac{\text{Individual Claim Value}}{\text{Total Claim Value}}$$

Where:

“**Individual Claim Value**” means, in respect of each Asset Pool Signatory at any time, an amount equal to: (i) the sum of the Value, as at the Provisional Valuation Date, of each Asset that is included in its Individual Claim Amount; or (as the case may be) (ii) its Net Equity Amount in respect of the relevant Asset Pool, except that the Individual Claim Value which is the subject of any underlying Dispute over a related TA Claimant Amount by each Asset Pool Signatory at such time shall be calculated by reference to its Alleged TA Claimant Amount in respect of the relevant Asset Pool; and

“**Total Claim Value**” at any time shall be determined by the Company as the sum of the Individual Claim Values of each of the Asset Pool Signatories at such time as determined by the Company.

##### **45.2 Timing of determination**

The Company shall determine the Provisional Allocation Percentage of each Asset Pool Signatory as soon as reasonably practicable following the Counterclaim Notice Deadline in respect of all the Claim Amount Notices in respect of the relevant Asset Pool, and thereafter:

**45.2.1** as soon as reasonably practicable following a Dispute Notice Deadline or any resolution of a (or, in the case of a Multiple Stock Line Pool, all) Dispute(s) between an Asset Pool Signatory and the Company over the TA Claimant Amount (or, in the case of a Multiple Stock Line Pool, all TA Claimant Amounts) relating to that Asset Pool;

**45.2.2** as soon as reasonably practicable following the Accession Date of a TA Claimant after the Effective Date in respect of the relevant Asset Pool to this Agreement; and

**45.2.3** as soon as reasonably practicable after the Company receives or otherwise becomes aware of new Relevant Information that relates to an Asset Claim in respect of a Stock Line or an Asset Pool (as applicable) in accordance with Clause 50.

## **45.3 Determination of Allocation Amount**

### **45.3.1 Allocation Amount**

The Company shall Allocate an amount of Distributable Trust Assets not comprising Reserved Assets (each, an “**Allocation Amount**”) to each Asset Pool Signatory in respect of: (i) a Custody Securities Pool or a Non-Custody Securities Pool of a Stock Line to which Clause 42 applies; or (ii) a Multiple Stock Line Pool in accordance with this Clause 45.3.

### **45.3.2 Allocation Amount following the Identification of Distributable Trust Assets**

Subject to Clause 39.2 and Clause 45.3.5, as soon as reasonably practicable following: (i) the first Allocation Date of an Asset Pool; and (ii) only in relation to a Multiple Stock Line Pool, on any subsequent Allocation Date on which additional Distributable Trust Assets have been Identified, the Company shall Allocate an Allocation Amount to each Asset Pool Signatory equal to its most recently determined Provisional Allocation Percentage multiplied by the amount of any Distributable Trust Assets which have been Identified by the Company in respect of that Allocation Date and which are not Reserved Assets.

### **45.3.3 Allocation Amount following the satisfaction of an Asset Claim of a TA Non-Signatory**

Subject to Clause 39.2 and Clause 45.3.5, as soon as reasonably practicable following any subsequent Allocation Date on which additional Distributable Trust Assets cease to be designated as Reserved Assets in accordance with Clause 44.3.2, the Company shall Allocate an Allocation Amount to each Asset Pool Signatory of the relevant Asset Pool equal to its most recently determined Provisional Allocation Percentage multiplied by the amount of Distributable Trust Assets ceasing to be designated as Reserved Assets in respect of that Allocation Date.

### **45.3.4 Allocation Amount following the acceptance of a TA Non-Signatory**

Subject to Clause 39.2 and Clause 45.3.5, as soon as reasonably practicable following any subsequent Allocation Date on which a TA Non-Signatory enters into this Agreement after the Effective Date:

- (i) the TA Non-Signatory that has entered into this Agreement shall be Allocated an Allocation Amount from the Distributable Trust Assets, which have ceased to be designated as Reserved Assets as a result of its entering into this Agreement in accordance with Clause 44.3.3, equal to the sum of each Allocation Amount (if any) which the Company would have Allocated to such TA Non-Signatory on each previous Allocation Date (if any) if such TA Non-Signatory had been a Signatory to this Agreement since the Effective Date; and
- (ii) to the extent that any Distributable Trust Assets, which have ceased to be designated as Reserved Assets as a result of its entering into this Agreement in accordance with Clause 44.3.3, exceeds the Allocation Amount of that TA Non-Signatory determined in accordance with Clause 45.3.4(i), each Asset Pool Signatory (including the TA Non-Signatory that has entered into this Agreement) that has an Asset Claim or Net Equity Amount with respect to the Distributable Trust Assets ceasing to be designated as Reserved Assets shall be Allocated an Allocation Amount equal to a portion of such excess pro rata to each Asset Pool Signatory's most recently determined Provisional Allocation Percentage.

#### **45.3.5 Suspension of Allocation for any Signatory Disputing its TA Claimant Amount**

The aggregate of any Allocation Amount which would have been Allocated to an Asset Pool Signatory in accordance with Clause 45.3.2, Clause 45.3.3 and Clause 45.3.4 if such Allocation had not been suspended by Clause 39.2 shall be the “**Suspended Allocation Amount**” in respect of that Asset Pool Signatory.

#### **45.3.6 Allocation Amount following the resolution of a Dispute over a TA Claimant Amount**

Subject to Clause 45.3.5, as soon as reasonably practicable following an Allocation Date on which a Dispute over the TA Claimant Amount of an Asset Pool Signatory has been resolved:

- (i) if the TA Claimant Amount so settled as a result of the resolution of the Dispute is equal to the Alleged TA Claimant Amount, the Company shall Allocate an Allocation Amount to such Asset Pool Signatory equal to the Suspended Allocation Amount; and
- (ii) if the TA Claimant Amount so settled as a result of the resolution of the Dispute is less than the Alleged TA Claimant Amount:
  - (a) the Company shall Allocate an Allocation Amount to such Asset Pool Signatory equal to the sum of each Allocation Amount (if any) which the Company would have Allocated to such Asset Pool Signatory on each previous Allocation Date (if any) if: (x) such Asset Pool Signatory were not Disputing its TA Claimant Amount; and (y) its Provisional Allocation Percentage were calculated by reference to its TA Claimant Amount so settled as a result of the resolution of the Dispute; and
  - (b) the Company shall, subject to Clause 39.2, Allocate an Allocation Amount to each Asset Pool Signatory (including the Asset Pool Signatory which has just resolved its Dispute over the TA Claimant Amount) equal to such portion of: (x) the Suspended Allocation Amount of the Asset Pool Signatory for which the Dispute over its TA Claimant Amount is resolved; less (y) the Allocation Amount determined in accordance with Clause 45.3.6(ii)(a), pro rata to each Asset Pool Signatory's most recently determined Provisional Allocation Percentage.

#### **45.3.7 Effect of Intermediary Distribution Value and Recoverable Delivery Value on Allocation Amount**

##### **(i) General rule**

Subject to Clause 45.3.8 and Clause 45.3.7(iv), if the Company becomes aware that an Asset Pool Signatory has received: (a) an Intermediary Distribution; and/or (b) any Distributable Trust Assets (or the realisation proceeds of any Distributable Trust Assets), in the case of (b) in contravention of Clause 8.1 (such an Asset Pool Signatory, an “**Over-Allocated Signatory**”), then the immediately following Allocation Amount(s) which would have been Allocated to it under Clause 45.3.2, 45.3.3, 45.3.4, 45.3.6 or 45.3.7(iii), with a Value as at the Provisional Valuation Date up to an amount equal to the Excess Value (such Allocation Amount(s), the “**Reallocation Amount**”), shall instead be Allocated to the other Asset Pool Signatories in accordance with Clause 45.3.7(iii).



(ii) **Excess Value**

The “**Excess Value**” shall be an amount determined by the Company equal to the product of: (a) 100 per cent. less the most recently determined Provisional Allocation Percentage of such Over-Allocated Signatory; and (b) the relevant Intermediary Distribution Value and/or Recoverable Delivery Value (as applicable).

(iii) **Allocation of the Reallocation Amount**

The Company shall Allocate to each Asset Pool Signatory other than the Over-Allocated Signatory such portion of the Reallocation Amount pro rata to the most recently determined Provisional Allocation Percentage of each such other Asset Pool Signatory, provided that:

- (a) to the extent that a Reallocation Amount comprises Distributable Trust Assets which would have been Allocated to that Over-Allocated Signatory as a result of an Allocation of a Reallocation Amount from another Over-Allocated Signatory, such other Over-Allocated Signatory shall not be included in the Allocation under this Clause 45.3.7;
- (b) if each Asset Pool Signatory other than the Over-Allocated Signatory is excluded under Clause 45.3.7(iii)(a), then the Company shall Allocate the Reallocation Amount to such Over-Allocated Signatory notwithstanding Clause 45.3.7(i).

(iv) **Suspension of Allocation pending determination of or resolution of Dispute over an Intermediary Distribution Value**

If the Company becomes aware that an Asset Pool Signatory has received an Intermediary Distribution, but the Intermediary Distribution Value: (a) has not been determined by the Company; or (b) is the subject of a Dispute by the relevant Asset Pool Signatory, the immediately following Allocation Amount(s) which would have been Allocated to it under Clause 45.3.2, 45.3.3, 45.3.4, 45.3.6 or 45.3.7(iii) shall not be Allocated until: (x) the Intermediary Distribution Value has been determined; or (y) the Dispute over the Intermediary Distribution Value is resolved (as applicable).

**45.3.8 No double counting of Intermediary Distribution with respect to a Net Equity Amount**

If the Company determines that the Net Equity Amount of any TA Signatory has already taken into account an amount of Intermediary Distribution received by such Asset Pool Signatory (including, for the avoidance of doubt, the reduction of Liabilities of such TA Signatory to the relevant Affected Intermediary by way of set-off), then Clause 45.3.7 shall not apply with respect to such amount of Intermediary Distribution.

**45.4 Realisation of Assets**

The Company shall, acting in a commercially reasonable manner, use reasonable endeavours to sell all the Distributable Trust Assets of a Multiple Stock Line Pool within six months following the return of such Distributable Trust Assets by the Affected Intermediary to the Company.

**45.5 The Company may determine an Allocation in respect of the Multiple Stock Line Pool before all Distributable Trust Assets have been Identified**

The Company may, from time to time, make an Allocation of Distributable Trust Assets which have been Identified in respect of a Multiple Stock Line Pool to an Asset Pool Signatory in accordance with this Part 10, whether or not the Company expects additional Assets may subsequently be Identified.

**46 Asset Shortfall Claim with respect to a Custody Securities Pool or a Non-Custody Securities Pool**

**46.1 Asset Shortfall Claim to be determined after Last Allocation**

The Company shall determine the Asset Shortfall Claim for each Asset Pool Signatory as soon as reasonably practicable after making the Last Allocation from a Custody Securities Pool or a Non-Custody Securities Pool.

**46.2 Amount of Asset Shortfall Claim**

The “**Asset Shortfall Claim**” for each Asset Pool Signatory of a Custody Securities Pool or a Non-Custody Securities Pool means an amount (or several amounts where the Asset Pool includes Derived Assets) determined by the Company as:

**46.2.1** its Individual Claim Amount; less

**46.2.2** the aggregate of all its Allocation Amounts with respect to that Asset Pool,

provided that the Value of an Asset Shortfall Claim: (i) being applied as a Distribution Asset (Valued as at the relevant Distribution Value Date) in the priority of application under Clause 60.5; or (ii) becoming an Ascertained Claim (Valued as at the Date Before Administration) under Clause 62.1; shall not include the aggregate of the Intermediary Distribution Value and Recoverable Delivery Value received by such Asset Pool Signatory in respect of the relevant Asset Pool.

**47 Allocation in respect of a Single Customer Pool**

**47.1 Allocation Amount**

The Company shall Allocate to each Signatory with an Asset Claim to a Single Customer Pool an “**Allocation Amount**” equal to such amount of Distributable Trust Assets that have been returned from such Affected Intermediary from time to time and which have been Identified by the Company as relating to such Signatory.

**47.2 Suspension of Allocation**

If, at any time after an Allocation has been made in accordance with Clause 47.1, the Company determines that, notwithstanding its determination under Clause 43.2.1, the information received from the relevant Affected Intermediary is insufficient to enable the Company to continue to Identify the Distributable Trust Assets returned from such Affected Intermediary that relate to a Single Customer, then no further Allocation shall be made in respect of any Distributable Trust Assets returned to the Company from such Affected Intermediary unless:

- (i) the Company is subject to an order made by a court of competent jurisdiction, which:
  - (a) requires the Company to make an Allocation in respect of such Distributable Trust Assets;

- (b) determines the entitlements of Trust Asset Claimants to the relevant Distributable Trust Assets; or
- (c) permits the Company to make an Allocation, Distribution or Appropriation in respect of such Distributable Trust Assets without incurring a liability to the TA Claimants in doing so,

provided that either:

- (x) the order is not capable of being appealed; or
- (y) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought);
- (ii) the proposed Allocation has been agreed between: (a) the Company; and (b) each Single Customer in relation to such Affected Intermediary; or
- (iii) this Agreement has been modified in accordance with Clause 80 to provide for an alternative method of Allocation which takes into account such insufficiency of information.

## **48 Asset Shortfall Claim with respect to an Affected TA Signatory**

### **48.1 Affected TA Signatory**

Each TA Signatory who has an Asset Claim to Securities in respect of an Affected Stock Line is an “**Affected TA Signatory**” with respect to the relevant Affected Intermediary. Any Asset Shortfall Claims of an Affected TA Signatory shall be determined with respect to all of its Asset Claims against the same Affected Intermediary in accordance with this Clause 48.

### **48.2 Timing of determination of Asset Shortfall Claim**

The Company shall determine the Asset Shortfall Claim for each Affected TA Signatory as soon as reasonably practicable after:

- 48.2.1** the Company has made the Last Allocation: (i) in respect of such Affected TA Signatory's Asset Claim to Securities held by the relevant Affected Intermediary (where the Affected TA Signatory is a Single Customer); or (ii) otherwise, in respect of the relevant Multiple Stock Line Pool; and
- 48.2.2** the Company determines that it has received sufficient information from the relevant Affected Intermediary to determine the Asset Shortfall Claim in accordance with Clause 48.3.

### **48.3 Amount of Asset Shortfall Claim**

The Asset Shortfall Claim for each Affected TA Signatory in respect of an Affected Intermediary means a cash value determined by the Company as the lesser of:

- 48.3.1** (i) the Value of such amount of Assets as of the Provisional Valuation Date; or (ii) otherwise, a cash value, in each case (i) and (ii), admitted by the relevant Affected Intermediary to be the shortfall between: (a) the amount of Distributable Trust Assets that have been returned by the Affected Intermediary to the Company in respect of such TA Signatory; and (b) the amount of Assets which should have been returned to the Company by the Affected Intermediary in order to fully discharge the liability of such Affected Intermediary in respect of such TA Signatory, in each case (a) and (b), in respect of the Trust Assets that were held by such Affected Intermediary (after taking

into account: (x) the ability of the relevant Affected Intermediary to discharge the liability to return Trust Assets by returning an amount of cash to the Company equal to the value of such Trust Assets as at a time later than the relevant Provisional Valuation Date; and/or (y) the exercise of any rights to set-off available to such Affected Intermediary, in each case (x) and (y), as permitted or required under the relevant governing laws and regulations applicable to such Affected Intermediary); and

- 48.3.2** the Value of its Individual Claim Amount as of the Provisional Valuation Date to each of the Affected Stock Lines in respect of such Affected Intermediary; less the aggregate of the Value as of the Provisional Valuation Date of all of its Allocations in respect of its Asset Claims to Securities held by the relevant Affected Intermediary,

provided that the Asset Shortfall Claim: (i) being applied as a Distribution Asset in the priority of application under Clause 60.5; (ii) becoming an Ascertained Claim under Clause 62.1; or (iii) used to determine the amount of Ascertained Shortfall Amount under Clause 62.2.2 shall not include the aggregate of the Intermediary Distribution Value (only to the extent that such Intermediary Distribution Value applies to Clause 45.3.7 in accordance with Clause 45.3.8) and Recoverable Delivery Value received by such Asset Affected TA Signatory in respect of the relevant Asset Claim.

## **49 Shortfall Signatory**

### **49.1 Shortfall Signatory**

A “**Shortfall Signatory**” is:

- 49.1.1** an Affected TA Signatory who has made an Affected Intermediary Collateralisation Election, and whose Ascertained Shortfall Amount is greater than it would have been as a consequence of either condition in Clause 49.2;
- 49.1.2** otherwise, a TA Signatory whose: (i) TA Claimant Amount in respect of an Asset Pool cannot be satisfied to the same extent that it would have been as a consequence of either condition in Clause 49.2; and (ii) Asset Shortfall Claim, following Appropriation in accordance with Clause 61, exceeds its Net Financial Liability.

### **49.2 Shortfall Signatory Conditions**

In relation to an Asset Pool, the conditions to a TA Signatory being a Shortfall Signatory are:

- 49.2.1** A TA Claimant to that Asset Pool is a Non-Signatory as a result of being an Excluded Party pursuant to Clause 2.3; and
- 49.2.2** The Company has entered into a bilateral arrangement with a TA Non-Signatory that affects Asset Claims to that Asset Pool.

### **49.3 Payment to Shortfall Signatory**

- 49.3.1** The Company shall pay to a Shortfall Signatory falling within Clause 49.1.1 a cash value equal to the Value of its Ascertained Shortfall Amount less the Value that would have been determined as the Shortfall Signatory's Ascertained Shortfall Amount had such Excluded Party been a Signatory, or the Company not entered into such bilateral arrangement, as the case may be; provided that the Shortfall Signatory's Ascertained Shortfall Amount shall thereafter be deemed to be the lesser of such amounts described in Clause 49.1.1.

**49.3.2** The Company shall pay to a Shortfall Signatory falling within Clause 49.1.2 a cash value equal to the lesser of: (i) the Value by which the Shortfall Signatory's Asset Shortfall Claim exceeds its Net Financial Liability; and (ii) the Value of the Shortfall Signatory's Asset Shortfall Claim less the Value that would have been determined as its Asset Shortfall Claim had such Excluded Party been a Signatory, or the Company not entered into such bilateral arrangement, as the case may be.

## **50 Reallocation following the Company becoming aware of a new TA Claimant Amount or Alleged TA Claimant Amount**

On any day when the Company receives or otherwise becomes aware of any new Relevant Information that relates to an Asset Claim in respect of a Stock Line or an Asset Pool (as applicable) after any determination of an Allocation Amount has been made by the Company in respect of such Stock Line or Asset Pool in circumstances where the Company believes that such new Relevant Information would have resulted in the determination of different Allocation Amounts had it been available at the time, the Company shall disregard all previous determinations of the Allocation for such Stock Line or Asset Pool, and shall proceed to re-determine the Allocation Amounts taking into account such new Relevant Information and in accordance with this Part 10, provided that:

- (i) any Assets for which instructions for settlement in respect of their Distribution or Appropriation have already been given will not be taken into account as Distributable Trust Assets of the relevant Stock Line or Asset Pool;
- (ii) the Asset Claim of any TA Claimant in respect of which instructions for settlement for a Distribution or Appropriation have already been given (each such TA Claimant, a "**Satisfied Claimant**") shall be reduced by the amount of their Asset Claim which has been satisfied by such Distribution or Appropriation that has been made and/or which will be satisfied by such Distribution or Appropriation as set out in such Distribution and Appropriation Notice;
- (iii) the Asset Claim of a Satisfied Claimant (as reduced in accordance with Clause 50(ii)) shall not be taken into account in the determination of Allocation Amounts until all other Signatories with an Asset Claim to the relevant Stock Line or Asset Pool have been Allocated an Allocation Amount to the same pro rata extent as the Asset Claim of such Satisfied Claimant has been satisfied by such Distribution or Appropriation and/or will be satisfied by such Distribution or Appropriation as set out in the Distribution and Appropriation Notice; and
- (iv) the Company shall not deliver a new Claim Amount Notice to any person if the information in its Claim Amount Notice remains the same.

## **51 Application of Distributable Trust Assets towards satisfaction of Asset Claims of TA Non-Signatories**

### **51.1 Restriction on satisfying Asset Claims of TA Non-Signatories**

The Company shall not apply any Distributable Trust Assets (whether or not such Distributable Trust Assets are designated as Reserved Assets in accordance with Clause 44) towards the satisfaction of Asset Claims of a TA Non-Signatory in respect of a Stock Line unless:

- 51.1.1** the proposed application of Distributable Trust Assets has been agreed between: (i) the Company; (ii) such TA Non-Signatory; (iii) each person who the Company determines as having an Asset Claim to such Stock Line; and (iv) any other person who has alleged to

the Company that it has an Asset Claim to such Stock Line but with whom the Company has not reached an agreement in respect of its alleged Asset Claim;

- 51.1.2 the Company is subject to an order made by a court of competent jurisdiction, which requires the Company to make such application of Distributable Trust Assets or which determines the entitlements of Trust Asset Claimants to the relevant Stock Line, provided that either: (i) the order is not capable of being appealed; or (ii) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought);
- 51.1.3 the proposed application of Distributable Trust Assets is in accordance with Clause 51.2 and the Company has obtained an order from a court of competent jurisdiction, the effect of which is to afford the Company protection from liability in its capacity as trustee in respect of the relevant Trust Assets in carrying out such proposed application of Distributable Trust Assets, provided that either: (i) the order is not capable of being appealed; or (ii) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought); or
- 51.1.4 the proposed application of Distributable Trust Assets is in accordance with Clause 51.2 and has been agreed between the Company and all TA Signatories having an Asset Claim to such Stock Line.

## **51.2 Requirements for satisfaction of Asset Claims of TA Non-Signatories**

A proposed application of Distributable Trust Assets shall satisfy the requirement of Clause 51.1.3 or Clause 51.1.4, as the case may be, if:

- 51.2.1 it is carried out in respect of a Stock Line other than an Affected Stock Line on the same or substantially similar basis as an Allocation in accordance with this Part 10 as if all TA Non-Signatories to such Stock Line have entered into this Agreement; and
- 51.2.2 it is carried out in respect of an Affected Stock Line on the same or substantially similar basis as an Allocation in accordance with this Part 10 as if all TA Non-Signatories with an Asset Claim to such Affected Stock Line and each other Affected Stock Line with respect to the same Affected Intermediary have entered into this Agreement.

## PART 11: APPROPRIATION AND DISTRIBUTION

### 52 Introduction

#### 52.1 Appropriation and Distribution

The Company will determine Distributions of Distribution Assets to a Signatory, subject to any rights of the Company to appropriate any Distribution Assets to Reduce such Signatory's Distribution Liabilities to the Company in full or in part.

#### 52.2 Definitions

**"Distribution"** means any distribution of a Distribution Asset to a Signatory determined in accordance with this Part ~~44.11~~ [and, in the case of CRA Omnibus Beneficiaries, in accordance with the Common Terms.](#)

**"Appropriation"** means any application or appropriation by the Company of any Distribution Asset to Reduce Distribution Liabilities in accordance with Clause 54.3, and **"Appropriate"**, **"Appropriated"** and **"Appropriating"** shall be construed accordingly.

**"Reduction"** means any reduction or discharge of Distribution Liabilities in accordance with Clause 55.3, and **"Reduce"**, **"Reduced"** and **"Reducing"** shall be construed accordingly.

#### 52.3 Costs Amount

The Company shall determine the Costs Amount applicable to each TA Signatory from time to time. The Company shall have a discretion to waive the Costs Amount, in part, in respect of a TA Signatory whose Acceptance Date falls after the end of the Initial Offer Period subject to a minimum of the Costs Amount that would have applied had such Acceptance Date fallen before the end of the Initial Offer Period.

### 53 No set-off

#### 53.1 No set-off for Assets and Liabilities Transferred post Administration

**53.1.1** Only those Assets and Liabilities comprising, respectively, Distribution Assets and Distribution Liabilities of a Signatory that have been held or owed by that Signatory at the Time of Administration can be applied towards each other for Reduction or set-off in accordance with this Part 11.

**53.1.2** Subject to Clause 6.3, no Liabilities comprising Distribution Liabilities that have been Transferred to a Signatory after the Time of Administration may be applied against the Appropriation of Assets comprising any Distribution Assets: (i) held by that Signatory before the Time of Administration; or (ii) that have been Transferred to such Signatory. Distribution Liabilities that have been Transferred to a Signatory after the Time of Administration may be applied against the Appropriation of any Distribution Assets that have been Transferred by the same Transferor to that Signatory after the Time of Administration.

**53.1.3** Subject to Clause 6.3, no Distribution Assets that have been Transferred to a Signatory after the Time of Administration may be applied towards the Reduction of any Distribution Liabilities: (i) owed by the Signatory since the Time of Administration; or (ii) that have been Transferred to such Signatory. Distribution Assets that have been Transferred to a Signatory after the Time of Administration may be applied towards the

Reduction of any Distribution Liabilities that have been Transferred by the same Transferor to that Signatory after the Time of Administration.

- 53.1.4** Notwithstanding Clauses 53.1.1 to 53.1.3, all Assets comprising Distribution Assets of a Signatory, whether such Assets have been held or owed by that Signatory before or after the Time of Administration, and all Distribution Assets whether such Distribution Assets have been Transferred to such Signatory before or after the Time of Administration, can be Appropriated to Reduce each of the Distribution Liabilities in the following order of priority: (i) the Costs Amount, (ii) Ascertained Non-Financial Contract Liabilities or Limited Ascertained Non-Financial Contract Liabilities (as applicable) and (iii) Unfunded Retention Amounts.

## **54 Distribution Assets**

### **54.1 Distribution Assets**

**"Distribution Assets"** are Assets and/or Claims for which the Company is accountable to, or for the benefit of, a Signatory under this Agreement and which comprise:

- 54.1.1** any Asset Allocation to the TA Signatory determined in accordance with Part 10;
- 54.1.2** any Retention Allocation to the TA Signatory determined in accordance with Part 8;
- 54.1.3** if a Collateralisation Election has been made, any Collateral Allocation to the TA Signatory determined in accordance with Clause 59.10, the Collateral Amount of the Signatory and any Pre-Administration Client Money Shortfall Claim of the Signatory;
- 54.1.4** if an Affected Intermediary Collateralisation Election has been made, any Shortfall For Appropriation determined in accordance with Clause 60.6.2;
- 54.1.5** the Net Financial Claim of the TA Signatory determined in accordance with Part 7; ~~and~~
- 54.1.6** any Asset Shortfall Claim of the TA Signatory for each Asset Pool;
- 54.1.7** any Reduced Gross Distribution of the CRA Omnibus Beneficiary; and
- 54.1.8** any 19/9 Shortfall Claim of the CRA Omnibus Beneficiary.

### **54.2 Applicability of Distribution Assets**

- 54.2.1** An Asset Allocation shall be applied as a Distribution Asset in the priorities of application under Clauses 60.1, 60.2, 60.3, and 60.5.
- 54.2.2** A Retention Allocation shall be applied as a Distribution Asset in the priority of application under ~~Clause 60.2.~~ Clauses 60.2 and 60.10.
- 54.2.3** A Collateral Allocation shall be applied as a Distribution Asset in the priority of application under Clause 60.4.
- 54.2.4** Any Asset Shortfall Claim shall be applied as a Distribution Asset in the priority of application under Clause 60.5.
- 54.2.5** Any Shortfall For Appropriation shall be applied as a Distribution Asset in the priority of application under Clause 60.6.
- 54.2.6** Any Pre-Administration Client Money Shortfall Claim shall be applied as a Distribution Asset in the priority of application under Clause 60.7.



- 54.2.7** Any Collateral Amount shall be applied as a Distribution Asset in the priority of application under Clause 60.8.
- 54.2.8** Any Net Financial Claim shall be applied as a Distribution Asset in the priority of application under ~~Clause 60.1~~ Clauses 60.1 and 60.9.
- 54.2.9** Any Asset Shortfall Claim and any Pre-Administration Client Money Shortfall Claim shall only be Appropriated to Reduce Net Financial Liability and shall not be Appropriated to Reduce any other Distribution Liabilities. Any Net Financial Claim shall only be Appropriated to Reduce the Limited Ascertained Non-Financial Contract Liabilities and shall not be Appropriated to Reduce any other Distribution Liabilities.
- 54.2.10** Any Reduced Gross Distribution shall be applied as a Distribution Asset in the priority of application under Clauses 60.9 and 60.10.
- 54.2.11** Any 19/9 Shortfall Claim shall be applied as a Distribution Asset in the priority of application under Clause 60.11 and shall only be Appropriated to Reduce Net Financial Liability and shall not be Appropriated to Reduce any other Distribution Liabilities.
- 54.2.12** ~~54.2.10~~ Subject to Clause 6 and Clause 53, each of the Distribution Assets may be determined and Appropriated by the Company at different times to Reduce different Distribution Liabilities. In determining any Distribution and Appropriation, the Company will only take into account Distribution Assets that are available and applicable for Appropriation at that time. The Company has no obligation to determine all Distribution Assets of a Signatory prior to determining a Distribution or an Appropriation.

### **54.3 Effect of Appropriation of Distribution Assets**

The effect of Appropriation of Distribution Assets differs depending on the type of Distribution Asset. The effect of Appropriation for each type of Distribution Asset shall be:

- 54.3.1** for Securities comprising an Allocation, to appropriate and convey or otherwise transfer to the Company full and absolute title (to the extent that the Signatory is able to convey such title) in such Securities upon such time of Appropriation, free and clear of any encumbrances, restrictions, limitations and any equitable interest or Equity of Redemption of the relevant TA Signatory in such Securities, and any of which that may exist shall be extinguished;
- 54.3.2** for any money comprising an Allocation, Reduced Gross Distribution, Collateral Amount, Retention Allocation or Collateral Allocation, to entitle the Company to retain such amount absolutely for its own account without any obligation to account for it to the Signatory;
- 54.3.3** for any Asset Shortfall Claim, to reduce the Ascertained Claim of the relevant TA Signatory by such amount as is equal to the Appropriated amount of the Asset Shortfall Claim;
- 54.3.4** for any Shortfall For Appropriation, to reduce the Shortfall For Appropriation of the relevant TA Signatory by such amount as is equal to the Appropriated amount of the Shortfall For Appropriation;
- 54.3.5** for any Pre-Administration Client Money Shortfall Claim, to reduce the Ascertained Claim of the relevant Signatory by an amount equal to the Appropriated amount of the Pre-Administration Client Money Shortfall Claim; ~~and~~

54.3.6 for any Net Financial Claim, to reduce the Net Financial Claim of the relevant TA Signatory by such amount as is equal to the Appropriated amount of the Net Financial Claim-; and

54.3.7 for any 19/9 Shortfall Claim, to reduce the 19/9 Shortfall Claim of the relevant CRA Omnibus Beneficiary by such amount as is equal to the Appropriated amount of the 19/9 Shortfall Claim.

## **55 Distribution Liabilities**

### **55.1 Distribution Liabilities**

“**Distribution Liabilities**” are Liabilities due and owing by the Signatory to the Company which may be Reduced by Appropriation of Distribution Assets (or as otherwise provided under Clause 55.4) under this Agreement and which comprise:

55.1.1 the Costs Amount applicable to that TA Signatory;

55.1.2 any Ascertained Non-Financial Contract Liabilities of that TA Signatory;

55.1.3 any Limited Ascertained Non-Financial Contract Liabilities of that TA Signatory;

55.1.4 any Unfunded Retention Amount relating to that TA Signatory;

55.1.5 the Net Financial Liability (if any) of that Signatory, which may comprise Uncollateralised Net Financial Liability and Collateralised Net Financial Liability if a Collateralisation Election has been made; and

55.1.6 if an Affected Intermediary Collateralisation Election has been made, the Affected Intermediary Derived Asset Liability of that TA Signatory.

### **55.2 Applicability of Distribution Liabilities**

55.2.1 The Costs Amount shall be applied as a Distribution Liability in the priorities of application under Clauses 60.1 to 60.5 and ~~Clause 60.8.~~Clauses 60.8 to 60.10.

55.2.2 Any Ascertained Non-Financial Contract Liabilities shall be applied as a Distribution Liability in the priorities of application under Clauses 60.1 to 60.5 and ~~Clause 60.8.~~Clauses 60.8 to 60.10.

55.2.3 Any Limited Ascertained Non-Financial Contract Liabilities shall be applied as a Distribution Liability in the priority of application under ~~Clause 60.4.~~Clauses 60.1 and 60.9.

55.2.4 Any Unfunded Retention Amount shall be applied as a Distribution Liability in the priorities of application under Clauses 60.1 to 60.5 and ~~Clause 60.8.~~Clauses 60.8 to 60.10.

55.2.5 The Net Financial Liability shall be applied as a Distribution Liability in the priorities of application under Clause ~~60.2 and 60.2.~~ Clause ~~60.5,~~60.5 and Clauses 60.10 and 60.11, if no Collateralisation Election has been made.

55.2.6 The Uncollateralised Net Financial Liability shall be applied as a Distribution Liability in the priorities of application under Clauses 60.2 (unless an Appropriation Deferral Election has been made), 60.5, ~~60.7~~60.10 and ~~60.8,~~60.11, and, if a Collateralisation Election has been made-60.7 and 60.8.

- 55.2.7** The Collateralised Net Financial Liability shall be applied as a Distribution Liability in the priorities of application under Clauses 60.3, 60.6, ~~60.7~~[60.7](#), [60.8](#) and ~~60.8~~[60.11](#), if a Collateralisation Election has been made.
- 55.2.8** The Affected Intermediary Derived Asset Liability shall be applied as a Distribution Liability in the priority of application under 60.3, if an Affected Intermediary Collateralisation Election has been made.
- 55.2.9** Subject to Clause 6 and Clause 53, each of the Distribution Liabilities may be Reduced at different times and in different ways, including by Appropriation of different Distribution Assets. In determining any Distribution or Appropriation, the Company will only take into account Distribution Liabilities that exist at that time. Any subsequent increase in Distribution Liabilities, such as Ascertained Non-Financial Contract Liabilities, Limited Ascertained Non-Financial Contract Liabilities, Affected Intermediary Derived Asset Liability or Unfunded Retention Amount, shall not invalidate any prior Distribution or Appropriation.

### **55.3 Effect of Reduction of Distribution Liabilities**

The effect of Reduction of Distribution Liabilities differs depending on the type of Distribution Liability. The effect of Reduction for each type of Distribution Liability shall be:

- 55.3.1** for a Costs Amount, to discharge the obligation of the TA Signatory to pay or account to the Company for such amount of the Costs Amount as is Reduced;
- 55.3.2** for Ascertained Non-Financial Contract Liabilities or Limited Ascertained Non-Financial Contract Liabilities, to discharge the obligation of the TA Signatory to pay or account to the Company for such amount of the Ascertained Non-Financial Contract Liabilities or Limited Ascertained Non-Financial Contract Liabilities as is Reduced;
- 55.3.3** for an Unfunded Retention Amount, to decrease the Unfunded Retention Amount by such Reduced amount and increase the Funded Retention Amount by such Reduced amount correspondingly in accordance with Clause 29.2;
- 55.3.4** for a Net Financial Liability, to discharge the obligation of the Signatory to pay or account to the Company for such amount of Net Financial Liability as is Reduced; and
- 55.3.5** for an Affected Intermediary Derived Asset Liability, to discharge the obligation of the Affected TA Signatory to pay or account to the Company for such amount of Affected Intermediary Derived Asset Liability.

### **55.4 Reduction of Distribution Liabilities**

Distribution Liabilities may be Reduced in full or in part from time to time in any one way or a combination of ways as set out in Clauses 55.4.1 to 55.4.4.

#### **55.4.1 Appropriation**

Subject to Clause 55.5, Distribution Liabilities shall be Reduced by Appropriation by the Company of Distribution Assets in accordance with the priorities of application in Clause 60.

#### **55.4.2 Payment**

Distribution Liabilities may be Reduced by Payment by the Signatory to the Company on any Business Day upon giving not less than five Business Days' Notice to the Company. Such Notice shall show the amount and proposed payment date of such Payment and

give details of the relevant account from which any amount for such Payment will be paid. If the Company incurs any costs and expenses as a result of the Signatory's failure to make such Payment in accordance with such Notice, such costs and expenses shall be a Non-Financial Contract Liability in respect of such Signatory.

A Signatory shall specify in such Notice which of the Distribution Liabilities and the amount of each such Distribution Liability it is intending to Reduce by way of such Payment, failing which the Company shall decide in its absolute discretion.

#### **55.4.3 Intermediary Retention**

Subject to Clause 55.5, Distribution Liabilities shall be Reduced upon the receipt by the Company of any Intermediary Retention on any Business Day.

The Company shall, as soon as reasonably practicable following the receipt of such Intermediary Retention:

- (i) determine the Value of such Intermediary Retention, as at the Business Day on which such Intermediary Retention is received by the Company;
- (ii) determine which of the Distribution Liabilities and the amount of each such Distribution Liability that is Reduced by the Value of such Intermediary Retention according to the purpose of such Intermediary Retention, if and to the extent that such purpose is either: (a) notified to the Company by the relevant Intermediary or Sub-Intermediary, as the case may be; or (b) reasonably apparent to the Company. Failing Clause 55.4.3(ii)(a) and Clause 55.4.3(ii)(b) above, the Company shall determine a Reduction of Distribution Liabilities in its absolute discretion; and
- (iii) as soon as reasonably practicable following the determination of Clause 55.4.3(ii)(a) and Clause 55.4.3(ii)(b), Notify the TA Signatory of such determinations.

#### **55.4.4 Election to apply Collateral Amount**

A Signatory may give an irrevocable instruction to the Company to appropriate its Collateral Amount in full or in part to Reduce its Collateralised Net Financial Liability on any Business Day upon giving not less than fifteen Business Days' Notice to the Company.

The Signatory shall specify in such Notice the amount of such Collateral Amount that the Company shall appropriate, failing which the Company shall decide, in its absolute discretion, the amount of Collateral Amount that it may appropriate to Reduce such Signatory's Collateralised Net Financial Liability in its absolute discretion. The Collateral Amount shall be Reduced accordingly.

### **55.5 Limitation on Reduction of Non-Financial Contract Liabilities**

Any Non-Financial Contract Liabilities shall not be Reduced by Appropriation of Distribution Assets under Clause 55.4.1 or receipt of Intermediary Retention under Clause 55.4.3 if (and then only to the extent that) such Reduction would:

- 55.5.1** be prohibited by any applicable law or regulation; or
- 55.5.2** have the effect of Reducing such Non-Financial Contract Liabilities to an extent greater or more extensive than is permitted under Rule 2.85 or Rule 4.90 of the Insolvency Rules or, if greater, any contract between such Signatory and the Company.

## **55.6 Outstanding amount of Distribution Liability**

- 55.6.1** Any reference to a Distribution Liability shall, at any time, be a reference to the outstanding amount of such Distribution Liability following any Reduction effected prior to such time.
- 55.6.2** Any Costs Amount, Net Financial Liability or Affected Intermediary Derived Asset Liability that has been Reduced in full shall, from such time, cease to be a Distribution Liability.
- 55.6.3** Any Unfunded Retention Amount, Ascertained Non-Financial Contract Liability or Limited Ascertained Non-Financial Contract Liability that has been Reduced in full shall, from such time, cease to be a Distribution Liability provided that it may be subsequently increased (if determined appropriate) to become a Distribution Liability again.

## **56 Conditions to Distributions and Appropriations**

[This Clause 56 other than Clause 56.1.1 does not apply in relation to any Distribution, deductions or Appropriation made with respect to a CRA Omnibus Beneficiary in accordance with the Common Terms to which part 4 \(Common Terms Distributions out of Omnibus Trust\) of the Common Terms shall apply.](#)

### **56.1 Conditions**

The Company may determine Distributions and Appropriations with respect to a Signatory at any time when each of the conditions set out in Clauses 56.1.1 to 56.1.4 is satisfied, except that once the condition in Clause 56.1.1 in respect of an NTA Signatory is satisfied, the Company may determine the Distributions and Appropriations with respect to such NTA Signatory.

#### **56.1.1 Net Contractual Position**

The Net Contractual Position of such Signatory has been determined in accordance with Part 7 or, where that Signatory disputes its Net Contractual Position in accordance with Clause 68, such Dispute has been resolved.

#### **56.1.2 Retention Claim**

The Retention Claim Identification Cut-Off Time relating to such TA Signatory has occurred and has not been postponed to a later date in accordance with Clause 27.

#### **56.1.3 Allocation and no suspension by reason of De Minimis Allocation**

An Allocation to such TA Signatory has been determined and the determination of a Distribution or Appropriation is not suspended by reason of such Allocation not being a De Minimis Allocation as described in Clause 56.3.

#### **56.1.4 Non-Financial Contract Liabilities have been ascertained**

If the Company determines at any time that a TA Signatory has any of the Non-Financial Contract Liabilities as described in Clause 33.1 and Clause 33.4 and such Non-Financial Contract Liabilities have not yet become Ascertained Non-Financial Contract Liabilities or Limited Ascertained Non-Financial Contract Liabilities (as the case may be), then no Distribution or Appropriation shall be determined until such time as the Non-Financial Contract Liabilities have become Ascertained Non-Financial Contract Liabilities.

## **56.2 Valid determination**

**56.2.1** Once the condition in Clause 56.1.1 has been satisfied, it will remain satisfied for the duration of this Agreement. The conditions in Clause 56.1.2, Clause 56.1.3 and Clause 56.1.4 may be satisfied at any one point in time and subsequently cease to be satisfied.

**56.2.2** Provided that the Company has determined a Distribution or Appropriation at a time when the conditions in Clauses 56.1.1 to 56.1.4 are satisfied with respect to a TA Signatory, then any such Distribution or Appropriation shall not be invalidated if at any subsequent time any one of the conditions in Clause 55.1.2, Clause 56.1.3 or Clause 56.1.2 ceases to be satisfied.

**56.2.3** Once the conditions in Clauses 56.1.1 to 56.1.4 have been satisfied, the Company shall, in its absolute discretion, choose to deliver Distributions of Distributable Trust Assets:

- (i) on a Stock Line-by-Stock Line basis;
- (ii) on a Signatory-by-Signatory basis; and/or
- (iii) in a combination of both Clause 56.2.3(i) and Clause 56.2.3(ii),

in such order as the Company sees fit, provided that this does not prejudice or unduly delay meeting the objectives and purposes, or otherwise conflict with the terms, of this Agreement.

## **56.3 De Minimis Allocation**

If the Company determines, in its absolute discretion, that Assets of a particular Asset Pool which have been Allocated to a TA Signatory are of such minimal quantity that it would not be reasonably practicable for a Distribution or Appropriation to be determined with respect to such Allocation (a “**De Minimis Allocation**”), then no Distribution or Appropriation for such De Minimis Allocation shall be determined until the earlier of:

**56.3.1** any additional Allocation of Assets of the same Asset Pool to such TA Signatory, which, when aggregated with such De Minimis Allocation, is of such quantity that the Company determines in its absolute discretion that it would be reasonably practicable for a Distribution or Appropriation to be determined; and

**56.3.2** the final Allocation of Assets of that Asset Pool.

## **56.4 Distributable Trust Assets subject to encumbrances**

If the Company determines that any Distributable Trust Asset that would otherwise be eligible for Distribution or Appropriation is subject to any Security Interest or other encumbrance that would prevent or restrict the Distribution or Appropriation of that Distributable Trust Asset in accordance with this Agreement, the Company may postpone the Distribution or Appropriation of that Distributable Trust Asset until such Security Interest or other encumbrance is removed, discharged or otherwise dealt with to the Company's satisfaction.

## **57 Distribution Value Date**

The Company shall determine Distributions and Appropriations [other than Distributions and Appropriations in respect of Reduced Gross Distributions](#) using the Value of the relevant Distribution Assets and Distribution Liabilities as of a date (such date, a “**Distribution Value Date**”) falling on the twenty-fifth Business Day prior to the latest date on which the Company intends to give instructions for settlement of such Distribution Assets, regardless of whether any such Distribution Assets would actually fall due for delivery to a Signatory or be Appropriated in

full by the Company. In relation to Distributions and Appropriations in respect of Reduced Gross Distributions, the Company shall determine such Distributions and Appropriations using the Value of the relevant Distribution Assets and Distribution Liabilities as of the Cut-Off Date relating to such Distributions and Appropriations, except in relation to any 19/9 Shortfall Claim for which the Appropriation shall be made as of the date on which the Shortfall Claims Determination Notice is issued as provided in Clause 60.11.

## **58 Distribution and Appropriation Notice**

This Clause 58 does not apply in relation to any Distribution or Appropriation made in respect of Reduced Gross Distributions and Retention Allocations, arising from a Reduced Gross Distribution, if applied together with Reduced Gross Distributions, in relation to which part 5 (Information) of the Common Terms shall apply.

### **58.1 Distribution and Appropriation Notice**

The Company shall, as soon as reasonably practicable following the determination of any Distribution or Appropriation and in any case within five Business Days of the relevant Distribution Value Date, give a Notice to the relevant Signatory (such Notice, a “**Distribution and Appropriation Notice**”). If a TA Signatory receives a Distribution and Appropriation Notice from the Company and the Company becomes aware of new Relevant Information prior to the instructions for settlement having been given in respect of the relevant Distribution or Appropriation, which affects the calculation or determination of the information in respect of the Allocation of one or more Stock Lines provided in the Distribution and Appropriation Notice, then the original Distribution and Appropriation Notice to the extent of that Stock Line or those Stock Lines shall cease to be final and binding between the Parties. If an Appropriation Deferral Election is made by a TA Signatory relating to the Asset Allocation of that Stock Line and a Deferral Cash Amount is Paid to the Company once instructions for settlement in respect of the relevant Distribution or Appropriation have been given, then the Company shall, as soon as practicable, return the Deferral Cash Amount to such TA Signatory. The Company shall send a new Distribution and Appropriation Notice amending or superseding the original Distribution and Appropriation Notice, or if the Company decides that no Assets would be delivered to such TA Signatory, then the Company shall send a Notice to this effect.

### **58.2 Multiple Distributions and Appropriations**

A single Distribution and Appropriation Notice may be given in respect of the Distribution or Appropriation of more than one Distribution Asset, provided that it shall specify all Relevant Information set out in Clause 58.3 in respect of each such Distribution Asset.

### **58.3 Content of Distribution and Appropriation Notice**

A Distribution and Appropriation Notice shall contain the following information:

- 58.3.1** a list of each Distribution Asset relating to such Distribution or Appropriation, including the identification details of any Securities, number of any Securities and amount of any cash;
- 58.3.2** the Value of each relevant Distribution Asset as at the Distribution Value Date;
- 58.3.3** a list of each Distribution Liability of the Signatory as at the Distribution Value Date, subject to Clause 58.4;
- 58.3.4** the Value of each such Distribution Liability as at the Distribution Value Date, subject to Clause 58.4;



- 58.3.5 the number or amount and the Value of any Distribution Asset which the Company intends to appropriate to Reduce such Signatory's Distribution Liabilities;
- 58.3.6 the number or amount of any Distribution Asset which the Company intends to deliver as a Distribution to such Signatory, if any;
- 58.3.7 whether a Collateralisation Election may be made by the Signatory and, if so, the Collateral Amount, Collateral Claim Amount and Affected Intermediary Claim Amount as at the relevant Distribution Value Date, and if an Appropriation Deferral Election has not already been made with respect to that Asset Allocation, then the Deferral Election Deadline, the Deferral Cash Amount and the Deferral Cash Payment Date relating to such Asset Allocation;
- 58.3.8 if a Collateralisation Election has already been made by the Signatory, the Collateral Amount, Collateral Claim Amount and the Affected Intermediary Claim Amount as at the relevant Distribution Value Date and, if an Appropriation Deferral Election has already been made with respect to an Asset Allocation, the Deferral Cash Amount and the Deferral Cash Payment Date relating to such Asset Allocation;
- 58.3.9 the Distribution Value Date; and
- 58.3.10 the Delivery Instruction Date, if any Distribution shall fall due for delivery by the Company.

#### 58.4 Statement of Distribution Liabilities

- 58.4.1 Any information relating to Distribution Liabilities in any Distribution and Appropriation Notice may not reflect any Reduction of such Distribution Liabilities which have been effected by Payment by the Signatory or receipt of Intermediary Retention by the Company within the period of five Business Days preceding the relevant Distribution Value Date.
- 58.4.2 This Clause 58.4 shall not affect the effectiveness of the Reduction of such Distribution Liabilities. The Company shall take into account any such Reduction as soon as reasonably practicable following such Distribution Value Date and reflect such Reduction in the next Distribution and Appropriation Notice to such Signatory.

### 59 Collateralisation Election

#### 59.1 Collateralisation Election

Subject to this Clause 59, a Signatory may elect to collateralise its Net Financial Liability with one or more of the following amounts or liabilities (each of the below, a “**Collateralisation Election**”):

- 59.1.1 its Pre-Administration Admitted Client Money Amount (a “**Client Money Collateralisation Election**”);
- 59.1.2 its Deferral Cash Amount (for a TA Signatory only);
- 59.1.3 its Affected Intermediary Admitted Claim Amount (for an Affected TA Signatory in respect of the Affected Stock Lines of a Net Equity Intermediary only) (an “**Affected Intermediary Collateralisation Election**”); ~~and/or~~
- 59.1.4 its Cash Payment Amount (for a TA Signatory only); ~~and/or~~
- 59.1.5 its LBI Deferral Cash Amount (for a CRA Omnibus Beneficiary only).



## 59.2 Pre-Administration Admitted Client Money Amount

- 59.2.1 A Signatory's Net Financial Liability may only be collateralised by its Pre-Administration Admitted Client Money Amount if all or part of its Pre-Administration Client Money Claim has been admitted or determined as a Pre-Administration Admitted Client Money Amount in accordance with this Clause 59.2.
- 59.2.2 A Signatory may elect to collateralise its Net Financial Liability with its Pre-Administration Client Money Claim on any Business Day by giving not less than fifteen Business Days' Notice to the Company.
- 59.2.3 The "**Pre-Administration Admitted Client Money Amount**" in respect of a Signatory, from time to time, is equal to the aggregate of:
- (i) any amount admitted from time to time by the Company as the Liability of the Company to that Signatory in respect of its Pre-Administration Client Money Claim; and
  - (ii) any amount (other than an amount in Clause 59.2.3(i)) determined from time to time by a court of competent jurisdiction, whose ruling is binding upon the Company and the Signatory and which is not then subject to appeal, as the Liability of the Company to that Signatory in respect of its Pre-Administration Client Money Claim,

in each case, provided that such Liabilities remain unsatisfied at the time when: (a) the Collateralisation Election is made; or (b) an Ascertained Claim is determined or admitted by the Company pursuant to Clause 62.3.2.

## 59.3 Deferral Cash Amount

- 59.3.1 A TA Signatory may elect to defer the exercise of the Company's rights to Appropriate an Asset Allocation of a particular Asset Pool to Reduce its Net Financial Liability until its Asset Shortfall Claim for that Asset Pool has been determined (such election, an "**Appropriation Deferral Election**"). A TA Signatory may only make such election upon the first Asset Allocation of a Stock Line in respect of an Asset Pool by giving Notice to the Company on or prior to the fifteenth Business Day following the relevant Distribution Value Date of such Asset Allocation (the "**Deferral Election Deadline**").
- 59.3.2 If an Appropriation Deferral Election is made, the TA Signatory shall, on or prior to each day falling on the fifteenth Business Day following any Distribution Value Date relating to an Asset Allocation of that Asset Pool (each, a "**Deferral Cash Payment Date**"), Pay to the Company a cash amount (each such amount, a "**Deferral Cash Amount**") equal to the lesser of:
- (i) the Value of that Asset Allocation as at such Distribution Value Date; and
  - (ii) the Net Financial Liability of the TA Signatory as at such Distribution Value Date.
- 59.3.3 If the TA Signatory fails to pay any Deferral Cash Amount on or prior to the relevant Deferral Cash Payment Date, then the Company may without prior notice exercise its rights to Appropriate any Asset Allocation to such TA Signatory to Reduce its Net Financial Liability.
- 59.3.4 The aggregate amount of all Deferral Cash Amounts in respect of an Asset Pool Paid by the TA Signatory to the Company shall increase the Collateral Amount which shall be applied as a Distribution Asset in the priority of payment under Clause 60.8.

#### **59.4 Affected Intermediary Admitted Claim Amount**

- 59.4.1** An Affected TA Signatory may collateralise its Net Financial Liability by its Affected Intermediary Admitted Claim Amount in respect of a Net Equity Intermediary on any Business Day before the Company gives a Distribution and Appropriation Notice to such Affected TA Signatory in relation to any Asset Allocation in respect of Distributable Trust Assets received from such Net Equity Intermediary, by giving not less than fifteen Business Days' Notice to the Company.
- 59.4.2** Such Affected TA Signatory's Net Financial Liability may only be collateralised after the Affected Intermediary Admitted Claim Amount has been admitted or determined by the Company in accordance with Clause 59.4.3.
- 59.4.3** The "**Affected Intermediary Admitted Claim Amount**" of an Affected TA Signatory in respect of a Net Equity Intermediary is an amount admitted by the Company equal to the lesser of: (i) the aggregate Value, as at the Provisional Valuation Date, of its Individual Claim Amounts (excluding all Derived Assets included in such Individual Claim Amounts) in respect of the relevant Affected Stock Lines; and (ii) its Net Equity Amount in respect of such Net Equity Intermediary.

#### **59.5 Consequence of Affected Intermediary Collateralisation Election**

##### **59.5.1 Overrides any Appropriation Deferral Election**

If an Affected TA Signatory makes an Affected Intermediary Collateralisation Election, any Appropriation Deferral Election (for the avoidance of doubt, including an Appropriation Deferral Election which such Affected TA Signatory makes after making an Affected Intermediary Collateralisation Election) shall not apply with respect to any Asset Allocation in relation to any Affected Stock Line which is the subject of such Affected Intermediary Collateralisation Election.

##### **59.5.2 Undertaking to pay Intermediary Distribution Value to the Company**

Each Signatory undertakes that, if it elects to make an Affected Intermediary Collateralisation Election, it shall pay the Company an amount of cash equal to:

- (i) any Intermediary Distribution Value received from the relevant Net Equity Intermediary unless the Company determines that such Intermediary Distribution Value has been taken into account in the relevant Net Equity Amount of the Affected TA Signatory (including for the avoidance of doubt, the reduction of Liabilities of such TA Signatory to the relevant Affected Intermediary by way of set-off); or
- (ii) the value of any asset received by a Signatory on or after the Administration Date from the relevant Net Equity Intermediary that, had it been received by the Company, would have been a Derived Asset.

Such amount of cash is payable promptly and in no event later than 20 Business Days after the later of: (a) the day on which the Affected TA Signatory makes an Affected Intermediary Collateralisation Election; or (b) the day on which the amount of such Intermediary Distribution Value has been determined (in relation to (i) above) or such asset has been received by the Affected TA Signatory (in relation to (ii) above).

Such amount of cash received by the Company shall be deemed to become an Asset Allocation in relation to any Affected Stock Line which is the subject of such Affected

Intermediary Collateralisation Election, and shall be subject to Appropriation and/or Distribution in respect of such Signatory in accordance with this Part 11.

#### **59.5.3 Covenant to pay Derived Assets**

If an Affected TA Signatory makes an Affected Intermediary Collateralisation Election, such Affected TA Signatory covenants to transfer to the Company all Derived Assets forming part of any Asset Allocation in respect of that Affected TA Signatory and Affected Intermediary (the liability of such Affected TA Signatory in respect of such Derived Assets being “**Affected Intermediary Derived Asset Liability**”).

### **59.6 Consequence of Client Money Collateralisation Election**

This Clause shall immediately apply upon a valid Client Money Collateralisation Election by a Signatory.

#### **59.6.1 Each Signatory hereby irrevocably:**

- (i) effects an absolute assignment to AssignCo of all and any Pre-Administration Client Money Claims and all of its rights with respect thereto. The Company, acting as the authorised agent of AssignCo, hereby accepts such assignment;
- (ii) directs the Company (or, as the case may be, the relevant compensation scheme, insurer or other person) to pay any Pre-Administration Client Money or proceeds of a Pre-Administration Client Money Claim that would, but for Clause 59.6.1, have been made to the Signatory to a bank account opened in the name of AssignCo (such account, the “**Pre-Administration Client Money Collection Account**”) and the Signatory agrees that AssignCo shall be entitled to retain such amount absolutely for its own account without any obligation to account for it to the Signatory; and
- (iii) agrees that each payment by the Company in accordance with Clause 59.6.1(ii) in respect of Pre-Administration Client Money held on Statutory Trust shall constitute a valid discharge pro tanto of the Statutory Trust upon which the Company held the relevant amount of Pre-Administration Client Money for the Signatory and the Company’s obligations with respect to the distribution of such amount of Pre-Administration Client Money.

#### **59.6.2 The Signatory:**

- (i) undertakes that if, notwithstanding the assignment in Clause 59.6.1(i), it receives any amount or benefit in relation to a Pre-Administration Client Money Claim, it shall promptly upon receipt and without need for any demand pay such amount or, as the case may be, the fair value of such benefit to the Pre-Administration Client Money Collection Account for AssignCo’s account;
- (ii) irrevocably authorises the Company, AssignCo and the Administrators to take all such action as they may reasonably consider appropriate in the name of, and on behalf of, the Signatory to establish, pursue or enforce any Pre-Administration Client Money Claims;
- (iii) agrees to promptly render such assistance and take such action as the Company, AssignCo or the Administrators may reasonably request in relation to such Client Money Claims including, without limitation, action to enforce any of the Pre-Administration Client Money Claims to the extent that the assignment in Clause 59.6.1(i) is, for any reason, ineffective; and

- (iv) agrees not to take any action in relation to such Client Money Claim or to waive, compromise, dispose of, charge, encumber or otherwise deal with the same except as so requested.

## **59.7 Total Collateralisation Amount**

- 59.7.1** At any time, the aggregate of the Collateral Claim Amount, the Collateral Amount and the Affected Intermediary Claim Amount of a Signatory shall be the **“Total Collateralisation Amount”**.
- 59.7.2** The **“Collateral Claim Amount”** shall be the Signatory’s Pre-Administration Admitted Client Money Amount as admitted or determined from time to time in accordance with Clause 59.2 that remains unsatisfied from time to time.
- 59.7.3** The **“Collateral Amount”** shall be the aggregate amount of: (i) all Pre-Administration Client Money distributions paid into the Pre-Administration Client Money Collection Account from time to time in accordance with Clause 59.6.1(i) in respect of the Signatory; (ii) all Deferral Cash Amounts paid to the Company in accordance with Clause 59.3 ~~and~~; (iii) all Cash Payment Amounts paid to the Company in accordance with Clause 59.12 and (iv) all LBI Deferral Cash Amounts paid to the Company in accordance with Clause 59.13.2 less any decrease in accordance with Clause 59.9.
- 59.7.4** The **“Affected Intermediary Claim Amount”** shall be the Affected Intermediary Admitted Claim Amount as reduced by the Value of any Asset Allocation as at the Distribution Value Date that has been Appropriated in accordance with Clause 60.3.
- 59.7.5** Upon a valid Collateralisation Election by a Signatory, the Company shall establish a notional ledger to record:
- (i) the Collateral Claim Amount in respect of any Client Money Collateralisation Election;
  - (ii) the Collateral Amount in respect of any Client Money Collateralisation Election and/or Appropriation Deferral Election and/or Cash Payment Election and/or LBI Appropriation Deferral Election; and
  - (iii) the Affected Intermediary Claim Amount in respect of an Affected Intermediary Collateralisation Election,
- in each case of such Signatory from time to time.
- 59.7.6** No interest shall accrue on the Collateral Amount, the Collateral Claim Amount or Affected Intermediary Admitted Claim Amount.

## **59.8 Collateralised Net Financial Liability and Uncollateralised Net Financial Liability**

At any time, the portion of such Signatory’s Net Financial Liability equal to the lesser of: (i) the Total Collateralisation Amount at that time; and (ii) its Net Financial Liability at that time, shall be the collateralised portion of its Net Financial Liability (such portion, the **“Collateralised Net Financial Liability”**).

At any time, such Signatory’s Net Financial Liability less the Collateralised Net Financial Liability at that time shall be the uncollateralised portion of its Net Financial Liability (such portion, the **“Uncollateralised Net Financial Liability”**).

## **59.9 Increase or decrease of Collateral Claim Amount and Collateral Amount**

- 59.9.1** On each occasion that the Company pays a distribution of Pre-Administration Client Money to the Pre-Administration Client Money Collection Account in accordance with Clause 59.6.1(i) in respect of a Signatory, the Signatory's Collateral Claim Amount shall be reduced by an amount equal to such payment and the Signatory's Collateral Amount shall be increased by an amount equal to such payment.
- 59.9.2** The Signatory's Collateral Amount shall only be increased either: (i) together with a corresponding reduction of the Signatory's Collateral Claim Amount in accordance with Clause 59.9.1; or (ii) in respect of a TA Signatory, whenever a TA Signatory pays a Deferral Cash Amount to the Company in accordance with Clause 59.3 and whenever a TA Signatory pays a Cash Payment Amount to the Company in accordance with Clause ~~59.12~~59.12 and in respect of a CRA Omnibus Beneficiary, whenever a LBI Deferral Cash Amount is Paid to the Company in accordance with Clause 59.13.2, and shall be decreased in accordance with Clause 55.4.4, Clause 59.10 or Clause 60.8.
- 59.9.3** The Signatory's Collateral Claim Amount shall only be decreased: (i) together with a corresponding increase of the Collateral Amount in accordance with Clause 59.9.1; or (ii) in accordance with Clause 59.10, and shall only be increased to the extent of any increase, from time to time, of the Signatory's Pre-Administration Admitted Client Money Amount.

## **59.10 Collateral Allocation attributable to surplus Collateral Amount**

- 59.10.1** If at any time the Total Collateralisation Amount exceeds the Net Financial Liability of a Signatory that has made a Collateralisation Election, then an amount equal to the lesser of: (i) the surplus of the Total Collateralisation Amount over such Net Financial Liability; and (ii) the Collateral Amount, shall be deemed to be an Allocation to such Signatory (such deemed Allocation, a "**Collateral Allocation**").
- 59.10.2** A Collateral Allocation shall be applied as a Distribution Asset in the priority of payment under Clause 60.4 and there shall be a corresponding Reduction in the Collateral Amount.

## **59.11 Application of Pre-Administration Client Money Shortfall Claim as Distribution Asset**

- 59.11.1** In respect of a Signatory who has made a Collateralisation Election in respect of a Pre-Administration Client Money Claim, as soon as reasonably practicable following such time when the Company, in its absolute discretion, determines that: (i) it does not expect to make any further distribution of Pre-Administration Client Money in satisfaction of any Signatory's Pre-Administration Client Money Claim; and (ii) it does not expect any further increase to that Signatory's Pre-Administration Admitted Client Money Amount, the Company shall determine the "**Pre-Administration Client Money Shortfall Claim**" of such Signatory as an amount equal to the Signatory's Collateral Claim Amount at such time.
- 59.11.2** Upon the determination of a Signatory's Pre-Administration Client Money Shortfall Claim, the Signatory's Collateral Claim Amount shall be reduced to zero and the Pre-Administration Client Money Shortfall Claim shall be applied as a Distribution Asset in accordance with Clause 60.7.

## **59.12 Cash Payment Amount**

- 59.12.1** A TA Signatory may elect to collateralise all, or part of, its Net Financial Liability (such election, a “**Cash Payment Election**”) by giving not less than five Business Days’ Notice, or such other notice period as agreed with the Company, (such Notice, the “**Cash Payment Election Notice**”) to the Company. The Cash Payment Election Notice shall show the amount and the proposed payment date of such Payment and give details of the relevant account from which any amount for such Payment will be paid.
- 59.12.2** Upon receipt by the Company of a Payment of a cash amount in accordance with a Cash Payment Election Notice, such amount shall constitute a “**Cash Payment Amount**” of the TA Signatory.
- 59.12.3** If the TA Signatory fails to pay any cash amount in accordance with a Cash Payment Election Notice, the TA Signatory shall be deemed not to have made a Cash Payment Election and the Cash Payment Election Notice in relation to such cash amount shall be deemed not given. If the Company incurs any costs and expenses as a result of the TA Signatory’s failure to make such Payment in accordance with a Cash Payment Election Notice, such costs and expenses shall be a Non-Financial Contract Liability in respect of such TA Signatory.
- 59.12.4** The aggregate amount of all Cash Payment Amounts of the TA Signatory shall increase the Collateral Amount which shall be applied as a Distribution Asset in the priority of payment under Clause 60.8.

## **59.13 LBI Deferral Cash Amount**

- 59.13.1** A CRA Omnibus Beneficiary may elect to defer the exercise of the Company’s rights to Appropriate a Reduced Gross Distribution to Reduce its Net Financial Liability until its 19/9 Shortfall Claim has been determined (such election, a “**LBI Appropriation Deferral Election**”). A CRA Omnibus Beneficiary may only make such election, prior to the Cut-Off Date nominated by the Company in the first Notice of Intended Distribution to the CRA Omnibus Beneficiary, by giving a Notice to the Company.
- 59.13.2** If a LBI Appropriation Deferral Election has been made and has not been cancelled in accordance with Clause 59.13.3, the Company shall apply all Reduced Gross Distributions in respect of the CRA Omnibus Beneficiary in the priority of payment under Clause 60.10 and any LBI Deferral Cash Amount arising pursuant to Clause 60.10.4 shall be Paid to the Company and shall increase the Collateral Amount which shall be applied as a Distribution Asset in the priority of payment under Clause 60.8.
- 59.13.3** A CRA Omnibus Beneficiary that has made a LBI Appropriation Deferral Election can at any time by Notice (the “**LBI Appropriation Deferral Election Cancellation Notice**”) to the Company elect that the LBI Appropriation Deferral Election ceases to apply to any Reduced Gross Distributions to be made on or after the date falling five Business Days after the date of the LBI Appropriation Deferral Election Cancellation Notice.

## **60 Appropriation of Distribution Assets to Reduce Distribution Liabilities**

### **60.1 Allocation to TA Signatory with a Net Financial Claim**

#### **60.1.1 Applicable Distribution Assets and Distribution Liabilities**

For a TA Signatory with a Net Financial Claim, where an Asset Allocation is determined in respect of any Stock Line at any time:

- (i) the applicable Distribution Asset shall be such Asset Allocation and Net Financial Claim; and
- (ii) the applicable Distribution Liability shall be the Costs Amount, Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

#### **60.1.2 First priority of application**

The Company shall appropriate the Asset Allocation towards the Reduction of the applicable Distribution Liabilities, based on the Value of such Asset Allocation and the amount of such Distribution Liabilities as at the relevant Distribution Value Date, in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly, Ascertained Non-Financial Contract Liabilities; and
- (iii) thirdly, Unfunded Retention Amount.

#### **60.1.3 Excess Distribution Asset or outstanding Distribution Liabilities**

If the Value of such Asset Allocation exceeds the aggregate amount of the applicable Distribution Liabilities, then all such Distribution Liabilities will be Reduced in full by Appropriation in accordance with Clause 60.1.2 and any remaining Value of the Asset Allocation after Appropriation in accordance with Clause 60.1.2 shall be a Distribution to the TA Signatory.

If the Value of the Asset Allocation is less than the aggregate amount of the applicable Distribution Liabilities, then the Asset Allocation will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.1.2 shall remain outstanding.

#### **60.1.4 Second priority of application**

The Company shall appropriate the Net Financial Claim towards the Reduction of the amount of the Limited Ascertained Non-Financial Contract Liabilities at the relevant Distribution Value Date.

#### **60.1.5 Excess Distribution Asset or outstanding Distribution Liabilities**

If the Net Financial Claim exceeds the Limited Ascertained Non-Financial Contract Liabilities, then the Limited Ascertained Non-Financial Contract Liabilities will be Reduced in full in accordance with Clause 60.1.4 and any remaining amount of Net Financial Claim after Appropriation in accordance with Clause 60.1.4 shall become an Ascertained Claim.

If the Net Financial Claim is less than the Limited Ascertained Non-Financial Contract Liabilities, then the Net Financial Claim will be Appropriated in full and any remaining Limited Ascertained Non-Financial Contract Liabilities that are not Reduced in accordance with Clause 60.1.4 shall remain outstanding as a Liability of the TA Signatory to the Company.

## **60.2 Interim Asset Allocation or Retention Allocation to a TA Signatory with a Net Financial Liability**

### **60.2.1 Applicability**

This Clause 60.2 applies to: (i) an Asset Allocation in respect of any Stock Line, other than any Affected Stock Lines that are the subject of an Affected Intermediary Collateralisation Election; and (ii) a Retention Allocation [with respect to any Retention Amount arising from Distribution Assets other than a Reduced Gross Distribution](#).

### **60.2.2 Applicable Distribution Assets and Distribution Liabilities**

For a TA Signatory with a Net Financial Liability, where an Asset Allocation is determined at any time prior to the determination of an Asset Shortfall Claim for that Asset Pool or where a Retention Allocation is determined:

- (i) the applicable Distribution Asset shall be such Asset Allocation or Retention Allocation [with respect to any Retention Amount arising from Distribution Assets other than a Reduced Gross Distribution](#), as the case may be; and
- (ii) the applicable Distribution Liabilities shall be the Costs Amount, Net Financial Liability (subject to whether a Collateralisation Election has been made), Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

### **60.2.3 Priority of application**

The Company shall appropriate the Asset Allocation or the Retention Allocation, as the case may be, towards the Reduction of the applicable Distribution Liabilities, based on the Value of such Asset Allocation or Retention Allocation, as the case may be, and the amount of such Distribution Liabilities as at the relevant Distribution Value Date, in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly, if no Collateralisation Election has been made, Net Financial Liability; or, if a Collateralisation Election has been made, the Uncollateralised Net Financial Liability (unless an Appropriation Deferral Election has been made in respect of that Asset Allocation, in which case the Uncollateralised Net Financial Liability shall not be an applicable Distribution Liability);
- (iii) thirdly, Ascertained Non-Financial Contract Liabilities; and
- (iv) fourthly, Unfunded Retention Amount.

### **60.2.4 Excess Distribution Asset or outstanding Distribution Liabilities**

If the Value of the Asset Allocation or the Retention Allocation exceeds the aggregate amount of the Distribution Liabilities, then all applicable Distribution Liabilities will be Reduced in full in accordance with Clause 60.2.3 and any remaining Value of the Asset Allocation after Appropriation in accordance with Clause 60.2.3 shall be a Distribution to the TA Signatory or any remaining value of the Retention Allocation after Appropriation in accordance with Clause 60.2.3 shall be paid to the TA Signatory.

If the Value of the Asset Allocation or the Retention Allocation is less than the aggregate amount of the applicable Distribution Liabilities, then such Asset Allocation or such Retention Allocation, as the case may be, will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.2.3 shall remain outstanding.



### **60.3 Asset Allocation following an Affected Intermediary Collateralisation Election**

#### **60.3.1 Applicability**

This Clause 60.3 applies to an Asset Allocation in respect of an Affected Stock Line that is the subject of an Affected Intermediary Collateralisation Election.

#### **60.3.2 Applicable Distribution Assets and Distribution Liabilities**

For a TA Signatory with a Net Financial Liability who has made an Affected Intermediary Collateralisation Election, where an Asset Allocation is determined in respect of the Net Equity Intermediary the subject of the Affected Intermediary Collateralisation Election :

- (i) the applicable Distribution Asset shall be such Asset Allocation; and
- (ii) the applicable Distribution Liabilities shall be the Affected Intermediary Derived Asset Liability relating to that Asset Allocation, Costs Amount, Collateralised Net Financial Liability, Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

#### **60.3.3 First priority of application**

The Company shall appropriate any part of the Asset Allocation that comprises Derived Assets towards the Reduction of the Affected Intermediary Derived Asset Liability relating to that Asset Allocation, based on the Value of the component of such Asset Allocation that comprises Derived Assets and the amount of the Affected Intermediary Derived Asset Liability as at the relevant Distribution Value Date.

#### **60.3.4 Excess Distribution Asset or outstanding Distribution Liability**

It is intended that the Value of the component of such Asset Allocation that comprises Derived Assets will equal the amount of the Affected Intermediary Derived Asset Liability such that all such Affected Intermediary Derived Asset Liability will be Reduced in full by Appropriation and the component of such Asset Allocation will be Appropriated in full, in each case in accordance with Clause 60.3.3.

#### **60.3.5 Second priority of application**

The Company shall appropriate the balance of the Asset Allocation that does not comprise Derived Assets towards the Reduction of the applicable Distribution Liabilities, based on the Value of the balance of such Asset Allocation and the amount of such Distribution Liabilities as at the relevant Distribution Value Date, in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly, Collateralised Net Financial Liability;
- (iii) thirdly, Ascertained Non-Financial Contract Liabilities; and
- (iv) fourthly, Unfunded Retention Amount.

#### **60.3.6 Excess Distribution Asset or outstanding Distribution Liabilities**

If the Value of the Asset Allocation exceeds the aggregate amount of the applicable Distribution Liabilities, then all applicable Distribution Liabilities will be Reduced in full in accordance with Clause 60.3.5 and any remaining Value of the Asset Allocation after Appropriation in accordance with Clause 60.3.5 shall be a Distribution to the TA Signatory.

If the Value of the Asset Allocation is less than the amount of the aggregate amount of the applicable Distribution Liabilities, then such Asset Allocation will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.3.5 shall remain outstanding.

## **60.4 Interim Collateral Allocation to a Signatory with a Net Financial Liability**

### **60.4.1 Applicable Distribution Assets and Distribution Liabilities**

For a TA Signatory with a Net Financial Liability who has made a Collateralisation Election, where a Collateral Allocation is determined in accordance with Clause 59.10 at any time prior to the determination of its Pre-Administration Client Money Shortfall Claim and the Last Allocation [and the determination of any 19/9 Shortfall Claim](#):

- (i) the applicable Distribution Asset shall be such Collateral Allocation; and
- (ii) the applicable Distribution Liabilities shall be the Costs Amount [\(unless part or all of the Collateral Allocation arises from a LBI Deferral Cash Amount, in which case the Costs Amount shall not be a Distribution Liability in respect of the part of the Collateral Allocation so arising\)](#), Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

### **60.4.2 Priority of application**

The Company shall appropriate the Collateral Allocation towards the Reduction of the applicable Distribution Liabilities, based on the amount of such Collateral Allocation and such applicable Distribution Liabilities as at the relevant Distribution Value Date, in the following order of priority:

- (i) first, Costs Amount [provided that the Costs Amount shall be satisfied only from any Collateral Allocation not arising from a LBI Deferral Cash Amount](#);
- (ii) secondly, Ascertained Non-Financial Contract Liabilities; and
- (iii) thirdly, Unfunded Retention Amount.

### **60.4.3 Excess Distribution Asset or outstanding Distribution Liabilities**

If the amount of Collateral Allocation exceeds the aggregate amount of the applicable Distribution Liabilities, then all applicable Distribution Liabilities will be Reduced in full in accordance with Clause 60.4.2 and an amount equal to such remaining amount of the Collateral Allocation after Appropriation in accordance with Clause 60.4.2 shall be paid to the TA Signatory.

If the amount of Collateral Allocation is less than the aggregate amount of the applicable Distribution Liabilities, then the Collateral Allocation will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.4.2 shall remain outstanding.

### **60.4.4 Interim Collateral Allocation to an NTA Signatory**

For an NTA Signatory with a Net Financial Liability that has made a Collateralisation Election, where a Collateral Allocation is determined in accordance with Clause 59.10 at any time prior to the determination of its Pre-Administration Client Money Shortfall Claim, an amount equal to such Collateral Allocation shall be paid to the NTA Signatory.

## **60.5 Last Asset Allocation to a TA Signatory with a Net Financial Liability**

### **60.5.1 Applicability**

This Clause 60.5 applies to any Asset Allocation and/or Asset Shortfall Claim in respect of any Stock Line other than any Affected Stock Lines that are the subject of an Affected Intermediary Collateralisation Election.

### **60.5.2 Applicable Distribution Assets and Distribution Liabilities**

For a TA Signatory with a Net Financial Liability, upon the determination of an Asset Shortfall Claim of an Asset Pool:

- (i) the applicable Distribution Assets shall be such Asset Shortfall Claim and any Asset Allocation; and
- (ii) the applicable Distribution Liabilities shall be the Net Financial Liability (subject to whether a Collateralisation Election has been made), Costs Amount, Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

### **60.5.3 First priority of application**

The Company shall first appropriate such Asset Shortfall Claim towards the Reduction of Net Financial Liability or, if a Collateralisation Election has been made, first, the Uncollateralised Net Financial Liability and, secondly, the Collateralised Net Financial Liability in that order, in each case, based on the Value of the Asset Shortfall Claim and the amount of such Net Financial Liability or the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability, as the case may be, as at the relevant Distribution Value Date.

### **60.5.4 Excess Asset Shortfall Claim and outstanding Net Financial Liability after first priority of application**

If the Asset Shortfall Claim exceeds the Net Financial Liability, then the Net Financial Liability will be Reduced in full in accordance with Clause 60.5.3 and any remaining amount of Asset Shortfall Claim after Appropriation in accordance with Clause 60.5.3 shall be Valued as at the Date Before Administration and become an Ascertained Claim.

If the Asset Shortfall Claim is less than the Net Financial Liability, then the Asset Shortfall Claim will be Appropriated in full and any remaining Net Financial Liability or the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability, as the case may be, that is not Reduced in accordance with Clause 60.5.3 shall remain outstanding for application as a Distribution Liability under Clause 60.5.5.

### **60.5.5 Second priority of application**

The Company shall then appropriate the Asset Allocation towards the Reduction of the applicable Distribution Liabilities in the order of priority set out in this Clause 60.5.5, based on the Value of such Asset Allocation and the amount of such Distribution Liabilities as at the relevant Distribution Value Date following any Reduction effected in accordance with Clause 60.5.3. The applicable Distribution Liabilities shall be Reduced in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly:
  - (a) if a Collateralisation Election has been made, the Uncollateralised Net Financial Liability; or

- (b) if no Collateralisation Election has been made, the Net Financial Liability;
- (iii) thirdly, Ascertained Non-Financial Contract Liabilities; and
- (iv) fourthly, Unfunded Retention Amount.

**60.5.6 Excess Distribution Assets or outstanding Distribution Liabilities after second priority of application**

If the Value of the Asset Allocation exceeds the aggregate amount of the Distribution Liabilities in Clause 60.5.5, then all such applicable Distribution Liabilities will be Reduced in full in accordance with Clause 60.5.5. Any remaining Value of such Asset Allocation after Appropriation in accordance with Clause 60.5.5 shall be a Distribution to the TA Signatory.

If the aggregate Value of the Asset Allocation is less than the aggregate amount of the applicable Distribution Liabilities in Clause 60.5.5, then the Asset Allocation will be Appropriated in full and any applicable Distribution Liability in Clause 60.5.5 that is not Reduced in full in accordance with Clause 60.5.5 shall remain outstanding.

**60.6 Last Asset Allocation of Assets from the Affected Intermediary under an Affected Intermediary Collateralisation Election**

**60.6.1 Applicability**

This Clause 60.6 applies in respect of the Affected Stock Lines that are the subject of an Affected Intermediary Collateralisation Election upon the Company having determined that it does not expect to make any further Asset Allocation in relation to Distributable Trust Assets received from such Net Equity Intermediary to an Affected TA Signatory.

**60.6.2 Shortfall For Appropriation**

As soon as reasonably practicable after making the determination in Clause 60.6.1, the Company shall determine the “**Shortfall For Appropriation**” of such Affected TA Signatory in respect of such Net Equity Intermediary in an amount equal to any excess of: (i) the relevant Affected Intermediary Admitted Claim Amount; over (ii) the aggregate Value of each such Asset Allocation (other than the Derived Asset components subject to the first priority of application in Clause 60.3.3) as at the relevant Distribution Value Date.

**60.6.3 Applicable Distribution Assets and Distribution Liabilities**

Upon the determination of a Shortfall For Appropriation in respect of a TA Signatory and a Net Equity Intermediary, the subject of such Affected Intermediary Collateralisation Election:

- (i) the applicable Distribution Asset shall be any Shortfall For Appropriation; and
- (ii) the applicable Distribution Liability shall be the Collateralised Net Financial Liability.

**60.6.4 Priority of application**

The Company shall appropriate any Shortfall For Appropriation towards the Reduction of the Collateralised Net Financial Liability based on the Value of such Collateralised Net Financial Liability at the relevant Distribution Value Date.

**60.6.5 Excess Shortfall For Appropriation and outstanding Net Financial Liability after priority of application**

If the Shortfall For Appropriation is less than the Collateralised Net Financial Liability, then the Shortfall For Appropriation will be Appropriated in full and any remaining Collateralised Net Financial Liability that is not Reduced in accordance with Clause 60.6.4 shall remain outstanding for application as a Distribution Liability.

If the Shortfall For Appropriation exceeds the Collateralised Net Financial Liability, then the Net Financial Liability will be Reduced in full and the Affected TA Signatory shall have an Ascertained Claim in an amount equal to the Ascertained Shortfall Amount (which may be zero) determined by the Company in accordance with Clause 62.2.

**60.7 Last distribution of Pre-Administration Client Money to Signatory**

**60.7.1 Applicable Distribution Assets and Distribution Liabilities**

For a Signatory with a Net Financial Liability who has made a Collateralisation Election in respect of Pre-Administration Client Money, upon the determination of its Pre-Administration Client Money Shortfall Claim:

- (i) the applicable Distribution Asset shall be any Pre-Administration Client Money Shortfall Claim; and
- (ii) the applicable Distribution Liabilities shall be the Collateralised Net Financial Liability and the Uncollateralised Net Financial Liability.

**60.7.2 Priority of application**

The Company shall appropriate any Pre-Administration Client Money Shortfall Claim towards the Reduction of the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability based on the amount of such Pre-Administration Client Money Shortfall Claim and Net Financial Liability as at the relevant Distribution Value Date.

**60.7.3 Excess Pre-Administration Client Money Shortfall Claim and outstanding Net Financial Liability after first priority of application**

If the amount of the Pre-Administration Client Money Shortfall Claim exceeds the aggregate amount of the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability, then the Net Financial Liability will be Reduced in full in accordance with Clause 60.7.2 and any remaining amount of Pre-Administration Client Money Shortfall Claim after Appropriation in accordance with Clause 60.7.2 shall become an Ascertained Claim of such Signatory.

If the amount of the Pre-Administration Client Money Shortfall Claim is less than the aggregate amount of the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability, then the Pre-Administration Client Money Shortfall Claim will be Appropriated in full and any remaining Uncollateralised Net Financial Liability and/or the Collateralised Net Financial Liability that is not Reduced in accordance with Clause 60.7.2 shall remain outstanding for application as a Distribution Liability under Clause 60.8.

## **60.8 Final Distribution of Collateral Amount following determination of Pre-Administration Client Money Shortfall Claim and final Asset Allocation and any 19/9 Shortfall Claim**

### **60.8.1 Applicable Distribution Assets and Distribution Liabilities**

For a Signatory with a Net Financial Liability who has made a Collateralisation Election where: (a) the Collateralisation Election is in respect of Pre-Administration Client Money and the Company has determined such Signatory's Pre-Administration Client Money Shortfall Claim; (b) (for a TA Signatory) the Collateralisation Election is an Appropriation Deferral Election and there is no further Asset Allocation in respect of such TA Signatory; (c) (for a TA Signatory) the Collateralisation Election is a Cash Payment Election and there is no further Asset Allocation in respect of such TA Signatory ~~or (d) (for a CRA Omnibus Beneficiary) the Collateralisation Election is a LBI Appropriation Deferral Election and any 19/9 Shortfall Claim in respect of such CRA Omnibus Beneficiary has been determined and, if applicable, applied in accordance with Clause 60.11 or (e)~~ (for a TA Signatory) the Collateralisation Election falls within two or more of (a), (b), (c) and ~~(ed)~~ and all the applicable criteria set out in (a), (b), (c) and ~~(ed)~~, as relevant, are satisfied, then:

- (i) the applicable Distribution Asset shall be the Collateral Amount; and
- (ii) the applicable Distribution Liabilities for a TA Signatory shall be the Net Financial Liability, Costs Amount (unless part or all of the Collateral Amount arises from a LBI Deferral Cash Amount, in which case the Costs Amount shall not be a Distribution Liability in respect of the part of the Collateral Amount so arising), Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount and for an NTA Signatory shall be the Net Financial Liability.

### **60.8.2 Priority of application**

For a TA Signatory, the Company shall appropriate the Collateral Amount towards the Reduction of the applicable Distribution Liabilities, based on the amount of such Collateral Amount and such applicable Distribution Liabilities as at the relevant Distribution Value Date following any Reduction effected in accordance with Clause 60.7.2, in the following order of priority:

- (i) first, Costs Amount, provided that the Costs Amount shall be satisfied only from any Collateral Amount not arising from a LBI Deferral Cash Amount;
- (ii) secondly, the Net Financial Liability;
- (iii) thirdly, Ascertained Non-Financial Contract Liabilities; and
- (iv) fourthly, Unfunded Retention Amount.

For an NTA Signatory, the Company shall appropriate the Collateral Amount towards the Reduction of the Net Financial Liability, based on the amount of such Collateral Amount and such Net Financial Liability as at the relevant Distribution Value Date following any Reduction effected in accordance with Clause 60.7.2.

### **60.8.3 Excess Distribution Asset or outstanding Distribution Liabilities after second priority of application**

If the Collateral Amount exceeds the aggregate amount of the applicable Distribution Liabilities, or in the case of an NTA Signatory, the Net Financial Liability, then all such applicable Distribution Liabilities, or Net Financial Liability (as applicable), will be

Reduced in full in accordance with Clause 60.8.2. An amount equal to any remaining Collateral Amount after Appropriation in accordance with Clause 60.8.2 shall be paid to the Signatory.

If the Collateral Amount is less than the aggregate amount of the applicable Distribution Liabilities, or the Net Financial Liability (as applicable), then the Collateral Amount will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.8.2 shall remain outstanding.

## **60.9 Reduced Gross Distribution to CRA Omnibus Beneficiary with a Net Financial Claim**

### **60.9.1 Applicable Distribution Assets and Distribution Liabilities**

For a CRA Omnibus Beneficiary with a Net Financial Claim, where a Reduced Gross Distribution is determined at any time in accordance with the Common Terms:

- (i) the applicable Distribution Asset shall be such Reduced Gross Distribution and Net Financial Claim; and
- (ii) the applicable Distribution Liability shall be the Costs Amount, the Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

### **60.9.2 First priority of application**

The Company shall appropriate the Reduced Gross Distribution towards the Reduction of the applicable Distribution Liabilities, based on the Value of such Reduced Gross Distribution and the amount of such Distribution Liabilities as at the relevant Cut-Off Date, in the following order of priority:

- (i) first, the Costs Amount, provided that if the Appropriation for such Costs Amount will result in the aggregate amount of the Costs Amount paid or accounted for to the Company by such CRA Omnibus Beneficiary exceeding the Settlement Agreement Permitted Costs Liability, then only a portion of the Costs Amount such that the aggregate amount of the Costs Amount following the Appropriation hereunder paid or accounted for to the Company by such CRA Omnibus Beneficiary is equal to the Settlement Agreement Permitted Costs Liability, shall be Appropriated hereunder;
- (ii) secondly, Ascertained Non-Financial Contract Liabilities; and
- (iii) thirdly, Unfunded Retention Amount.

### **60.9.3 Excess Distribution Asset or outstanding Distribution Liabilities**

If the Value of such Reduced Gross Distribution exceeds the aggregate amount of the applicable Distribution Liabilities, then all such Distribution Liabilities will be Reduced in full by Appropriation in accordance with Clause 60.9.2 and any remaining Value of the Reduced Gross Distribution after Appropriation in accordance with Clause 60.9.2 shall be a Net Distribution to the CRA Omnibus Beneficiary in accordance with clause 10.1 of the Common Terms.

If the Value of the Reduced Gross Distribution is less than the aggregate amount of the applicable Distribution Liabilities, then the Reduced Gross Distribution will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.9.2 shall remain outstanding.

### **60.9.4 Second priority of application**

The Company shall appropriate the Net Financial Claim towards the Reduction of the amount of the Limited Ascertained Non-Financial Contract Liabilities at the relevant Cut-Off Date.

#### **60.9.5 Excess Distribution Asset or outstanding Distribution Liabilities**

If the Net Financial Claim exceeds the Limited Ascertained Non-Financial Contract Liabilities, then the Limited Ascertained Non-Financial Contract Liabilities will be Reduced in full in accordance with Clause 60.9.4 and any remaining amount of Net Financial Claim after Appropriation in accordance with Clause 60.9.4 shall become an Ascertained Claim.

If the Net Financial Claim is less than the Limited Ascertained Non-Financial Contract Liabilities, then the Net Financial Claim will be Appropriated in full and any remaining Limited Ascertained Non-Financial Contract Liabilities that are not Reduced in accordance with Clause 60.9.4 shall remain outstanding as a Liability of the CRA Omnibus Beneficiary to the Company.

### **60.10 Reduced Gross Distribution to a CRA Omnibus Beneficiary with a Net Financial Liability**

#### **60.10.1 Applicability**

This Clause 60.10 applies to: (i) any Reduced Gross Distribution; and (ii) any Retention Amount arising from a Distribution Asset that is a Reduced Gross Distribution.

#### **60.10.2 Applicable Distribution Assets and Distribution Liabilities**

For a CRA Omnibus Beneficiary with a Net Financial Liability, where a Reduced Gross Distribution is determined or where a Retention Allocation with respect to any Retention Amount arising from a Reduced Gross Distribution is determined:

- (i) the applicable Distribution Asset shall be such Reduced Gross Distribution or Retention Allocation with respect to any Retention Amount arising from a Reduced Gross Distribution, as the case may be; and
- (ii) the applicable Distribution Liabilities shall be the Costs Amount, the Net Financial Liability (subject to whether a Collateralisation Election has been made and has not been cancelled), Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

#### **60.10.3 Priority of application**

The Company shall appropriate the Reduced Gross Distribution or the Retention Allocation, as the case may be, towards the Reduction of the applicable Distribution Liabilities, based on the Value of such Reduced Gross Distribution or Retention Allocation, as the case may be, and the amount of such Distribution Liabilities as at the relevant Cut-Off Date, or, if the Retention Allocation is not being applied together with a Reduced Gross Distribution, as at the relevant Distribution Value Date, in the following order of priority:

- (i) first, the Costs Amount, provided that if the Appropriation for such Costs Amount will result in the aggregate amount of the Costs Amount paid or accounted for to the Company by such CRA Omnibus Beneficiary exceeding the Settlement Agreement Permitted Costs Liability, then only a portion of the Costs Amount such that that aggregate amount of the Costs Amount following the



Appropriation hereunder paid or accounted for to the Company by such CRA Omnibus Beneficiary is equal to the Settlement Agreement Permitted Costs Liability, shall be Appropriated hereunder;

- (ii) secondly, if no Collateralisation Election has been made, Net Financial Liability; or, if a Collateralisation Election has been made, the Uncollateralised Net Financial Liability (unless a LBI Appropriation Deferral Election has been made and has not been cancelled in accordance with Clause 59.13.3, in which case no part of the Net Financial Liability shall be an applicable Distribution Liability);
- (iii) thirdly, Ascertained Non-Financial Contract Liabilities; and
- (iv) fourthly, Unfunded Retention Amount.

#### **60.10.4 Excess Distribution Asset or outstanding Distribution Liabilities**

If the Value of such Reduced Gross Distribution or the Retention Allocation exceeds the aggregate amount of the Distribution Liabilities, then all applicable Distribution Liabilities will be Reduced in full in accordance with Clause 60.10.3 and any remaining Value of the Reduced Gross Distribution after Appropriation in accordance with Clause 60.10.3: (a) shall, if: (x) a LBI Appropriation Deferral Election has not been made; or (y) a LBI Appropriation Deferral Election has been made and has not been cancelled but there is no Uncollateralised Net Financial Liability; or (z) a LBI Appropriation Deferral Election has been made but has been cancelled in accordance with Clause 59.13.3, be a Net Distribution to the CRA Omnibus Beneficiary in accordance with clause 10.1 of the Common Terms; or (b) if a LBI Appropriation Deferral Election has been made and has not been cancelled in accordance with Clause 59.13.3 and there is Uncollateralised Net Financial Liability, the lower of: (x) such remaining Value of the Reduced Gross Distribution after Appropriation in accordance with Clause 60.10.3; and (y) the Uncollateralised Net Financial Liability, shall be a “LBI Deferral Cash Amount” and shall be applied in accordance with Clause 59.13.2 and if such remaining Value of the Reduced Gross Distribution after Appropriation in accordance with Clause 60.10.3 is higher than the Uncollateralised Net Financial Liability, the excess of such remaining Value of the Reduced Gross Distribution after Appropriation in accordance with Clause 60.10.3 over the Uncollateralised Net Financial Liability shall be a Net Distribution to the CRA Omnibus Beneficiary in accordance with clause 10.1 of the Common Terms and any remaining value of the Retention Allocation after Appropriation in accordance with Clause 60.10.3 shall be paid to the CRA Omnibus Beneficiary.

If the Value of the Reduced Gross Distribution or the Retention Allocation is less than the aggregate amount of the applicable Distribution Liabilities, then such Reduced Gross Distribution or such Retention Allocation, as the case may be, will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60 10 3 shall remain outstanding

### **60.11 19/9 Shortfall Claim to a CRA Omnibus Beneficiary with a Net Financial Liability**

#### **60 11 1 Applicability**

This Clause 60.11 applies to the 19/9 Shortfall Claim of a CRA Omnibus Beneficiary with a Net Financial Liability.

#### **60 11 2 Applicable Distribution Assets and Distribution Liabilities**

For a CRA Omnibus Beneficiary with a Net Financial Liability, upon the determination of a 19/9 Shortfall Claim:

- (i) the applicable Distribution Assets shall be such 19/9 Shortfall Claim; and
- (ii) the applicable Distribution Liability shall be the Net Financial Liability (subject to whether a Collateralisation Election has been made).

#### **60.11.3 Priority of application**

The Company shall appropriate such 19/9 Shortfall Claim towards the Reduction of Net Financial Liability or, if a Collateralisation Election has been made, first, the Uncollateralised Net Financial Liability and, secondly, the Collateralised Net Financial Liability in that order, in each case, based on the Value of the 19/9 Shortfall Claim and the amount of such Net Financial Liability or the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability, as the case may be, as at the date on which the Shortfall Claims Determination Notice in respect of the CRA Omnibus Beneficiary is issued in accordance with clause 5.2 (*Shortfall Claims Determination Notice*) of the Common Terms.

#### **60.11.4 Excess 19/9 Shortfall Claim and outstanding Net Financial Liability**

If the 19/9 Shortfall Claim exceeds the Net Financial Liability, then the Net Financial Liability will be Reduced in full in accordance with Clause 60.11.3 and any remaining amount of 19/9 Shortfall Claim after Appropriation in accordance with Clause 60.11.3 shall be the Net 19/9 Shortfall Claim of the CRA Omnibus Beneficiary pursuant to clause 5 (*19/9 Shortfall Claim*) of the Common Terms.

If the 19/9 Shortfall Claim is less than the Net Financial Liability, then the 19/9 Shortfall Claim will be Appropriated in full and the Net 19/9 Shortfall Claim of the CRA Omnibus Beneficiary shall be zero and any remaining Net Financial Liability or the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability, as the case may be, that is not Reduced in accordance with Clause 60.11.3 shall remain outstanding.

### **61 Distributions relating to Pre-Agreement Asset Contracts**

If a TA Signatory who is a Pre-Agreement Provisionally Returned Asset Recipient would, but for the operation of this Clause 61, otherwise be due a Distribution pursuant to Clause 60, then if the amount of such Distribution in the Company's absolute discretion (after the Company has made an appropriate adjustment to reflect timing differences relating to value and the accrual of Derived Assets between the date of return of the Pre-Agreement Provisionally Returned Assets and the proposed value date of the Distribution and Appropriation Notice for such Distribution) is:

- (i) equal to or greater than the amount of the Signatory's Pre-Agreement Provisionally Returned Assets:
  - (a) the Pre-Agreement Provisionally Returned Assets shall be its Pre-Agreement Returned Assets; and
  - (b) the Distribution (otherwise determined in accordance with Part 11) less its Pre-Agreement Returned Assets (after adjustment as provided above) shall be the Distribution to such Signatory for the purpose of this Agreement; or
- (ii) less than an amount of the Signatory's Pre-Agreement Provisionally Returned Assets:
  - (a) the Distribution (otherwise determined in accordance with Part 11) shall be its Pre-Agreement Returned Assets;

- (b) there shall be no further Distribution to such Signatory for the purpose of this Agreement; and
- (c) nothing in this Agreement shall be construed to prevent the Company from pursuing, or be a waiver of any right of the Company to pursue, the Signatory for such excess amounts of Pre-Agreement Provisionally Returned Assets in accordance with any such terms of the relevant Pre-Agreement Asset Contract.

## **62 Ascertained Claims**

The Company shall determine the following Ascertained Claims (if any) of a Signatory.

### **62.1 Asset Shortfall Claim**

For a Signatory with a Net Financial Liability, subject to Clause 46.2 or Clause 48.3 (as applicable), the aggregate of all excess Asset Shortfall Claims after Appropriation in accordance with Clause 60.5.4 shall be Valued as at the Date Before Administration and become an Ascertained Claim.

For a Signatory with a Net Financial Claim, subject to Clause 46.2 or Clause 48.3 (as applicable), the aggregate of all Asset Shortfall Claims shall be Valued as at the Date Before Administration and become an Ascertained Claim.

### **62.2 Ascertained Shortfall Amount**

**62.2.1** For an Affected TA Signatory who has made an Affected Intermediary Collateralisation Election and has an amount of Shortfall For Appropriation remaining after all Collateralised Net Financial Liability has been Reduced in accordance with Clause 60.6.5, the Ascertained Shortfall Amount shall become an Ascertained Claim.

**62.2.2** An “**Ascertained Shortfall Amount**” for an Affected TA Signatory in respect of the relevant Net Equity Intermediary is an amount, subject to a minimum of zero and subject to Clause 48.3, equal to the Asset Shortfall Claim of such TA Signatory in respect of such Net Equity Intermediary (determined in accordance with Clause 48.3) less the amount of the Collateralised Net Financial Liability Reduced to zero by Appropriation against the related Shortfall For Appropriation in accordance with Clause 60.6.4.

### **62.3 Pre-Administration Client Money Shortfall Claim**

**62.3.1** For a Signatory who has made a Collateralisation Election, the amount of its Pre-Administration Client Money Shortfall Claim remaining after Appropriation in accordance with Clause 60.7.3 shall become an Ascertained Claim.

**62.3.2** In respect of a Signatory who has not made a Collateralisation Election in respect of a Pre-Administration Client Money Claim, as soon as reasonably practicable following such time when the Company, in its absolute discretion, determines that it does not expect to make any further distribution of Pre-Administration Client Money in satisfaction of any Signatory's Pre-Administration Client Money Claim, the Company shall determine and admit as an Ascertained Claim an amount equal to the Signatory's Pre-Administration Admitted Client Money Claim that remains unsatisfied at that time.

### **62.4 Net Financial Claim**

A TA Signatory with a Net Financial Claim, after Appropriation in accordance with Clause ~~60.1.4~~, [60.1.4 or 60.9.4, as relevant](#), shall have an Ascertained Claim for an amount equal to such Net Financial Claim remaining after Appropriation.

An NTA Signatory with a Net Financial Claim shall have an Ascertained Claim for an amount equal to such Net Financial Claim.

**62.5 Capped Net 19/9 Shortfall Claim**

For a CRA Omnibus Beneficiary, any Capped Net 19/9 Shortfall Claim determined in accordance with clause 5.4 (*Shortfall Claim Cap*) of the Common Terms shall be an Ascertained Claim.

## PART 12: DELIVERY OF DISTRIBUTIONS

### 63 Delivery of Distributions

This Clause 63 does not apply in relation to any Net Distribution or any Retention Allocation to be delivered simultaneously with a Net Distribution made to a CRA Omnibus Beneficiary in accordance with the Common Terms to which part 4 (*Common Terms Distributions out of Omnibus Trust*) and part 5 (*Information*) of the Common Terms shall apply.

#### 63.1 Delivery of Distributions to Signatories

- 63.1.1 The Company shall deliver to each Signatory its Distribution in accordance with this Clause 63.
- 63.1.2 Each Signatory's Distribution may be delivered to it by a number of different deliveries. The Company shall, acting in a commercially reasonable manner, determine the Delivery Instruction Date in respect of each delivery.
- 63.1.3 Unless otherwise specified under this Agreement, a Signatory shall not be entitled to any payment or other assets, whether of interest or otherwise, if the delivery of the Distribution falls after the Delivery Date or if the Delivery Instruction Date or the Delivery Date is postponed (or both of them are) by reason of this Clause 63.
- 63.1.4 Any Securities to be delivered by the Company under this Part 12 shall be rounded down to the nearest: (i) whole number of Securities; or (ii) integral multiple of the minimum transfer value of such Security, and delivered to the relevant Signatory in accordance with Clause 63.2. The Company shall, provided that it is reasonably and economically practicable to do so, realise the number of the Securities which have been subject to the rounding down (if any) in aggregate and shall pay the realisation proceeds of the fractional entitlement of such Securities, to the Signatory in accordance with Clause 63.5.

#### 63.2 Method of delivery of Securities

- 63.2.1 In order for the instruction for settlement to be given in respect of any Securities to which it is entitled out of a Distribution on a Delivery Instruction Date, a Signatory must send a Notice (an "**Asset Delivery Notice**") to the Company no later than 5.00 p.m. (London time) on the day which is five Business Days before the Delivery Instruction Date in relation to such Securities (the "**Notice Cut-off Date**"). An Asset Delivery Notice may be provided to the Company by a Signatory in respect of Securities of a single Stock Line or in respect of one or more classes or categories of Securities.
- 63.2.2 If a Signatory has delivered a valid Asset Delivery Notice in respect of Securities of one Stock Line or in respect of one or more classes or categories of Securities, the Company shall treat that Asset Delivery Notice as valid for all subsequent Distributions of Securities of the same Stock Line, class or category, unless and until the Signatory delivers a replacement Asset Delivery Notice to the Company in accordance with Clause 63.2.1.
- 63.2.3 An Asset Delivery Notice shall:
  - (i) specify the Securities (whether by Stock Line, class or category) to which it applies;

- (ii) contain full details of the person and/or account to which the Securities are to be delivered, together with the method by which delivery is to be effected and any other information that may be required for delivery of the Securities;
- (iii) specify an account to which any cash amounts are to be paid; and
- (iv) authorise the production of such Notice in any applicable administrative or legal proceedings.

The Company may treat any Asset Delivery Notice which, in the opinion of the Company, is not compliant with this Clause 63.2.3, as null and void.

**63.2.4** Notwithstanding Clause 63.2.3, where, in the opinion of the Company, the information in an Asset Delivery Notice is ambiguous, unclear or insufficient, the Company may reject such Asset Delivery Notice as invalid and request the relevant Signatory to provide a revised Asset Delivery Notice curing the ambiguity, lack of clarity or insufficiency.

**63.2.5** Notwithstanding Clause 63.2.3, where, in the opinion of the Company, the instructions for and method of delivery of Securities as set out in the Asset Delivery Notice, or such instructions or method of delivery would involve disproportionate costs, the Company may in its absolute discretion:

- (i) reject such Asset Delivery Notice as invalid and request the relevant Signatory to provide a revised Asset Delivery Notice with alternative instructions for and method of delivery of such Securities, which shall also be subject to this Clause 63.2.5; or
- (ii) require the Signatory to pay to the Company such sum of money as the Company determines necessary to meet the additional costs incurred in delivering such Securities and the Company need not effect such delivery until these extra costs have been paid to it by the Signatory.

**63.2.6** If a Signatory delivers an Asset Delivery Notice to the Company after 5.00 p.m. (London time) on the Notice Cut-off Date in relation to any Securities, then the Delivery Instruction Date for those Securities may, at the discretion of the Company, be postponed to the day that falls up to five clear Business Days after the day on which such Asset Delivery Notice is given or, if the Company considers that that date is not reasonably practicable, such later date as the Company may decide.

**63.2.7** Provided that the Signatory has delivered a valid Asset Delivery Notice in accordance with Clause 63.2.1, Clause 63.2.2 and Clause 63.2.3, and subject to the Delivery Disruption Event provisions set out in Clause 63.4, the Company shall give, or procure the giving of, the instruction for settlement of each delivery on the Delivery Instruction Date to the person and/or account specified in the Asset Delivery Notice in such commercially reasonable manner as the Company shall determine to be appropriate for such delivery at the risk of the relevant Signatory.

**63.2.8** If the Signatory fails to deliver an Asset Delivery Notice to the Company in respect of a Distribution (or any delivery in respect of that Distribution) by 5.00 p.m. (London time) on the day falling 12 months after the Notice Cut-off Date, the Signatory shall forfeit its right to receive delivery of the relevant Distribution (or part of it) and such Distribution (or part of it) shall be deemed to be an Unclaimed Distribution and applied in the manner set out in Clause 63.6.

### **63.3 Delivery Date**

**63.3.1** The “**Delivery Date**” in respect of any Securities comprising a Distribution shall be such date that the Company determines, acting in a commercially reasonable manner, would be the date on which those Securities would be delivered to the Signatory if the Company instructed their delivery in accordance with the relevant Asset Delivery Notice on the respective Delivery Instruction Date.

### **63.4 Delivery Disruption Event**

**63.4.1** If the Company determines that delivery of a Distribution (or part of it) is not practicable on a Delivery Date by reason of a Delivery Disruption Event relating to those Securities, then that Delivery Date shall be postponed to the first following Business Day in respect of which there is no such Delivery Disruption Event; provided that, subject as provided below, in no event shall delivery be made later than such date as the Company and the Signatory may mutually agree (the “**Physical Delivery Deadline**”).

**63.4.2** The Company and the Signatory shall make reasonable endeavours to agree to such other alternative method of delivery which is not subject to a Delivery Disruption Event on or before the Physical Delivery Deadline.

**63.4.3** If the delivery of the Distribution (or part of it) is not practicable by reason of a Delivery Disruption Event having occurred and continuing on the Physical Delivery Deadline, then, in lieu of delivery of the Distribution (or part of it), the Company shall discharge its obligations to deliver the Distribution to the Signatory by: (i) using reasonable endeavours to sell the relevant Distribution; and (ii) to the extent that the Company is able to sell the relevant Distribution, paying the Signatory the proceeds of such sale in accordance with Clause 63.5.

### **63.5 Method of delivery of money**

**63.5.1** Any Distribution of money shall be delivered by payment of cash by telegraphic transfer or other electronic means in immediately available funds to such bank account as the Signatory shall Notify to the Company in writing on the relevant Delivery Date at the risk of such Signatory.

**63.5.2** A Distribution of money to Signatories shall be deemed to have been delivered on the day that the wire transfer instruction is given by or on behalf of the Company to the relevant bank.

**63.5.3** Receipt of the amount of any such telegraphic transfer or an amount received by other electronic means into such bank account shall be good discharge and satisfaction of the money in respect of which it was paid.

**63.5.4** If the Company has made a payment of money by telegraphic transfer or other electronic means using details provided by the Signatory, and such payment fails to be credited to that account and remains in the bank account of the Company, then the Company shall Notify the Signatory and request details of an alternative bank account from that Signatory. Signatories will have a period of 12 months to provide such instructions and the Company shall send a second request for instructions six months after the first request, and a third request three months after the second request. If the Signatory fails to provide details of an alternative bank account to the Company within 12 months of the date of the failed transfer of the cash, such failure to provide instructions to the Company shall be deemed a discharge of the Company's obligations to that Signatory in respect of that payment and the Signatory shall forfeit its Claim to

that Distribution and such Distribution shall be considered to be an Unclaimed Distribution and applied in the manner set out in Clause 63.6.

#### **63.6 Unclaimed Distributions**

At the expiration of 12 months from a Delivery Instruction Date, a Signatory who fails to Claim a Distribution pursuant to Clause 63.2.8 or Clause 63.5.4 (an “**Unclaimed Distribution**”) shall be deemed to have waived its rights to that Distribution pursuant to this Agreement and the Company shall retain, transfer or dispose of such Unclaimed Distribution.

#### **63.7 Surplus Assets**

If, after having made all Distributions in respect of any particular type of Asset which are required to be made under this Agreement, there remains Distributable Trust Assets of that type which could still be available for delivery (the “**Surplus Assets**”), the Company shall retain, transfer or dispose of such Surplus Assets, except to the extent any such Assets relate to excess assets distributed for the benefit of any Signatory by LBI.



## PART 13: CLOSING

### 64 Closing Statement

#### 64.1 Closing Time

Upon the determination of the final Distribution and Appropriation to a TA Signatory and an NTA Signatory that has made a Collateralisation Election (such time, the “**Closing Time**”), the Company shall give a Closing Statement to such Signatory.

#### 64.2 Closing Statement

**64.2.1** The “**Closing Statement**” for a TA Signatory shall specify the following information:

- (i) any outstanding Net Financial Liability and Non-Financial Contract Liabilities of such TA Signatory, as at such date;
- (ii) all Allocations to such TA Signatory under this Agreement;
- (iii) all Distributions ([including any Net Distributions](#)) to such TA Signatory under this Agreement;
- (iv) any Asset Shortfall Claim, [any Capped Net 19/9 Shortfall Claim](#) and any other Ascertained Claim of such TA Signatory;
- (v) if a Collateralisation Election has been made, the Pre-Administration Client Money Claim or Pre-Administration Client Money Shortfall Claim (if any) of such TA Signatory;
- (vi) all payments that have been made to such TA Signatory’s Retention Creditors;
- (vii) any Intermediary Distribution and Intermediary Retention in respect of such TA Signatory; and
- (viii) the Costs Amount and, if applicable, any Costs Rebate Amount to be repaid to such TA Signatory.

**64.2.2** The “**Closing Statement**” for an NTA Signatory shall specify the following information:

- (i) any outstanding Net Financial Liability of such NTA Signatory as at such date;
- (ii) all Distributions to such NTA Signatory under this Agreement;
- (iii) any Ascertained Claim of such NTA Signatory; and
- (iv) if a Client Money Collateralisation Election has been made, the Pre-Administration Client Money Claim or Pre-Administration Client Money Shortfall Claim (if any) of such NTA Signatory.

**64.2.3** The Closing Statement shall also state that the Company has discharged all of its obligations in respect of that Signatory pursuant to this Agreement.

#### 64.3 Payment of Costs Rebate Amount

At the Closing Time for a TA Signatory, if the Company determines that there is a Costs Rebate Amount for such TA Signatory, it shall pay such Costs Rebate Amount to such bank account as the TA Signatory has Notified to the Company in writing in accordance with Clause 63.5.

## **PART 14: REPRESENTATIONS AND WARRANTIES, AND CERTAIN UNDERTAKINGS BY A SIGNATORY**

### **65 Provision of Representations and Warranties, and certain Undertakings**

#### **65.1 Provision of Initial Representations and Warranties upon signing this Agreement**

Each Signatory represents and warrants to the Company that as at its Accession Date:

- 65.1.1** it is duly organised and validly existing under the laws of its jurisdiction of incorporation, or (if not applicable) under the laws of which it is established, and, if relevant under such laws, in good standing and has full power and authority to conduct its business activities;
- 65.1.2** it has (or, in respect of completed actions, at the relevant time had) the power to execute this Agreement and any documentation relating to this Agreement to which it is a party, to deliver this Agreement and any documentation relating to this Agreement that it is required to deliver and to perform its obligations under this Agreement and any documentation relating to this Agreement to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- 65.1.3** such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any term or provision of any agreement or instrument binding on or affecting it or any of its assets, and will not result in a breach of, or constitute a default or termination event under, any such agreement or instrument;
- 65.1.4** all actions or things required to be taken, fulfilled or done (including, without limitation, the obtaining of any consent or licence or the making of any filing or registration) by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- 65.1.5** its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in proceedings in equity or at law)); and
- 65.1.6** there is not pending or, to its knowledge, threatened against it any action, suit or proceedings at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement,

(each, an “**Initial Representation and Warranty**”, and together, the “**Initial Representations and Warranties**”).

#### **65.2 Provision of Information Representations and Warranties upon submission of information**

By submitting information in respect of its Asset Claims (via the Portal or otherwise), each TA Signatory represents and warrants to the Company, as at: (i) the date of submission of such information; and (ii) with respect to Clause 65.2.5 and Clause 65.2.8, each time upon providing the Company with any information in accordance with this Agreement (whether in response to requests for information from the Company, Adjudicator, the Valuation Expert or otherwise), that:

- 65.2.1 the TA Signatory has a right, free from encumbrances, to make an Asset Claim in respect of an Asset or has fully disclosed to the Company all encumbrances in respect of that Signatory's right to make an Asset Claim in respect of that Asset;
- 65.2.2 save as specifically disclosed (via the Portal or otherwise), or permitted by Clause 6, the TA Signatory is not asserting any Asset Claims, Pre-Administration Client Money Claims or any other Claims or Liabilities against the Company that have been Transferred to such TA Signatory after the Time of Administration;
- 65.2.3 the Signatory is not asserting an Asset Claim in respect of any Asset previously received from another person, including, for the avoidance of doubt, any other Signatories;
- 65.2.4 the Signatory has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, all documents and obligations pursuant to this Agreement, including, for the avoidance of doubt, the power and authority to provide Relevant Information to the Company;
- 65.2.5 the Signatory believes, after making due and careful enquiries, that the information in respect of its Asset Claims submitted (via the Portal or otherwise), any Intermediary Distribution Notice, the Valuation Statements, the Asset Delivery Notice and any further information provided to the Company in accordance with this Agreement, whether in response to requests for information from the Company, Adjudicator or the Valuation Expert, or otherwise, is true, complete, accurate and not misleading;
- 65.2.6 save as previously disclosed in writing, the Signatory is not aware, having made due and careful enquiries, of any further Liabilities in respect of the Asset which may give rise to an entitlement on the part of the Company to withhold a Retention Amount in accordance with Part 8 and any previously disclosed Liabilities in respect of the Asset have been fully and accurately disclosed;
- 65.2.7 the Signatory has the ability, and is permitted pursuant to the applicable laws of the jurisdiction in which that Signatory is located, to lawfully accept the delivery of any Distribution made by the Company in accordance with this Agreement and to give full discharge to the Company Released Parties for the Assets which have been delivered to such Signatory as a Distribution;
- 65.2.8 the Signatory is not prohibited by:
- (i) any law or regulation applicable to such Signatory;
  - (ii) any constitutional documents of such Signatory; or
  - (iii) any agreement or instrument binding on such Signatory,
- from disclosing the information relating to its Asset Claims (via the Portal or otherwise) or receiving any Distributions pursuant to this Agreement,

(each, an “**Information Representation and Warranty**”, and together, the “**Information Representations and Warranties**”).

### **65.3 Repetition of Information Representations and Warranties**

Each TA Signatory shall be deemed to repeat in full the Information Representations and Warranties on each Delivery Instruction Date that the relevant TA Signatory is due to be delivered a Distribution.

#### **65.4 Disclosure against Information Representations and Warranties**

The Information Representations and Warranties shall be subject to any specific matters which are fully and fairly disclosed by each Signatory to the Company in the information submitted via the Portal by such Signatory, or otherwise disclosed by Notice to the Company from the Signatory by 5.00 p.m. on the Business Day before the relevant Delivery Instruction Date, provided that:

**65.4.1** Signatories shall not be entitled to disclose information against the Information Representations and Warranties set out in Clause 65.2.4 and Clause 65.2.7 and, for the avoidance of doubt, the Initial Representations and Warranties; and

**65.4.2** in respect of Information Representations and Warranties against which Signatories are entitled to make disclosures, matters are disclosed in sufficient detail to enable the Company to assess their impact on the relevant Asset Claims and/or the relevant Distribution.

#### **65.5 Undertaking to Notify incorrect or misleading Representations and Warranties**

Each of the Signatories undertakes that, if it becomes aware that any Representation and Warranty given by it under this Clause 65 was incorrect or misleading in any material respect when made or repeated, or would be so if then repeated, it shall Notify the Company of this as soon as reasonably practicable.

#### **65.6 Undertakings in relation to Intermediary Distribution**

Each TA Signatory undertakes to the Company, as at its Accession Date, that the Signatory shall: (i) where it has received an Intermediary Distribution on or prior to the Accession Date, promptly after its relevant Accession Date; or (ii) where it receives an Intermediary Distribution after the Accession Date, promptly following the receipt of such Intermediary Distribution, provide an Intermediary Distribution Notice to the Company in accordance with Clause 37.1.

#### **65.7 Claim for breach of Representation and Warranty**

The Company may make a Claim for damages against any Signatory for breach of any of the Representations and Warranties or failure to comply with any Undertakings set out in this Clause 65, whether or not the relevant facts, matters or circumstances giving rise to the breach of any Representations and Warranties were known to the Company, or could have been discovered (whether by any investigation made by or on behalf of the Company or otherwise), provided that such breach of Representations and Warranties or failure to comply with Undertakings had not previously been disclosed to the Company, where, and in a manner by which, such disclosure is permitted or required pursuant to this Agreement. The Company shall be entitled to take any such Claim for damages arising from such breach of any Representations and Warranties or failure to comply with any Undertakings into account when calculating the Non-Financial Contract Liabilities of such Signatory.

#### **65.8 Additional representations and warranties by CRA Omnibus Beneficiaries**

In relation to LBI Assets only, additional representations and warranties are provided under clause 17 (Provision of representations and warranties, and certain covenants) of the Common Terms by CRA Omnibus Beneficiaries.

## PART 15: TAX

### 66 Tax

This Part 15 does not apply in relation to a Gross Distribution, the Cumulative Gross Allocation or any Appropriation, deduction or Distribution made in connection with such Gross Distribution. Part 7 (Tax) of the Common Terms sets out the relevant provisions that will apply in relation to Tax in respect of the Cumulative Gross Allocation and any Gross Distribution or any Appropriation, deduction or Distribution made in connection with such Gross Distribution.

#### 66.1 Power to withhold Tax

The Company may, in its absolute discretion, withhold any Tax payable or, in the reasonable opinion of the Company, required to be withheld or accounted for in relation to any Appropriation, any Distribution or any payment which, as a result of the implementation and operation of this Agreement, the Company is treated as making for Tax purposes (including, but not limited to, circumstances where a payment is made, or treated as being made, because a Claim against the Company is set off against a Liability which is owed to the Company).

#### 66.2 Disclosure to Tax Authorities

The Company may also make any disclosures or reports to any Tax Authorities in respect of any matters which are the subject of, or arise as a result of, the implementation and operation of this Agreement.

#### 66.3 Tax certificates

The Company is not obliged to provide any Tax certificates in respect of any dividends or other payments made or received in respect of any Securities forming the basis of a Signatory's Asset Claim to Signatories.

#### 66.4 Tax liabilities

Any stamp duty, stamp duty reserve tax, transfer taxes, VAT or other Tax liabilities or costs, including any penalties or interest, arising out of the implementation and operation of this Agreement (including, but not limited to, any Tax costs arising from the making of Distributions or Appropriations in cash or kind) shall be borne by the Signatories whether chargeable directly or primarily against, or attributable directly or primarily to, the Signatories or any other person.

#### 66.5 Tax obligations

A Signatory will deliver to the Company any form or document that may be required or reasonably requested in writing in order to allow the Company to make a payment in accordance with this Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to Company and to be executed and to be delivered with any reasonably required certification, as soon as reasonably practicable.

## PART 16: DISPUTE RESOLUTION MECHANISM

### 67 Disputes, Disputing Parties and Determination Notices

Apart from Clause 74, this Part 16 only applies to a Dispute other than a Common Terms Dispute. Any Common Terms Dispute shall be determined pursuant to the Common Terms Dispute Resolution Mechanism in part 10 (Common Terms Dispute Resolution Mechanism) of the Common Terms. If a Dispute under this Part 16 is (or was) also capable of being raised as a Common Terms Dispute, that Dispute shall not be determined pursuant to the Dispute Resolution Mechanism set out in this Part 16 and the Common Terms Dispute Resolution Mechanism shall instead apply.

#### 67.1 Disputing Parties

This Dispute Resolution Mechanism shall govern the resolution of any and all disputes between the Company on the one hand and a Signatory on the other hand (together the “**Disputing Parties**”) arising out of or relating to any of the following Notices issued by the Company pursuant to this Agreement:

67.1.1 a Net Contractual Position Statement;

67.1.2 a Claim Amount Notice;

67.1.3 an Intermediary Distribution Value Notice; or

67.1.4 a Distribution and Appropriation Notice,

each, a “**Determination Notice**” and, each such dispute, a “**Dispute**”.

For the purposes of Part 10 and this Clause 67, a Dispute shall also refer to a submission of a Counterclaim Notice by a TA Signatory by the Counterclaim Notice Deadline.

#### 67.2 Settlement of Dispute

For the avoidance of doubt, nothing in this Clause 67 or in any of Clauses 68 to 74 precludes the Disputing Parties from entering into a compromise, arrangement or settlement of a Dispute at any stage, whether by mediation or otherwise, nor precludes the Company from entering into a compromise, arrangement or settlement with a Signatory or person who claims to be a Signatory.

#### 67.3 Dispute Trigger Notice

Within a reasonable time after the Company determines that it can not, or does not expect to be able to, resolve a Dispute in relation to a Counterclaim Notice, the Company shall send a Notice to that effect (a “**Dispute Trigger Notice**”) to the TA Signatory that delivered the Counterclaim Notice.

#### 67.4 Combining a Claim Amount Notice and a Dispute Trigger Notice

The Company may also combine a Claim Amount Notice with a Dispute Trigger Notice or issue a subsequent Dispute Trigger Notice in respect of a Claim Amount Notice before receipt of a related Counterclaim Notice. If it does so and the recipient TA Signatory wishes to raise a Dispute with respect to such Claim Amount Notice, such TA Signatory may not issue a Counterclaim Notice and must issue a Dispute Notice as provided in Clause 68.1, which Dispute Notice must specify the relevant Alleged TA Claimant Amount.

## **68 Dispute Notice**

### **68.1 Dispute Notice**

If a Signatory wishes to raise a Dispute with respect to a Determination Notice relating to its Claim, it must Notify the Company by way of a written Notice, to be received by the Company on or before 5.00 p.m. (London time) on the Dispute Notice Deadline, that it wishes to raise a Dispute, provided that a TA Signatory may only raise a Dispute in the case of a Claim Amount Notice after it has received a Dispute Trigger Notice in respect of that Claim Amount Notice. This Notice (the “**Dispute Notice**”) must be in writing in the form set out in Schedule 3. It must specify which aspect(s) of the Determination Notice the Signatory wishes to challenge and must include reasonable details of the nature and basis of the challenge. If the Signatory is neither resident, nor has its principal place of business, in England and Wales, the Dispute Notice must also provide details of, and appoint, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Dispute. If the Signatory fails to serve a Dispute Notice within the time period specified within this Agreement, the Signatory shall be deemed to have accepted the Determination Notice and to have given up any rights of objection in relation to the same, whether under this Agreement or otherwise. Subject to the provisions of Clause 50, the Determination Notice is then final and binding and no subsequent Dispute may be raised by the Signatory in respect of that Determination Notice.

### **68.2 Amicable resolution**

Upon receipt by the Company of a Dispute Notice, the Disputing Parties shall first, and for a period of 20 Business Days, seek to resolve the Dispute amicably.

### **68.3 Determination of Dispute by Company**

Where the parties are unable to resolve the Dispute amicably within the time period referred to in Clause 68.2, the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Dispute relates, whether the Dispute should be referred for determination to the Valuation Expert pursuant to Clause 69, to the Adjudicator pursuant to Clause 70 or to the Court pursuant to Clause 71. The Company shall Notify the Signatory of its decision in writing (a “**Forum Notice**”) within 10 Business Days of the expiry of the time period referred to in Clause 68.2.

### **68.4 Dispute forum**

Subject to Clause 68.5, Clause 68.7 and Clause 69.11.5, the Company’s decision as regards the forum for resolving the Dispute pursuant to Clause 68.3 shall be final and binding.

### **68.5 Valuation Expert Contest Notice**

If the Signatory disagrees with the Company’s decision to have a Dispute resolved by the Valuation Expert, the Signatory may, within five Business Days of receipt of a Forum Notice sent in accordance with Clause 68.3, Notify the Company in writing (a “**Valuation Expert Contest Notice**”) that it requires it to reconsider its decision and refer the Dispute either to the Adjudicator or to the Court.

### **68.6 Revised Forum Notice**

Upon receipt of a Valuation Expert Contest Notice, the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Dispute relates, whether the Dispute should be referred for determination to the Adjudicator pursuant to Clause 70, or to the Court pursuant to Clause 71. The Company

shall Notify the Signatories of its revised determination in writing (a “**Revised Forum Notice**”) within five Business Days of receipt of a Valuation Expert Contest Notice. The Company’s revised determination as regards the forum for resolving the Dispute shall, subject to Clause 68.7, be final and binding.

#### **68.7 Adjudicator Contest Notice**

If the Signatory disagrees with the Company’s decision to have a Dispute resolved by the Adjudicator, the Signatory may, within five Business Days of receipt of a Forum Notice sent in accordance with Clause 68.3 or a Revised Forum Notice sent in accordance with Clause 68.6, Notify the Company in writing (an “**Adjudicator Contest Notice**”) that it requires the Dispute to be resolved by the Court pursuant to Clause 71.1.

#### **68.8 Early determination**

Notwithstanding the foregoing, if the Disputing Parties agree that it would be beneficial to obtain a determination of an issue before the issuance of a Determination Notice, the Disputing Parties may make a joint referral for early determination to the Court, to the Valuation Expert or the Adjudicator. The Disputing Parties shall agree which forum is most appropriate for resolving the issue and shall also agree the procedure for obtaining an early determination.

#### **68.9 Award of Alleged TA Claimant Amount**

In determining a Dispute, the maximum amount that may be awarded to a Signatory in respect of its TA Claimant Amount shall be no more than the Alleged TA Claimant Amount Claimed by the Signatory in the relevant Dispute Notice. The Signatories irrevocably waive any rights they may have to, and undertake not to bring a Claim for, an Asset Claim in excess of the relevant Alleged TA Claimant Amount.

### **69 Valuation Expert**

#### **69.1 Exclusive jurisdiction of Valuation Expert**

Where the Company determines pursuant to Clause 68.3 that the Valuation Expert should determine a Dispute, the Valuation Expert shall, subject to Clause 68.5, have exclusive jurisdiction to settle that Dispute.

#### **69.2 Settlement of Dispute by Valuation Expert**

If the Company determines, pursuant to Clause 68.3, that the Valuation Expert shall settle the Dispute, then, provided no Valuation Expert Contest Notice has been served by a Signatory, the Company shall, within 25 Business Days of sending a Forum Notice, provide in writing to the Signatory the names of two candidates willing to act as an independent valuation expert (the “**Valuation Expert**”), together with contact details for those candidates.

#### **69.3 Attributes of Valuation Expert**

The Valuation Expert shall:

- 69.3.1** be an individual who has at least five years’ experience in dealing with financial products of the type that are the subject matter of the Dispute Notice;
- 69.3.2** in the reasonable opinion of the Company, be duly qualified to discharge the functions and powers of the Valuation Expert, as applicable, under this Agreement, with the appropriate expertise having regard to the nature of the Dispute; and



**69.3.3** in the reasonable opinion of the Valuation Expert, have no conflict of interest in accepting the appointment, provided that having previously acted as a Valuation Expert in relation to a Dispute shall not be considered a conflict of interest.

**69.4 Election of Valuation Expert**

Within 10 Business Days of receipt of the names of the two candidates in accordance with Clause 69.2 or Clause 69.8, the Signatory shall Notify the Company which of the candidates it elects to act as Valuation Expert, following which the Company shall take steps to confirm his appointment and to agree the terms of such appointment.

**69.5 Powers of Valuation Expert**

The Valuation Expert shall have the powers, rights and duties conferred upon him by this Agreement. The Valuation Expert shall act as an expert and not as an arbitrator.

**69.6 Terms of appointment of Valuation Expert**

The Valuation Expert shall be retained on such reasonable terms as may be agreed by the Company.

**69.7 Acceptance of appointment by Valuation Expert**

As soon as reasonably practicable, the Valuation Expert shall notify the Disputing Parties in writing that he has accepted the appointment.

**69.8 Failed appointment of Valuation Expert**

If the Valuation Expert chosen by the Signatory is unable or unwilling to accept the appointment, or is unable to agree the terms of his appointment to the satisfaction of the Company, the Company shall, as soon as reasonably practicable, provide in writing to the Signatory the names and contact details of two alternative candidates (one of whom may be a candidate previously not selected by the Signatory). The provisions of Clause 69.4 shall then apply.

**69.9 Provision of deposit to Valuation Expert**

Within 10 Business Days of the receipt of confirmation given by the Valuation Expert pursuant to Clause 69.7, the Signatory shall provide to the Valuation Expert (copied simultaneously to the Company) a copy of the relevant Determination Notice and Dispute Notice, together with a deposit of the lesser of: (i) US\$50,000; and (ii) subject to a minimum of US\$25,000, 10 per cent. of the Value of the Signatory's Asset Claim, on account of the Valuation Expert's fees. No referral to the Valuation Expert may proceed without payment of the deposit and the deposit shall be payable in respect of each Determination Notice that is the subject of the Dispute.

**69.10 Provision of information to Valuation Expert**

The Disputing Parties shall, within 20 Business Days of the receipt by the Valuation Expert of the Determination Notice, the Dispute Notice and the deposit to the Valuation Expert in accordance with Clause 69.9, provide the Valuation Expert with details of their respective valuations and assumptions behind those valuations, together with any additional documentation or information that they wish to be taken into account by the Valuation Expert in reaching his decision. The Disputing Parties may (but are not obliged to) submit written representations to the Valuation Expert within the same period of 20 Business Days.

## **69.11 Determination of Dispute by Valuation Expert**

The Valuation Expert shall be entitled to rely exclusively upon the documents supplied to him pursuant to Clause 69.9 and Clause 69.10 when determining the Dispute.

**69.11.1** Following the receipt of the documents supplied pursuant to Clause 69.9 and Clause 69.10, the Valuation Expert shall, as soon as reasonably practicable and in any event within 20 Business Days:

- (i) notify the Disputing Parties in writing of whether he requires additional evidence or representations to be provided to him; and
- (ii) provide details of the procedure and timetable he wishes to adopt for resolving the Dispute.

**69.11.2** The Valuation Expert shall, in his absolute discretion, consider such matters as he thinks fit in making his determination. The Valuation Expert shall be entitled to consult with such advisers, including legal advisers and experts, and to take into account such information or evidence obtained from these sources, as he may deem appropriate. Subject to Clause 69.11.5, the Valuation Expert shall be entitled (but is not obliged) to substitute his own valuation for those provided by the Disputing Parties.

**69.11.3** Each Disputing Party shall respond promptly (and, subject to Clause 72.4, at its own expense) to all reasonable requests for information and other assistance that the Valuation Expert requests in connection with making his determination. If the Signatory fails to provide any documentation or information within the timeframe provided in this Agreement (or such other time period as the Valuation Expert directs), it shall be deemed to have abandoned the Dispute and to have accepted the relevant Determination Notice. The Determination Notice is then final and binding and no subsequent Dispute may be raised by the Signatory in respect of that Determination Notice.

**69.11.4** The Valuation Expert may, but is not obliged to, require the Disputing Parties to appear before him and address him on any matters, in which case the Disputing Parties shall appear on such date and at such place as the Valuation Expert shall reasonably prescribe. If the Valuation Expert requires the parties to appear before him, the Valuation Expert shall be entitled to prescribe and lay down such reasonable procedures or provisions as he, in his absolute discretion, deems appropriate for the purposes of assisting him in reaching his determination.

**69.11.5** If, in the course of considering the Dispute, the Valuation Expert considers that the Dispute gives rise to issues of law (including, without limitation, issues as to the interpretation of the terms of the Agreement) or other matters outside his area of expertise, he shall Notify the Disputing Parties that he no longer considers himself capable of determining the Dispute. Upon receiving notice from the Valuation Expert (a "**Cessation of Appointment Notice**"), the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Dispute relates, whether the Dispute should be referred for determination to the Adjudicator pursuant to Clause 70, or to the Court pursuant to Clause 71. The Company shall Notify the Signatory of its decision in writing within five Business Days of receipt of a Cessation of Appointment Notice, by means of a Revised Forum Notice. The Company's revised determination of forum shall, subject to Clause 68.7, be final and binding.

**69.11.6** Upon the conclusion of the procedure adopted pursuant to this Clause 69, the Valuation Expert shall, as soon as reasonably practicable, inform the Disputing Parties in writing of his decision. The Valuation Expert shall not be obliged to give reasons for his decision.

## **70 Adjudicator**

### **70.1 Exclusive jurisdiction of Adjudicator**

Where the Company determines pursuant to Clause 68.3, Clause 68.6 or Clause 69.11.5 that the Adjudicator should determine a Dispute, the Adjudicator shall, subject to Clause 68.7, have exclusive jurisdiction to settle that Dispute.

### **70.2 Settlement of Dispute by Adjudicator**

If the Company determines, pursuant to Clause 68.3, Clause 68.6 or Clause 69.11.5, that the Adjudicator shall settle the Dispute, then, provided no Adjudicator Contest Notice has been served by the Signatory, the Company shall, within fifteen Business Days of sending a Forum Notice or Revised Forum Notice, provide in writing to the Signatory the name of two candidates willing to act as an independent adjudicator (the “**Adjudicator**”), together with contact details for those candidates.

### **70.3 Attributes of Adjudicator**

The Adjudicator shall:

- 70.3.1** be an individual who has been appointed Queen’s Counsel and has held this position for at least five years or an individual of comparable status in whose jurisdiction the laws are applicable to the Dispute;
- 70.3.2** in the reasonable opinion of the Company, be duly qualified to discharge the functions and powers of the Adjudicator, as applicable, under this Agreement, with the appropriate expertise having regard to the nature of the Dispute; and
- 70.3.3** in the reasonable opinion of the Adjudicator, have no conflict of interest in accepting the appointment, provided that having previously acted as Adjudicator in relation to a Dispute shall not be regarded as being a conflict of interest.

### **70.4 Election of Adjudicator**

Within 10 Business Days of receipt of the names of the two candidates in accordance with Clause 70.2 or Clause 70.8, the Signatory shall Notify the Company of which of the candidates it elects to act as Adjudicator, following which the Company shall take steps to confirm his appointment and to agree the terms of such appointment.

### **70.5 Powers of Adjudicator**

The Adjudicator shall have the powers, rights and duties conferred upon him by this Agreement. The Adjudicator shall act as an expert and not as an arbitrator.

### **70.6 Terms of appointment of Adjudicator**

The Adjudicator shall be retained on such reasonable terms as may be agreed by the Company, which may include the imposition of an obligation for the payment of fees and disbursements, by the Disputing Parties, on an ongoing basis.

#### **70.7 Acceptance of appointment by Adjudicator**

As soon as reasonably practicable, the Adjudicator shall notify the Disputing Parties that he has accepted the appointment.

#### **70.8 Failed appointment of Adjudicator**

If the Adjudicator chosen by the Signatory is unable or unwilling to accept the appointments, or is unable to agree the terms of his appointment to the satisfaction of the Company, the Company shall, as soon as reasonably practicable, provide in writing to the Signatory the names and contact details of two alternative candidates (one of whom may be a candidate previously not selected by the Signatory). The provisions of Clause 70.4 shall then apply.

#### **70.9 Provision of deposit to Adjudicator**

Within 10 Business Days of receipt of confirmation given by the Adjudicator pursuant to Clause 70.7, the Signatory shall provide to the Adjudicator (copied simultaneously to the Company) a copy of the relevant Determination Notice and Dispute Notice, together with a deposit of the lesser of: (i) US\$50,000; and (ii) subject to a minimum of US\$25,000, 10 per cent. of the Value of the Signatory's Asset Claim, on account of the Adjudicator's fees. No referral to the Adjudicator may proceed without payment of the deposit and the deposit shall be payable in respect of each Determination Notice that is the subject of the Dispute.

#### **70.10 Provision of information to Adjudicator**

Within 20 Business Days of receipt by the Adjudicator of the Determination Notice, the Dispute Notice and the deposit in accordance with Clause 70.9, the Signatory shall provide to the Adjudicator and simultaneously to the Company a written statement of its position (a "**Statement of Case**"), together with any documentation and other evidence upon which it wishes to rely.

Within 20 Business Days of receipt by the Company of the Signatory's Statement of Case, the Company shall provide to the Adjudicator and simultaneously to the Signatory its Statement of Case, together with any documentation and other evidence upon which it wishes to rely.

#### **70.11 Determination of Dispute by Adjudicator**

The Adjudicator shall be entitled to rely exclusively upon the documents supplied to him pursuant to Clause 70.9 and Clause 70.10 when determining the Dispute.

**70.11.1** Following the receipt of the Disputing Parties' Statements of Case, the Adjudicator shall, as soon as reasonably practicable and in any event within 20 Business Days:

- (i) notify the Disputing Parties in writing of whether he requires additional evidence or representations to be provided to him; and
- (ii) provide details of the procedure and timetable he wishes to adopt for resolving the Dispute.

**70.11.2** The Adjudicator shall, in his absolute discretion, consider such matters as he thinks fit (including the Statements of Case and evidence provided in accordance with Clause 70.9 and Clause 70.10, and any additional evidence he deems necessary or desirable, including evidence obtained as a result of his own investigations or research) in making his determination. The Adjudicator shall be entitled to consult with such advisers, including legal advisers and experts (including persons who have previously acted as a

Valuation Expert), and to take into account information or evidence obtained from these sources, as he may deem appropriate.

**70.11.3** Each Disputing Party shall respond promptly (and, subject to Clause 72.4, at its own expense) to all reasonable requests for information and other assistance that the Adjudicator requests in connection with making his determination. If the Signatory fails to provide any documentation or information within the timeframe provided in this Agreement (or such other time period as the Adjudicator directs), it shall be deemed to have abandoned the Dispute and to have accepted the relevant Determination Notice. The Determination Notice is then final and binding and no subsequent Dispute may be raised by the Signatory in respect of that Determination Notice.

**70.11.4** The Adjudicator may, but is not obliged to, require the Disputing Parties to appear before him and address him on any matters, in which case the Disputing Parties shall appear on such date and at such place as the Adjudicator shall reasonably prescribe. If the Adjudicator requires the parties to appear before him, the Adjudicator shall be entitled to prescribe and lay down such reasonable procedures or provisions as he in his absolute discretion deems appropriate for the purposes of assisting him in reaching his determination.

**70.11.5** Upon the conclusion of the procedure adopted pursuant to this Clause 70, the Adjudicator shall, as soon as reasonably practicable, inform the Disputing Parties in writing of his decision. The Adjudicator shall not be obliged give reasons for his decision.

## **71 The Court**

### **71.1 Exclusive jurisdiction of the Court**

Where the Company determines pursuant to Clause 68.3, Clause 68.6 or Clause 69.11.5, or a Signatory requires pursuant to Clause 68.7, that the Court should determine a Dispute, the Court shall have exclusive jurisdiction to settle that Dispute.

### **71.2 Failure to issue Proceedings**

If the Signatory fails to issue Proceedings in the Court and to serve the claim form within the timeframe provided in Clause 70, it shall be deemed to have abandoned the Dispute and to have accepted the relevant Determination Notice. The Determination Notice is then final and binding and no subsequent Dispute may be raised by the Signatory in respect of that Determination Notice.

## **72 Appeals, costs, indemnities and insurance**

### **72.1 Right of appeal**

The decision of the Valuation Expert or the Adjudicator on any Dispute referred to them in accordance with this Agreement shall, insofar as the law allows, be final and binding. There shall be no right of appeal therefrom, nor shall there be any right to make any claim against the Valuation Expert or the Adjudicator in respect thereof, save in the case of any loss arising from the Valuation Expert's or Adjudicator's fraud, wilful default, dishonesty or negligence.

### **72.2 Rate of remuneration**

The Valuation Expert and the Adjudicator shall be entitled to be remunerated at such reasonable rate as may be agreed by the Company and to be reimbursed their reasonable costs and expenses in carrying out their duties under this Agreement.

### **72.3 Apportionment of remuneration of Valuation Expert or Adjudicator**

Any remuneration, costs, charges and expenses incurred by the Valuation Expert or the Adjudicator in respect of a Dispute shall be apportioned between the Disputing Parties in such proportions as the Valuation Expert or Adjudicator may determine in their absolute discretion, and shall be paid in accordance with Clause 72.5, Clause 72.6 and Clause 72.7.

### **72.4 Apportionment of costs of Disputing Parties**

Any remuneration, costs, charges and expenses incurred by the Disputing Parties in respect of a Dispute determined by the Valuation Expert or the Adjudicator shall be apportioned between the Disputing Parties in such proportions as the Valuation Expert or Adjudicator may determine in their absolute discretion, and shall be paid in accordance with Clause 72.5, Clause 72.6 and Clause 72.7.

### **72.5 Costs borne by a Signatory**

Any costs, charges and expenses (together with any applicable VAT) directed by the Valuation Expert or the Adjudicator to be borne by a Signatory in respect of a Dispute shall be borne in full by that Signatory. The deposit paid pursuant to Clause 69.9 and Clause 70.9 shall be applied against this amount and then, if there is a shortfall, the Signatory shall be liable to the Company to discharge such shortfall in full without set-off, deduction, defence to payment or counterclaim. The Company may deduct such shortfall in accordance with Clause 72.7.

### **72.6 Costs borne by the Company and/or the Administrators**

Any costs, charges and expenses directed by the Valuation Expert or the Adjudicator to be borne by the Company and/or the Administrators shall be borne in full by the Company and shall be paid as an expense of the Administration.

### **72.7 Default of Signatory**

If a Signatory defaults in its Liability under Clause 72.5, then that Signatory's share of the Valuation Expert's or Adjudicator's remuneration, costs, charges and expenses shall be deducted from the deposit paid by that Signatory and/or taken into account when calculating the Signatory's Distribution.

### **72.8 General indemnification of the Valuation Expert and the Adjudicator**

The Company shall indemnify the Valuation Expert and the Adjudicator against:

- 72.8.1** all actions, Claims, proceedings and demands brought or made against him in respect of any act done or omitted to be done by him in good faith, without wilful default, fraud, dishonesty or negligence in the course of performing his duties and functions under this Agreement; and
- 72.8.2** all costs, charges, expenses and Liabilities properly incurred by the Valuation Expert and the Adjudicator in the course of performing their duties and functions under this Agreement.

### **72.9 Specific indemnification of the Valuation Expert and the Adjudicator**

Without prejudice to the generality of Clause 72.8, the Company shall indemnify the Valuation Expert and the Adjudicator:

- 72.9.1** against any costs, charges, expenses and Liabilities properly incurred by them in defending any proceedings, whether civil or criminal, in respect of any wilful default,

fraud, dishonesty or negligence in relation to the performance of their duties and functions under this Agreement, in which judgment is given in their favour or in which they are acquitted; or

**72.9.2** in connection with any application in any such proceedings in which relief is granted to them by a court from liability for wilful default, fraud, dishonesty or negligence in relation to the operation of this Agreement.

### **73 Indemnity insurance**

The Company may purchase and maintain at the Company's cost for the Valuation Expert and the Adjudicator insurance against any Liability in respect of which the Company would be obliged to indemnify that person in accordance with Clause 72.8 and Clause 72.9.

### **74 Miscellaneous**

#### **74.1 Exclusivity of Dispute Resolution Mechanism and the Common Terms Dispute Resolution Mechanism**

~~The~~Subject to the opening paragraph of Clause 67 and Clause 74.2 the Dispute Resolution Mechanism shall be the exclusive method for determining any Dispute and Signatories shall be barred from bringing any other proceedings in any jurisdiction in respect of a Dispute.

#### **74.2 Jurisdiction of the Court**

Notwithstanding the foregoing, nothing in this Agreement shall (save to the extent that such matters are Disputes or Common Terms Disputes and therefore subject to the Dispute Resolution Mechanism and the Common Terms Dispute Resolution Mechanism respectively) prevent the Court from having jurisdiction to hear applications from the Company, the Administrators or any Signatory with respect to the operation or implementation of this Agreement (excluding for the avoidance of doubt, the Common Terms), or from hearing applications for directions brought by the Administrators in the Administration.

#### **74.3 Extension of time limits of Dispute Resolution Mechanism**

Save in respect of Clause 68.1 (the time limit for which may not be extended), any of the time limits in this Dispute Resolution Mechanism may be extended by prior written agreement between the Disputing Parties or by the Adjudicator or Valuation Expert, as appropriate.

## **PART 17: OTHER PROVISIONS**

### **75 No personal liability on the Administrators**

The Administrators have entered into this Agreement as agents for and on behalf of the Company and none of the Administrators, their firm, partners, employees, agents, advisers or representatives shall incur any personal liability whatever in respect of any of the obligations undertaken or assumed 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 Agreement. The exclusion of liability set out in this Clause 75 shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any Claims in tort as well as under the laws of contract. Each of the Administrators, their firm, partners, employees, agents, advisers and representatives shall be able to rely on this Clause 75 as if they were a party to this Agreement.

### **76 Non-reliance on Circular by Signatory**

So far as permitted by law and except in the case of fraud, the Company shall not be liable in respect of anything done or suffered by a Signatory in reliance on the Circular (save for this Agreement contained within the Circular). The Signatory has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from its own advisers as it has deemed necessary. The Signatory is not relying on any communication (written or oral) of or from the Company, including the Circular (save for this Agreement contained within the Circular), as a recommendation or an inducement to enter into this Agreement, it being understood that information and explanations related to this Agreement in the Circular (save for this Agreement contained within the Circular) will not be relied upon or treated as a recommendation or an inducement to enter into this Agreement. Nothing in this Agreement will exclude any liability the Company may have under the regulatory system (as defined in the FSA Rules) which may not be excluded or restricted thereunder.

### **77 Authority**

Each Signatory hereby irrevocably authorises the Company to make such Claims of, give such release or discharge to, sign or execute any agreement or instrument with, and/or take all such action (as the Company may reasonably consider appropriate) in relation to, any Intermediary, in the name of, and on behalf of, the Signatory for the purpose of establishing, pursuing, or enforcing any distribution of, or any Claim for the distribution of, Assets from an Intermediary to the Company. The authority conferred by this Clause 77 shall not apply to any determination or notice from an Affected Intermediary in respect of which a TA Signatory has Notified the Company that it wishes to make a challenge under Clause 38.

### **78 Delegation by the Company of its functions**

#### **78.1 Power of the Company to delegate**

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



- 78.1.1 employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents in connection with this Agreement; and
- 78.1.2 delegate in writing to any person all or any of the functions, rights, authorities, powers and discretions conferred upon the Company under this Agreement, 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.

## **79 Signatories to co-operate**

### **79.1 Signatories to co-operate**

The Signatories shall:

- 79.1.1 co-operate with and render such assistance to the Company as it may reasonably require, including, but not limited to, the provision of information and documents in connection with their Asset Claims, the calculation of their Net Contractual Position and the operation of this Agreement;
- 79.1.2 provide such assistance as the Company may reasonably require in connection with gathering in any Trust Assets, removing any impediments upon Assets being Distributable Trust Assets [or Trust Financial Assets](#) or enforcing obligations owed to the Company; and
- 79.1.3 use best endeavours to ensure that maximum effect is given to this Agreement.

## **80 Modifications**

### **80.1 Modification of Agreement**

[80.1.1](#) Subject to each of Clause 3.1 and Clause 80.3, no amendment, modification or waiver in respect of this Agreement (or any agreement supplemental to it) shall be effective unless in writing and previously approved by (i) the Company; and (ii) Extraordinary Resolution.

[80.1.2](#) In relation to amendments to be made in respect of the Common Terms, Clause 41 (Amendment of Common Terms) of the Common Terms will apply. The Company shall notify the Signatories of any amendment of the Common Terms made in accordance with clause 41 (Amendment of Common Terms) of the Common Terms

### **80.2 Powers of modification of the Company**

In furtherance of Clause 80.1:

- 80.2.1 the Company may certify that it has determined, as it may do in its absolute discretion, that any such amendment, modification or waiver will materially affect some (but not all) of the Signatories, or will materially affect different classes or groups of Signatories in different ways;
- 80.2.2 the Company is hereby authorised to agree for and on behalf of the relevant Signatories, all amendments, modifications or waivers, if so directed by an Extraordinary Resolution Direction; and
- 80.2.3 the Company shall not be responsible for having acted in good faith on a resolution purporting to have been passed by the Signatories (either in writing or, if at a meeting, in

respect of which minutes of such meeting have been made and signed) even if it is later found that there was a defect in the constitution of the meeting or the passing of the resolution or that the resolution was not valid or binding on the Signatories.

### **80.3 Minor, technical or not materially prejudicial amendments**

The Company may, without the consent of the Signatories, amend, modify or waive any term or condition of this Agreement (or any agreement supplemental to it), which is, in its opinion:

**80.3.1** of a formal, minor or technical nature, or to correct a manifest error; or

**80.3.2** not materially prejudicial to the interests of the Signatories (or some of them).

### **80.4 Notice of outcome**

The Company shall inform the relevant Signatories, by written Notice in accordance with Clause 89, of any modification of this Agreement made in accordance with this Clause 80.

## **81 Conflict**

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

## **82 Liquidation Event**

### **82.1 Survival of Agreement upon a Liquidation Event**

**82.1.1** If the Company shall become subject to a Liquidation Event, this Agreement shall not terminate and shall continue in full force and effect.

**82.1.2** In the event of any inconsistency between the provisions of this Agreement and the Insolvency Act or the Insolvency Rules as they apply to the Company following a Liquidation Event in accordance with this Clause 82.1, for the purposes of this Agreement the provisions of this Agreement shall prevail to the extent that the law allows.

## **83 Act in good faith**

All actions and determinations by the Company under this Agreement shall be made in good faith.

## **84 No challenge to the validity of acts of the Company or its Delegates**

Subject to any applicable provision of the Insolvency Act, no Signatory shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Company, or any Delegate, in pursuance of its functions or duties under this Agreement, or the exercise or non-exercise by the Company or any Delegate, in good faith, of any power or discretion conferred upon it for the purposes of this Agreement, and neither the Company 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 any Delegate.

## **85 Payment**

Any Payment to the Company under this Agreement shall be made in immediately available funds in US dollars to a bank account as Notified in advance by the Company to the relevant payor.

## **86 Entire Agreement**

This Agreement contains the whole agreement between the Company and each Signatory relating to the subject matter of this Agreement at the date of the relevant Signatory's Accession Date to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement (save as provided in Clause 3) between the Company and each Signatory in relation to the matters dealt with in this Agreement.

## **87 Partial invalidity**

If, at any time, any provision of this Agreement 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 Agreement under the law of that jurisdiction shall in any way be affected or impaired thereby.

## **88 Modification of foreign law contracts**

Where this Agreement 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. Each Signatory undertakes to the Company to take all actions that the Company requests (including executing such instruments or entering into such agreements, in each case governed by the relevant proper law) to perfect any modifications to such contracts in order to ensure that such modifications are effective to the fullest extent possible under such governing law.

## **89 Notices**

[This Clause 89 does not apply in relation to any Notices to be given pursuant to the Common Terms. Clause 42 \(Notices\) of the Common Terms sets out the relevant notice provisions that will apply in respect of notices to be given pursuant to the Common Terms.](#)

### **89.1 General provisions**

**89.1.1** Any Notice or other communication to be given, or document to be sent to the Company, pursuant to this Agreement, except where this Agreement otherwise provides, shall be in writing in English and shall be delivered:

- (i) by NTA Signatories by electronic mail; or
  - (ii) by TA Signatories by using the Portal or electronic mail,
- in accordance with this Clause 89.

**89.1.2** The accidental omission by the Company to send any Notice, communication or document in accordance with this Clause 89, or the non-receipt of any such Notice, communication or document by any Signatory, shall not affect the provisions of this Agreement.

**89.1.3** A Signatory may submit any information or give Notices or other communication or send documents to the Company by registered post or by courier using an internationally recognised courier company other than in accordance with Clause 89.1.1, subject to the consent of the Company (such consent not to be unreasonably withheld or delayed) (so far as permitted by applicable law or regulation). For the purposes of this Clause 89.1.3 it shall not be unreasonable for the Company to withhold its consent where submission of such information or giving of Notices or communication or sending documents by registered post or courier would require the Company to expend disproportionate costs, time or effort in dealing with such information, Notices, communication or documents.

## **89.2 The Portal**

**89.2.1** The Portal will only be available to TA Signatories. TA Signatories will be able to access the Portal if they have obtained a unique login (a “**User ID**”) and password (a “**Password**”) from the Company.

**89.2.2** The Company may give any Notice or other communication or send any document to TA Signatories that have been given access to the Portal by uploading the same to the Portal. TA Signatories will be sent an electronic mail notification to inform them that such Notice, communication or document has been uploaded. Any such Notice, communication or document shall be deemed to have been received when it was first uploaded or, if later, when the recipient received (or is deemed to have received) notice of the fact that it was available on the Portal.

## **89.3 Addresses**

**89.3.1** Any Notice or communication shall be given or any document shall be sent to the Company:

- (i) by electronic mail to [claimresolutionagreement@lbia-eu.com](mailto:claimresolutionagreement@lbia-eu.com) by any Signatory;
- (ii) by using the Portal to send an electronic mail to the address above by any TA Signatory; or
- (iii) by pre-paid post or air mail to: Lehman Brothers International (Europe) (in administration), Trust Property ~~24<sup>th</sup> Floor, PO Box 62492, Level 23, 25 Canada Square~~, London E14 ~~4JX5LQ~~, United Kingdom, or by courier, using an internationally recognised courier company (if Clause 89.1.3 applies), only to: Lehman Brothers International (Europe) (in administration), Trust Property ~~24<sup>th</sup> Floor, 25 Bank Street, Canary Wharf, Level 23, 25 Canada Square~~, London E14 ~~5LELQ~~, United Kingdom.

**89.3.2** Any Notice or communication shall be given or any document shall be sent by the Company:

- (i) to an NTA Signatory by electronic mail to the address specified by the recipient;
- (ii) to a TA Signatory by using the Portal by uploading the Notice or communication to that part of the Portal that is allocated to the User ID of that TA Signatory within the Portal or by electronic mail to the address specified by the TA Signatory; or
- (iii) to a Signatory by registered post or by courier to the address specified by the recipient from time to time,

where “**address**” includes, without limitation, any electronic mail address or postal address used for the purposes of such communications.

**89.3.3** The Signatories shall provide details of an electronic mail address in their Forms of Acceptance and upon request by the Company 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).

#### **89.4 Notices by electronic mail**

**89.4.1** Any Notice or communication given or document sent by electronic mail shall be sufficiently served by sending the same by electronic mail to the address specified in Clause 89.3.

**89.4.2** Any Notice or communication given or document sent by electronic mail shall be deemed to have been received:

- (i) if sent in accordance with Clause 89.3.1, at the time recorded on the response email that will be automatically generated by the Company's electronic mail system; or
- (ii) 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 in London or after 5.00 p.m. on any Business Day in London, such Notice, communication or document shall be deemed to have been received at 9.30 a.m. on the next Business Day in London.

#### **89.5 Notices by registered post or courier**

**89.5.1** Any Notice or communication given or document sent by registered post or courier by the Company shall be sufficiently served by sending the same to the address specified by the recipient from time to time in accordance with Clause 89.3.2.

**89.5.2** Any Notice or communication given or document sent by registered post or courier by the Signatory shall be effective upon receipt by the Company and shall be deemed to have been received at the time of delivery in accordance with Clause 89.3.1.

### **90 Authority to sign Notices and documents**

In the case of a Notice, communication or document, including, for the avoidance of doubt, this Agreement, which is signed on behalf of a Signatory, the Company shall not be required to make enquiry as to the authority of the signatory of that Notice, communication or document to sign such Notice, communication or document on behalf of such Signatory.

[In relation to Notices to be provided pursuant to the Common Terms clause 42.8 \(Authority to sign Notices and documents\) of the Common Terms will apply. To the extent that the provisions of this Clause 90 are inconsistent with clause 42.8 \(Authority to sign Notices and documents\) of the Common Terms, clause 42.8 \(Authority to sign Notices and documents\) of the Common Terms will prevail in relation to Notices provided pursuant to the Common Terms.](#)

### **91 General notifications and advertisements**

The Company may also, in its absolute discretion, publish any information in respect of this Agreement (including information in respect of Bar Date, other relevant dates pursuant to this Agreement and communications from the Company), and any other Notice, communication or

document required to be or capable of being given or sent under this Agreement, on the Website.

#### **91.1 Notices**

Any Notice, communication or document which is published on the Website shall be deemed to have been received when the material was first made available on that Website or, if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the Website.

#### **91.2 Advertisements**

Any advertisements by the Company in respect of this Agreement shall be placed in at least the following website and newspapers:

**91.2.1** the Website;

**91.2.2** the *Financial Times* (United Kingdom and international editions); and

**91.2.3** *The Wall Street Journal* (European, US and Asian editions).

#### **91.3 Accidental failure to send communication by the Company**

Accidental failure by the Company to send any communication to any Signatory shall not be considered a breach of its obligations pursuant to this Agreement and shall not prejudice the operation of this Agreement as regards that Signatory or at all. The Company shall not be liable to any Signatory for such failure but it may, in its absolute discretion, extend the deadline laid down in this Agreement for any Signatory affected by such failure in accordance with Clause 92.

#### **91.4 Common Terms**

In relation to Notices to be provided pursuant to the Common Terms clauses 42.9 (*General notifications and advertisements*) to 42.11 (*Accidental failure to send communication by the Company*) of the Common Terms will apply. To the extent that any of the provisions of this Clause 91 are inconsistent with clauses 42.9 (*General notifications and advertisements*) to 42.11 (*Accidental failure to send communication by the Company*) of the Common Terms, clauses 42.9 (*General notifications and advertisements*) to 42.11 (*Accidental failure to send communication by the Company*) of the Common Terms will prevail in relation to Notices provided pursuant to the Common Terms.

#### **92 Extension and calculation of deadlines**

All or any of the deadlines laid down by this Agreement for the taking of any step by the Company or by any Signatory, save in respect of the Dispute Resolution Mechanism, may be postponed or extended for such period or periods as may be determined by the Company in its absolute discretion, whether in relation to one or more Asset Claims only or in relation to all Asset Claims, or to matters relevant to the determination of Net Contractual Positions.

#### **93 Treatment of International Prime Brokerage Agreements terminated at or after the Time of Administration**

##### **93.1 Custody Security, Non-Custody Security and/or Trust Assets**

Any Security which would otherwise be a Custody Security, a Non-Custody Security, [a LBI Asset](#) and/or Trust Assets shall not fail to be a Custody Security, a Non-Custody Security, [a LBI Asset](#) and/or Trust Assets, as the case may be, by reason of the application at or after the Time

of Administration of any provision of any contract waiving, releasing or otherwise negating the existence of a trust over such Asset, and “Custody Asset Claim”, “Non-Custody Asset Claim”, “LBI Asset Claim”, “Signatory”, “Converted Asset”, “Non-Trust Assets”, “Net Contractual Position”, “Close-Out Amount”, “Trust Assets”, “TA Signatory” and “Distributable Trust Assets” shall be construed accordingly.

### **93.2 Custody Asset Claim, Non-Custody Asset Claim**

Any Claim that would otherwise be a Custody Asset Claim ~~or~~ a Non-Custody Asset Claim or a [LBI Asset Claim](#), as appropriate, shall not fail to be treated as such by reason only of the application at or after the Time of Administration of any provision of any contract waiving, releasing or otherwise negating the existence of a trust over the relevant Securities that would prevent the delivery of such Securities to satisfy such Claim, and “Custody Asset Claim”, “Non-Custody Asset Claim”, “LBI Asset Claim”, “Signatory”, “Converted Asset”, “Non-Trust Assets”, “Net Contractual Position”, “Close-Out Amount”, “Trust Assets”, “TA Signatory” and “Distributable Trust Assets” shall be construed accordingly.

## **94 Third Party rights**

Except as provided for in Clauses 4.7, 5, 9, 75, and this Clause 94, and, in relation to a CRA Omnibus Beneficiary only, also as provided for in clause 32 (Third party rights) of the Common Terms, nothing in this Agreement or the Circular or the Information Memorandum, is intended to, nor should it be construed as purporting to, confer any rights on, or to be enforceable by, any Third Party. Any term of this Agreement including the Common Terms, apart from those provisions of the specified Clauses and clauses that confer rights on Third Parties may be amended or waived in accordance with Clause 80 or, as the case may be, clause 41 (Amendment of Common Terms) of the Common Terms without the consent of any person named or described in this Clause 94 or in Clauses 4.7, 5, 9, or ~~75~~ 75 or in clause 32 (Third party rights) of the Common Terms.

## **95 Governing law and jurisdiction**

### **95.1 Exclusive jurisdiction**

This Agreement shall be governed by, and construed in accordance with, English law and the Signatories hereby agree that the courts of England shall (save as otherwise provided in the Dispute Resolution Mechanism and save as provided in Clause 95.2) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of or in connection with the Circular or this Agreement, or the operation of this Agreement or, in the case of a CRA Omnibus Beneficiary only, the Information Memorandum, and the Signatories hereby submit to the exclusive jurisdiction of the courts of England for such purposes. The Signatories also waive any objections to Proceedings in the courts of England that may arise that are based on the grounds of the venue or that the Proceedings have been brought in an inconvenient forum.

### **95.2 Proceedings in other jurisdictions**

Notwithstanding the provisions of Clause 95.1, the Company retains the right to bring Proceedings in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.



## PART 18: DEFINITIONS AND INTERPRETATION

### 96 Definitions

In this Agreement, unless inconsistent with the subject or context, the following expressions bear the following meanings:

|  |  |
|--|--|
| <u><b>"19/9 Shortfall Claim"</b></u>   | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b>"Acceptance Condition"</b>          | has the meaning set out in paragraph 4.1 of Schedule 1   |
| <b>"Acceptance Date"</b>               | has the meaning set out in paragraph 8.7 of Schedule 1   |
| <b>"Acceptance Threshold Claims"</b>   | has the meaning set out in paragraph 4.2 of Schedule 1   |
| <b>"Acceptance Threshold Offerees"</b> | has the meaning set out in paragraph 4.2 of Schedule 1   |
| <b>"Acceptance Value"</b>              | has the meaning set out in paragraph 4.2 of Schedule 1   |
| <b>"Accession Date"</b>                | in respect of a Signatory, the date on which the Company Notifies such Signatory that its Form of Acceptance has been validly submitted and that such Signatory is a Party to this Agreement   |
| <b>"Accession Notice"</b>              | a Notice given by the Company to a Signatory on or after the Effective Date confirming that its Form of Acceptance has been validly submitted and that such Signatory is a Party to this Agreement   |
| <b>"Adjudicator"</b>                   | such person as may be appointed as Adjudicator in accordance with the provisions of Clause 70.2  |
| <b>"Adjudicator Contest Notice"</b>    | has the meaning set out in Clause 68.7   |
| <b>"Administration"</b>                | the administration of the Company under the Administration Order   |
| <b>"Administration Date"</b>           | 15 September 2008  |
| <b>"Administration Order"</b>          | the order of the Court dated 15 September 2008 made under paragraph 12 of Schedule B1 of the Insolvency Act under which <del>the Administrators</del> <u>Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann and Michael John Andrew Jervis</u> were appointed joint administrators of the Company   |
| <b>"Administrators"</b>                | the persons from time to time serving as joint administrators in the Administration who, as at <del>8 December 2011</del> , <u>the date of the Information Memorandum</u> , are Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell, Paul David Copley and Russell Downs of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, United Kingdom |
| <b>"Advisers"</b>                      | (i) Linklaters LLP; and<br>(ii) any other professional advisers to the Administrators  |



|   |  |
|---|--|
| <b>“Affected Claimant”</b>                                | has the meaning set out in Clause 34.5   |
| <b>“Affected Intermediary”</b>                            | has the meaning set out in Clause 34.5   |
| <b>“Affected Intermediary Admitted Claim Amount”</b>      | has the meaning set out in Clause 59.4.3   |
| <b>“Affected Intermediary Claim Amount”</b>               | has the meaning set out in Clause 59.7.4   |
| <b>“Affected Intermediary Collateralisation Election”</b> | has the meaning set out in Clause 59.1.3   |
| <b>“Affected Intermediary Derived Asset Liability”</b>    | has the meaning set out in Clause 59.5.3   |
| <b>“Affected Stock Line”</b>                              | has the meaning set out in Clause 34.5   |
| <b>“Affected TA Signatory”</b>                            | has the meaning set out in Clause 48.1   |
| <b>“Affiliate”</b>  | in relation to the Company, any Subsidiary, a Holding Company or any other Subsidiary of that Holding Company  |
| <b>“Agreed Amounts”</b>                                   | has the meaning set out in Clause 28.1.2   |
| <b>“Agreed Claim”</b>                                     | <p>means:</p> <p>(i) any Ascertained Claim determined in accordance with the terms of this Agreement and the quantum of which has been agreed by the Company and the Claimant in writing;</p> <p>(ii) any Claim to which Clauses 4 and 5 of this Agreement are not applicable and the quantum of which has been agreed by the Company and the Claimant in writing; and</p> <p>(iii) any combination of Claims that would have fallen in (i) and/or (ii) above, if their individual quantum was agreed in writing, the aggregate quantum of which has been agreed by the Company and the Claimant in writing, whether or not the quantum of each individual Claim in this combination of Claims has then been agreed or is subsequently agreed,</p> <p>and for the purposes of this definition of “Agreed Claim”, the quantum of a Claim will only be regarded as being agreed in writing if set out in a Closing Statement or in a deed or other agreement executed on behalf of the Company by an Administrator and, for the avoidance of doubt, amounts specified in a Determination Notice will not be Agreed Claims.</p> |
| <b>“Agreed Valuation Methodology”</b>                     | has the meaning set out in Clause 22.1.3   |
| <b>“Alleged Amounts”</b>                                  | has the meaning set out in Clause 28.1.3   |
| <b>“Alleged Individual Claim Amount”</b>                  | means, with respect to a Stock Line, the amount of Assets which a person alleges to be the subject of its Asset Claim to that relevant Stock Line  |
| <b>“Alleged Net Equity Amount”</b>                        | means, with respect to each Affected Claimant, the amount of Claims of (or derived from) the Affected Claimant against the Net Equity Intermediary, as alleged by such Affected Claimant, that the Net Equity Intermediary should recognise or   |

|  |   |
|--|---|
|  | acknowledge for the purpose of quantifying that Affected Claimant's Asset Claim in respect of Trust Assets held by such Net Equity Intermediary   |
| <b>"Alleged TA Claimant Amount"</b>                            | means: <ul style="list-style-type: none"> <li>(i) in relation to (a) a Stock Line which is not an Affected Stock Line or (b) an Affected Stock Line in respect of an Asset Claim Intermediary, an Alleged Individual Claim Amount; and</li> <li>(ii) in relation to a Net Equity Intermediary, an Alleged Net Equity Amount</li> </ul>  |
| <b>"Allocate", "Allocated", "Allocating", and "Allocation"</b> | each has the meaning set out in Clause 34.1   |
| <b>"Allocation Amount"</b>                                     | has the meaning set out in Clause 41(i), Clause 45.3 and Clause 47.1  |
| <b>"Allocation Date"</b>                                       | in relation to an Asset Pool: <ul style="list-style-type: none"> <li>(i) the first date on which both: <ul style="list-style-type: none"> <li>(a) (x) in the case of a Custody Securities Pool and a Non-Custody Securities Pool, the Company has determined that it does not expect to Identify any further Distributable Trust Assets for that Asset Pool or (y) in the case of a Multiple Stock Line Pool, Distributable Trust Assets have been Identified for that Asset Pool; and</li> <li>(b) the first Provisional Allocation Percentage has been determined for an Asset Pool Signatory of that Asset Pool; and</li> </ul> </li> <li>(ii) each subsequent date on which: <ul style="list-style-type: none"> <li>(a) (in respect of a Multiple Stock Line Pool) additional Distributable Trust Assets have been Identified for an Asset Pool;</li> <li>(b) a Dispute over a TA Claimant Amount of any Asset Pool Signatory of that Asset Pool has been resolved; or</li> <li>(c) Distributable Trust Assets of that Asset Pool cease to be Reserved Assets in accordance with Clause 44.3</li> </ul> </li> </ul> |
| <b>"Antecedent Transaction Liabilities"</b>                    | amounts due and payable from a Signatory to the Company under Sections 238 to 245 of the Insolvency Act (adjustment of prior transactions), Sections 423 to 425 of the Insolvency Act (provisions against debt avoidance) or Sections 213 to 215 of the Insolvency Act (fraudulent or wrongful trading) or as a result of any misfeasance, breach of duty or breach of contract owed by the Signatory to the Company  |
| <b>"Applicable Rate"</b>                                       | has the meaning set out in Clause 25.3.2(iii)   |
| <b>"Appropriate"</b>   | has the meaning set out in Clause 52.2  |

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| <b>“Appropriated Asset”</b>                             | at any time, any Asset which has been Appropriated by the Company prior to such time pursuant to Part 11   |
| <b>“Appropriation”</b>                                  | has the meaning set out in Clause 52.2   |
| <b>“Appropriation Deferral Election”</b>                | has the meaning set out in Clause 59.3.1   |
| <b>“Appropriation Rights”</b>                           | the rights of the Company to appropriate any Distribution Asset pursuant to Clause 60  |
| <b>“Ascertained Claim”</b>                              | an ascertained, unsecured claim in the winding-up of the Company or any distribution of the Company’s assets generally to its unsecured creditors  |
| <b>“Ascertained Non-Financial Contract Liabilities”</b> | has the meaning set out in Clause 33.2   |
| <b>“Ascertained Shortfall Amount”</b>                   | has the meaning set out in Clause 62.2.2   |
| <b>“Asset”</b>  | any Security or Post-Administration Client Money   |
| <b>“Asset Allocation”</b>                               | any Allocation of Distributable Trust Assets   |
| <b>“Asset Claim”</b>                                    | a Custody Asset Claim and/or a Non-Custody <a href="#">Asset Claim and/or a LBI</a> Asset Claim, as appropriate  |
| <b>“Asset Claim Intermediary”</b>                       | has the meaning set out in Clause 34.5   |
| <b>“Asset Delivery Notice”</b>                          | has the meaning set out in Clause 63.2.1   |
| <b>“Asset Pool”</b>                                     | a Custody Securities Pool, a Non-Custody Securities Pool, a Multiple Stock Line Pool or a Single Customer Pool   |
| <b>“Asset Pool Signatory”</b>                           | with respect to each Asset Pool, a Signatory that has an Asset Claim with respect to any Assets in such Asset Pool and references to an Asset Pool Signatory are to that Signatory in that capacity only and not generally in its capacity as a Signatory  |
| <b>“Asset Shortfall Claim”</b>                          | has the meaning set out in Clause 46.2 or Clause 48.3  |
| <b>“Asset Valuation Date”</b>                           | <ul style="list-style-type: none"> <li>(i) in respect of any Rehypothecated Security and for the purpose of calculating its Value in accordance with Clause 20.4.3, the Date Before Administration;</li> <li>(ii) in respect of any Security which is the subject of Short Positions Security and for the purpose of calculating its Value in accordance with Clause 20.4.3, the Date Before Administration;</li> <li>(iii) in respect of any Unpaid Amount Deliverable in accordance with Clause 23.5.2 other than any Rehypothecated Security and Securities which are the subject of Short Positions, the date on which such Unpaid Amount Deliverable was (or would have been but for any Flawed Asset Provision) required to be settled;</li> <li>(iv) in respect of any Individual Claim Value, the Provisional Valuation Date;</li> <li>(v) in respect of any Security that is the subject of an</li> </ul> |

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|   | Allocation and for the purpose of calculating its Value in Clause 60, the relevant Distribution Value Date;   |
| (vi)  | in respect of any Security forming part of an Asset Shortfall Claim and for the purpose of calculating its Value in accordance with Clause 60.5.3, the relevant Distribution Value Date;  |
| (vii)   | in respect of any Security forming part of any excess Asset Shortfall Claim for the purpose of Clause 60.5.4 or any aggregate Asset Shortfall Claim for the purpose of Clause 62.1, the Date Before Administration;   |
| (viii)  | in respect of any Ownership Claim asserted against Non-Trust Assets and for the purpose of Clause 7.3, the date on which such Signatory successfully asserts such Claim; and  |
| (ix)  | in respect of any other Relevant Asset, any date which the Company determines appropriate for calculating the Value of such Relevant Asset  |
| <b>“Asset Valuation Methodology”</b>                        | has the meaning set out in Clause 17.1  |
| <b>“Assignable Post-Administration Client Money Claims”</b> | has the meaning set out in Clause 4.8.1(i)  |
| <b>“Assignable Post-Administration Client Money”</b>        | has the meaning set out in Clause 4.8.1(ii)   |
| <b>“AssignCo”</b>   | means Laurifer Limited, a company incorporated under the laws of Jersey, having its registered office at Ogier House, The Esplanade, St Helier, Jersey JE4 9WG  |
| <b>“Bar Date”</b>   | 26 February 2010 or such later date as the Company may Notify the Signatories in its sole discretion  |
| <b>“Beneficiary”</b>  | each person for whom a Representative Signatory holds Trust Assets and is a Beneficiary by virtue of the bilateral agreement between the Company and that Representative Signatory by which that Representative Signatory becomes a party to this Agreement   |
| <b>“Books and Records”</b>                                  | books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm. For the avoidance of doubt, Books and Records in respect of the Company shall include information received by the Company from the Signatory through the Portal, but shall not include books, records or other information: (i) owned by persons other than the Company but to which the Company has access (whether full or partial); or (ii) which the Company cannot locate or access |
| <b>“Business Day”</b>                                       | <p>(i) a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York;</p> <p>(ii) in the case of an obligation to be performed in a country</p>   |

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|   | other than the United Kingdom or the United States of America, a day on which banks are open for general business in such country;   |
|   | (iii) in the case of the determination of an event or circumstance required to be calculated by reference to a day in any country other than the United Kingdom or the United States of America, a day on which banks are open for general business in such country; or  |
|   | (iv) in the case of any country, a day on which banks are open for general business in such country  |
| <b>"CAPCO"</b>                                  | Customer Asset Protection Company, an insurance company licensed by the state of Vermont, United States of America   |
| <b><u>"Capped Net 19/9 Shortfall Claim"</u></b> | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b>"Cash Payment Amount"</b>                    | has the meaning set out in Clause 59.12  |
| <b>"Cash Payment Election"</b>                  | has the meaning set out in Clause 59.12  |
| <b>"Cash Payment Election Notice"</b>           | has the meaning set out in Clause 59.12  |
| <b>"CASS Rules"</b>                             | the rules set out in Chapters 7 and 7A of the FSA's Client Assets Sourcebook (as amended)  |
| <b>"Cessation of Appointment Notice"</b>        | has the meaning set out in Clause 69.11.5  |
| <b>"Charge Long Positions"</b>                  | in respect of an Acceptance Threshold Offeree, the "Charge Long Positions" referred to at line item reference 2.2.1 of that Acceptance Threshold Offeree's Updated Position and Balance Statement  |
| <b>"Circular"</b>                               | the circular dated 24 November 2009 issued by the Company in connection with this Agreement (including the appendices thereto)   |
| <b>"Claim"</b>                                  | a claim in law or in equity of whatsoever nature: <ul style="list-style-type: none"> <li>(i) including for (but not limited to) breach of contract, tort, restitutionary claims and breach of trust;</li> <li>(ii) whether arising by, amongst other things, reason of 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; and</li> <li>(iii) for, amongst other things, the enforcement of any right to, or any liability in respect of a right to: <ul style="list-style-type: none"> <li>(a) seek or enforce judgment;</li> <li>(b) exercise any remedy (for damages or otherwise), indemnity and 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</li> </ul> </li> </ul> |



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|   | <p>available had an obligation been duly performed in a timely manner, or otherwise), costs, and expenses of any nature; or</p> <p>(c) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or liability whatsoever,</p> <p>and “<b>Claimant</b>”, “<b>to Claim</b>” and “<b>Claiming</b>” shall be construed accordingly</p> |
| “ <b>Claim Amount Notice</b> ”                            | has the meaning set out in Clause 36.5   |
| “ <b>Client Money</b> ”                                   | money which is client money pursuant to and as defined in the FSA Rules and which was, or ought to have been, held by the Company  |
| “ <b>Client Money Collateralisation Election</b> ”        | has the meaning set out in Clause 59.1.1   |
| “ <b>Closed Contract</b> ”                                | any Financial Contract that is not an Open Contract  |
| “ <b>Close-Out Amount</b> ”                               | in respect of a Financial Contract and each Signatory that is a party to it: (i) a single amount payable by either one of the Company or the relevant Signatory to the other as a result of termination of such Financial Contract as determined in accordance with Clause 20; or (ii) the aggregate of each Close-Out Component in accordance with Clause 21.3                                  |
| “ <b>Close-Out Component</b> ”                            | has the meaning set out in Clause 21.3   |
| “ <b>Closing Date</b> ”                                   | has the meaning set out in paragraph 2.2 of Schedule 1   |
| “ <b>Closing Statement</b> ”                              | has the meaning set out in Clause 64   |
| “ <b>Closing Time</b> ”                                   | has the meaning set out in Clause 64.1   |
| “ <b>Collateral Allocation</b> ”                          | has the meaning set out in Clause 59.10  |
| “ <b>Collateral Amount</b> ”                              | has the meaning set out in Clause 59.7.3   |
| “ <b>Collateral Claim Amount</b> ”                        | has the meaning set out in Clause 59.7.2   |
| “ <b>Collateralisation Election</b> ”                     | has the meaning set out in Clause 59.1   |
| “ <b>Collateralised Net Financial Liability</b> ”         | has the meaning set out in Clause 59.8   |
| <u>“<b>Common Terms</b>”</u>                              | <u>means the terms set out in Schedule 5</u>   |
| <u>“<b>Common Terms Claims</b>”</u>                       | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <u>“<b>Common Terms Dispute</b>”</u>                      | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <u>“<b>Common Terms Dispute Resolution Mechanism</b>”</u> | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <u>“<b>Common Terms Distribution</b>”</u>                 | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <u>“<b>Common Terms Effective Date</b>”</u>               | <u>has the meaning given to it in clause 54 (Definitions) of the</u>   |



## Common Terms

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| <b>“Companies Act”</b>                     | the Companies Act 2006   |
| <b>“Company”</b>                           | Lehman Brothers International (Europe) (in administration), incorporated in England and Wales with registered number 2538254   |
| <b>“Company Released Claims”</b>           | has the meaning set out in Clause 5.1.1  |
| <b>“Company Released Parties”</b>          | the Company, the Administrators and their firms, members, agents, partners or employees  |
| <b>“Conditions”</b>                        | the conditions to the Offer set out in paragraph 4 of Schedule 1   |
| <b>“Connected Trade”</b>                   | <p>(i) any transaction between the Company and a Signatory relating to a Financial Contract that was entered into contemporaneously with, and/or is directly or indirectly linked to, a Failed Trade, which was scheduled to settle on or before the Administration Date and has actually settled; or</p> <p>(ii) any transaction between the Company and a Signatory relating to a Financial Contract that was entered into contemporaneously with, and/or is directly or indirectly linked to, a Failed Trade, which was scheduled to settle after the Administration Date</p> <p>provided, however, that in no event shall a transaction between the Company and a Third Party be a Connected Trade</p> |
| <b>“Contractual Determining Party”</b>     | has the meaning set out in Clause 21.7.1   |
| <b>“Contractual Valuation Methodology”</b> | has the meaning set out in Clause 21.2.3   |
| <b>“Contractual Valuation Provisions”</b>  | has the meaning set out in Clause 21.1   |
| <b>“Contribution to Determination”</b>     | has the meaning set out in Clause 21.7.3(ii)   |
| <b>“Converted Asset”</b>                   | any Asset which has, after the Time of Administration, been exchanged or replaced (including, without limitation, as a result of any Corporate Action or Corporate Event in respect of such Asset), realised, disposed of or appropriated or which has matured   |
| <b>“Corporate Action”</b>                  | a subscription rights issue, a tender offer (such as a takeover offer, exchange offer or other similar offer or proposal) which may be of a security for a security, cash, any other securities or assets, or any combination of these, a scheme of arrangement pursuant to Part 26 of the Companies Act, a security subdivision/security split, a reverse security split, a bonus issue or a bonus rights issue, an exercise of voting rights, an exercise of conversion rights in relation to convertible bonds/warrants, a capital reorganisation, a merger, an election in relation to dividends (whether for cash or securities), and any other analogous or similar action                           |

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| <b>“Corporate Action Fee”</b>    | has the meaning set out in Clause 15.4.2   |
| <b>“Corporate Event”</b>         | has the meaning set out in Clause 15.11  |
| <b>“Costs Amount”</b>            | an amount determined by the Company on each Distribution Value Date <u>and each Cut-Off Date</u> equal to the relevant Costs Amount Percentage multiplied by the aggregate amount of the Value as at the Bar Date of all Asset Claims (including any new or additional Asset Claims submitted by that TA Signatory up to the relevant Distribution Value Date <u>or Cut-Off Date, as applicable</u> , that have previously not been added to such amount (whether or not the Asset Claim is subsequently reduced or withdrawn)), as supplemented by further information or as attributed a clarificatory meaning in accordance with Clause 12.4.2 provided that, where the Acceptance Date for a TA Signatory falls on a date on or prior to the end of the Initial Offer Period, such amount shall not exceed US\$2.5 million for any TA Signatory  |
| <b>“Costs Amount Percentage”</b> | <ul style="list-style-type: none"> <li>(i) where the Acceptance Date for a TA Signatory falls on a date on or prior to the end of the Initial Offer Period: <ul style="list-style-type: none"> <li>(a) in respect of a TA Signatory that is a Pure Custody Signatory, 0.75 per cent.; and</li> <li>(b) in respect of a TA Signatory that is not a Pure Custody Signatory, 1.00 per cent.</li> </ul> </li> <li>(ii) where the Acceptance Date for a TA Signatory falls on a date after the end of the Initial Offer Period: <ul style="list-style-type: none"> <li>(a) in respect of a TA Signatory that is a Pure Custody Signatory, 1.50 per cent.; and</li> <li>(b) in respect of a TA Signatory that is not a Pure Custody Signatory, 2.00 per cent.</li> </ul> </li> </ul>   |
| <b>“Costs Rebate Amount”</b>     | <ul style="list-style-type: none"> <li>(i) in respect of each TA Signatory, the difference as determined by the Company between: <ul style="list-style-type: none"> <li>(a) the Costs Amount determined as at the last Distribution Value Date <u>or the last Cut-Off Date, which ever is later</u>; less</li> <li>(b) the relevant Costs Amount Percentage of the sum of: <ul style="list-style-type: none"> <li>(I) the Value as at the Bar Date of all Asset Allocations to such TA Signatory;</li> <li>(II) the Value of each Intermediary Distribution as at the date on which such Intermediary Distribution was received by the Signatory; and</li> <li>(III) the Value of each Intermediary Retention as at the date on which such Intermediary Retention was received by the Company from the relevant Intermediary; and</li> </ul> </li> </ul> </li> <li>(ii) in all cases provided that, if the difference between (a)</li> </ul> |



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|   | and (b) above is less than US\$1,000, the Costs Rebate Amount shall be deemed to be zero  |
| <b>"Counterclaim Notice Deadline"</b>       | the twenty-fifth Business Day after the date the Claim Amount Notice is given by the Company  |
| <b>"Counterclaim Notice"</b>                | has the meaning set out in Clause 39.1  |
| <b>"Court"</b>                              | the High Court of Justice in England and Wales  |
| <b><u>"CRA Omnibus Beneficiaries"</u></b>   | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>   |
| <b>"Creditors' Committee"</b>               | the committee of creditors of the Company constituted under paragraph 57 of Schedule B1 to the Insolvency Act   |
| <b>"Creditors' Committee Group"</b>         | the members of the Creditors' Committee, including any sub-committees thereof, and their investment managers and investment managers' affiliates, and each of their respective advisers, firms, members, agents, partners, officers, directors and employees, at all times only in their respective capacities described in this definition, which ultimately derive from the role of the Creditors' Committee and, where the context requires, means them individually or collectively   |
| <b><u>"Cumulative Gross Allocation"</u></b> | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>   |
| <b>"Current Date"</b>                       | has the meaning set out in Clause 25.3  |
| <b>"CUSIP number"</b>                       | the number assigned to a Security by the <u>Company Committee</u> on Uniform <u>Security Securities</u> Identification Procedures   |
| <b>"Custody Agreement"</b>                  | any agreement, whether written, oral or otherwise, between the Company and any person for the provision of custodial services in respect of cash, Securities or other assets by the Company to such person, including, for the avoidance of doubt, custody arrangements evidenced by the maintenance of a custody account for a person on the Company's Books and Records within a range of account codes typically used by the Company for custody services  |
| <b>"Custody Asset Claim"</b>                | <ul style="list-style-type: none"> <li>(i) an Ownership Claim <u>(other than an Ownership Claim with respect to LBI Assets or Customer Name Securities)</u> against the Company for or in respect of: (a) any Securities (excluding any Rehypothecated Securities and Securities Covered By Client Money) which were recorded in the Books and Records of the Company at the Time of Administration as Securities which, pursuant to an obligation giving rise to an Ownership Claim against the Company in respect of such Securities, the Company held or should have held as Custody Securities; and (b) Derived Assets relating to such Securities other than money; and</li> <li>(ii) a Claim against the Company in respect of any Derived Asset relating to (a) or (b) above that is money.</li> </ul> |



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|  | For the avoidance of doubt, unless otherwise required by law or regulation, the obligation of the Company in respect of a Custody Asset Claim shall not exceed the obligation of the Company under the terms of the agreement or arrangement that gives rise to such Custody Asset Claim   |
| <b>“Custody Long Positions”</b>          | in respect of an Acceptance Threshold Offeree, the “Custody Long Positions” referred to at line item reference 2.1.1 of that Acceptance Threshold Offeree’s Updated Position and Balance Statement   |
| <b>“Custody Securities Pool”</b>         | has the meaning set out in Clause 43.1   |
| <b>“Custody Security”</b>                | a Security which is a Trust Asset <u>(other than a LBI Asset)</u> credited to a custody account of a TA Claimant with the Company and, where held by an Intermediary and designated as being held for the Company’s customers, is expressed to be so held for the benefit of the Company’s custody customers   |
| <b><u>“Customer Name Securities”</u></b> | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b><u>“Cut-Off Date”</u></b>             | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b>“CVA”</b>                             | a company voluntary arrangement proposed or to be proposed by the Administrators under Part I of the Insolvency Act for the purpose of dealing with the claims of general unsecured creditors of the Company   |
| <b>“Date Before Administration”</b>      | the last business day before the Administration Date. For the purpose of this definition only, “ <b>business day</b> ” shall mean a business day in the city or principal market which is most closely connected to or for the trading in respect of the relevant Security that is being Valued  |
| <b>“De Minimis Allocation”</b>           | has the meaning set out in Clause 56.3   |
| <b>“Defective Notice of Termination”</b> | in respect of any Financial Contract, a notice which a Signatory served on the Company on or before the Accession Date of that Signatory which would have validly terminated such Financial Contract in accordance with its terms but for a failure by that Signatory to comply with the terms of the relevant Financial Contract with regard to the delivery of notices in general or the requirements for Notices of Termination in particular |
| <b>“Deferral Cash Amount”</b>            | has the meaning set out in Clause 59.3.2   |
| <b>“Deferral Cash Payment Date”</b>      | has the meaning set out in Clause 59.3.2   |
| <b>“Deferral Election Deadline”</b>      | has the meaning set out in Clause 59.3.1   |
| <b>“Delegate”</b>                        | any person appointed as a delegate pursuant to Clause 78.1.2   |
| <b>“deliver”</b>                         | when used in relation to the delivery or payment of any Securities or money forming part of a Distribution, “ <b>deliver</b> ” means delivery in accordance with Clause 63 <u>or part 4 (Common Terms Distributions out of Omnibus Trust) of the</u>   |

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|   | <a href="#">Common Terms</a> and “ <b>delivery</b> ” and “ <b>delivered</b> ” shall be construed accordingly   |
| “ <b>Delivery Date</b> ”                | has the meaning set out in Clause 63.3.1   |
| “ <b>Delivery Disruption Event</b> ”    | an event beyond the control of the Company as a result of which the Company cannot deliver the Distribution in accordance with the instructions of the Signatory specified in the Asset Delivery Notice, or an event in which the delivery of the Distribution is rendered illegal under any applicable law or regulation  |
| “ <b>Delivery Instruction Date</b> ”    | in relation to any Distribution that the Company is due to make to a Signatory by delivery in accordance with Clause 63, the latest day on which the Company must give instructions for settlement of such Distribution  |
| “ <b>Derived Asset</b> ”                | <p>any Asset received by the Company after the Time of Administration arising out of or derived from any Security <a href="#">other than an LBI Asset</a> (but also including interest on Post-Administration Client Money that was originally derived from a Security) which was itself a Trust Asset at or immediately before the time that that other Asset was received, including:</p> <ul style="list-style-type: none"> <li>(i) any Security or Post-Administration Client Money which an Intermediary delivers to the Company in lieu of a Segregated Asset held by such Intermediary, as required by, or otherwise permitted under, the applicable law of that Intermediary;</li> <li>(ii) any sale proceeds of any Security comprising paragraph (i) above realised by the Company in accordance with Clause 45.4; and</li> <li>(iii) any proceeds or consideration received in exchange, replacement, realisation, disposal, appropriation or maturity of any Converted Asset,</li> </ul> <p>and, when used in relation to a particular Security, any Asset that is so derived from that Security</p> |
| “ <b>Determination Notice</b> ”         | has the meaning set out in Clause 67.1   |
| “ <b>Determining Party</b> ”            | has the meaning set out in Clause 20.6.1   |
| “ <b>Dispute</b> ”                      | has the meaning set out in Clause 67   |
| “ <b>Dispute Notice</b> ”               | has the meaning set out in Clause 68.1   |
| “ <b>Dispute Notice Deadline</b> ”      | the twenty-fifth Business Day after the date the Dispute Trigger Notice, an Intermediary Distribution Value Notice or Net Contractual Position Statement is given by the Company or the tenth Business Day after the date a Distribution and Appropriation Notice is given by the Company  |
| “ <b>Dispute Resolution Mechanism</b> ” | the procedures for resolving Disputes as described in Clauses 67 to 74   |
| “ <b>Dispute Trigger Notice</b> ”       | has the meaning set out in Clause 67.3   |
| “ <b>Disputing Parties</b> ”            | has the meaning set out in Clause 67   |

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| <b>“Distributable Trust Assets”</b>            | <p>at any time, any Trust Assets which fulfil each of the following criteria at such time:</p> <ul style="list-style-type: none"> <li>(i) they have been sufficiently identified and located by the Company to enable the Company to Identify them in accordance with Clause 35;</li> <li>(ii) they are within the direct custody or control of the Company or any Intermediary through which the Company has indirect custody or control of the Assets and which is willing and able to act in accordance with a direction from the Company in respect of such Trust Assets; and</li> <li>(iii) they are not subject to any order or restriction of any competent court or authority which would prevent or interfere with the operation of this Agreement in respect of such Trust Assets,</li> </ul> <p>provided that:</p> <ul style="list-style-type: none"> <li>(a) Trust Assets which do not fulfil each of the criteria above at any time may subsequently become Distributable Trust Assets at such time as they fulfil each of the criteria above and for as long as they continue to fulfil each of the criteria above; and</li> <li>(b) conversely, Trust Assets which have at any time fulfilled each of the criteria above may cease to be Distributable Trust Assets at any time that they cease to fulfil each of the criteria above.</li> </ul> <p><a href="#"><u>For the avoidance of doubt Trust Financial Assets cannot constitute Distributable Trust Assets</u></a></p> |
| <b>“Distribution”</b>                          | has the meaning set out in Clause 52.2   |
| <b>“Distribution and Appropriation Notice”</b> | has the meaning set out in Clause 58.1   |
| <b>“Distribution Assets”</b>                   | has the meaning set out in Clause 54.1   |
| <b>“Distribution Liabilities”</b>              | has the meaning set out in Clause 55.1   |
| <b>“Distribution Value Date”</b>               | has the meaning set out in Clause 57   |
| <b>“Effective Date”</b>                        | the date on which this Agreement became effective as declared by the Company in accordance with paragraph 12 of Schedule 1   |
| <b>“Eligible Offeree”</b>                      | has the meaning set out in paragraph 3.2 of Schedule 1   |
| <b>“Entire Position”</b>                       | in respect of a Signatory, its Asset Claims, Pre-Administration Client Money Claims, Asset Shortfall Claims, Ascertained Claims, Distribution Liabilities, Financial Contracts (including all transactions under them) and any other Claims or Liabilities under this Agreement that together comprise all of the Claims against the Company of, and Liabilities owed to the Company by, that Signatory  |
| <b>“Equity of Redemption”</b>                  | has the meaning given to it under English law and, in relation to security given under a legal system other than English law, any  |

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|   | proprietary interest in an Asset that confers rights that are equivalent to an equity of redemption under English law  |
| <b>“Excess Value”</b>                       | has the meaning set out in Clause 45.3.7(ii)   |
| <b>“Excluded Claims”</b>                    | <p>from time to time, any Claim:</p> <ul style="list-style-type: none"> <li>(i) that is an Ownership Claim for or in respect of Excluded Property other than Appropriated Assets;</li> <li>(ii) for loss or damage relating to the failure of the Company to perform any of its obligations with regard to Excluded Property;</li> <li>(iii) that is a Retention Claim;</li> <li>(iv) against the Company for breach of any of the terms of this Agreement or for any failure on the part of the Company to discharge their obligations under this Agreement; or</li> <li>(v) against the Company under a contract: (a) which is not a Financial Contract; and (b) where the Company, in its absolute discretion, determines it is not in the interests of the unsecured creditors of the Company as a whole to have the obligations under that contract resolved through this Agreement,</li> </ul> <p>provided that no Claim under paragraph (ii) above in respect of, or connected or related to, a Financial Contract shall be an Excluded Claim</p> |
| <b>“Excluded Party”</b>                     | has the meaning set out in Clause 2.3  |
| <b>“Excluded Property”</b>                  | <p>at any time:</p> <ul style="list-style-type: none"> <li>(i) Non-Trust Assets; <del>and</del></li> <li>(ii) any Security Interest over Assets; <u>and</u></li> <li>(iii) <u>any Customer Name Securities</u></li> </ul>  |
| <b>“Extended Offer Period”</b>              | has the meaning set out in paragraph 7.8 of Schedule 1   |
| <b>“Extraordinary Resolution”</b>           | has the meaning given to it in Schedule 4  |
| <b>“Extraordinary Resolution Direction”</b> | means a direction by an Extraordinary Resolution of relevant Signatories   |
| <b>“Failed Trade”</b>                       | any transaction for the purchase, sale or delivery of any Security which has actually failed to settle   |
| <b>“Failed Trade Entry”</b>                 | an entry in the Books and Records of the Company recording a Failed Trade as having settled  |
| <b>“Fallback Notification Date”</b>         | has the meaning set out in Clause 22.1.2   |
| <b>“Fallback Valuation Date”</b>            | in respect of an Open Contract, the Open Contract Termination Date or as soon as reasonably practicable thereafter and, in respect of a Closed Contract, the date on which such Closed Contract was terminated or as soon as reasonably practicable thereafter   |
| <b>“Fallback Valuation</b>                  | has the meaning set out in Clause 23.3.1   |



## **Methodology**

### **“Financial Contract”**

any bilateral or multilateral contract entered into before the Administration Date (whether evidenced in writing or not) relating to one or more transactions or positions of a financial nature (and which is not a purely administrative or services contract), including contracts for the delivery and/or custody of Assets, entered into between a Signatory and the Company. For the avoidance of doubt, Master Agreements are Financial Contracts and each Master Agreement, together with the transactions entered into under it, shall be treated as a single Financial Contract

### **“Financial Contract Valuation Methodology”**

has the meaning set out in Clause 20.2

### **“Financial Instrument”**

any financial instrument, including, without limitation, any share, instrument creating or acknowledging indebtedness, instrument creating or acknowledging entitlements to investments, warrant or unit in a collective investment scheme, that is capable of being credited to an account of the Company with an Intermediary, excluding money

### **“Financing and Derivatives Contract”**

a Financial Contract which is capable of giving rise to a Liability of the Signatory to the Company in the form of indebtedness or such other arrangement with an economic effect similar to an indebtedness, including a Financial Contract which provides for:

- (i) an obligation of the Signatory to pay money or deliver Securities to the Company in respect of (a) a loan of cash and/or Securities or (b) a Security repurchase (or reverse-repurchase) arrangement; or
- (ii) an obligation of the Signatory to pay or deliver Securities to the Company in accordance with the terms of a derivative transaction, contract for differences transaction or a transaction for the sale and purchase of any futures or options contract.

For the avoidance of doubt, (x) any standard terms of business, (y) a Custody Agreement or (z) a Prime Brokerage Agreement under or in connection with which a Signatory does not have any Liability as described above, as determined by the Company as at the Bar Date, is not a Financing and Derivatives Contract with respect to such Signatory

### **“Flawed Asset Provision”**

has the meaning set out in Clause 20.4.4

### **“Form of Acceptance”**

has the meaning set out in paragraph 1.2 of Schedule 1

### **“Forum Notice”**

has the meaning set out in Clause 68.3

### **“FSA”**

the Financial Services Authority of the United Kingdom

### **“FSA Handbook”**

the handbook containing rules, principles and guidance made by the FSA under powers given to it by the FSMA as modified, amended or revised from time to time

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| <b>“FSA Rules”</b>  | the FSMA and the FSA Handbook  |
| <b>“FSMA”</b>   | Financial Services and Markets Act 2000 <u>and, to any extent relevant, the Financial Services Acts 2010 and 2012</u>  |
| <b>“Funded Retention Amount”</b>                                  | an amount in a notional ledger established and designated as such by the Company in respect of each currency in which any Retention Claim Amount in respect of a Signatory is denominated  |
| <b>“Further Offer”</b>  | has the meaning set out in paragraph 7.10 of Schedule 1  |
| <b>“Greatest Pre-Administration Admitted Client Money Amount”</b> | has the meaning set out in Clause 25.3.2(ii)   |
| <b><u>“Gross Distribution”</u></b>                                | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b>“Gross Uncollateralised Liability”</b>                         | has the meaning set out in Clause 25.3.2(ii)   |
| <b>“Gross Uncollateralised Liability Interest”</b>                | has the meaning set out in Clause 25.3.2(i)  |
| <b>“Holding Company”</b>  | in relation to the Company, any other company, corporation or legal entity in respect of which it is a Subsidiary  |
| <b>“Hypothetical Counterparty”</b>                                | a hypothetical market counterparty with a creditworthiness of prime quality  |
| <b>“Identification”</b>   | has the meaning set out in Clause 35   |
| <b>“Incompletely Documented Agreement”</b>                        | has the meaning set out in Clause 14.1   |
| <b>“Individual Claim Amount”</b>                                  | has the meaning set out in Clause 36.1   |
| <b>“Individual Claim Value”</b>                                   | has the meaning set out in Clause 45.1   |
| <b><u>“Information Memorandum”</u></b>                            | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b>“Information Representation and Warranty”</b>                  | has the meaning set out in Clause 65.2   |
| <b>“Initial Offer Period”</b>                                     | has the meaning set out in paragraph 2.2 of Schedule 1   |
| <b>“Initial Representation and Warranty”</b>                      | has the meaning set out in Clause 65.1   |
| <b>“Insolvency Act”</b>   | the Insolvency Act 1986  |
| <b>“Insolvency Rules”</b>   | the Insolvency Rules 1986  |
| <b>“Instructions”</b>   | has the meaning set out in Clause 15.4.1   |
| <b>“Intermediary”</b>   | a custodian, clearing system, depository, nominee or other person who holds assets (including, for the avoidance of doubt, rights in respect of Assets) on behalf of or to the order of the Company, and which has a direct contractual or fiduciary relationship with the Company in relation to those assets |

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| <b>“Intermediary Distribution”</b>                                | <ul style="list-style-type: none"> <li>(i) any asset or benefit received by a Signatory on or after the Administration Date from an Intermediary or its Sub-Intermediary (other than from the Company), by way of delivery of Security, payment of cash, set-off or otherwise equivalent to Appropriation or Distribution under this Agreement, in or towards satisfaction of an Asset Claim of that Signatory, as determined by the Company; and</li> <li>(ii) for the purpose of Clause 48.3 only, also includes any asset received by a Signatory on or after the Administration Date from an Intermediary or its Sub-Intermediary (other than from the Company) that, had it been received by the Company, would have been a Derived Asset.</li> </ul> <p>For the avoidance of doubt, Intermediary Distribution includes any such assets or benefits received by a Signatory between the Administration Date and its Accession Date</p> |
| <b>“Intermediary Distribution Notice”</b>                         | has the meaning set out in Clause 37.1  |
| <b>“Intermediary Distribution Value”</b>                          | has the meaning set out in Clause 37.3  |
| <b>“Intermediary Distribution Value Notice”</b>                   | has the meaning set out in Clause 37.3  |
| <b>“Intermediary Retention”</b>                                   | any asset or benefit which an Intermediary or its Sub-Intermediary has: (i) withheld from an Intermediary Distribution to a Signatory; and (ii) transferred to the Company by way of delivery of Security, payment of cash, set-off or otherwise equivalent to Appropriation or Distribution under this Agreement, in or towards the satisfaction of that Signatory’s Distribution Liabilities  |
| <b>“International Prime Brokerage Agreement (Charge Version)”</b> | means the international prime brokerage agreement entered into between a Signatory and the Company pursuant to which the assets of the Signatory were held for the Signatory by the Company as trustee for itself and/or others subject to a security interest, including with a right of use of such assets by the Company   |
| <b>“ISIN”</b>   | International Securities Identification Number  |
| <b>“Judgment Amounts”</b>   | has the meaning set out in Clause 28.1.1  |
| <b>“Last Allocation”</b>  | <ul style="list-style-type: none"> <li>(i) in respect of a Custody Securities Pool or a Non-Custody Securities Pool, the Allocation to the relevant Asset Pool Signatory(ies) of an Asset in the relevant Asset Pool where: <ul style="list-style-type: none"> <li>(a) there are no Disputes or all Disputes arising have been resolved over the TA Claimant Amount and/or Intermediary Distribution Value by the relevant Asset Pool Signatories; and</li> <li>(b) no Distributable Trust Assets in respect of the</li> </ul> </li> </ul>  |



- relevant Asset Pool are designated as Reserved Assets in respect of its TA Claimant Amount or Alleged TA Claimant Amount of a TA Non-Signatory (as the case may be)
- (ii) in respect of a Multiple Stock Line Pool, the Allocation to the relevant Asset Pool Signatory(ies) of an Asset in the relevant Asset Pool:
    - (a) after the Company has determined in its absolute discretion that it does not expect to Identify any further Assets in respect of that Asset Pool;
    - (b) where there are no Disputes or all Disputes arising have been resolved over the TA Claimant Amount and/or Intermediary Distribution Value by the relevant Asset Pool Signatories; and
    - (c) where no Distributable Trust Assets in respect of the relevant Asset Pool are designated as Reserved Assets in respect of its TA Claimant Amount or Alleged TA Claimant Amount of a TA Non-Signatory (as the case may be); and
  - (iii) in respect of a Single Customer Pool and in respect of the relevant Single Customer, the Allocation where the Company has determined in its absolute discretion that it does not expect to Identify any further Assets to be returned from such Affected Intermediary that relate to the Asset Claim of such Single Customer

**“LBI”**

Lehman Brothers Inc.

**“LBI Appropriation Deferral Election”**

has the meaning set out in Clause 59.13.1

**“LBI Appropriation Deferral Election Cancellation Notice”**

has the meaning set out in Clause 59.13.3

**“LBI Asset”**

has the meaning given to it in clause 54 (Definitions) of the Common Terms

**“LBI Asset Claim”**

has the meaning given to it in clause 54 (Definitions) of the Common Terms

**“LBI Deferral Cash Amount”**

has the meaning set out in Clause 60.10.4

**“Legal Claim”**

has the meaning given to it in clause 54 (Definitions) of the Common Terms

**“Legal Liabilities”**

has the meaning given to it in clause 54 (Definitions) of the Common Terms

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| <b>“Liabilities”</b>  | 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>“Limited Ascertained Non-Financial Contract Liabilities”</b> | has the meaning set out in Clause 33.5   |
| <b>“Liquidation Event”</b>                                      | either an order by the Court to compulsorily wind up the Company or the commencement of a creditors’ voluntary winding-up in respect of the Company (both pursuant to the Insolvency Act and the Insolvency Rules)   |
| <b>“Master Agreement”</b>                                       | an agreement which provides a set of common terms and conditions for one or more transactions entered into under it, which together form a single agreement  |
| <b>“Mid-Market Value”</b>                                       | has the meaning set out in Clause 23.4.1   |
| <b>“Modified Claims”</b>  | has the meaning set out in Clause 4.1  |
| <b>“Multiple Stock Line Pool”</b>                               | has the meaning set out in Clause 43.2.2   |
| <b><u>“Net 19/9 Shortfall Claim”</u></b>                        | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b>“Net Contractual Position”</b>                               | the amount determined in accordance with Clause 24.2   |
| <b>“Net Contractual Position Statement”</b>                     | has the meaning set out in Clause 24.4   |
| <b><u>“Net Distribution”</u></b>                                | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b>“Net Equity Amount”</b>                                      | has the meaning set out in Clause 36.2   |
| <b>“Net Equity Intermediary”</b>                                | has the meaning set out in Clause 34.5   |
| <b>“Net Financial Claim”</b>                                    | has the meaning set out in Clause 25.1   |
| <b>“Net Financial Interest Amount”</b>                          | has the meaning set out in Clause 25.3.1   |
| <b>“Net Financial Liability”</b>                                | has the meaning set out in Clause 25.2   |
| <b>“New Claims”</b>   | has the meaning set out in Clause 4.4  |
| <b>“Non-Custody Asset Claim”</b>                                | (i) an Ownership Claim <u>(other than an Ownership Claim with respect to LBI Assets or Customer Name Securities)</u> against the Company for or in respect of: (a) any Securities (excluding any Rehypothesized Securities and Securities Covered By Client Money) which were recorded in the Books and Records of the Company as at the Time of Administration as Securities which, pursuant to an obligation giving rise to an Ownership Claim against the Company in respect of such Securities, the Company held or should have held |



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|   | as Non-Custody Securities; and (b) Derived Assets relating to such Securities other than money; and  |
|   | (ii) a Claim against the Company in respect of any Derived Assets relating to (a) or (b) above that is money.  |
|   | For the avoidance of doubt, unless otherwise required by law or regulation, the obligation of the Company in respect of a Non-Custody Asset Claim shall not exceed the obligation of the Company under the terms of the agreement or arrangement that gives rise to such Non-Custody Asset Claim   |
| <b>“Non-Custody Securities Pool”</b>        | has the meaning set out in Clause 43.1   |
| <b>“Non-Custody Security”</b>               | any Security which is a Trust Asset, but not a Custody Security <u>or a LBI Asset</u>  |
| <b>“Non-Financial Contract Liabilities”</b> | has the meaning given to it in Clause 33.1 and <b>“Non-Financial Contract Liability”</b> means any one of such Non-Financial Contract Liabilities  |
| <b>“Non-Signatory”</b>                      | any person who is not a Signatory to this Agreement  |
| <b>“Non-Trust Assets”</b>                   | any Assets or money held or controlled by the Company, other than Segregated Assets, Derived Assets <del>and</del> , Recovered Assets <u>and Trust Financial Assets</u> , including, without limitation: (i) a Rehypothecated Security; (ii) a Converted Asset; (iii) a Returned Asset; (iv) a Pre-Agreement Returned Asset; (v) from the time of Appropriation, an Appropriated Asset; (vi) any Pre-Administration Client Money; and (vii) any Assets beneficially owned by the Company, including any Surplus Assets |
| <b>“Notice”</b>                             | any notice given in accordance with Clause 89, <u>except that in relation to the Common Terms it shall mean any notice given in accordance with clause 42 (Notices) of the Common Terms</u> , and <b>“Notify”</b> , <b>“Notifying”</b> and <b>“Notified”</b> shall be construed accordingly  |
| <b>“Notice Cut-off Date”</b>                | has the meaning set out in Clause 63.2.1   |
| <b>“Notice of Termination”</b>              | with respect to a Financial Contract, any notice from one party to another which purports to terminate such Financial Contract, regardless of whether such notice effectively terminates such Financial Contract in accordance with its terms  |
| <b>“NTA Condition”</b>                      | has the meaning set out in paragraph 9.1 of Schedule 1   |
| <b>“NTA Offerees”</b>                       | has the meaning set out in paragraph 3.1 of Schedule 1   |
| <b>“NTA Signatory”</b>                      | any Signatory that is not a TA Signatory   |
| <b>“Offer”</b>                              | has the meaning set out in paragraph 1.1 of Schedule 1   |
| <b><u>“Omnibus Settlement Assets”</u></b>   | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b>“Open Contract”</b>                      | with respect to each Signatory, any Financial Contract that has not been terminated on or before the Accession Date of that  |

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|   | Signatory  |
| <b>“Open Contract Termination Date”</b> | in respect of each Signatory, the last Business Day of the month in which its relevant Accession Date falls  |
| <b>“Original Position”</b>              | the Entire Position of a Signatory as at the Time of Administration  |
| <b>“Over-Allocated Signatory”</b>       | has the meaning set out in Clause 45.3.7   |
| <b>“Overriding Valuation Provision”</b> | has the meaning set out in Clause 20.4   |
| <b>“Ownership Claim”</b>                | <p>with respect to an Asset in the possession or custody of a person (the <b>“holder”</b>), a Claim by another (the <b>“ownership claimant”</b>) that:</p> <ul style="list-style-type: none"> <li>(i) the ownership claimant is the legal or beneficial owner of that Asset (whether or not it is subject to any prior ranking Security Claim of any person); and</li> <li>(ii) for the delivery or transfer of the Asset to (or to the order of) the ownership claimant by the holder in order to convey all right, title and interest in the Asset, subject to any right of the holder to withhold such delivery or transfer until the satisfaction of some condition precedent by the ownership claimant, including satisfaction of any Security Claim,</li> </ul> <p>but shall exclude any Claim in contract for the delivery or transfer of the Asset by the holder to the ownership claimant, unless such a Claim is capable of remedy by an order for specific performance (or equivalent under a legal system outside England)</p> |
| <b>“Parallel Debt”</b>                  | has the meaning set out in Clause 32.2   |
| <b>“Party”</b>                          | means the Company or any Signatory   |
| <b>“Password”</b>                       | has the meaning set out in Clause 89.2.1   |
| <b>“Payment”</b>                        | in respect of any payment to the Company, a payment in accordance with Clause 85 and <b>“Pay”</b> and <b>“Paid”</b> shall be construed accordingly   |
| <b>“Physical Delivery Deadline”</b>     | has the meaning set out in Clause 63.4.1   |
| <b>“Pledge Positions”</b>               | in respect of an Acceptance Threshold Offeree, the “Pledge Positions” referred to at line item reference 2.3.1 of that Acceptance Threshold Offeree’s Updated Position and Balance Statement   |
| <b>“Pledgor”</b>                        | in relation to any Security Interest, the party over whose assets the Security Interest has been created   |
| <b>“Portal”</b>                         | a secure online facility made available by the Company through which certain Signatories (expected, initially, to be limited to TA Signatories) may access information about their Positions with the Company using their unique User ID and Password  |
| <b>“Position”</b>                       | any asset (including an Asset) or Liability comprising a part of a   |

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|  | Signatory's Entire Position, including an individual transaction under a Financial Contract  |
| <b>"Post-Administration Client Money"</b>                    | any Client Money which is received by the Company after the Time of Administration and for which the Company remains accountable, but, for the avoidance of doubt, shall not include Pre-Administration Client Money or Pre-Administration Client Money Claims   |
| <b>"Post-Administration Client Money Claim"</b>              | <p>any Claim by the Signatory in relation to Post-Administration Client Money including:</p> <ul style="list-style-type: none"> <li>(i) any Claim by the Signatory, whether against the Company or any other person, for or in respect of Post-Administration Client Money held on the Statutory Trust (or for or in respect of the proceeds of, or any substitute for, such money or any assets over which a trust, charge or other proprietary right exists in respect of such money);</li> <li>(ii) any Claim against the Company for or in respect of a shortfall in the Signatory's recovery of the Post-Administration Client Money whether on the basis that such money is owed as a debt, or that the Company is responsible for the loss of any Post-Administration Client Money or on any other basis whatsoever;</li> <li>(iii) any Claim or entitlement (including any discretionary entitlement) of the Signatory against any compensation scheme, insurer or other person in respect of Claims to or loss of Post-Administration Client Money;</li> <li>(iv) any debt, contractual right or other Claim which has given rise to a Post-Administration Client Money Claim; and</li> <li>(v) any right to waive, compromise, dispose of or otherwise deal with any of the foregoing,</li> </ul> <p>provided that this definition does not apply to (a) Client Money unrelated to the Company or (b) Claims by the Signatory under insurance or other arrangements entered into with a person unconnected with the Company by the Signatory for its own benefit</p> |
| <b>"Post-Administration Client Money Collection Account"</b> | has the meaning set out in Clause 4.8.1(i)   |
| <b>"Post-Administration Financial Contract"</b>              | in relation to a Signatory, any Financial Contract (or any Positions under it) to which the Signatory became a party after the Time of Administration by reason of a Transfer from a Transferor  |
| <b>"Pre-Administration Admitted Client Money Amount"</b>     | has the meaning as set out in Clause 59.2.3  |
| <b>"Pre-Administration Client"</b>                           | any Client Money which was received or held by the Company prior to the Time of Administration and for which the Company   |

**Money”**

remained accountable at the Time of Administration and any money earned or arising at any time in respect thereof, whether before or after the Time of Administration

**“Pre-Administration Client Money Claim”**

any Claim by the Signatory in relation to Pre-Administration Client Money including:

- (i) any Claim by the Signatory, whether against the Company or any other person, for or in respect of money held on the Statutory Trust (or for or in respect of the proceeds of, or any substitute for, such money or any assets over which a trust, charge or other proprietary right exists in respect of such money) or including, without limitation:
  - (a) any entitlement against the Company to a distribution from the Pre-Administration Client Money Pool;
  - (b) any Claim to Pre-Administration Client Money held at the Time of Administration outside of the Pre-Administration Client Money Pool; and
  - (c) any Pre-Administration Client Money received after the Time of Administration;
- (ii) any Claim against the Company for or in respect of a shortfall in the Signatory's recovery from the Pre-Administration Client Money Pool whether on the basis that such money is owed as a debt, or that the Company is responsible for the loss of any Pre-Administration Client Money or on any other basis whatsoever;
- (iii) any Claim or entitlement (including any discretionary entitlement) of the Signatory against any compensation scheme, insurer or other person in respect of Claims to or loss of Pre-Administration Client Money;
- (iv) any debt, contractual right or other Claim which has given rise to a Pre-Administration Client Money Claim; and
- (v) any right to waive, compromise, dispose of or otherwise deal with any of the foregoing,

provided that this definition does not apply to: (a) Client Money unrelated to the Company; or (b) Claims by the Signatory under insurance or other arrangements entered into with a person unconnected with the Company by the Signatory for its own benefit

**“Pre-Administration Client Money Collection Account”**

has the meaning set out in Clause 59.6.2

**“Pre-Administration Client Money Pool”**

the pool created pursuant to CASS Rule 7.9.6R (as in force at the Time of Administration)

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| <b>“Pre-Administration Client Money Shortfall Claim”</b>      | has the meaning set out in Clause 59.11.1  |
| <b>“Pre-Administration Financial Contract”</b>                | at any time in relation to a person, any Financial Contract (or any Positions under it) to which that person was a party at the Time of Administration and, at the relevant time, continues to be a party  |
| <b>“Pre-Agreement Asset Contract”</b>                         | <p>a Pre-Agreement Contract pursuant to which:</p> <ul style="list-style-type: none"> <li>(i) Pre-Agreement Provisionally Returned Assets were distributed, transferred or delivered; and</li> <li>(ii) such Assets or other assets may be required to be redelivered, delivered or paid to the Company,</li> </ul> <p>provided that the amount or value of any Claim for the purposes of this Agreement shall be the amount or value finally agreed for such Claim(s) in the Pre-Agreement Contract</p>   |
| <b>“Pre-Agreement Contract”</b>                               | any agreement entered into by the Company with a person after the Time of Administration, and where such person is a Signatory before their Accession Date   |
| <b>“Pre-Agreement Provisionally Returned Asset”</b>           | any Security which has been distributed, transferred or delivered by the Company to a person after the Time of Administration but prior to the Effective Date, in respect of which such person has an obligation to redeliver to the Company such Security or assets equivalent to such Security and proceeds of any conversion and/or derived assets of such Security or assets equivalent to such Security, whether in full or in part, which obligation includes an indemnity to the Company that compensates the Company, in whole or in part, for the consequences of any failure to make such a redelivery |
| <b>“Pre-Agreement Provisionally Returned Asset Recipient”</b> | a person who has undertaken pursuant to a Pre-Agreement Asset Contract to redeliver to the Company, in certain circumstances, any Pre-Agreement Provisionally Returned Asset   |
| <b>“Pre-Agreement Returned Asset”</b>                         | any Pre-Agreement Provisionally Returned Asset that, in retrospect (and after the adjustment referred to in parentheses in the first paragraph of Clause 61), has been properly distributed, transferred or delivered by the Company to the relevant Pre-Agreement Provisionally Returned Asset Recipient as determined by the Company in accordance with Clause 61  |
| <b>“Previous Acceptors”</b>                                   | has the meaning set out in paragraph 11.3 of Schedule 1  |
| <b>“Previous Period”</b>                                      | has the meaning set out in Clause 25.3   |
| <b>“Prime Brokerage Agreement”</b>                            | any agreement, whether written, oral or otherwise, between the Company and any person for the provision of prime brokerage services or margin lending services by the Company to such person including, for the avoidance of doubt, cash margin trading arrangements evidenced by the maintenance of a margin account for a person on the Company’s Books and  |



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|  | Records within a range of account codes typically used by the Company for such services   |
| <b>“Prior Date”</b>                        | has the meaning set out in Clause 25.3  |
| <b>“Proceedings”</b>                       | any process, action, legal or other proceeding, including, without limitation, 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>“Provisional Allocation Percentage”</b> | has the meaning set out in Clause 45.1  |
| <b>“Provisional Valuation Date”</b>        | the Date Before Administration, unless the Provisional Allocation Percentage relates to an Asset Claim to an Affected Stock Line, in which case, the date as determined by the Company as the date on which the relevant Intermediary valued, or was required to value, the Assets of such Affected Stock Line for the purpose of determining the pro rata shortfall to be borne by the relevant Affected Claimants   |
| <b>“Pure Custody Signatory”</b>            | <p>a Signatory which:</p> <ul style="list-style-type: none"> <li>(i) does not have any outstanding Claim or Liability in respect of any Financing and Derivatives Contract (whether terminated or not terminated) with the Company; and</li> <li>(ii) does not have a Non-Custody Asset Claim against the Company,</li> </ul> <p>as determined by the Company as at the Bar Date for the sole purpose of determining the Costs Amount that is applicable to such Signatory. For the avoidance of doubt, the determination by the Company on whether a Signatory is a Pure Custody Signatory is made without prejudice to the right of the Company under this Agreement to determine (i) and (ii) above again for all other purposes in this Agreement</p> |
| <b>“purposes”</b>                          | has the meaning given to it on page III-9 of this Agreement   |
| <b>“Realisation”</b>                       | has the meaning set out in Clause 15.6.2(ii)  |
| <b>“Reallocation Amount”</b>               | has the meaning set out in Clause 45.3.7  |
| <b>“Recoverable Delivery Value”</b>        | has the meaning set out in Clause 7.4   |
| <b><u>“Recoverable Turnover Value”</u></b> | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>   |
| <b>“Recovered Asset”</b>                   | any Asset received by the Company at any time from a Pre-Agreement Provisionally Returned Asset Recipient to satisfy its redelivery obligation to the Company in respect of any Pre-Agreement Provisionally Returned Asset  |
| <b><u>“Reduced Gross Distribution”</u></b> | <u>means a Gross Distribution after the deduction of any Tax</u>  |



Burden Liability pursuant to clause 10.3.2(i) of the Common Terms and the deduction of any Recoverable Turnover Value pursuant to clause 10.3.2(ii) of the Common Terms

**“Reduction”**

has the meaning set out in Clause 52.2

**“rehypothecate”**

to appropriate an asset (including money) that is subject to a Security Interest pursuant to which the Pledgor of that asset has an Equity of Redemption in respect of that asset, in such a manner as to eliminate that Equity of Redemption and replace it with a contractual obligation to redeliver equivalent assets or pay an amount of equivalent value, and “**rehypothecation**” and “**rehypothecated**” shall be construed accordingly

**“Rehypothecated Security”**

as at the Time of Administration, any Security which was rehypothecated by the Company, including any Security which was appropriated by the Company so as to cease being a Segregated Asset, whether or not the Company was entitled to do so. For the purposes of this definition a Security shall not be regarded as a Rehypothecated Security if, prior to the Time of Administration, the Company had, as reflected in its Books and Records, taken steps to instruct LBI to redeliver equivalent assets to a Signatory or to its order and such redelivery subsequently took place. A Security shall be regarded as a Rehypothecated Security if, prior to the Time of Administration, the Company had, as reflected in its Books and Records, taken steps to instruct LBI to rehypothecate such Security and such rehypothecation was subsequently completed by LBI.

**“Released Claims”**

has the meaning set out in Clause 4.2

**“Released Parties”**

in respect of a Signatory, the Company Released Parties together with all other Signatories.

For the avoidance of doubt:

- (i) Lehman Brothers Holding Inc.;
- (ii) Lehman Brothers Inc.;
- (iii) Lehman Brothers Bankhaus AG;
- (iv) any other Affiliate of LBIE; and
- (v) CAPCO,

shall not be Released Parties for the purpose of Clause 4.2 whether or not they are Signatories

**“Relevant Asset”**

has the meaning set out in Clause 17.1

**“Relevant Currency”**

has the meaning set out in Clause 29.5

**“Relevant FX Conversion Time”**

- (i) for the purpose of Clause 17.5, the close of business in London on: (a) if the Asset being valued comprises Trust Assets, the relevant Asset Valuation Date; and (b) otherwise, the Administration Date;
- (ii) for the purpose of Clause 24.1, the close of business in London on the Administration Date;
- (iii) for the purpose of Clause 28, the close of business in

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|                                      | London on the day on which the Retention Amount is determined;  |
|                                      | (iv) for the purpose of the definition of Unfunded Retention Amount Component, the close of business in London on the day on which the Unfunded Retention Amount Component is determined;   |
|                                      | (v) for the purpose of Clause 29.2, the close of business in London on the day on which the Unfunded Retention Amount is Reduced;   |
|                                      | (vi) for the purpose of Clause 29.5.2, the close of business in London on the day on which the Funded Retention Amount in respect of each currency other than the Relevant Currency is increased;   |
|                                      | (vii) for the purpose of Clause 30.2.2, the close of business in London on the day on which the Funded Retention Amount is determined; and  |
|                                      | (viii) for the purpose of Clause 33.3, the close of business in London on the Administration Date,  |
|                                      | provided that, if the Company determines that it is not reasonably practicable for it to determine the foreign currency exchange rate as at the close of business in London, then such other time as the Company determines in its absolute discretion  |
| <b>“Relevant Information”</b>        | has the meaning set out in Clause 12.1  |
| <b>“Relevant Period”</b>             | has the meaning set out in Clause 25.3.2(i)   |
| <b>“Relevant Securities”</b>         | has the meaning set out in Clause 15.4.3  |
| <b>“Representation and Warranty”</b> | any Initial Representation and Warranty or Information Representation and Warranty, and <b>“Representations and Warranties”</b> shall be construed accordingly  |
| <b>“Representative Offeree”</b>      | any Eligible Offeree who is acting as an agent, trustee, custodian or other similar representative on behalf of its clients or other third parties (excluding any Eligible Offeree who is acting as an authorised signatory on behalf of and with the power to bind its principal to enter into this Agreement) |
| <b>“Representative Signatory”</b>    | a Representative Offeree who becomes a Signatory to this Agreement  |
| <b>“Reserved Assets”</b>             | at any time, means such amount of Distributable Trust Assets designated as such in accordance with Clause 44.2 and which has not ceased to be so designated in accordance with Clause 44.3  |
| <b>“Reset Date”</b>                  | the last Business Day in London of every month following the Effective Date   |
| <b>“Retention Allocation”</b>        | has the meaning set out in Clause 29.5.2(ii)  |
| <b>“Retention Amount”</b>            | an amount determined in accordance with Clause 28   |

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| <b>“Retention Claim”</b>                             | has the meaning set out in Clause 26.1  |
| <b>“Retention Claim Amount”</b>                      | has the meaning set out in Clause 28  |
| <b>“Retention Claim Identification Cut-Off Time”</b> | has the meaning set out in Clause 27  |
| <b>“Retention Creditor”</b>                          | on any date, any person which has notified the Company of a Retention Claim in accordance with Clause 28 or is otherwise determined by the Company based on Relevant Information to have a Retention Claim as at such date  |
| <b>“Retention Decrease Amount”</b>                   | has the meaning set out in Clause 29.5  |
| <b>“Returned Asset”</b>                              | at any time, any Asset comprising a Distribution that has been delivered to a Signatory by the Company prior to such time pursuant to Clause 60   |
| <b>“Revised Forum Notice”</b>                        | has the meaning set out in Clause 68.6  |
| <b>“Revised Offer”</b>                               | has the meaning set out in paragraph 7.7 of Schedule 1  |
| <b>“Satisfied Claimant”</b>                          | has the meaning set out in Clause 50(ii)  |
| <b>“Scheme”</b>                                      | a scheme of arrangement proposed or to be proposed by the Company under Part 26 of the Companies Act for the purpose of dealing with the claims of general unsecured creditors of the Company   |
| <b>“Securities Covered By Client Money”</b>          | <p>in respect of a Signatory, any Securities:</p> <ul style="list-style-type: none"> <li>(i) which were recorded in the Books and Records of the Company at the Time of Administration as Securities which, pursuant to a legal or equitable obligation of the Company, should have been held by the Company as Custody Securities or Non-Custody Securities <u>or LBI Assets</u> (as applicable) for that Signatory but which were not so held; and</li> <li>(ii) in respect of which the Company, prior to and at the Time of Administration, held as Client Money in a client bank account (as defined under the CASS Rules) an amount of money determined by the Company from time to time as equivalent to the value of such Securities, to which Client Money the Signatory is entitled under the CASS Rules</li> </ul> |
| <b>“Security” or “Securities”</b>                    | any Financial Instrument or any right in respect of any Financial Instrument against a custodian, clearing system, depository, nominee or other person who holds assets (including, for the avoidance of doubt, rights in respect of assets) on behalf of or to the order of a person who holds such Financial Instrument   |
| <b>“Security Claim”</b>                              | any Claim asserted by a Security Interest Claimant that it has a Security Interest, <u>provided that references to “Security Claim” in the Common Terms shall have the meaning given to this term in clause 54 (Definitions) of the Common Terms</u>  |
| <b>“Security Interest”</b>                           | any legal, equitable or possessory interest (or equivalent under  |



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|                                     | a legal system outside England) of a person (a <b>"Security Interest Claimant"</b> ) in an identified or identifiable asset that is in the nature of a lien, pledge or security that encumbers the entitlement of the Pledgor to that asset until one or more obligations of the Pledgor to the Security Interest Claimant are discharged in full   |
| <b>"Security Interest Claimant"</b> | has the meaning set out in the definition of "Security Interest"  |
| <b>"Segregated Asset"</b>           | any Security <u>other than a LBI Asset</u> which was recorded in the Books and Records of the Company as at the Time of Administration as being held in a segregated manner for customers of the Company separately from other Securities held by the Company which are available to the unsecured creditors of the Company and which was: <ul style="list-style-type: none"> <li>(i) held in physical form by the Company and segregated from other Securities held in physical form by the Company which are not credited to an account of a customer of the Company;</li> <li>(ii) held in physical form by an Intermediary for the Company's customers and segregated from other Securities held in physical form by such Intermediary which are not credited to an account of a customer of such Intermediary; or</li> <li>(iii) if not held in physical form by an Intermediary, <ul style="list-style-type: none"> <li>(a) credited to an account designated in the Books and Records of the Intermediary as an account in the name of the Company, but being held by the Company for the benefit of its customers; or</li> <li>(b) where the Intermediary does not designate any account recorded in its Books and Records as being for the Company's customers, credited to an account in the name of the Company</li> </ul> </li> </ul> |

**"Settlement Agreement  
Permitted Costs Liability"**

In relation to a CRA Omnibus Beneficiary and a Cut-Off Date or a Distribution Value Date, as applicable, the lower of: (a) US\$ 2,500,000 (plus VAT on the underlying costs and expenses, if applicable); and (b) 1 per cent. of the sum of the Values of all Asset Allocations to such CRA Omnibus Beneficiary for which a Distribution Value Date has occurred on or prior to such Cut-Off Date or Distribution Value Date, as applicable, plus the Value of the Cumulative Gross Allocation for such CRA Omnibus Beneficiary calculated in respect of the Common Terms Distribution to which such Cut-Off Date relates or to which the Cut-Off Date immediately preceding such Distribution Value Date related, such Value in relation to each such Asset Allocation determined as of the Distribution Value Date relating to the Distribution or Appropriation of such Asset Allocation and the Value of the Cumulative Gross Allocation determined as of such Cut-Off Date or the Cut-Off Date immediately preceding such Distribution Value Date, as applicable (plus VAT on the



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|   | <u>underlying costs and expenses, if applicable)</u>   |
| <u><b>“Shortfall Claims Determination Notice”</b></u> | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>  |
| <b>“Short Position”</b>                               | an obligation of the Signatory to deliver equivalent Securities (or pay an amount equal to their value) to the Company arising in connection with a Short Sale   |
| <b>“Short Sale”</b>                                   | a transaction which involves a sale or other transfer for value of Securities by a Signatory or by the Company for the account of the Signatory where the Signatory is required to borrow such Securities from the Company at the time of sale or transfer, and in connection with which the Signatory assumes an obligation to deliver equivalent Securities (or to pay an amount equal to their value) to the Company at a future date   |
| <b>“Shortfall For Appropriation”</b>                  | has the meaning set out in Clause 60.6.2   |
| <b>“Shortfall Signatory”</b>                          | has the meaning set out in Clause 49   |
| <b>“Signatory”</b>                                    | has the meaning given to it on page III-9 of this Agreement  |
| <b>“Single Customer”</b>                              | has the meaning set out in Clause 43.2.1   |
| <b>“Single Customer Pool”</b>                         | has the meaning set out in Clause 43.2.1   |
| <b>“Spot Rate”</b>                                    | in respect of a conversion of a currency (the <b>“Original Currency”</b> ) into another currency (the <b>“Target Currency”</b> ), the rate at which the Target Currency may be purchased in the London spot market using the Original Currency at the Relevant FX Conversion Time, as determined by the Company in its absolute discretion   |
| <b>“Standard Terms”</b>                               | has the meaning set out in Clause 14.2   |
| <b>“Statement of Case”</b>                            | has the meaning set out in Clause 70.10  |
| <b>“Statutory Trust”</b>                              | the statutory trust created by the CASS Rules  |
| <b>“Stock Line”</b>                                   | has the meaning set out in Clause 34.2   |
| <b>“Sub-Intermediary”</b>                             | in respect of each Intermediary, a custodian, clearing system, depository, nominee or other person which holds assets (including rights in respect of assets) on behalf of or to the order of such Intermediary, and which has a direct or (through one or more Sub-Intermediaries) indirect contractual or fiduciary relationship with the Intermediary in relation to those assets   |
| <b>“Subsidiary”</b>                                   | in relation to the Company or its Holding Company, any company, corporation or other legal entity: <ul style="list-style-type: none"> <li>(i) which is controlled, directly or indirectly, by the Company or its Holding Company;</li> <li>(ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the Company or its Holding Company; or</li> <li>(iii) which is a subsidiary of another Subsidiary of the Company or its Holding Company,</li> </ul> |



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|                                      | and, for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to determine the composition of the majority of its board of directors or equivalent body  |
| <b>"Surplus Assets"</b>              | has the meaning set out in Clause 63.7  |
| <b>"Surviving Claim"</b>             | has the meaning set out in Clause 4.6.1   |
| <b>"Suspended Allocation Amount"</b> | has the meaning set out in Clause 45.3.5  |
| <b>"TA Claimant"</b>                 | any TA Signatory or TA Non-Signatory  |
| <b>"TA Claimant Amount"</b>          | has the meaning set out in Clause 36.3  |
| <b>"TA Non-Signatory"</b>            | has the meaning set out in Clause 44.1  |
| <b>"TA Offerees"</b>                 | has the meaning set out in paragraph 3.1 of Schedule 1  |
| <b>"TA Signatory"</b>                | any Signatory that asserts, or any Signatory that the Company believes has, an Asset Claim  |
| <b>"Tax"</b>                         | 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, 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 Signatory or any other person   |
| <b>"Tax Authority"</b>               | any taxing or other authority 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><u>"Tax Burden Liability"</u></b> | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>   |
| <b>"terminated"</b>                  | <p>in respect of a Financial Contract, that the relevant contract has matured or expired or, as the context requires, been terminated, accelerated, closed out, or the payment or delivery rights and obligations arising under it have fallen due or been crystallised, or other similar event has occurred, either:</p> <ul style="list-style-type: none"> <li>(i) by operation of the contract (including, for the avoidance of doubt, where such event takes effect automatically, by effluxion of time or where the Signatory has effectively served a Notice of Termination in respect of such Financial Contract to the Company which terminates such Financial Contract in accordance with its terms); or</li> <li>(ii) by operation of Clause 19,</li> </ul> <p>and "terminate" and "termination" shall be construed accordingly</p> |
| <b>"Third Party"</b>                 | means in relation to any contract, a person who is not a party to that contract   |
| <b>"Third Party Obligation"</b>      | has the meaning set out in Clause 4.6.1   |



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| <b>"Time of Administration"</b>                   | 7.56 a.m. (London time) on the Administration Date  |
| <b>"Total Claim Amount"</b>                       | has the meaning set out in Clause 40  |
| <b>"Total Claim Value"</b>                        | has the meaning set out in Clause 45.1  |
| <b>"Total Collateralisation Amount"</b>           | has the meaning set out in Clause 59.7.1  |
| <b>"Transfer"</b>                                 | in relation to any asset or liability, the assignment, novation, sale or any other form of transfer (including any succession in title arising by operation of insolvency or any other law), which is effective to transfer the title to, rights of and obligations under such asset or liability, as the case may be, from one person to another and <b>"Transferred"</b> shall be construed accordingly |
| <b>"Transferee"</b>                               | means any Signatory to whom one or more Positions or Entire Positions have been Transferred   |
| <b>"Transferor"</b>                               | means any person who makes a Transfer of one or more Positions or an Entire Position to a Signatory   |
| <b>"Transferred Position"</b>                     | any Position that has been Transferred  |
| <b>"Trust Assets"</b>                             | at any time, any Assets which fulfil the following criteria at such time: <ul style="list-style-type: none"> <li>(i) they are a Segregated Asset, a Derived Asset <del>or</del> a Recovered Asset <u>or a Trust Financial Asset</u>; and</li> <li>(ii) they are not Excluded Property</li> </ul>  |
| <b><u>"Trust Financial Assets"</u></b>            | <u>has the meaning given to it in clause 54 (Definitions) of the Common Terms</u>   |
| <b>"Unaffected Close-Out Components"</b>          | has the meaning set out in Clause 21.5.2(ii)  |
| <b>"Unallocated"</b>                              | has the meaning set out in Clause 34.1  |
| <b>"Unclaimed Distribution"</b>                   | has the meaning set out in Clause 63.6  |
| <b>"Uncollateralised Net Financial Liability"</b> | has the meaning set out in Clause 59.8  |
| <b>"Undertaking"</b>                              | any of the undertakings given by the Signatory under Clauses 4.8.3, 6.5, 32.1, 59.6.2, 65.5, 65.6, 68.9 and 88, and <b>"Undertakings"</b> shall be construed accordingly  |
| <b>"Unfunded Retention Amount"</b>                | has the meaning set out in Clause 29.1  |
| <b>"Unfunded Retention Amount Component"</b>      | in respect of each currency, that portion of the Unfunded Retention Amount that comprises the aggregate Retention Claim Amounts denominated in such currency converted into US dollars using the Spot Rate as of the Relevant FX Conversion Time  |
| <b>"Unpaid Amounts"</b>                           | has the meaning set out in Clause 23.5  |
| <b>"Unpaid Amount Deliverables"</b>               | has the meaning set out in Clause 23.5.2  |
| <b>"unsecured creditors"</b>                      | those persons who have unsecured claims against the Company   |

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| <b>“Updated Position and Balance Statement”</b> | the updated position and balance statement provided to each TA Offeree by the Company through the Portal on or around the date of this Agreement  |
| <b>“US dollars” or “US\$”</b>                   | the lawful currency of the United States of America   |
| <b>“USD-LIBOR”</b>                              | on any Reset Date, the London Inter-Bank Offered Rate for deposits in US dollars for a designated maturity of one month which appears on the Telerate Page 3750 as of 11.00 a.m. (London time) on the day which is two London Business Days prior to such Reset Date and, if such rate does not appear on the Telerate Page 3750, then the rate for such Reset Date will be determined on the basis of the arithmetic mean of the rates at which deposits in US dollars are offered by at least three major banks in the London interbank market to prime banks in the London interbank market for a designated maturity of one month commencing on that Reset Date and in a representative amount of a reasonable size, as determined by the Company   |
| <b>“User ID”</b>                                | has the meaning set out in Clause 89.2.1  |
| <b>“Valuation Expert”</b>                       | an independent valuation expert appointed pursuant to Clause 69.2   |
| <b>“Valuation Expert Contest Notice”</b>        | has the meaning set out in Clause 68.5  |
| <b>“Valuation Statement”</b>                    | in respect of each Financial Contract, one or more statements that, when taken together, show in reasonable detail the calculation of the relevant Close-Out Amount or Close-Out Components for such Financial Contract. Such statement(s) may be contained within any other Notice or document which the Signatory may send to the Company in accordance with this Agreement, including, for the avoidance of doubt, any supplementary information provided by the Signatory in accordance with Clause 21.8.5  |
| <b>“Valuation Submission Date”</b>              | <p>in respect of each Signatory, 30 Business Days after its relevant Open Contract Termination Date, unless the Company has:</p> <ul style="list-style-type: none"> <li>(i) amended the Contractual Valuation Provisions of a Financial Contract in accordance with Clause 21.5.1 or 21.6.1; or</li> <li>(ii) determined to treat a Financial Contract as two separate Financial Contracts in accordance with Clause 21.5.2,</li> </ul> <p>in which case the Valuation Submission Date in relation to such Financial Contract shall be the day falling 20 Business Days after the Company has Notified the relevant Signatory of the relevant amendments. For the avoidance of doubt, the Valuation Submission Date in respect of Clause 21.7.3 and Clause 21.8.1 shall be 30 Business Days after the relevant Open Contract Termination Date of a Signatory in respect of its Closed Contracts</p> |
| <b>“Value”</b>                                  | unless otherwise specifically provided in this Agreement:   |



- (i) in respect of any Financial Contract, the Close-Out Amount of such Financial Contract as determined in accordance with the applicable Financial Contract Valuation Methodology set out in Clauses 19 to 24;
- (ii) in respect of any Relevant Asset, the Value of such Relevant Asset as determined in accordance with the Asset Valuation Methodology set out in Clause 17.1;
- (iii) in respect of a monetary amount of a given currency, the value in that currency of that monetary amount; and
- (iv) in respect of a variable that is itself a composite of other variables, its Value shall be determined with regard to the Value of each of its composite elements,

and “**Valuation**” and “**Valued**” shall be construed accordingly

“**VAT**”

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 levied by reference to added value or sales

“**Website**”

the Company’s site on the website of PricewaterhouseCoopers LLP at [http://www.pwc.co.uk/eng/issues/lehman\\_updates.html](http://www.pwc.co.uk/eng/issues/lehman_updates.html) ~~http://www.pwc.co.uk/eng/issues/lehman\_updates.html~~ [http://www.pwc.co.uk/eng/issues/lehman\\_updates.html](http://www.pwc.co.uk/eng/issues/lehman_updates.html)

## 97 Interpretation

**97.1** In this Agreement, unless the context otherwise requires or unless otherwise expressly provided:

- 97.1.1** references to any specified provision of this Agreement shall be construed as references to that provision subject to any modification, addition or condition approved or imposed pursuant to Clause 80;
- 97.1.2** 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;
- 97.1.3** references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- 97.1.4** words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
- 97.1.5** headings are for ease of reference only and shall not affect the interpretation of this Agreement;
- 97.1.6** references to Clauses, Parts and Schedules are to Clauses and Parts of and Schedules to this Agreement, and references to time are to London time;
- 97.1.7** if there is any ambiguity, inconsistency, discrepancy or conflict between this Agreement and any other part of the Circular, this Agreement shall prevail;
- 97.1.8** the language which governs the interpretation of this Agreement is the English language. All notices to be given by any Party and all other communications and documentation

which are in any way relevant to this Agreement or the performance or termination of this Agreement shall be in the English language;

**97.1.9** the words “**include**” and “**including**” are to be construed without limitation;

**97.1.10** a reference to “**indebtedness**” includes any obligation (whether incurred as principal or surety or otherwise) for the payment or repayment of money, whether present or future, actual or contingent;

**97.1.11** a reference to a “**judgment**” includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction; and

**97.1.12** a reference to a “**law**” includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and “**lawful**” and “**unlawful**” shall be construed accordingly).

**97.2** In determining whether any action is “**reasonably practicable**” for the Company for the purposes of this Agreement, regard shall be had to:

**97.2.1** the fact that the Company is in administration;

**97.2.2** the fact that the Company is not operating as an investment bank whose business includes prime brokerage services;

**97.2.3** the actual limitations on access to Books and Records of the Company and other resources;

**97.2.4** the materiality of the likely impact of such action on the Company’s aim to control costs and to deal with matters arising under this Agreement expeditiously; and

**97.2.5** any other matters of order or more general application.

## SCHEDULE 1

### TERMS AND CONDITIONS OF THE OFFER

#### 1 The Offer

- 1.1 The Company hereby makes an offer (the “**Offer**”), on the terms and subject to the conditions set out in this Schedule 1 and the Form of Acceptance, to Eligible Offerees (as defined in paragraph 3 below) to enter into and be bound by all of the provisions of the Claim Resolution Agreement (the “**Agreement**”) as if they had signed the Agreement itself.
- 1.2 Eligible Offerees may accept the Offer by completing and submitting, in accordance with paragraph 8 below, a form of acceptance to the Company in the form set out in Schedule 2 to the Agreement (the “**Form of Acceptance**”), subject to the provisions set out in this Schedule 1.

#### 2 General

- 2.1 The terms and conditions set out in this Schedule 1 apply to the Offer and, once the Agreement is effective, are incorporated in and form part of the Agreement. Unless the context requires otherwise, capitalised terms used in this Schedule 1 have the same meaning as ascribed to them in the Agreement and any reference to “**Signatory**” in the definition of such capitalised term in the Agreement shall be construed as a reference to “**Eligible Offeree**” in this Schedule 1.
- 2.2 Except where the context otherwise requires, in this Schedule 1 and in the Form of Acceptance:
- 2.2.1 “**Closing Date**” means 5.00 p.m. (London time) on Tuesday 29 December 2009 (or such later time and/or date as may apply under paragraph 7.7 below or as the Company may decide in accordance with paragraph 7.3 below);
- 2.2.2 “**Initial Offer Period**” means the period from the date of the Circular until the Closing Date;
- 2.2.3 any reference to the “**Offer**”, “**Closing Date**” or the “**Initial Offer Period**” includes any revision or variation to or extension of it in accordance with this Schedule 1; and
- 2.2.4 any reference to a person having an “**Ownership Claim**” or being party to a “**Financial Contract**” as at the Time of Administration includes a person to whom such claim or contract has been Transferred, subject to paragraph 8.8.1 below.

#### 3 Eligible Offerees

- 3.1 The Offer is open for acceptance, subject to paragraph 9.1 and paragraph 13.5 below, by those persons who, at the date of the Circular:
- 3.1.1 have Ownership Claims to Segregated Assets as at the Time of Administration (the “**TA Offerees**”); and
- 3.1.2 are not TA Offerees but who are party to Financial Contracts with the Company as at the Time of Administration (the “**NTA Offerees**”).
- 3.2 Each TA Offeree or, as the case may be, NTA Offeree is referred to in this Schedule 1 as an “**Eligible Offeree**” and together, the “**Eligible Offerees**”.
- 3.3 The Company reserves the right to determine whether a person is eligible to accept the Offer pursuant to paragraph 3.1 above.

- 3.4** The following criteria shall not of themselves disqualify a person from being a TA Offeree:
- 3.4.1** the fact that the Company or any other person may have Claims of any nature whatsoever against that person whether or not those Claims are ascertained, capable of being reduced by any set-off, netting, withholding, combination of accounts, retention and/or any other similar operation and irrespective of the amount of such Claims;
  - 3.4.2** any defect in the title which the Company itself or any Intermediary may have to the Trust Assets which are the subject of the relevant Ownership Claim provided that such defect in title did not have the effect that none of the relevant Assets were held as Segregated Assets;
  - 3.4.3** the fact that any other person also has an Ownership Claim to the same Segregated Assets; and
  - 3.4.4** the fact that such person's Ownership Claim is disputed, uncertain, conditional, unascertained, future or contingent and regardless of whichever system of law may govern the Ownership Claim provided such claim is of a type the courts of England would be prepared to recognise and enforce.
- 3.5** In determining whether a person is a TA Offeree, no regard shall be had to the application upon or after the Time of Administration of any provision of any Financial Contract which would or might result in a person not having an Ownership Claim to Segregated Assets if: (i) that person had an Ownership Claim to Segregated Assets immediately prior to the Time of Administration; and (ii) that person would have an Ownership Claim to Segregated Assets at the time of the Offer but for the application of such provision.

## **4 Conditions to the Offer**

- 4.1** The Offer is subject to the following conditions (the "**Conditions**"):
- 4.1.1** valid Forms of Acceptance being received, in accordance with paragraph 8.4 below, by the Company by the Closing Date from Acceptance Threshold Offerees who represent not less than 90 per cent. of the Acceptance Value of the Acceptance Threshold Claims in aggregate.  
  
This Condition 4.1.1 is referred to in this Schedule 1 as the "**Acceptance Condition**";
  - 4.1.2** the Company having obtained from the Court, following its application for leave to distribute assets after a bar date, an order in terms acceptable to the Company as regards liberty to distribute assets; and
  - 4.1.3** prior to the time at which the Offer would otherwise become or be declared unconditional in all respects, no government or governmental, quasi-governmental, regulatory or investigative body, court, authority, or any other similar body or person in any jurisdiction having given notice of a decision to take, institute or threaten any action or suit, or having required any action to be taken, or otherwise having done anything, which, in the absolute opinion of the Company, would:
    - (i) make the Agreement or its implementation void, unenforceable or illegal (in whole or in part); or
    - (ii) restrict or delay to a material extent or otherwise materially interfere with the implementation or require material amendment of the Agreement.
- 4.2** For the purposes of the Acceptance Condition:

**4.2.1 “Acceptance Threshold Claims”** means Ownership Claims to Distributable Trust Assets of each Acceptance Threshold Offeree that appear in the Books and Records of the Company as at the statement date of such Acceptance Threshold Offeree’s Updated Position and Balance Statement as determined by the Company.

**4.2.2 “Acceptance Threshold Offerees”** means the TA Offerees with Acceptance Threshold Claims excluding those TA Offerees who are:

- (i) Representative Offerees; and
- (ii) such other TA Offerees as the Company may decide, in its absolute discretion, to exclude as Acceptance Threshold Offerees.

**4.2.3 “Acceptance Value”** means, in respect of each Acceptance Threshold Offeree, the aggregate of the values of such Acceptance Threshold Offeree’s Custody Long Positions, Charge Long Positions and Pledge Positions as determined by the Company and provided to each Acceptance Threshold Offeree on its Updated Position and Balance Statement.

**4.3** The Acceptance Values will be used by the Company solely for the purpose of determining the level of acceptances in relation to the Offer. They are not determinative of any rights or claims of any person and are not an indication of any allocation or distribution of assets or calculations of claims or liabilities that a person may receive or have under the Agreement.

**4.4** The Company reserves the right to withdraw the Offer at any time before the Effective Date if any of the Conditions set out in paragraph 4.1 above in the absolute opinion of the Company is not satisfied or is not capable of being satisfied. In such circumstances, the Company will notify Eligible Offerees of its withdrawal in accordance with the provisions of paragraph 14 below.

**4.5** The Company will not invoke any of the Conditions set out in paragraph 4.1 above so as to cause the Offer not to proceed, to lapse or to be withdrawn unless the circumstances which give rise to the right to invoke the relevant Condition are, in the absolute opinion of the Company, of material significance in the context of the Offer.

## **5 Waiver of Acceptance Condition**

**5.1** The Company may waive the Acceptance Condition with the consent of Acceptance Threshold Offerees who represent not less than 90 per cent. of the Acceptance Value of the Acceptance Threshold Claims (in aggregate) of those Acceptance Threshold Offerees who have submitted a Form of Acceptance to the Company (as at the date of notification by the Company of the proposed waiver or such other date as the Company may decide).

**5.2** As soon as practicable after it decides that it wishes to waive the Acceptance Condition, the Company shall notify (in accordance with the provisions of paragraph 14 below) each Acceptance Threshold Offeree who has submitted a Form of Acceptance to the Company and request consent from each such Acceptance Threshold Offeree to the waiver of the Acceptance Condition by such date as the Company may decide.

**5.3** If the requisite majority set out in paragraph 5.1 above consent to the waiver of the Acceptance Condition, each Eligible Offeree who has submitted a Form of Acceptance to the Company (whether before or after the waiver of the Acceptance Condition) shall be bound by such waiver and shall not have a right to withdraw its Form of Acceptance on the basis of or by reason of such waiver.

**5.4** As soon as practicable after the waiver of the Acceptance Condition in accordance with the provisions of this paragraph 5, the Company shall notify the Eligible Offerees (in accordance with the provisions of paragraph 14 below) of such waiver.

**5.5** The waiver of the Acceptance Condition shall take effect on such date as the Company may determine, provided that consent to the waiver is obtained from Acceptance Threshold Offerees in accordance with paragraph 5.1 above.

## **6 Waiver of other Conditions**

**6.1** The Company reserves the right to waive, in whole or in part, at any time before the Effective Date, all or any of the Conditions set out in paragraph 4.1 above except for the Acceptance Condition which shall be subject to the provisions of paragraph 5 above.

**6.2** As soon as practicable after it decides to waive any of the Conditions set out in paragraph 4.1 above other than the Acceptance Condition, the Company shall notify the Eligible Offerees (in accordance with the provisions of paragraph 14 below) of such waiver which shall take effect on such date as the Company may determine.

## **7 Acceptance period**

**7.1** The Offer will be open for acceptance by Eligible Offerees at any time during the Initial Offer Period.

**7.2** If the Acceptance Condition is satisfied on or before the Closing Date, the Company will notify the Eligible Offerees (in accordance with the provisions of paragraph 14 below) that the Offer has become unconditional as to acceptances (but is subject to any other conditions that remain unsatisfied in the absolute opinion of the Company).

**7.3** If, at any time prior to the Closing Date, the Acceptance Condition has not been satisfied or waived in the absolute opinion of the Company, or for any other reason in its sole discretion, the Company:

**7.3.1** may extend the Closing Date to such later time and/or date as the Company may determine, subject to paragraph 7.4 below; and

**7.3.2** will notify Eligible Offerees of the new Closing Date in accordance with the provisions of paragraph 14 below.

**7.4** The Company may extend the Closing Date from 5.00 p.m. (London time) on Tuesday 29 December 2009 to a time and date that is no later than 5.00 p.m. (London time) on Friday 26 February 2010. Any further extension by the Company of the Closing Date beyond such time and date shall be subject to the approval of the Creditors' Committee.

**7.5** The Offer will lapse:

**7.5.1** in the case of TA Offerees:

(i) if the Acceptance Condition has not been satisfied or waived by the Closing Date, provided that the Company has decided not to extend the Closing Date pursuant to paragraph 7.3 above; or

(ii) if all of the Conditions set out in paragraph 4.1 above (other than the Acceptance Condition) have not been satisfied or waived by 5.00 p.m. (London time) on Wednesday 30 June 2010.

**7.5.2** in the case of NTA Offerees:

- (i) if the Acceptance Condition has not been satisfied or waived by the Closing Date, provided that the Company has decided not to extend the Closing Date pursuant to paragraph 7.3 above;
  - (ii) if all of the Conditions set out in paragraph 4.1 above (other than the Acceptance Condition) have not been satisfied or waived by 5.00 p.m. (London time) on Wednesday 30 June 2010; or
  - (iii) if the NTA Condition (as defined in paragraph 9 below) is not satisfied or waived by 5.00 p.m. (London time) on Wednesday 30 June 2010 or such later time and/or date as the Company may decide.
- 7.5.3 If the Offer lapses in relation to TA Offerees pursuant to paragraph 7.5.1 above, the Company will notify the TA Offerees in accordance with the provisions of paragraph 14 below.
- 7.5.4 If the Offer lapses in relation to NTA Offerees pursuant to paragraph 7.5.2 above, the Company will notify the NTA Offerees in accordance with the provisions of paragraph 14 below.
- 7.6 If the Offer lapses pursuant to paragraph 7.5.1 or 7.5.2 above, it will cease to be capable of further acceptance and the Company and any TA Offeree or, as the case may be, NTA Offeree who has submitted a Form of Acceptance at or prior to the time when the Offer so lapses will cease to be bound by such Form of Acceptance.
- 7.7 If any term of the Offer is revised by the Company in accordance with the provisions of paragraph 11 below (the “**Revised Offer**”), the Revised Offer will remain open for acceptance until, whichever is later:
  - 7.7.1 the Closing Date; or
  - 7.7.2 the day which is 14 days from the date on which written notification of the revision is provided by the Company to Eligible Offerees, in which case the Closing Date shall be deemed to be extended to such date.
- 7.8 Notwithstanding that the Offer may have become unconditional as to acceptances or that the Effective Date of the Agreement may have been declared in accordance with paragraph 12 below, the Company reserves the right to keep the Offer open for acceptance by Eligible Offerees to such later time and/or date after the end of the Initial Offer Period as it may determine or for an indefinite period after the end of the Initial Offer Period (the “**Extended Offer Period**”).
- 7.9 In the event that the Company decides to have an Extended Offer Period by keeping the Offer open after the end of the Initial Offer Period, the Company will notify Eligible Offerees in accordance with the provisions of paragraph 14 below.
- 7.10 After the end of the Initial Offer Period or, as the case may be, the end of the Extended Offer Period, the Company reserves the right to make further offers to Eligible Offerees, including a restricted number or category of Eligible Offerees that may comprise only one person, to enter into the Agreement (each a “**Further Offer**”).
- 7.11 Each Further Offer shall be subject to such terms and conditions (if any) as the Company may determine, provided that any such terms and/or conditions shall not be more favourable, in the absolute opinion of the Company, to the Eligible Offerees to whom any such Further Offer is made than the terms and conditions of the Offer set out in this Schedule 1.



- 7.12** Those Eligible Offerees whose Forms of Acceptance are received by the Company after the end of the Initial Offer Period will be subject to higher Costs Amounts than those whose Forms of Acceptance are received by the Company before the end of the Initial Offer Period (subject to and in accordance with the provisions of the Agreement).

## **8 Form of Acceptance**

- 8.1** Each Eligible Offeree who wishes to accept the Offer must complete, execute and submit (or authorise the completion, execution and submission of) a Form of Acceptance to the Company, subject to paragraph 10 below.
- 8.2** Each Form of Acceptance submitted by or on behalf of an Eligible Offeree must include an electronic mail address to which notices and communications may be sent by the Company in accordance with the provisions of paragraph 14 below.
- 8.3** Each Form of Acceptance submitted by or on behalf of an Eligible Offeree must also include a disclosure of whether that person is:
- 8.3.1** acting as principal on its own behalf or as an authorised signatory executing the Form of Acceptance on behalf of and with authority to bind its principal to the Agreement; or
  - 8.3.2** acting as a Representative Offeree (in which case the provisions of paragraph 10 below shall apply).
- 8.4** A completed and signed Form of Acceptance must be submitted to the Company by emailing a scanned copy to [claimresolutionagreement@lbia-eu.com](mailto:claimresolutionagreement@lbia-eu.com) or by faxing a copy to +44 (0)20 7067 8542. As soon as possible after the Form of Acceptance has been so submitted by electronic mail or facsimile, the original must be sent to the Company by pre-paid post or air mail to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, PO Box 62492, London E14 1JX, United Kingdom or by courier only to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, 25 Bank Street, Canary Wharf, London E14 5LE, United Kingdom (marked for the attention of E. Levy).
- 8.5** Forms of Acceptance must be submitted to the Company as soon as possible and in any event so as to be received by the Company by electronic mail or facsimile no later than the Closing Date (subject to paragraphs 7.8 and 7.10 above).
- 8.6** Without prejudice to any other provision in this Schedule 1, the Company reserves the right to treat a Form of Acceptance as being validly submitted to the Company even if the Form of Acceptance is not entirely in order or complete or is not received in the manner stated in this Schedule 1.
- 8.7** As soon as practicable after it receives a Form of Acceptance from an Eligible Offeree by electronic mail or facsimile, the Company will send an electronic mail to such Eligible Offeree confirming receipt of its Form of Acceptance. The date of receipt by the Company of a duly completed and signed Form of Acceptance submitted by an Eligible Offeree by electronic mail or facsimile is referred to as the “**Acceptance Date**” of such Eligible Offeree.
- 8.8** Each Eligible Offeree by whom or on whose behalf a Form of Acceptance is executed (save for a Representative Offeree in which case paragraph 10 below shall apply) irrevocably undertakes, represents, warrants and agrees to and with the Company as at its Acceptance Date (so as to bind such person and its personal representatives, heirs, successors and assignees) to the following effect that:

- 8.8.1** the execution of a Form of Acceptance constitutes, on and subject to the terms and conditions set out in this Schedule 1:
- (i) an irrevocable acceptance of the Offer (subject to the right of withdrawal in the circumstances described in paragraph 11.3 below and the right of exclusion of the Company in paragraph 13.5 below);
  - (ii) an undertaking to execute any further documents and give any further assurances as may be reasonably requested by the Company in order to implement the Agreement;
  - (iii) a representation and warranty that such person has not Transferred its Entire Position prior to its Acceptance Date; and
  - (iv) an undertaking that, except in accordance with the Agreement, such person shall not Transfer any of its Positions after its Acceptance Date;
- 8.8.2** it is duly organised and validly existing under the laws of its jurisdiction of incorporation, or (if not applicable) under the laws under which it is established, and, if relevant under such laws, in good standing and has full power and authority to conduct its business activities;
- 8.8.3** it has (or, in respect of completed actions, at the relevant time had) the power to execute the Form of Acceptance, the Agreement and any documentation relating to the Agreement to which it is a party, to deliver the Form of Acceptance, the Agreement and any documentation relating to the Agreement that it is required to deliver, and to perform its obligations under the Form of Acceptance and the Agreement and any documentation relating to the Agreement to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- 8.8.4** such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any term of provision of any agreement or instrument binding on or affecting it or any of its assets, and will not result in a breach of, or constitute a default or termination event under, any such agreement or instrument;
- 8.8.5** all actions or things required to be taken, fulfilled or done (including, without limitation, the obtaining of any consent or licence or the making of any filing or registration) by it with respect to the Form of Acceptance and the Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- 8.8.6** its obligations under the Form of Acceptance and the Agreement constitute, or (upon the Accession Date of such Eligible Offeree) will constitute, its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in proceedings in equity or at law)); and
- 8.8.7** there is not pending or, to its knowledge, threatened against it any action, suit or proceedings at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of the Form of Acceptance and the Agreement or its ability to perform its obligations under the Form of Acceptance and the Agreement.

- 8.9** The Company reserves the right to require evidence of power and authority or any supporting documentation or supplementary information from any person who executes or submits a Form of Acceptance to the Company.

## **9 Acceptances by NTA Offerees**

- 9.1** A Form of Acceptance submitted by an NTA Offeree to the Company shall be subject to the following condition (the “**NTA Condition**”):

**9.1.1** by no later than 5.00 p.m. (London time) on Wednesday 30 June 2010 or such later time and/or date as the Company may decide, one of the following events having occurred:

- (i) the Court declining on an application by the Administrators or the Company to permit meetings of the Company’s creditors to be convened for the purposes of voting in relation to the Scheme;
- (ii) a failure to obtain approval of the Scheme or the CVA from the requisite majority of creditors or classes of creditors at the relevant Scheme or CVA meeting(s);
- (iii) the Court declining to sanction the Scheme;
- (iv) the Court revoking a decision approving the CVA on the grounds of unfairness or material irregularity; or
- (v) the Company notifying NTA Offerees that it has decided not to promulgate or propose the Scheme or the CVA.

- 9.2** Any Form of Acceptance submitted by an NTA Offeree shall not be valid and effective unless and until the NTA Condition is satisfied in the absolute opinion of the Company.

- 9.3** If the Scheme or, as the case may be, the CVA becomes effective (provided that, in the case of the CVA, it is not challengeable under section 6 of the Insolvency Act), the Offer in relation to NTA Offerees will be treated as having automatically lapsed as from the effective date of the Scheme or, as the case may be, the CVA (subject to the provisions of paragraphs 7.5.2 and 7.5.4 above). The Offer will thereafter cease to be capable of acceptance by any NTA Offeree and the Company and any NTA Offeree who has submitted a Form of Acceptance at or prior to the time when the Offer so lapses will cease to be bound by such Form of Acceptance.

- 9.4** The Company reserves the right to waive the NTA Condition, in whole or in part, at any time before the applicable Effective Date in relation to NTA Offerees. As soon as practicable after it decides to waive the NTA Condition, the Company shall notify the NTA Offerees (in accordance with the provisions of paragraph 14 below) of such waiver which shall take effect on such date as the Company may determine.

## **10 Representative Offerees**

- 10.1** If an Eligible Offeree is acting as a Representative Offeree, the mere execution of the Form of Acceptance will not constitute a valid acceptance or bind the Representative Offeree to the Agreement since such person is acting in a representative capacity.

- 10.2** Such Representative Offeree must submit its Form of Acceptance and also provide all necessary information to the Company as reasonably requested by the Company in order for the Company and such person to enter into the Agreement on a bilateral basis with such amendments as may be agreed in accordance with the provisions of Clause 2.1 of the Agreement.

## **11 Revised Offer and withdrawal**

- 11.1** Once submitted to the Company, a Form of Acceptance shall be irrevocable, except in the circumstances specified in this paragraph 11.
- 11.2** Although no revision is envisaged, the Company reserves the right to revise the terms of the Offer set out in this Schedule 1 at any time before the Effective Date.
- 11.3** If any term of the Offer set out in this Schedule 1 is revised by the Company and such revision, in the absolute opinion of the Company, represents a material change or amendment of the Offer, the Company will notify Eligible Offerees in accordance with the provisions of paragraph 14 below. Those Eligible Offerees who have previously submitted a Form of Acceptance to the Company (the “**Previous Acceptors**”) will be informed that they may withdraw such Form of Acceptance within 14 days of written notification by the Company of such revision.
- 11.4** If the Company does not receive written notification of withdrawal of a Form of Acceptance from a Previous Acceptor within 14 days following written notification of revision of the terms of the Offer, the Form of Acceptance previously submitted by or on behalf of such Previous Acceptor shall be deemed to be, and will be treated as, valid in respect of the Offer as so revised.
- 11.5** This paragraph 11 shall not apply to waiver of any of the Conditions set out in paragraph 4.1 above, which shall be subject to the provisions of paragraphs 5 and 6 above, nor to waiver of the NTA Condition which shall be subject to the provisions of paragraph 9.4 above.

## **12 Declaration of Effective Date**

- 12.1** The Company shall declare the Effective Date of the Agreement in relation to the TA Offerees as soon as practicable after all of the Conditions set out in paragraph 4.1 above have, in the absolute opinion of the Company, been satisfied or waived by the Company in accordance with paragraphs 5 and 6 above.
- 12.2** The Company shall declare the Effective Date of the Agreement in relation to the NTA Offerees as soon as practicable after all of the Conditions set out in paragraph 4.1 above and the NTA Condition have, in the absolute opinion of the Company, been satisfied or waived by the Company in accordance with paragraph 9.4 above.
- 12.3** The Company shall, as applicable, confirm to the TA Offerees or, as the case may be, the NTA Offerees that the Offer has become unconditional in all respects and notify them of their applicable Effective Date in accordance with the provisions of paragraph 14 below.

## **13 Notification of Accession Date**

- 13.1** The Company shall confirm (in accordance with the provisions of paragraph 14 below) to each person who has submitted a Form of Acceptance whether such Form of Acceptance has been validly submitted and whether such person is or is not a Signatory to the Agreement.
- 13.2** The Company reserves the right, in its absolute discretion, to consider and deal with Forms of Acceptance which are received by the Company from TA Offerees as a priority ahead of those Forms of Acceptance which are received by the Company from NTA Offerees.
- 13.3** In the case of a TA Offeree, the confirmation pursuant to paragraph 13.1 above shall be provided by the Company no later than:
- 13.3.1** the Effective Date; or
- 13.3.2** if later, 25 days after the TA Offeree's Acceptance Date.

**13.4** In the case of an NTA Offeree, the confirmation pursuant to paragraph 13.1 above shall be provided by the Company no later than:

**13.4.1** 60 days after the satisfaction of the NTA Condition in accordance with paragraph 9.1 above, as determined by the Company; or

**13.4.2** if later, 60 days after the NTA Offeree's Acceptance Date.

**13.5** The Company reserves the right in its absolute discretion to exclude any person from being a party to the Agreement. No person shall be, or be treated as, a Signatory to the Agreement unless and until the Company has sent a notification in accordance with this paragraph 13 to such person confirming that that person is a Signatory to the Agreement.

## **14 Notices and announcements**

**14.1** Any notice or communication to be given or document to be sent by or on behalf of the Company pursuant to this Schedule 1 shall be in writing in English and may be delivered as the Company considers appropriate:

**14.1.1** by electronic mail to the address specified by the recipient on its Form of Acceptance or provided otherwise to the Company;

**14.1.2** where applicable, via the Portal to TA Offerees;

**14.1.3** by an announcement or update published on the Website; or

**14.1.4** by post or air mail to the address specified by the recipient or the last known address of such person.

**14.2** Any notice or communication given or document sent by or on behalf of the Company pursuant to this Schedule 1 shall be deemed to be received by the recipient at the time stated in Clause 89 or Clause 91 of the Agreement as applicable.

**14.3** Save as otherwise specified in this Schedule 1, any notice or communication to be given or document to be sent to the Company pursuant to this Schedule 1 shall be in writing in English and may be delivered to the Company:

**14.3.1** by electronic mail to [claimresolutionagreement@lbia-eu.com](mailto:claimresolutionagreement@lbia-eu.com); or

**14.3.2** by facsimile to +44 (0)20 7067 8542.

## **15 Governing law and jurisdiction**

**15.1** All matters and disputes arising out of or in connection with the Offer or the Form of Acceptance shall be governed by, and construed in accordance with, English law.

**15.2** The execution of a Form of Acceptance by or on behalf of an Eligible Offeree constitutes such Eligible Offeree's:

**15.2.1** submission to the exclusive jurisdiction of the courts of England in relation to all matters and disputes arising out of or in connection with the Offer or the Form of Acceptance; and

**15.2.2** agreement that nothing shall limit the right of the Company to bring any Proceedings arising out of or in connection with the Offer or the Form of Acceptance in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

## SCHEDULE 2 FORM OF ACCEPTANCE

### THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.

If you are in any doubt about the action you should take, you are recommended to seek advice immediately from your own professional adviser. If you have sold or otherwise transferred all of your interests as an Eligible Offeree (as defined in the Claim Resolution Agreement contained in Part III of the accompanying Circular (the “**Agreement**”)), please forward this document together with the accompanying documentation as soon as possible to the purchaser or transferee, or to the stockbroker, bank or other agent through whom the sale or transfer was effected for onward transmission to the purchaser or transferee. However, such documents should not be forwarded or transmitted in or into any jurisdiction outside the United Kingdom if to do so would constitute a violation of the relevant laws in such jurisdiction.

This Form of Acceptance should be read in conjunction with the accompanying Circular and the Agreement contained therein. Unless the context otherwise requires, capitalised terms used in this Form of Acceptance have the meanings ascribed to them in the Agreement.

This document does not constitute nor does it form part of any offer to sell or to purchase or to subscribe for, or the solicitation of an offer to sell or purchase or subscribe for, any securities in any jurisdiction or territory. Certain of the securities which are the subject of the Agreement may have been issued by Affiliates of the Company (the “**Affiliate Securities**”). No offer or sale of Affiliate Securities may have been registered under the United States Securities Act of 1933, as amended (the “**Securities Act**”). Any Affiliate Securities that may be delivered under the Agreement may not be offered or sold to other investors except as part of a transaction that is registered under the Securities Act or that is exempt from registration.

The information used by or relied upon by the Company for the purpose of determining the level of acceptances in relation to the Offer is not determinative of any rights or claims of any person and should not be used or relied upon for this or any other purpose. This information is not an indication of any allocation or distribution of assets or calculation of claims or liabilities that a person may receive or have under the Agreement. Please refer to the Agreement for further information regarding allocations and distributions of assets and calculations of claims and liabilities.

Further copies of this document may be downloaded from the PricewaterhouseCoopers website at [http://www.pwc.co.uk/eng/issues/lehman\\_updates.html](http://www.pwc.co.uk/eng/issues/lehman_updates.html).

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## FORM OF ACCEPTANCE

of the Offer

in relation to a proposed

### CLAIM RESOLUTION AGREEMENT

between

LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(in administration)

and

ELIGIBLE OFFEREEES

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**You must submit your Form of Acceptance so as to be received by the Company no later than 5.00 p.m. (London time) on Tuesday 29 December 2009.**

### ACTION TO BE TAKEN

- Your attention is drawn to the notes set out on page 4 of this Form of Acceptance and to Schedule 1 to the Agreement, the terms of which are incorporated in and form part of this Form of Acceptance. Your acceptance of the Offer is on the terms and subject to the conditions set out in Schedule 1 to the Agreement.
- If you wish to accept the Offer to enter into the Agreement, you must complete Section A of this Form of Acceptance. If you are an NTA Offeree (as defined in the Agreement), you must complete both Section A (except Box 1) and Section B of this Form of Acceptance.
- Please submit your completed and signed Form of Acceptance as soon as possible and in any event so as to be received by the Company no later than **5.00 p.m. (London time) on Tuesday 29 December 2009**. Completed and signed Forms of Acceptances may be submitted by email to [claimresolutionagreement@lbia-eu.com](mailto:claimresolutionagreement@lbia-eu.com) or by facsimile to +44 (0)20 7067 8542. After you submit your Form of Acceptance by email or facsimile, you must send the original to the Company by pre-paid post or air mail to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, PO Box 62492, London E14 1JX, United Kingdom or by courier only to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, 25 Bank Street, Canary Wharf, London E14 5LE, United Kingdom (marked for the attention of E. Levy).

The provisions of Schedule 1 to the Agreement are incorporated in and form part of this Form of Acceptance. Please carefully read the notes on page 4 of this Form of Acceptance before completing this Form of Acceptance.

## SECTION A

**1**

### TA OFFEREE'S DETAILS

This Box 1 only applies to TA Offerees. If you are an NTA Offeree, you must provide your details in Section B of this Form of Acceptance in addition to completing Boxes 2 to 5 of this Section A.

Name:

GAC Code: (See Note 3)

**2**

### ACCEPT THE OFFER

Please put a tick or an X in the box to the right.

☐

I wish to accept the offer to enter into the Agreement on the terms and conditions set out in Schedule 1 to the Agreement and hereby agree to be bound by all of the provisions of the Agreement contained in Part III of the Circular (subject to Note 5 below in the case of Representative Offerees).

**3**

### CAPACITY (See Notes 4 and 5)

Please put a tick or an X in the appropriate box to the right to confirm the capacity in which you are executing this Form of Acceptance.

☐

I represent that I am:

(i) acting as principal on my own behalf or as an authorised signatory executing this Form of Acceptance on behalf of and with authority to bind my principal to the Agreement.

OR

☐

(ii) a Representative Offeree (that is, I am acting as an agent, custodian or trustee on behalf of clients or other third parties).

**4**

### SIGNATURE (See Notes 6 and 7)

Signed by or on behalf of the TA Offeree named in Box 1 above or, as the case may be, the NTA Offeree named in Box 6 overleaf.

Signature

Name of signatory

Date

Title of signatory

**5**

### EMAIL ADDRESS (See Note 8)

You must provide in the box to the right an email address to receive notifications from the Company in relation to the Agreement.

**SECTION B** (See Note 2)

Please complete this Section B only if you are an NTA Offeree.

**6**

**NTA OFFEREE'S DETAILS**

**Name:**

**Client Account/ID Number:**

**7**

**ADDRESS**

Please provide the mailing address of the NTA Offeree in the box to the right.

**8**

**TELEPHONE NUMBER**

Please provide the telephone number (including the international dialling code) of the NTA Offeree in the box to the right.

**9**

**FAX NUMBER**

Please provide the fax number of the NTA Offeree in the box to the right.



### Notes for Completion of the Form of Acceptance

1. This Form of Acceptance must be completed and signed by you or on your behalf if you are an Eligible Offeree (as defined in the Agreement) and wish to accept the Offer to enter into the Agreement with the Company. Once you have completed and signed this Form of Acceptance in accordance with the instructions set out herein, this will constitute your acceptance of the Offer (subject to the terms and conditions in Schedule 1 to the Agreement) and your agreement to be bound by all of the provisions of the Agreement as if you had signed the Agreement itself (save in the circumstances set out in Note 5 below).
2. If you are an NTA Offeree, you must complete both Section A (except Box 1) and Section B of this Form of Acceptance. A TA Offeree should complete only Section A of this Form of Acceptance. As a general guideline, you are likely to be a TA Offeree based on the Company's Books and Records if you have received, on or around the date of the Circular, a personal letter from the Company by email containing access links to the Circular and a Form of Acceptance. If you have not received such a letter from the Company and you are an Eligible Offeree, you are likely to be an NTA Offeree.
3. Your GAC Code is your unique client reference number provided by the Company. Box 1 in Section A applies to TA Offerees only. If you are an NTA Offeree, you must provide your details (including your Client Account or ID Number) by completing all of the boxes in Section B.
4. This Form of Acceptance must include a disclosure of whether you: (i) are acting as principal on your own behalf or as an authorised signatory executing this Form of Acceptance on behalf of and with power to bind your principal; or (ii) are a Representative Offeree (that is, you are an agent, custodian or trustee acting on behalf of clients or other third parties).
5. If you are a Representative Offeree, the mere execution of this Form of Acceptance will not constitute a valid acceptance or bind you to the Agreement since you are acting in a representative capacity. You will need to submit your Form of Acceptance and provide all necessary information to the Company as reasonably requested by the Company in order for you and the Company to enter into the Agreement on a bilateral basis with such amendments as may be agreed in accordance with Clause 2.1 of the Agreement.
6. Unless you are a Representative Offeree (in which case see Note 5 above), on execution of this Form of Acceptance you are deemed to give the undertakings, representations and warranties to the Company that are set out in paragraph 8.8 of Schedule 1 to the Agreement.
7. If you are signing this Form of Acceptance as authorised signatory on behalf of the Eligible Offeree, please state your title and the capacity in which you are signing this Form of Acceptance. The Company may require you to provide evidence of power and authority or any other supporting documentation in connection with the execution and submission of this Form of Acceptance.
8. You must provide a valid email address to which notices and communications may be sent by the Company to you in connection with the Agreement.
9. Once this Form of Acceptance is completed and signed, you should submit this Form of Acceptance to the Company as soon as possible and in any event so as to be received by the Company by email or facsimile no later than **5.00 p.m. (London time) on Tuesday 29 December 2009**.
10. You may submit your completed and signed Form of Acceptance by emailing a scanned copy to the Company at [claimresolutionagreement@lbia-eu.com](mailto:claimresolutionagreement@lbia-eu.com) or by sending a copy by facsimile to +44 (0)20 7067 8542. After submitting your Form of Acceptance by email or facsimile, you must send the original by pre-paid post or air mail to the following address: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, PO Box 62492, London E14 1JX, United Kingdom or by courier only to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, 25 Bank Street, Canary Wharf, London E14 5LE, United Kingdom (marked for the attention of E. Levy).
11. As soon as practicable after it receives your Form of Acceptance by email or facsimile, the Company will send an email to you to confirm receipt of your Form of Acceptance.

### SCHEDULE 3 FORM OF DISPUTE NOTICE

**IMPORTANT: This Notice must be completed in full in order for it to be operative.**

|          |  |  |
|----------|--|--|
| <b>1</b> | Name of Signatory  |  |
| <b>2</b> | Registered address and contact details (including postal address) for Signatory  |  |
| <b>3</b> | Is the Signatory resident in, or does it have its principal place of business in, England or Wales?  |  |
| <b>4</b> | If the answer to 3 is 'NO', please complete the attached form for the appointment of an agent to accept service of process in England and Wales                        |  |
| <b>5</b> | Please provide details of the Determination Notice that the Signatory is challenging (e.g. date and type of notice)  |  |
| <b>6</b> | Please specify the aspects of the Determination Notice that the Signatory is challenging   |  |
| <b>7</b> | Please explain the reasons why the Signatory is challenging those aspects of the Determination Notice, including the Signatory's view of the correct position/approach |  |
| <b>8</b> | Please provide details (including underlying workings, where relevant) of the Signatory's calculation of any figures that it is disputing                              |  |
| <b>9</b> | Please provide copies of any past correspondence relating to the subject matter of the dispute   |  |

If further space is needed to respond, additional sheets should be attached to and submitted with this form.

**SCHEDULE 4**  
**WRITTEN RESOLUTIONS AND MEETINGS OF SIGNATORIES**

**PART I**  
**GENERAL**

**Interpretation**

- 1** In this Schedule 4:
- 1.1** references to a meeting are to a meeting of Signatories (or some of them) and include, unless the context otherwise requires, any adjournment;
- 1.2** references to “Signatories” are only to those Signatories who have rights in respect of which (i) a written resolution has been (or is to be) proposed, or (ii) a meeting has been (or is to be) called, as determined in the absolute discretion of the Company; provided that such determination shall accord with any certification made by the Company pursuant to Clause 80.2.1 of this Agreement;
- 1.3** “**agent**” means a holder of a voting certificate or a proxy for a Signatory;
- 1.4** “**Extraordinary Resolution**” means a resolution passed at a meeting duly convened and held in accordance with this Agreement, by a majority of at least 75 per cent. of the votes cast;
- 1.5** “**voting ratio**” means, in respect of a Signatory, that proportion of the aggregate applicable voting value of Signatories which is represented by the voting value attributable to the relevant Signatory; and
- 1.6** “**voting value**” means, for a Signatory, the Value (in US dollars), which the Company determines for the date of the proposed meeting or resolution, of the Signatory’s Distribution Assets less its Distribution Liabilities, subject to a minimum of US\$1.00; provided that those Values that have not then been finalised or agreed shall be such Values as the Company then attributes to them from its Books and Records pending their finalisation or agreement, as the case may be.

**Powers**

- 2** Subject to the terms and conditions of this Agreement and without prejudice to any powers conferred on other persons by this Agreement, the Signatories (or, if applicable, a meeting of them) shall have power by Extraordinary Resolution:
- 2.1** to sanction any proposal for any amendment, modification, variation, compromise, abrogation or waiver of, or arrangement in respect of, the rights of the Company against the Signatories or the Signatories against the Company, whether or not those rights arise under this Agreement;
- 2.2** to assent to any modification of this Agreement (or any agreement supplemental to it) proposed;
- 2.3** to authorise anyone to concur in and do anything necessary to carry out and give effect to an Extraordinary Resolution;
- 2.4** to give any authority, direction or sanction required to be given by Extraordinary Resolution;

- 2.5** to appoint any persons (whether Signatories or not) as a committee or committees to represent the Signatories' interests and to confer on them any powers or discretions which the Signatories could themselves exercise by Extraordinary Resolution; and
- 2.6** to discharge or exonerate the Company from any Liability in respect of any act or omission for which it may become responsible under this Agreement (or any agreement supplemental to it).
- 3** Any notice or communication to be given, or document to be sent, pursuant to this Schedule (including the submission of a written resolution) shall be provided, except where this Agreement otherwise provides or the Company otherwise specifies at such time, in accordance with Clause 89, Clause 90 and Clause 91. In relation to the submission of any written resolution by, or on behalf of, a Signatory, a copy of the original shall follow by post or courier to the address specified by the Company at such time.

## **PART II WRITTEN RESOLUTIONS**

### **Written resolutions**

- 4** A written resolution signed by Signatories with 75 per cent. of the aggregate applicable voting value shall take effect as if it were an Extraordinary Resolution. Such a resolution in writing may be contained in one document or several documents in the same form, each signed by or on behalf of one or more Signatories.
- 5** At least five days' notice (exclusive of the day on which the notice is given and of the day appointed for the passing of such written resolution) shall be given by the Company to the Signatories. The notice shall: (i) specify the day appointed for the passing of the written resolution, the nature of the resolution proposed, and the relevant Signatory's voting value for such purpose; and (ii) shall explain: (a) how Signatories may submit completed written resolutions; and (b) the details of the time limits applicable.

## **PART III MEETINGS**

### **Convening a meeting**

- 6** The Company may at any time convene a meeting. Every meeting shall be held at a time and place approved by the Company.
- 7** At least 21 days' notice (exclusive of the day on which the notice is given and of the day of the meeting) shall be given by the Company to the Signatories. The notice shall: (i) specify the day, time and place of meeting, the nature of the resolutions to be proposed, and the relevant Signatory's voting value and voting ratio; and (ii) shall explain: (a) how Signatories may appoint proxies and vote; and (b) the details of the time limits applicable and procedures concerning such matters as appointment of a chairman, who may attend and vote at the meeting, and adjournment of the meeting.

### **Chairman**

- 8** The chairman of a meeting shall be such person as the Company appoints. The chairman need not be a Signatory or agent. The chairman of an adjourned meeting need not be the same person as the chairman of the original meeting.

## **Quorum and adjournment**

- 9** No business (except choosing a chairman, if applicable) shall be transacted at a meeting unless a quorum is present at the commencement of business. If a quorum is not present within 15 minutes from the time initially fixed for the meeting, it shall, if convened on the requisition of Signatories or if the Company agrees, be dissolved. In any other case, it shall be adjourned (in accordance with the procedures specified for the meeting). If a quorum is not present within 15 minutes from the time fixed for a meeting so adjourned, the meeting shall be dissolved.
- 10** Two or more Signatories or agents present in person shall be a quorum only if they represent:
- 10.1** in the case of any meeting (except where such meeting was previously adjourned through want of quorum), 25 per cent. of the proportion of the total number of persons who are entitled to attend and vote at the meeting which they represent; and
- 10.2** in the case of a meeting that was previously adjourned through want of quorum, whatever the proportion of the total number of persons who are entitled to attend and vote at the meeting which they represent.
- 11** The chairman may, with the consent of (and shall if directed by) a meeting, adjourn the meeting from time to time and from place to place. Only business which could have been transacted at the original meeting may be transacted at a meeting adjourned in accordance with this paragraph 11 or paragraph 10.
- 12** At least 10 days' notice of a meeting adjourned through want of a quorum shall be given in the same manner as for an original meeting and that notice shall state the quorum required at the adjourned meeting. No notice need, however, otherwise be given of an adjourned meeting.

## **Voting**

- 13** Each question submitted to a meeting shall be decided by a poll, and shall be taken in such manner and (subject as provided below) either at once or after such adjournment as the chairman directs. The result of the poll shall be deemed to be the resolution of the meeting at which it was demanded as at the date it was taken.
- 14** Every person who is present in person and is eligible to vote (in accordance with the procedures of such meeting) has one vote in respect of their voting ratio.
- 15** In case of equality of votes, the chairman shall have a casting vote in addition to any other votes which he may have.

## **Effect and publication of an Extraordinary Resolution**

- 16** An Extraordinary Resolution shall be binding on all the Signatories (if passed at a meeting, whether or not all Signatories were present at the meeting) and they shall be bound to give effect to it accordingly. The passing of such a resolution shall be conclusive evidence that the circumstances justify its being passed. The Company shall give notice of the passing of an Extraordinary Resolution to Signatories within fourteen days but failure to do so shall not invalidate the resolution.

## **Minutes**

- 17** Minutes shall be made of all resolutions and proceedings at every meeting (if any) and, if purporting to be signed by the chairman of that meeting or of the next succeeding meeting, shall be conclusive evidence of the matters in them. Until the contrary is proved, every meeting for which minutes have been so made and signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings transacted at it to have been duly passed and transacted.

## **Company's power to prescribe regulations**

- 18** Subject to all other provisions in this Agreement the Company may, without the consent of the Signatories, prescribe such further regulations regarding the holding of meetings and attendance and voting at them as it, in its sole discretion, determines including (without limitation) such requirements as the Company thinks reasonable to satisfy itself that the persons who purport to make any requisition in accordance with this Agreement (or any agreement supplemental to it) are entitled to do so and so as to satisfy itself that persons who purport to execute written resolutions, or attend or vote at a meeting, are entitled to do so.

**SCHEDULE 5**  
**COMMON TERMS**

**COMMON TERMS**

**between**

**THE COMPANY**

**and**

**CONSENTING BENEFICIARIES**

## **Table of Contents of Common Terms**

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## **PART 1 – OPERATION OF THE COMMON TERMS**

### **1 Background to the Common Terms**

**1.1** The Common Terms are incorporated into and form part of the Omnibus Settlement Agreement and, on the Common Terms Effective Date, the Amended and Restated CRA (each a “**Consenting Beneficiary Agreement**”).

**1.2** Notwithstanding any of the other terms of the Consenting Beneficiary Agreements, if there is a conflict or inconsistency between any such terms and the provisions of the Common Terms, then the provisions of the Common Terms shall prevail. In the case of the Amended and Restated CRA, the provisions of the Common Terms shall not prevail in relation to Legal Claims other than LBI Asset Claims, Common Terms Claims and Legal Claims and Legal Liabilities affected by the provisions of Clause 13.1.3(ii).

### **2 Timing**

#### **2.1 Effectiveness of the Common Terms**

The Common Terms will become effective and binding as between the Company and the Consenting Beneficiaries as of the Common Terms Effective Date, save to the extent that it is provided in the OSA or in the Resolution that certain of the Common Terms shall bind the Consenting Beneficiaries at an earlier date.

#### **2.2 Notification of Common Terms Effective Date**

The Company shall Notify each Consenting Beneficiary of the occurrence of the Common Terms Effective Date.

## PART 2 – ENTITLEMENT TO COMMON TERMS CLAIMS AND RELEASE OF OTHER LEGAL CLAIMS

### 3 Common Terms Claims generally

#### 3.1 Each Consenting Beneficiary is entitled to:

3.1.1 a Proprietary Claim as set out in Clause 4; and

3.1.2 its 19/9 Shortfall Claim as set out in Clause 5.

(such claims as described in this Clause 3.1 being its “Common Terms Claims”).

#### 3.2 In return for its Common Terms Claims, each Consenting Beneficiary gives the releases, waivers and undertakings as set out in Clause 6.

### 4 Proprietary Claims

#### 4.1 Each Consenting Beneficiary shall have a beneficial interest in a share of the Omnibus Trust (its “Proprietary Claim”).

#### 4.2 Each Consenting Beneficiary’s share of the Omnibus Trust shall be calculated based on its Best Claim. A Consenting Beneficiary’s “Best Claim” is the higher of:

4.2.1 its 19/9 Value; and

4.2.2 its Aggregate Market Value.

and shall be the amount so specified in a Consenting Beneficiary’s Information Pack (as may be amended pursuant to Clause 13.1.2).

#### 4.3 The Proprietary Claim of each Consenting Beneficiary set out in this Clause 4 shall be satisfied only out of its Cumulative Gross Allocation as set out in Clause 9.8.1.

#### 4.4 If the total Cumulative Gross Allocation of any Consenting Beneficiary at the time of the final Common Terms Distribution is less than the Best Claim of that Consenting Beneficiary then, save to the extent an unsecured 19/9 Shortfall Claim is permitted under Clause 5, no Legal Claim in respect of such insufficiency or any loss caused directly or indirectly thereby shall be made by any Consenting Beneficiary against the Company or any other Released Person.

### 5 19/9 Shortfall Claim

#### 5.1 19/9 Shortfall Claim

5.1.1 Each Consenting Beneficiary shall have an unsecured claim against the general estate of the Company in the amount of its 19/9 Shortfall (if any) (its “19/9 Shortfall Claim”, which may be zero) in accordance with and subject to the terms and conditions of this Clause 5.

5.1.2 Each 19/9 Shortfall Claim shall be deemed to have arisen upon the Administration Date.

#### 5.2 Shortfall Claims Determination Notice

The amount (if any) of the 19/9 Shortfall Claim, the Net 19/9 Shortfall Claim and Capped Net 19/9 Shortfall Claim of a Consenting Beneficiary shall be ascertained by the Company and specified (together with such supplementary information as the Company considers

appropriate in its absolute discretion) in a statement (the “**Shortfall Claims Determination Notice**”), which shall be final and binding on each Consenting Beneficiary, and delivered by the Company to that Consenting Beneficiary once the Company is satisfied that no further Common Terms Distributions are to be made.

### **5.3 19/9 Shortfall set-off rights**

If a Consenting Beneficiary has a 19/9 Shortfall Claim notified to it pursuant to Clause 5.2, the 19/9 Shortfall Claim shall:

5.3.1 in the case of any OSA Consenting Beneficiary, be set off against any indebtedness owing at the time of the Shortfall Claims Determination Notice by such Consenting Beneficiary to the Company (on the same basis as, and in accordance with, any other unsecured claim against the Company under general insolvency law); and

5.3.2 in the case of any CRA Omnibus Beneficiary, be applied in accordance with, and only to the extent provided for in, clause 60.11 of the Amended and Restated CRA,

in each case, the 19/9 Shortfall Claim as reduced (if at all) by Clauses 5.3.1 or 5.3.2 being referred to as its “**Net 19/9 Shortfall Claim**”.

### **5.4 Shortfall Claim Cap**

5.4.1 If the aggregate amount of all Consenting Beneficiaries’ Net 19/9 Shortfall Claims exceeds the amount of the Shortfall Claim Cap, then each Consenting Beneficiary’s Net 19/9 Shortfall Claim shall be reduced *pro rata* such that, when aggregated with each other Consenting Beneficiary’s Net 19/9 Shortfall Claim so reduced, the aggregate amount equals the Shortfall Claim Cap (the Net 19/9 Shortfall Claim of any Consenting Beneficiary as and to the extent (if at all) so reduced being referred to as its “**Capped Net 19/9 Shortfall Claim**”).

5.4.2 Notwithstanding anything to the contrary in these Common Terms, the amount of the 19/9 Shortfall Claim which can be admitted as a claim of a Consenting Beneficiary against the Company is limited to its Capped Net 19/9 Shortfall Claim.

## **6 Releases and waivers of other Legal Claims**

### **6.1 Legal Claims released by Consenting Beneficiaries**

6.1.1 Subject to Clause 6.2, each Consenting Beneficiary hereby releases (to the maximum extent permissible in law) the Company, the Company’s Common Terms Delegate, LBI, all other Consenting Beneficiaries, the Company-Related Released Parties and the members of the Creditors’ Common Terms Committee Group (being together the “**Released Persons**”) from all Legal Claims to or arising out of or in respect of the LBI Assets, the Trust Financial Assets, the LBI Distributions and the Omnibus Trust, or arising out of or in connection with the preparation, negotiation, entry into, execution, operation, performance or content of any Consenting Beneficiary Agreement, the Resolution, the Information Memorandum, any Information Pack or the Settlement Agreement (and, to the extent (if at all) such Legal Claims are not released, each Consenting Beneficiary waives, renounces and surrenders them (to the maximum extent permissible in law) as against the Released Persons), including:

(i) any such Legal Claim to the legal or beneficial ownership of any asset comprised in any LBI Distribution or any LBI Asset;

- (ii) any LBI Duplicate Claim;
  - (iii) any such Legal Claim for or in respect of or in connection with any shortfall in value or property;
  - (iv) any such Legal Claim for or in respect of or in connection with the loss, dilution, deferral or any other change in any Common Terms Claim, Cumulative Gross Allocation, or Gross Distribution as a result of any Legal Liabilities;
  - (v) any such Legal Claim for or in respect of or in connection with any amount or property being held as Reserves in accordance with the Common Terms or as a result of any insufficiency in or any release, or payment out, of any amount being held as Reserves;
  - (vi) any such Legal Claim for or in respect of or in connection with any action (or omission to act) in connection with any Corporate Action or Corporation Event;
  - (vii) any such Legal Claim for or in respect of or in connection with any action (or omission to act) in connection with a sale or decision to sell for cash consideration any Security held in the Omnibus Trust or in connection with a conversion or decision to convert money held in the Omnibus Trust;
  - (viii) any such Legal Claim for or in respect of or in connection with any action (or omission to act) in connection with any right of the Company under the Settlement Agreement to delay all or part of any LBI Distribution; and
  - (ix) any such Legal Claim in respect of anything done or suffered to be done by any Consenting Beneficiary in reliance on the Information Memorandum,
- (together, the “Released Common Terms Claims”).

6.1.2 Subject to Clauses 6.2 and 26, each Consenting Beneficiary hereby agrees not to make, pursue, litigate, commence, continue or prosecute any Proceedings in any jurisdiction in respect of Released Common Terms Claims against any Released Person.

6.1.3 The Company hereby acknowledges and relies on the release and other agreements of each Consenting Beneficiary set out in this Clause 6.1.

## **6.2 Qualifications to release**

The Released Common Terms Claims shall not include:

6.2.1 any Proprietary Claim;

6.2.2 any 19/9 Shortfall Claim;

6.2.3 any Legal Claims against the Company or its Common Terms Delegate for breach of any of the terms of the relevant Consenting Beneficiary Agreement or for any failure on the part of the Company or its Common Terms Delegate to discharge its obligations under the relevant Consenting Beneficiary Agreement, in each case only to the extent attributable to the fraud of the Company or its Common Terms Delegate;

6.2.4 any LBHI Guarantee Claim;

6.2.5 any Legal Claim against CAPCO;

6.2.6 any Legal Claim against any Non-Consenting Beneficiary; or

6.2.7 any unsecured Legal Claim against the Company:

- (i) relating to Securities or Money that would have entitled a Consenting Beneficiary to an LBI Asset Claim but for the adjustments referred to in paragraph (iii) of the definition of LBI Asset; or
- (ii) to the extent not already included in Clause 6.2.7(i), which results from a recalculable pending transaction being subject to recalculation by the Company in accordance with a CDD, in light of the 19/9 Position having been determined.

### **6.3 Release and reassignment of Security Interest**

Each Consenting Beneficiary releases, and (if applicable) reassigns, or agrees to procure such release or reassignment of, any Security Interest or other encumbrance or assignment which was created or made in its favour that would or might prevent or restrict any Net Distributions or Permitted Deductions, the creation or payment out of any Reserve or the sale of any Trust Financial Asset.

### **6.4 Release of Client Money claims**

6.4.1 Each Consenting Beneficiary:

- (i) waives, renounces and surrenders:
  - (a) all rights it might otherwise have for any LBI Asset Claim or Trust Financial Asset or all or any part of the Omnibus Trust, any LBI Distribution or its Gross Distribution to be treated as Client Money (whether held at the Time of Administration or received thereafter) or proceeds of Client Money; and
  - (b) any beneficial interest it may have in respect of its LBI Asset Claim or Trust Financial Asset or all or any part of the Omnibus Trust, any LBI Distribution or its Gross Distribution under the statutory trust of Client Money arising under Chapter 7 of the CASS Rules; and
- (ii) directs that any LBI Asset, Trust Financial Asset or part of the Omnibus Trust, any LBI Distribution or its Gross Distribution which is (or but for this Clause 6.4.1 would be) Client Money or its proceeds shall be held by the Company on the trust set out in these Common Terms.

6.4.2 If the Company becomes aware that any money or other property comprised in any Trust Financial Asset is (i) Post-Administration Client Money or (ii) the proceeds of Post-Administration Client Money, in each case held for a Non-Consenting Beneficiary, then notwithstanding any provision to the contrary in the Common Terms the Company shall hold and deal with such money or property in accordance with rule 7.9 or, if relevant, Chapter 7A of the CASS Rules (as applicable to the Company at the relevant time) and each Consenting Beneficiary consents to such treatment.

## **7 Moratorium**

### **7.1 No Proceedings against Released Persons**

Save as provided in Part 10, no Consenting Beneficiary shall be entitled to take, commence or continue any Proceedings against the Company or any other Released Person, or take or seek to take any action to enforce or attach against any property or rights in any jurisdiction whatsoever, in relation to any OSA Document, LBI Distribution, LBI Assets, Trust Financial Assets, the Omnibus Trust, or any Common Terms Claim except as expressly agreed by the Company or the relevant Released Person.

### **7.2 No double counting**

If and to the extent that a Consenting Beneficiary obtains against the Company in relation to any OSA Document, LBI Distribution, LBI Assets, Trust Financial Assets, the Omnibus Trust, or any Common Terms Claim, an order, judgment, decision or award of a court or tribunal in contravention of Clause 7.1 or any other provision of any Consenting Beneficiary Agreement, such order, judgment, decision or award shall not give rise to any Trust Entitlement for the purposes of these Common Terms and, subject to Clause 25, shall be either disregarded when determining, or (at the Company's absolute discretion) applied in or towards discharge or reduction of, any Common Terms Claim or other Legal Liability of the Company owed to that Consenting Beneficiary under any relevant Consenting Beneficiary Agreement.

### **7.3 Enforcement by Company**

Nothing in any relevant Consenting Beneficiary Agreement shall preclude the Company from taking, commencing or continuing any Proceedings against a Consenting Beneficiary.



## PART 3 – OMNIBUS TRUST AND RESERVES

### 8 Omnibus Trust

#### 8.1 Definition of Omnibus Trust

Subject to Clause 6.4.2, all LBI Distributions and any other Trust Financial Assets received by the Company shall, until applied or distributed in accordance with the Common Terms, be held by the Company as trustee for the benefit of all persons with a Trust Entitlement and shall be held, managed, dealt with, applied and distributed by the Company under and in accordance with the provisions of the Common Terms. The trust referred to in this Clause 8.1 shall be referred to as the “Omnibus Trust” in these Common Terms.

#### 8.2 Reserves

8.2.1 The Company may at any time and from time to time establish, re-evaluate, adjust, maintain and/or release the amount of reserves (“Reserves”) it then considers prudent in respect of the actual or alleged Trust Entitlements of any person or persons to all or any part of the Omnibus Trust. Amounts held as Reserves shall constitute part of the Omnibus Trust but shall not, for so long as they are so held, be available for application by way of a Permitted Deduction or distribution to Consenting Beneficiaries. In calculating what Reserves should at any time be held, the Company shall (without limitation) make provision (the amount of such provision being at the absolute discretion of the Company) in relation to:

- (i) any Securities or Money claimed or which may be claimed by a Non-Consenting Beneficiary or a person purporting to be an LBI Asset Claim Customer in respect of its Trust Entitlement (including any Trust Entitlements that may have been assigned to or acquired by the Company);
- (ii) any Securities not yet liquidated;
- (iii) any Trust Entitlement of any Consenting Beneficiary whose Best Claim is not at that time determined or whose Trust Entitlement or Best Claim is at that time disputed;
- (iv) any dispute under or in connection with the Common Terms;
- (v) any Trust Entitlement of any Consenting Beneficiary who is at that time for any reason ineligible to participate in a Common Terms Distribution (including because of a failure to satisfy any of the conditions in Clause 9.4); and
- (vi) amounts in respect of any part of any Tax Burden Liability (which amounts the Company may hold in an escrow account) (any Reserve formed pursuant to this Clause 8.2.1(vi) being a “Tax Reserve”).

8.2.2 The Consenting Beneficiaries agree that:

- (i) the Reserving of any amount by the Company shall not, merely by virtue of such Reserve, be taken to be evidence of the admission by the Company of any claim or right of any person to such amounts;
- (ii) the Reserving of any Trust Financial Asset does not create any proprietary interest in any such Trust Financial Asset in favour of any person in respect of whom an amount has been Reserved; and

(iii) the Reserving of any amount does not give rise to any entitlement to payment for loss of profit or other Legal Liability in respect thereof.

**8.2.3 The Company may at any time and from time to time:**

(i) designate (or otherwise treat):

(a) any Reserve (or any part of any Reserve) as an “Attributable Reserve” in respect of:

(I) a particular Consenting Beneficiary to the extent it considers such Reserve (or the Legal Liabilities in respect of which such Reserve is held) as attributable to that individual Consenting Beneficiary; or

(II) more than one Consenting Beneficiary to the extent that the Company considers that such Reserve (or the Legal Liabilities in respect of which such Reserve is held) is attributable to them and allocate such Reserve amongst them on such basis as the Company considers appropriate given the facts giving rise to the creation or maintenance of that Reserve;

(b) any payment or discharge of an obligation (or any part of an obligation) made out of the Omnibus Trust (including any Reserve but excluding any payment or discharge as a result of distributing or applying any Gross Distribution) as an “Attributable Payment” where such payment or discharge is in respect of or attributable to:

(I) an individual Consenting Beneficiary as an Attributable Payment in respect of that Consenting Beneficiary; or

(II) more than one Consenting Beneficiary as an Attributable Payment in respect of those Consenting Beneficiaries to the extent that the Company considers that such payment or discharge out of the Omnibus Trust pays or discharges an obligation of each of them or otherwise allocate the payment or discharge amongst those Consenting Beneficiaries on such basis as the Company considers appropriate given the facts giving rise to the creation, maintenance, payment or discharge in question; and

(ii) change the Company’s designation (or treatment) or attribution of any Reserve (or any part of any Reserve) or of any payment or discharge of an obligation (or any part of an obligation) as an Attributable Reserve or Attributable Payment (as applicable) in respect of any one Consenting Beneficiary to an Attributable Reserve or Attributable Payment (as applicable) in respect of any other or of more than one Consenting Beneficiary or of none.

in each case as the Company (including any entity appointed pursuant to Clauses 18.7, 21.7 or 34.1) considers appropriate (in its absolute discretion, subject to Clause 18.4.3), provided that no amount shall be taken into account more than once at any time.

8.2.4 Each Consenting Beneficiary agrees that it shall not be entitled to dispute (and any attempt to do so shall be of no effect), whether pursuant to a Common Terms Dispute or otherwise, (i) any establishment, re-evaluation, adjustment, maintenance or release of any Reserve, or (ii) any designation, attribution or treatment, or any change in relation thereto, of any Reserve as an Attributable Reserve.

### **8.3 Reserves of Money and Securities**

8.3.1 The Company may hold in respect of any Reserve either Money or Securities.

8.3.2 The Company shall not be required to sell any such Securities so Reserved but may do so if it (in its absolute discretion) considers such a sale appropriate.

8.3.3 Upon the release of Money or Securities from any Reserve, such Money or Securities shall continue to be held by the Company as part of the Omnibus Trust, save that the Company may, and each Consenting Beneficiary hereby authorises the Company to:

(i) pay any such Money, or deliver any such Securities, to a Non-Consenting Beneficiary, a Tax Authority or other person; and/or

(ii) otherwise apply such Money or Securities,

including in each case towards any purpose for which any Reserve is permitted to be held if the Company considers it necessary or desirable to do so and, if the Company does so, then the obligation which was the subject of the Reserve shall be discharged *pro tanto* by the amount of Money or Securities (as the case may be) so paid, delivered or otherwise applied.

### **8.4 No segregation of Reserves**

Subject to Clause 19.1, notwithstanding any other provision contained in the Common Terms, the Company shall not be obliged, but shall have the power, to segregate and maintain separate accounts for any Available Funds and/or any Reserves (or any element of any of them).

## **PART 4 – COMMON TERMS DISTRIBUTIONS OUT OF OMNIBUS TRUST**

### **9 Dispositions out of Omnibus Trust**

#### **9.1 Overview**

For ease of reference, this Clause 9.1 provides an overview of Clause 9 but shall not be legally binding and shall not affect the interpretation of the operative provisions in the remainder of Clause 9 or the precise meaning of the definitions used therein. Clause 9 sets out the terms on which Money in the Omnibus Trust is to be allocated among the Consenting Beneficiaries. In summary:

9.1.1 Each Consenting Beneficiary can expect its Gross Distributions to:

- be made on each Distribution Date provided that it is eligible on that date as a Qualifying Consenting Beneficiary;
- result in a Net Distribution to be paid to it as a Qualifying Consenting Beneficiary and/or a Permitted Deduction to be applied by the Company to pay out a third party, or to be appropriated by the Company;
- be calculated as a portion of the available cash in the Omnibus Trust (after any Reserves) - its portion will be a *pro rata* share based on its Best Claim after adjustment to take account of its previous Gross Distributions, as well as its Attributable Reserves and Attributable Payments.

9.1.2 Clauses 9.2 to 9.4 set out the timing and number of Common Terms Distributions, and identify when Consenting Beneficiaries will be eligible to participate in a Common Terms Distribution. In particular, it is only those Consenting Beneficiaries who are Qualifying Consenting Beneficiaries on a Distribution Date who will be entitled to have Common Terms Distributions distributed to, or otherwise applied in respect of, them on that date.

9.1.3 Clauses 9.6 to 9.8 set out the method of calculation of Common Terms Distributions to be distributed to, or otherwise applied in respect of, Qualifying Consenting Beneficiaries.

9.1.4 Clause 9.6 defines Available Funds which is broadly all the cash held in the Omnibus Trust less any of that cash which is held as Reserves on the Distribution Date. It is these Available Funds which will be the cash allocated to Qualifying Consenting Beneficiaries as a Gross Distribution in Clause 9.8.

9.1.5 Clause 9.7 then adds to Available Funds an amount equal to all previous Gross Distributions of the Qualifying Consenting Beneficiaries (not all Consenting Beneficiaries generally) and the aggregate Attributable Amounts attributable to them, as at the Distribution Date. This sum is effectively that part of the Omnibus Trust which all the Qualifying Consenting Beneficiaries as a group on that Distribution Date will have had distributed to, or applied or reserved in respect of, them up to and including that Distribution Date. This aggregate amount is referred to as the Adjusted Available Funds.

9.1.6 Clause 9.8 calculates the Gross Distribution in three stages:

- (i) first, the Adjusted Available Funds are allocated as between the Qualifying Consenting Beneficiaries *pro rata* to their Best Claims giving each of them a Cumulative Gross Allocation;
- (ii) secondly, the Attributable Amounts and previous Gross Distributions which are attributable to a Qualifying Consenting Beneficiary and which were in each case added to Available Funds under Clause 9.7 are now deducted from that Qualifying Consenting Beneficiary's Cumulative Gross Allocation on an "individual" basis; and
- (iii) thirdly, each Qualifying Consenting Beneficiary who has a positive balance left from its Cumulative Gross Allocation will receive a share of the Available Funds *pro rata* to all such positive balances of Qualifying Consenting Beneficiaries on that Distribution Date and this is its Gross Distribution for that Distribution Date.

9.1.7 The final proviso to Clause 9.8 provides for a catch up mechanism in respect of those Qualifying Consenting Beneficiaries who at the Distribution Date may have received less benefit overall relative to other Qualifying Consenting Beneficiaries.

9.1.8 Clause 9.9 then provides for the Gross Distribution remaining, after all Permitted Deductions have been applied out of such Gross Distribution in accordance with Clause 10, to be paid to the Qualifying Consenting Beneficiary as its Net Distribution.

## **9.2 Timing of Common Terms Distribution**

As and when the Company determines (in its absolute discretion) that there are sufficient Available Funds in order to make a meaningful Common Terms Distribution, then:

9.2.1 the Company shall nominate a proposed "Distribution Date" and a "Cut-Off Date" in relation to such Common Terms Distribution, each such date to be a Business Day but otherwise being in the absolute discretion of the Company to nominate; the Company shall send a Notice of Intended Distribution pursuant to Clause 14.1 setting out the proposed Distribution Date and Cut-Off Date;

9.2.2 following the Cut-Off Date, the Company shall calculate the amount of Reserves which as at the proposed Distribution Date need to be retained in the Omnibus Trust and which will not form part of the Available Funds on the proposed Distribution Date; and

9.2.3 the Company shall send a Notice of Distribution pursuant to Clause 14.2,

provided that, notwithstanding the provisions of Clause 14, the Company shall be able to delay any of the matters set out in Clauses 9.2.1 to 9.2.3 and the making of any Common Terms Distribution if it considers this reasonable taking into account all relevant factors.

## **9.3 Number of Common Terms Distributions**

The Company may make Common Terms Distributions on more than one Distribution Date and, subject to Clause 9.4 and the other Common Terms, shall be obliged to make a Common Terms Distribution within a reasonable amount of time following the date upon which the Company determines that no further amounts are likely to become Available Funds. If after such determination, further Available Funds become available, then the Company shall make further Common Terms Distributions at such time as it considers appropriate (in its absolute discretion) and in any event no later than the date on which the

Company would otherwise be required under the Settlement Agreement to return to LBI any Trust Financial Assets not applied or distributed to or in respect of LBI Asset Claim Customers.

#### **9.4 Conditions to participation in a Common Terms Distribution**

9.4.1 Each Consenting Beneficiary agrees that, as a condition to its participation in a Common Terms Distribution, it shall be required to meet (to the satisfaction of the Company in its absolute discretion) all of the following conditions by no later than the Cut-Off Date (at such time as the Company may specify) in respect of that Common Terms Distribution and to continue to meet them (to the satisfaction of the Company in its absolute discretion, subject to the proviso in Clause 9.5.2) at the Distribution Date, unless agreed otherwise by the Company:

- (i) none of its Permitted Deductions (excluding any Costs Liability, Tax Burden Liability or Costs Amount) remain uncertain or unascertained;
- (ii) it has no actual or potential unsecured Legal Claims against or Legal Liabilities owing to the Company, the existence or quantum of which cannot at that time be determined because the contract pursuant to which such Legal Claims or Legal Liabilities may arise:
  - (a) has not been terminated;
  - (b) does not specify an appropriate valuation date or methodology and the Company and the Consenting Beneficiary have neither reached a binding agreement as to the valuation date or methodology to be used nor otherwise resolved how to determine such Legal Claims or Legal Liabilities; or
  - (c) specifies a valuation date or methodology which is materially uncertain in its terms and the Company and the Consenting Beneficiary have neither reached a binding agreement nor otherwise resolved how to determine such Legal Claims or Legal Liabilities;
- (iii) in relation to CRA Omnibus Beneficiaries, the conditions set out in clause 56.1.1 of the Amended and Restated CRA have been satisfied;
- (iv) it has no Common Terms Dispute (or other dispute under or in connection with the Common Terms) which has not been finally determined or agreed;
- (v) no disposition which may be made to it is or may be subject to a Security Interest or other encumbrance of a Third Party that in the opinion of the Company may prevent or restrict a disposition in accordance with any Consenting Beneficiary Agreement;
- (vi) it is not in breach of any obligation under its Consenting Beneficiary Agreement where that breach is continuing unremedied and unwaived; and
- (vii) the Company has, prior to that disposition, received all documentation which the Company considers necessary for the Company to comply with any anti-money laundering, tax information reporting or similar laws or regulations applicable to it.

#### **9.5 Qualifying Consenting Beneficiary**

9.5.1 If a Consenting Beneficiary meets (to the satisfaction of the Company) the conditions set out in Clause 9.4.1, both on (i) the Cut-Off Date applicable to the Common Terms Distribution and (ii) the Distribution Date, then it shall be treated as a “**Qualifying Consenting Beneficiary**” in relation to that Common Terms Distribution on that Distribution Date.

9.5.2 The Company may amend the Eligibility Status of any Consenting Beneficiary at any time, provided that any such amendment made between a Cut-Off Date and any disposition to which that Cut-Off Date applies may only be made if the Company considers it appropriate (acting reasonably having regard to whether that Consenting Beneficiary meets, or continues to meet, the conditions set out in Clause 9.4.1).

## 9.6 Available Funds

The funds available from which to make a Common Terms Distribution on a Distribution Date (the “**Available Funds**”) are equal to:

9.6.1 the aggregate of the Money denominated in US dollars held in the Omnibus Trust on that Distribution Date (provided that if any such funds comprise Money denominated in US dollars received by the Company after the Cut-Off Date set out in the Notice of Intended Distribution applicable to such Common Terms Distribution, then such funds shall not be included in Available Funds save to the extent that the Company determines (in its absolute discretion) that they should be so included); **less**

9.6.2 the aggregate of all Reserves (including all Attributable Reserves) on the Distribution Date and any Money (other than Money held as Reserves or excluded by the proviso to Clause 9.6.1) which is held in the Omnibus Trust and for any reason (including as a result of being held in a time deposit or likely to give rise to an extra cost as a result of it being made available) is not (or is not likely to be) considered by the Company to be freely available for disposition on the Distribution Date.

## 9.7 Adjusted Available Funds

The “**Adjusted Available Funds**”, for the purpose of determining the Common Terms Distribution on a Distribution Date, shall be the amount of Money denominated in US dollars as is equal to the aggregate of:

9.7.1 the Available Funds calculated in respect of that Distribution Date; **plus**

9.7.2 the aggregate of all Attributable Amounts on that Distribution Date attributable to the Qualifying Consenting Beneficiaries on that Distribution Date; **plus**

9.7.3 the aggregate of all Gross Distributions made to such Qualifying Consenting Beneficiaries prior to that Distribution Date; **less**

9.7.4 the aggregate amount of any Catch-Up Distributions on that Distribution Date to be made to such Qualifying Consenting Beneficiaries pursuant to the proviso set out in Clause 9.8.3(iii).

## 9.8 Calculation of Gross Distributions

The amount of the “**Gross Distribution**” to be made in respect of a Qualifying Consenting Beneficiary on a Distribution Date shall be computed by the Company as:

9.8.1 the portion of the Adjusted Available Funds attributable to that Qualifying Consenting Beneficiary (its “**Cumulative Gross Allocation**”) calculated by multiplying the Adjusted Available Funds by a fraction the numerator of which is the Best Claim of such Qualifying Consenting Beneficiary and the denominator of which is the aggregate amount of the Best Claims of all Qualifying Consenting Beneficiaries on that Distribution Date; **less**

9.8.2 all Attributable Amounts on that Distribution Date attributable to such Qualifying Consenting Beneficiary; **less**

9.8.3 the aggregate of all Gross Distributions made to such Qualifying Consenting Beneficiary prior to that Distribution Date.

**provided that:**

(i) if the amount of the Gross Distribution of such Qualifying Consenting Beneficiary so computed is calculated to be less than zero, it shall be deemed to be zero;

(ii) subject to, and following the operation of, Clause 9.8.3(iii), if the aggregate of the Gross Distributions to be made on a Distribution Date to, or in respect of, all Qualifying Consenting Beneficiaries (after taking into account the operation of the previous proviso set out in Clause 9.8.3(i), if applicable) would not equal the amount of the Available Funds on that Distribution Date, then the amount of the Gross Distribution of each Qualifying Consenting Beneficiary shall be varied *pro rata* to their Gross Distributions (after taking into account the operation of the previous proviso set out in Clause 9.8.3(i), if applicable) so that the aggregate of the Gross Distributions so varied equals the Available Funds in respect of that Distribution Date; and

(iii) if the operation of the above provisions of this Clause 9.8 (before the operation of the proviso set out in this Clause 9.8.3(iii)) in respect of a particular distribution to, or application in respect of, any Qualifying Consenting Beneficiary (the “**Catch-Up QCB**”) would if that Gross Distribution were made to that Catch-Up QCB, result in:

(a) the proportion which (A) the Cumulative Gross Allocation of that Catch-Up QCB (after taking into account on a *pro forma* basis the Gross Distribution which would be made (before the operation of this Clause 9.8.3(iii)) to that Catch-Up QCB under that relevant distribution or application) bears to (B) his Best Claim being less than

(b) the highest proportion which (A) the Cumulative Gross Allocation of any other Qualifying Consenting Beneficiary participating in that distribution or application (the “**Comparative QCB**”) (after taking into account on a *pro forma* basis the Gross Distribution which legitimately would be made (before the operation of this Clause 9.8.3(iii)) to that Comparative QCB under that relevant distribution or application) bears to (B) the Best Claim of that same Comparative QCB.

then the Company may in priority to any other distribution or application to be made by it to or in respect of any other Qualifying Consenting Beneficiary make such distribution or application (a “**Catch-Up Distribution**”) to, or in respect of, the Catch-Up QCB and any other Catch-Up QCBs participating in



that distribution or application as will, for all Qualifying Consenting Beneficiaries participating in that distribution or application, result in the proportion which (A) the Cumulative Gross Allocation of each Qualifying Consenting Beneficiary (after taking into account on a *pro forma* basis the Catch-Up Distribution) bears to (B) the Best Claim of that Qualifying Consenting Beneficiary being the same (or as close to the same as is possible given that there may be insufficient Available Funds to catch up in full and prioritising, amongst those Catch-Up QCBs relative to each other, those who have the lowest comparative Cumulative Gross Allocation at that time).

## **9.9 Net Distribution**

On each Distribution Date, the Company shall make to each Qualifying Consenting Beneficiary a distribution of Money in US dollars equal to its Net Distribution calculated as described in Clause 10.1.

## **9.10 Order of settlement**

Unless expressly notified to the contrary by the Company, it shall be assumed that dispositions made by the Company in relation to a Consenting Beneficiary pursuant to the Common Terms shall be made in settlement of:

9.10.1 first, Legal Claims for Money (if any) (excluding Income Amounts (if any));

9.10.2 then Legal Claims for Securities (if any); and

9.10.3 lastly, Income Amounts (if any).

in each case, by reference to the basis upon which a Consenting Beneficiary's Best Claim is calculated.

## **10 Deductions from Gross Distributions in respect of Qualifying Consenting Beneficiaries**

10.1 The Company shall be entitled in its absolute discretion, but is not obliged, to deduct and withhold from the amount of any Gross Distribution in respect of a Qualifying Consenting Beneficiary the full amount of any Permitted Deductions as described in Clause 10.3 and to pay amounts so deducted over to the person entitled thereto or (in respect of amounts due or owing to the Company in any capacity) appropriate to itself the amounts so deducted. The net amount (if any) after any such deduction, withholding or appropriation from that Gross Distribution is that Qualifying Consenting Beneficiary's "**Net Distribution**".

10.2 Without prejudice to the right of the Company to sue in respect of any Legal Liability owed to it by any Consenting Beneficiary, the Company shall make no applications or distributions out of the Gross Distributions (or Net Distributions) of any Qualifying Consenting Beneficiary, save for those set out in this Clause 10.

10.3 The amounts which may be applied by the Company from any Gross Distribution are:

10.3.1 in respect of any OSA Consenting Beneficiary:

(i) any Costs Liability payable out of its Gross Distribution in accordance with Clause 40;

- (ii) any Tax Burden Liability which the Company is permitted to deduct or withhold from its Gross Distribution in accordance with Clause 18 to the extent such Tax Burden Liability:
  - (a) is not part of any Attributable Reserve and has not been paid or discharged by any Attributable Payment in respect of that OSA Consenting Beneficiary; and
  - (b) does not form part of a general Reserve held pursuant to Clause 8.2.1(vi) at the time the Permitted Deduction under this Clause 10.3 is made;
- (iii) any Recoverable Turnover Value pursuant to Clause 25.1.1; and
- (iv) its OSA Distribution Liabilities; and

**10.3.2 in the case of a CRA Omnibus Beneficiary:**

- (i) any Tax Burden Liability which the Company is permitted to deduct or withhold from its Gross Distribution in accordance with Clause 18 to the extent such Tax Burden Liability:
  - (a) is not part of any Attributable Reserve and has not been paid or discharged by any Attributable Payment in respect of that CRA Omnibus Beneficiary; and
  - (b) does not form part of a general Reserve held pursuant to Clause 8.2.1(vi) at the time the Permitted Deduction under this Clause 10.3 is made;
- (ii) any Recoverable Turnover Value pursuant to Clause 25.1.1; and
- (iii) Distribution Liabilities (as defined in the Amended and Restated CRA) in accordance with the relevant waterfall set out in clause 60 of the Amended and Restated CRA,

(all such applications being “Permitted Deductions”). In respect of any application, Permitted Deductions shall be deemed to have been made as of the relevant Cut-Off Date in respect of that Gross Distribution.

**10.4 Each Consenting Beneficiary hereby authorises the Company:**

- 10.4.1 to make any Permitted Deduction out of any Gross Distribution that would otherwise be payable to it;**
- 10.4.2 to apply any Permitted Deduction as provided for in these Common Terms or the Amended and Restated CRA, as the case may be, including in or towards discharge of any obligation owed to a third party; and**
- 10.4.3 where any Permitted Deduction is to be applied in or towards discharge of any obligation owed to the Company, to appropriate that Permitted Deduction in or towards such discharge.**

and, if the Company so applies any Permitted Deduction, then it shall thereby discharge the obligation which was the subject of the Permitted Deduction *pro tanto* by the amount of the Gross Distribution so applied.

**11 Miscellaneous disposition provisions**

### **11.1 Method of cash distributions**

Any distribution to be made by the Company pursuant to the Common Terms will be in US dollars and may be made, at the absolute discretion of the Company, by draft, cheque, wire transfer, other electronic means or as otherwise required or provided in any relevant agreement or applicable law.

### **11.2 Dispositions on non-Business Days**

Any disposition due on a day other than a Business Day shall be made, without interest, on the next Business Day.

### **11.3 Disposition of excess funds**

The Company shall comply with its obligations under section 2.03(c) of the Settlement Agreement to return to LBI any property in the Omnibus Trust which has not been distributed or applied as a Permitted Deduction or applied in a similar manner in respect of Non-Consenting Beneficiaries, or applied towards the discharge of liabilities of LBI Asset Claim Customers as permitted by the Settlement Agreement, it being acknowledged that such assets are not required for application or distribution for the benefit of Consenting Beneficiaries or Non-Consenting Beneficiaries and therefore, with the benefit of information not available to the Company and LBI on execution of the Settlement Agreement, should not have been distributed by the LBI Trustee to LBIE.

## **12 Distributions to Non-Consenting Beneficiaries**

**12.1** The Company shall be entitled at any time and from time to time to make a distribution of any property in the Omnibus Trust in or towards the satisfaction of the Trust Entitlements of a Non-Consenting Beneficiary.

**12.2** The Company shall be entitled but not obliged at any time and from time to time to take any action in relation to making any distribution of any property in the Omnibus Trust to a Non-Consenting Beneficiary (whether in aggregate in excess of what would be the Best Claim of the relevant Non-Consenting Beneficiary or not), including seeking:

**12.2.1** an agreement as between the Company and any Non-Consenting Beneficiary;

**12.2.2** a Final Order, which may determine whether the Company has to make a distribution of any property in the Omnibus Trust to a Non-Consenting Beneficiary;

**12.2.3** a Final Order in respect of any distribution of any property in the Omnibus Trust to a Non-Consenting Beneficiary; and/or

**12.2.4** a Final Order, the effect of which is to afford the Company protection from liability in its capacity as trustee of the Omnibus Trust or any LBI Distribution.

**12.3** The Company is hereby permitted:

**12.3.1** not to distribute to the Non-Consenting Beneficiary but instead to deduct, withhold, or otherwise Reserve, an amount in respect of any Tax Burden Liability which the Company believes (in its absolute discretion) it is obliged or which it is prudent to deduct, withhold or Reserve from any distribution to a Non-Consenting Beneficiary and the Company may, but is not obliged to, seek an agreement or terms contained in a Final Order to that effect;

**12.3.2** not to distribute to the Non-Consenting Beneficiary but instead to deduct or withhold from the assets otherwise distributable to such Non-Consenting Beneficiary and

appropriate out of that distribution for itself or pay over to the person properly entitled thereto any amounts which are properly recoverable by and for the benefit of the Company or for some other person and which are permitted under the Settlement Agreement to be deducted, withheld or appropriated;

12.3.3 to seek to recover by agreement or by a Final Order by way of deduction or withholding any amount which the Company considers it is or should be entitled to recover from any Non-Consenting Beneficiary and appropriate for itself out of amounts which would otherwise be distributed to that Non-Consenting Beneficiary (including amounts in reimbursement of costs and expenses incurred by the Company and amounts in or towards discharge of indebtedness owed to the Company) in each case to the extent permitted under the Settlement Agreement to be deducted, withheld or appropriated; and

12.3.4 to make any such deduction, withholding, Reserve, payment or appropriation from assets that would otherwise be distributed to that Non-Consenting Beneficiary from the Omnibus Trust.

## **PART 5 – INFORMATION**

### **13 Production of Information Packs**

13.1.1 Each Consenting Beneficiary hereby acknowledges that:

- (i) it has received from the Company an information pack (such information pack (including its Explanatory Notes) as may be revised pursuant to Clause 13.1.2, the "Information Pack"); and
- (ii) its Information Pack included:
  - (a) its 19/9 Position and 19/9 Value;
  - (b) its Aggregate Market Value; and
  - (c) its Best Claim.

13.1.2 All figures in the Information Pack are final and binding on the Consenting Beneficiary and the Company, save to the extent the Company may make an adjustment:

- (i) by agreement between the Consenting Beneficiary and the Company;
- (ii) pursuant to a final resolution or settlement of a Common Terms Dispute in accordance with the Common Terms;
- (iii) to exclude Securities that were included in the 19/9 Position but which the Company determines should not have been recorded as LBI Assets because they never became held by LBI, provided that:
  - (a) no adjustments shall be made pursuant to this Clause 13.1.2(iii) that would reverse any adjustments made under paragraph (iii) of the definition of LBI Assets; and
  - (b) any adjustments pursuant to this Clause 13.1.2(iii) shall only be made where the Company acknowledges that the Customer has, instead of an LBI Asset Claim, a Legal Claim against the Company with respect to those Securities or their proceeds, which is not released under Clause 6 of these Common Terms; or
- (iv) to correct a manifest error.

13.1.3 Without limiting, and subject to, Clause 13.1.2, each Consenting Beneficiary agrees that it shall not be entitled to dispute (and any attempt to do so shall be of no effect), whether pursuant to a Common Terms Dispute or otherwise:

- (i) its 19/9 Position (which it acknowledges and accepts may reflect the exclusion of certain items as set out in paragraph 10.17 of Part III of Section I of the Information Memorandum), which shall be final and binding upon each Consenting Beneficiary;
- (ii) without prejudice to the generality of Clause 13.1.3(i) and notwithstanding any dispute resolution mechanism set out in a CDD, the Company's determination as set out in the 19/9 Position as to whether or not any trade relating to an LBI Asset had settled prior to 19 September 2008, which shall be final and binding upon each Consenting Beneficiary for the purposes of

not only Common Terms Claims and Legal Liabilities arising pursuant to the Common Terms but also for the purposes of any unsecured Legal Claim by or against the Company;

(iii) the terms of the corporate actions policy described in the explanatory notes provided with the Information Pack (the “**Explanatory Notes**”) as the “**Corporate Actions Policy**” that is used to establish its Aggregate Market Value which Corporate Actions Policy shall be final and binding upon it, provided that nothing in this Clause 13.1.3(iii) is intended to limit the ability of a Consenting Beneficiary to raise a Common Terms Dispute, in respect of an Information Pack Figure, as to whether the terms of such Corporate Actions Policy have been correctly applied by the Company; and

(iv) the Information Pack Figures, or any other information in or relating to the Information Pack, of any other Consenting Beneficiary or other Customer.

13.1.4 Any information (including Explanatory Notes) provided in or in connection with an Information Pack shall be based on or contain such statements, estimates, projections, assumptions and determinations as the Company may consider necessary or desirable in its absolute discretion (acting in good faith).

13.1.5 Prior to any adjustment to any Information Pack Figures in accordance with Clause 13.1.2, the Company shall, for the purposes of these Common Terms, be entitled to rely and act upon the then current Information Pack Figures.

## 14 Notices relating to Common Terms Distributions

### 14.1 Notice of Intended Distribution

14.1.1 If the Company intends to make any Common Terms Distribution to Consenting Beneficiaries it shall, prior to the Cut-Off Date applicable to that Common Terms Distribution, issue a notice (a “**Notice of Intended Distribution**”) Notifying each Consenting Beneficiary of the Company's intention to make such Common Terms Distribution.

14.1.2 A Notice of Intended Distribution shall contain such information as the Company may consider appropriate (in its absolute discretion) in relation to such Common Terms Distribution but, in any event, shall state the proposed Cut-Off Date and proposed Distribution Date applicable to such Common Terms Distribution.

### 14.2 Notice of Distribution

14.2.1 No later than seven Business Days prior to the date on which the Company makes a Common Terms Distribution, the Company shall issue a Notice (a “**Notice of Distribution**”) to each Qualifying Consenting Beneficiary.

14.2.2 The Notice of Distribution for each Qualifying Consenting Beneficiary shall contain the following information:

(i) the name of the Qualifying Consenting Beneficiary and its GAC Code;

(ii) the intended Distribution Date;

(iii) the expected Available Funds to be applied or distributed on the Distribution Date;

(iv) the amount of the Best Claim of that Qualifying Consenting Beneficiary;

- (v) the amount of the Attributable Reserves and Attributable Payments in respect of or attributable to that Qualifying Consenting Beneficiary;
- (vi) the amount of the Gross Distribution of that Qualifying Consenting Beneficiary;
- (vii) the expected amount of the Permitted Deductions of that Qualifying Consenting Beneficiary; and
- (viii) the expected amount of the Net Distribution of that Qualifying Consenting Beneficiary.

together with such other background information and calculations in relation to the items in Clauses 14.2.2(v) to 14.2.2(viii) as the Company may include, in its absolute discretion.

14.2.3 The Company may, but will not be obliged to, for the purposes of a particular Common Terms Distribution:

- (i) issue to any Consenting Beneficiary which is ineligible to be a Qualifying Consenting Beneficiary at the Cut-Off Date in respect of such Common Terms Distribution a Notice of Distribution indicating its ineligibility; and
- (ii) provide via the Portal from time to time to any Consenting Beneficiary which is ineligible to be a Qualifying Consenting Beneficiary such information in relation to any intended Common Terms Distribution as the Company considers appropriate (in its absolute discretion).

14.2.4 All information contained in a Notice of Distribution, with the exception of any Notice of Distribution Figure (where applicable) shall be final and binding on each Consenting Beneficiary.

14.2.5 If:

- (i) there are not matching payment instructions in place at the time of the intended distribution in respect of any Qualifying Consenting Beneficiary; or
- (ii) the Company elects not to make the distribution to some but not all Qualifying Consenting Beneficiaries pursuant to Clause 14.2.6,

then the Company shall not be obliged to increase any of the amounts to be applied or distributed to any other person on that Distribution Date.

14.2.6 The Company shall have the right in its absolute discretion:

- (i) not to proceed with any Common Terms Distribution, in part or in full, whether or not a Notice of Intended Distribution or Notice of Distribution has been issued;
- (ii) not to make a Common Terms Distribution to, or in respect of, one or more Qualifying Consenting Beneficiaries or any Consenting Beneficiary which is or becomes ineligible to be a Qualifying Consenting Beneficiary in relation to such disposition; and
- (iii) not to make a Common Terms Distribution to, or in respect of, any Qualifying Consenting Beneficiary that has not provided two originals of any properly and accurately completed and executed original U.S. Withholding Tax Form

or, to the extent any such Tax form has become obsolete or incorrect or the relevant Qualifying Consenting Beneficiary has not provided such other information as may otherwise be requested by the Company, until such U.S. Withholding Tax Form or other information has been duly or correctly provided, provided that this Clause 14.2.6(iii) shall not apply to the extent that the Company has received a confirmation from such Qualifying Consenting Beneficiary that it does not intend to provide to the Company, or update, any such U.S. Withholding Tax Form or other Tax form.

14.2.7 The Company may make any Net Distribution to a Qualifying Consenting Beneficiary by payment to any bank account (including a bank account where the account holding bank is the Company) of that Qualifying Consenting Beneficiary, details of which have been Notified to the Company via the Portal prior to the Notice of Distribution.

14.2.8 Any Notice of Intended Distribution or Notice of Distribution is issued without any liability (absent fraud) on the part of the Company. The Company shall not be obliged to:

- (i) proceed with the proposed Common Terms Distribution on the basis of the information contained in any Notice of Intended Distribution or Notice of Distribution, or at all; or
- (ii) send any updated notice relating to any such Common Terms Distribution to any Consenting Beneficiary irrespective of whether the details relating to such Common Terms Distribution have subsequently changed.

### **14.3 Timing and basis of Common Terms Distributions**

14.3.1 Without prejudice to any requirement to Notify Consenting Beneficiaries of the intended Distribution Date, the Company may make a disposition to or in respect of one or more Qualifying Consenting Beneficiaries on a date other than the intended Distribution Date if it considers it appropriate (in its absolute discretion).

14.3.2 In making a Common Terms Distribution, the Company may, but is not obliged to, take into account any information which it has become aware of prior to the Distribution Date.

## **15 Bi-annual statements**

15.1.1 The Company will Notify to each Consenting Beneficiary a summary update of the Money and Securities in the Omnibus Trust and the dispositions of Money out of the Omnibus Trust (in such summary form and detail and as at such date as in each case it considers appropriate in its absolute discretion) on a bi-annual basis, provided that:

- (i) the obligation to make available a summary update on a bi-annual basis will not start until 30 June 2014 and will end after the delivery of the Shortfall Claims Determination Notice; and
- (ii) there shall be an interval of no more than 35 weeks between consecutive summary updates.



15.1.2 Any summary update referred to in Clause 15.1.1 shall be provided to Consenting Beneficiaries on a non-reliance basis for information purposes only and shall not be subject to challenge by any Consenting Beneficiary.

## **16 Confidentiality**

### **16.1 Waiver of confidentiality by Consenting Beneficiaries**

16.1.1 Notwithstanding the terms of any other agreement with the Company, all Consenting Beneficiaries authorise the Company to disclose to any person any information which the Company is required to disclose or which it considers to be necessary or desirable to disclose to enable the Consenting Beneficiary Agreements (including the Common Terms) to be administered (including enforced) effectively and/or for the purposes of disclosure as set out in Clauses 13, 14, 15, 16, 18.2 and 42, including:

- (i) any disclosure to any Tax Authority in respect of the identity and other information of any Consenting Beneficiary as may be required by law or otherwise necessary or prudent to be disclosed in order for the Company to avoid or minimise the imposition of any penalties or withholding or otherwise in connection with the Tax affairs of the Company (as well as any disclosure authorised by Clause 18.2);
- (ii) any other disclosure made by the Company to a Tax Authority pursuant to Clause 18.2 or in connection with the Taxation affairs of the Company or any Taxation consequences affecting a Cumulative Gross Allocation, Gross Distribution or Net Distributions of, or Permitted Deductions from, Trust Financial Assets (including any disclosures related to amounts that represent Tax Burden Liabilities held as a Tax Reserve);
- (iii) any disclosure required by law or by any court of competent jurisdiction, the rules and regulations of any regulatory body or stock exchange or any enquiry or investigation or any disclosure required or requested (whether formally or informally) by any governmental, official or regulatory body of a competent jurisdiction which is lawfully entitled to require such disclosure;
- (iv) any disclosure by the Company to CAPCO of any information received or generated by the Company pursuant to the Common Terms;
- (v) any disclosure by the Company to a person against whom Proceedings in any court of competent jurisdiction have been brought, as to whether the person bringing such Proceedings is a Consenting Beneficiary;
- (vi) any disclosure by the Company of details in connection with any Securities held in the Omnibus Trust including Reserved Securities;
- (vii) any disclosure to LBI, the LBI Trustee, SIPC or pursuant to or in connection with the Settlement Agreement (including any Onward Distribution Report as defined in the Settlement Agreement);
- (viii) any disclosure to any Released Person; and
- (ix) any disclosure to an entity appointed pursuant to Clause 18.7.

16.1.2 Notwithstanding the terms of any other agreement with the Company, all Consenting Beneficiaries authorise:

- (i) any disclosure by the Administrators to any subsequent supervisor, liquidator or other officeholder of the Company;
- (ii) any disclosure or use required in the exercise of the statutory duties of the Administrators or to the extent required by current insolvency practice or to enable the Administrators to carry out properly the duties of their office; and
- (iii) any disclosure by the Company to a third party storage provider that provides disaster recovery or data back-up services to the Company or to the Administrator's firm.

## **16.2 Restricted information**

Subject to Clauses 16.1.1(v) and 18.6, no Consenting Beneficiary shall have any right pursuant to the Common Terms to obtain from the Company any information regarding:

16.2.1 any other person which is held by the Company; or

16.2.2 the identity, quantity or any other details of any Security forming part of (or which may form part of) any LBI Distribution including Reserved Securities, and each Consenting Beneficiary hereby confirms and agrees that it has no right to obtain disclosure to it or to any other person of any such information relating to such Securities.

## **PART 6 – REPRESENTATIONS AND UNDERTAKINGS**

### **17 Provision of representations and warranties, and certain covenants**

#### **17.1 Initial Representations**

Each Consenting Beneficiary represents and warrants to the Company that as at the date its OSA Offer is made (if applicable) and its Consenting Beneficiary Accession Date (save to the extent that the Company otherwise agrees in accordance with Clause 17.6):

17.1.1 it is duly organised and validly existing under the laws of its jurisdiction of incorporation, or (if not applicable) under the laws of which it is established, and in good standing and has full power and authority to conduct its business activities;

17.1.2 it has (or, in respect of completed actions, at the relevant time had) the power to execute and deliver the relevant Consenting Beneficiary Agreement (and, if applicable, submit electronically or otherwise any Consenting Beneficiary Accession Document) and any documentation relating to the relevant Consenting Beneficiary Agreement to which it is a party (including any evidence of due authority, evidence in relation to any Common Terms Dispute and any Tax form or document) and to perform its obligations under the relevant Consenting Beneficiary Agreement and any documentation relating to the relevant Consenting Beneficiary Agreement to which it is a party and has taken all necessary action to authorise such execution, delivery, submission and performance;

17.1.3 such execution, delivery, submission and performance does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any term or provision of any agreement or instrument binding on or affecting it or any of its assets, and will not result in a breach of, or constitute a default or termination event under, any such agreement or instrument;

17.1.4 all actions or things required to be taken, fulfilled or done (including the obtaining of any consent or licence or the making of any filing or registration) by it with respect to the relevant Consenting Beneficiary Agreement (and, if applicable, any Consenting Beneficiary Accession Document) have been taken, fulfilled or done and are in full force and effect and all conditions of any such consents have been complied with;

17.1.5 its obligations under the relevant Consenting Beneficiary Agreement (and, if applicable, any Consenting Beneficiary Accession Document) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in proceedings in law));

17.1.6 it has made any statements and/or certifications required to be made by it on any Tax form or document delivered by it under Clause 18.5 and all such statements and/or certifications made by it pursuant to Clause 18.5 are true and correct and not misleading in any way; and

17.1.7 there is not pending or, to its knowledge, threatened against it any Proceedings that are likely to affect the legality, validity or enforceability against it of the relevant

Consenting Beneficiary Agreement or its ability to perform its obligations under the relevant Consenting Beneficiary Agreement,

(each an “Initial Representation”).

## **17.2 Information Representations**

**17.2.1** Each Consenting Beneficiary represents and warrants to the Company (save to the extent that the Company otherwise agrees in accordance with Clause 17.6) that:

- (i) the details of the Common Terms Dispute (if any) which it has supplied with its Consenting Beneficiary Accession Document or, if applicable, at a later point in time in accordance with Part 10 of the Common Terms are to the best of its knowledge and belief true, complete, accurate and not misleading;
- (ii) it is the legal owner of each LBI Asset Claim set out in its Information Pack and the beneficial owner, or acting with the authority of the beneficial owner, of each LBI Asset Claim set out in its Information Pack, free of any Security Interest (other than a Security Interest (if any) in favour of the Company or any of its Affiliates);
- (iii) it has received no recoveries from or on behalf of LBI in respect of or in connection with its LBI Asset Claims or Trust Entitlements; and
- (iv) it believes, after making due and careful enquiries, that any further information provided by it to the Company in accordance with the relevant Consenting Beneficiary Agreement, whether in response to requests for information from the Company or the Common Terms Dispute Expert, or otherwise, is true, complete, accurate and not misleading.

**17.2.2** Each Consenting Beneficiary represents and warrants to the Company that it has validly released or will have validly released by the Common Terms Effective Date irrevocably and unconditionally any LBI Duplicate Claim which it has or may have remaining as of the Common Terms Effective Date (the representation and warranty in this Clause 17.2.2, together with those in Clause 17.2.1, being an “**Information Representation**”).

**17.2.3** The Information Representations are made:

- (i) in the case of the representations in Clauses 17.2.1(i) (in respect of the details of a Common Terms Dispute (if any) which has been supplied with a Consenting Beneficiary Accession Document) to 17.2.1(iii), as at the date an OSA Consenting Beneficiary's OSA Offer is made (if applicable) and as at the relevant Consenting Beneficiary Accession Date;
- (ii) in the case of the representation in Clause 17.2.1(iv), as at the time of submission of any information requested by the Company or the Common Terms Dispute Expert in respect of any Common Terms Dispute set out in its Common Terms Dispute Notice; or
- (iii) in the case of the representation in Clause 17.2.2, on the Common Terms Effective Date.

### **17.3 Repetition**

Each Consenting Beneficiary shall be deemed to repeat in full the Representations contained at Clauses 17.2.1(ii) and 17.2.1(iii) on the Common Terms Effective Date and each Distribution Date.

### **17.4 Covenant to Notify incorrect or misleading Representations**

Each of the Consenting Beneficiaries undertakes that, if it becomes aware that any Representation given by it under this Clause 17 was incorrect or misleading in any material respect when made or repeated, it shall Notify the Company of this as soon as reasonably practicable.

### **17.5 Legal Claim for breach of Representation**

The Company may make a Legal Claim for damages against any Consenting Beneficiary for breach of any of the Representations or failure to comply with any covenants set out in this Clause 17, whether or not the relevant facts, matters or circumstances giving rise to the breach of any Representations were known to the Company, or could have been discovered (whether by any investigation made by or on behalf of the Company or otherwise) save as agreed in accordance with Clause 17.6.

### **17.6 Disclosure**

A Consenting Beneficiary will not be in breach of any Representation or liable for any failure to comply with any covenant set out in this Clause 17 to the extent that:

17.6.1 prior to the date for making any Representation or complying with such covenant, it has disclosed to the Company in writing:

- (i) any facts, matters or circumstances which, but for the operation of this provision, would have resulted in such Consenting Beneficiary being in breach of a Representation or failing to comply with such a covenant; and
- (ii) the Representations and/or such covenants against which disclosure is being made; and

17.6.2 the Company has notified the Consenting Beneficiary in writing that it accepts such disclosure as absolving the Consenting Beneficiary of any Legal Liability in respect of such Representations and/or covenants with respect to the facts, matters or circumstances so disclosed.

### **17.7 No inducement**

Each Consenting Beneficiary:

17.7.1 acknowledges that it has not been induced to enter into any Consenting Beneficiary Agreement by any representation, warranty, promise or assurance by the Company or any other person, save for those (if any) contained in the relevant Consenting Beneficiary Agreement; and

17.7.2 agrees that, except in respect of fraud, it has no right or remedy in respect of any representations, warranties, promise or assurance save for those rights and remedies specifically contained in the relevant Consenting Beneficiary Agreement.

## **17.8 Withholding tax acknowledgment**

Each Consenting Beneficiary acknowledges on its Consenting Beneficiary Accession Date that:

- 17.8.1 it may, but is not obliged to, deliver to the Company two originals of any Tax forms (including any U.S. Withholding Tax Form) referred to in Clause 18.5 at the time of the OSA Offer or of approval or non-approval of the Resolution, or at a later point in time, to the extent not delivered at the time of the OSA Offer or of approval or non-approval of the Resolution, or to the extent such Tax forms have become obsolete or incorrect or may otherwise be requested by the Company;
- 17.8.2 the Company may, in its absolute discretion, elect to defer any disposition in accordance with Clause 14.2.6(iii);
- 17.8.3 withholding or deduction in respect of U.S. withholding taxes, U.S. backup withholding or FATCA may be required from dispositions, if any, made to or in respect of it whether or not it has submitted (or in the future submits) a U.S. Withholding Tax Form, unless that U.S. Withholding Tax Form is correct and complete and the Company is entitled based on such U.S. Withholding Tax Form to make such disposition without reduction for U.S. withholding taxes, U.S. backup withholding, or FATCA withholding tax, as appropriate; and
- 17.8.4 if it does not provide the relevant form or does not do so in a timely fashion, dispositions to or in respect of it will be reduced by the amount of any applicable U.S. withholding tax, U.S. backup withholding, or FATCA withholding tax or any other applicable U.S. Tax as may be determined by the Company or its agents to be appropriate.



## **PART 7 – TAX**

### **18 Tax**

#### **18.1 Power to withhold Tax**

The Company may, in its absolute discretion, deduct, withhold or Reserve any amounts:

18.1.1 for or on account of any Tax due or payable to a Tax Authority, whether required by law or pursuant to any agreement binding on the Company; or

18.1.2 which in the reasonable opinion of the Company may be prudent to deduct, withhold or retain (including as part of a Tax Reserve),

in each case, in relation to:

- (i) any LBI Distribution, any Cumulative Gross Allocation, any Gross Distribution, any Permitted Deductions, any Net Distribution or any payment made, to be made, or deemed to be made in the process of implementing and/or operating the relevant Consenting Beneficiary Agreement; or
- (ii) any payment which the Company is treated as making for any Tax purposes (including circumstances where a payment is made, or treated as being made, because a Legal Claim against the Company is set off against a Legal Liability which is owed to the Company).

#### **18.2 Disclosure to Tax Authorities and Released Persons**

Irrespective of whether it is required to do so by law and in addition to its rights under Clause 16.1.1, the Company may make any disclosures or reports to any Tax Authority or Released Person which it considers (in its absolute discretion) are either necessary or desirable to make in respect of any matters which are the subject of, or arise as a result of, the implementation and operation of any relevant Consenting Beneficiary Agreement.

#### **18.3 Tax certificates**

Save as required by law and subject to Clause 18.6, the Company is not obliged to provide any Tax certificates in respect of any dividends or other payments made or received in respect of any Securities forming the basis of a Consenting Beneficiary's LBI Asset Claim or any LBI Distribution or the Omnibus Trust, and the Company shall have no liability for any withholding or deduction made in respect of any such dividend or other payment as a result of the Company not providing any such Tax certificate.

#### **18.4 Tax liabilities**

18.4.1 An amount equal to:

- (i) any actual or reasonably anticipated Tax liability (and any interest or penalties in respect of such Tax liability) of any LBI Asset Claim Customer or the Company (in any capacity, including as trustee of the Omnibus Trust), other than any Tax liability of the Company imposed on the Company's actual net income, profits or gains beneficially earned and received by the Company (as opposed to the Omnibus Trust or the Company's agents); and
- (ii) any amounts for or on account of Tax which are required to be deducted, withheld or retained by the Company or, which in the reasonable opinion of the Company may be prudent to deduct, withhold or retain (including as part



of a Tax Reserve), in the process of implementing and operating the relevant Consenting Beneficiary Agreement (or otherwise administering the Trust Financial Assets), including any Tax liabilities or related costs arising from:

- (a) receipt of any LBI Distributions;
- (b) the management, holding and/or sale of Trust Financial Assets;
- (c) the application of amounts in respect of, or payment of distributions to, Qualifying Consenting Beneficiaries or Non-Consenting Beneficiaries (including as directed in accordance with the Common Terms); and
- (d) capital or income earned or received (or deemed to be earned or received for any Tax purposes) on any Trust Financial Asset, and any other Taxes arising as a result of receiving, holding or causing to be applied or distributed any part of the Trust Financial Assets.

(such Tax liabilities, amounts and costs collectively, the “**Tax Burden Liability**”) shall be borne by the Consenting Beneficiaries in accordance with Clauses 8, 9 and 10 and this Part 7 (except to the extent any part of such Tax Burden Liability is properly allocable to and borne by any Non-Consenting Beneficiary pursuant to any relevant agreement between the Company and such Non-Consenting Beneficiary or any Final Order in relation to a Non-Consenting Beneficiary’s Trust Entitlement or in accordance with applicable law) whether chargeable directly or primarily against, or attributable directly or primarily to, the Consenting Beneficiaries (or to Cumulative Gross Allocations of, or Gross Distributions made to, Consenting Beneficiaries) or any other person.

**18.4.2** The Company shall be entitled:

- (i) to Reserve for, and/or to reduce, any Cumulative Gross Allocation or any Gross Distribution or other payment or discharge that may ultimately be made out of the LBI Distributions and other Trust Financial Assets constituting the Omnibus Trust by, the amount of such Tax Burden Liability (or any part thereof) in accordance with Clauses 8, 9 or 10 and subject to Clause 18.4.3;
- (ii) to be indemnified on an after-Tax basis out of amounts held in the Omnibus Trust (including any Tax Reserve) in respect of any Tax Burden Liability borne or payable by the Company in its capacity as trustee of the LBI Distributions (whether held in the Omnibus Trust (including any Tax Reserve) or otherwise); and
- (iii) subject to Clause 18.4.3, otherwise to deduct and/or retain amounts from any Gross Distribution or other amounts in satisfaction (or partial satisfaction) of such Tax Burden Liability.

**18.4.3** To the extent the Company reasonably considers that any part of the Tax Burden Liability for which it is making:

- (i) a Reserve is attributable to one or more Consenting Beneficiaries, it may treat it as an Attributable Reserve in accordance with and subject to Clause 8.2.3;

(ii) a payment or discharge of an obligation made from the Omnibus Trust (including any Reserve) is attributable to one or more Consenting Beneficiaries, it may treat it as an Attributable Payment in accordance with and subject to Clause 8.2.3; and

(iii) a Permitted Deduction is attributable to one or more Consenting Beneficiaries, it may allocate that portion of the Tax Burden Liability as Permitted Deductions to such Consenting Beneficiaries in the same manner as that described in Clause 8.2.3, and, to the extent the Company reasonably considers that any part of the Tax Burden Liability for which it is making Permitted Deductions cannot be so allocated, it may allocate that portion of the Tax Burden Liability to all Consenting Beneficiaries *pro rata* to each Consenting Beneficiary's Trust Entitlement.

18.4.4 If any part of the Tax Burden Liability was applied by way of a Permitted Deduction pursuant to Clause 10, but such amount represents a Tax Burden Liability that the Company, in its absolute discretion, determines will not become due or payable to any Tax Authority, on a Distribution Date following the date on which the Company makes such a determination, and to the extent this amount has not previously been distributed by the Company, such amounts will be distributed to the relevant Qualifying Consenting Beneficiary in accordance with the calculations in Parts 3 and 4 or otherwise Reserved by the Company (in its absolute discretion, subject to Clause 18.4.3).

18.4.5 If the Company determines, in its absolute discretion, that any part of the Tax Burden Liability in any Tax Reserve represents an amount that will not become due or payable to any Tax Authority, such part of the relevant Tax Reserve may (at the absolute discretion of the Company) cease to be held as a Reserve or instead Reserved for some other purpose.

## **18.5 Tax obligations**

A Consenting Beneficiary will:

18.5.1 upon becoming a Consenting Beneficiary; and

18.5.2 as soon as reasonably practicable after any written request by the Company,

deliver to the Company at Trust Property Level 23, 25 Canada Square, Canary Wharf, London E14 5LQ, United Kingdom (marked for the attention of Tax Department) two originals of any U.S. Withholding Tax Forms (to the extent such Consenting Beneficiary would like to claim any available exemption from, or reduction in the rate of, U.S. withholding tax, backup withholding, or FATCA withholding tax on dispositions under these Common Terms) or such other document or information:

(i) which might enable the Company or any other Consenting Beneficiary to mitigate any liability to Tax or to reclaim any amount deducted or withheld, whether by the Company or any other person, for or on account of any Tax; or

(ii) in order to allow the Company to make a payment in accordance with the relevant Consenting Beneficiary Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate.

in each case with any such form, document or other information necessary for such U.S. Withholding Tax Forms or such other document or information to be accurate and completed in a manner reasonably satisfactory to the Company.

#### **18.6 Non-confidential information**

The Company will, at the expense of a Consenting Beneficiary, pass on to that Consenting Beneficiary any non-confidential information (if any) that is in the Company's possession or control which that Consenting Beneficiary might reasonably request to assist that Consenting Beneficiary in reclaiming any Tax, or claiming credit or other relief in respect of amounts for or on account of any Tax withheld or deducted by the Company or any other person.

#### **18.7 Withholding agent**

The Company may, but shall not be required to, appoint:

18.7.1 a U.S. person that is a "financial institution" within the meaning of US Treasury Regulations § 1.1441-1(b)(2)(ii); or

18.7.2 any person that is a "qualified intermediary" within the meaning of US Treasury Regulation § 1.1441-1(e)(5)(ii).

to receive any LBI Distribution and to deal with the Trust Financial Assets as appropriate, including paying any Net Distributions, making any Reserves or payment out of Reserves, withholding, deduction, disclosure or reporting permitted by this Clause 18 in respect of any amounts received or to be received for or on account of any Consenting Beneficiary or Non-Consenting Beneficiary and in respect of any amounts paid or credited to the account of any Consenting Beneficiary or any Non-Consenting Beneficiary and the Company shall be deemed to have satisfied its duty of care in selecting a custodian, nominee, agent or other person referred to in Clause 21.7.1 if it appoints such a person as custodian, nominee or otherwise as contemplated by Clause 21.7.1.

## **PART 8 – MANAGEMENT OF TRUST FINANCIAL ASSETS BY COMPANY**

### **19 Segregation**

#### **19.1 Segregation of the Omnibus Trust**

The property held in the Omnibus Trust from time to time shall be:

19.1.1 segregated, and held separate from the assets of the Company forming part of the general estate of the Company available to its general unsecured creditors; and

19.1.2 held in one or more accounts by or on behalf of the Company in its capacity as trustee for the benefit of the relevant Consenting Beneficiaries and any other person (if any) entitled in law to any such property.

#### **19.2 Segregation where Company treated as a Consenting Beneficiary**

Where the Company is entitled to be treated as a Consenting Beneficiary pursuant to Clause 28, the Company shall continue to maintain the segregation of the Omnibus Trust (including any part attributable to the Company in its capacity as a Consenting Beneficiary) from the assets of the Company forming part of the general estate of the Company available to its general unsecured creditors, save to the extent any such part attributable to the Company in its capacity as a Consenting Beneficiary is applied as permitted by Clause 10.2 or paid to the Company as a Net Distribution in accordance with the Common Terms.

#### **19.3 Holding and investment of Trust Financial Assets**

Any Money or Securities (including Derived Financial Assets) resulting from the deposit or reinvestment of a Trust Financial Asset shall, when they are received and after any Tax deducted at source, be added to and treated as part of the Omnibus Trust and held on trust in accordance with Clause 8.1.

### **20 Sale of LBI Distribution**

#### **20.1 Sale for cash**

Subject to Clauses 20.3 and 20.4, the Company may sell for cash consideration, in the manner and in the timescale set out in this Clause 20, any Security held in the Omnibus Trust which is not already held in the form of US dollar denominated cash. Sale for the purpose of this Clause 20 includes any conversion or exchange of non-US dollar denominated sale proceeds or Money into US dollar denominated cash. The Company shall be entitled to convert such proceeds or Money (as applicable) into US dollars at a rate of exchange for the purchase of US dollars with such currency available to the Company at the time of receipt of such proceeds or Money (as applicable), or on such other date as the Company may select at its absolute discretion.

#### **20.2 Consent and authority to sell**

Each Consenting Beneficiary hereby authorises, consents and unconditionally agrees to the Company:

20.2.1 having the power to deal with any Security or Money from time to time held in the Omnibus Trust including the power to sell and give good receipt for any sale proceeds in respect thereof; and

20.2.2 providing any assurance to any person in its capacity as trustee of the Omnibus Trust or on behalf of the Consenting Beneficiaries as to the Company's entitlement to

deal with such Securities and Money and the validity of any sale process in respect of such Securities and Money.

### **20.3 Proceeds of sale**

The Company shall hold the proceeds from the sale of any assets comprised in the Omnibus Trust on trust as part of the Omnibus Trust.

### **20.4 Timescale of sale**

The Company may in its absolute discretion choose not to sell at all or for a period of time any Trust Financial Asset consisting of a Security and, in particular, the Company shall have an absolute discretion to delay, not delay and/or stagger sales as it considers appropriate (in its absolute discretion).

### **20.5 No liability with respect to timing of sale**

The Company shall have no liability (absent fraud) to any Consenting Beneficiary for any loss alleged to be attributable to a delay in selling any Security or otherwise with respect to the timing of the sale of any Security.

### **20.6 Protection from fall in value of Securities**

If the Company has Reserved or considers that it may in the future Reserve specific Securities in relation to Legal Claims, then the Company may, but shall be under no obligation to, seek and/or arrange insurance, indemnities or other protections from third parties in respect of any change in the value of those Securities.

### **20.7 General power**

The Company may sell any Security to any person under a sale effected in accordance with this Clause 20 including to a person who is or may be a Customer.

## **21 Role of the Company with regard to Trust Financial Assets**

### **21.1 Duties**

Each of the Consenting Beneficiaries agrees that the Company shall have only those duties, obligations and responsibilities with respect to the Trust Financial Assets as are expressly specified in the relevant Consenting Beneficiary Agreement (and no others shall be implied).

### **21.2 Instructions**

Each Consenting Beneficiary agrees that the Company is irrevocably authorised and instructed:

21.2.1 to act or not to act (at the Company's absolute discretion) in relation to the Trust Financial Assets including in connection with the management, segregation, sale and investment of Trust Financial Assets as contemplated by the Common Terms; and

21.2.2 generally, to exercise any power, discretion or authority relating to Trust Financial Assets as is expressed in or contemplated by or in connection with the Common Terms.

in each case without any further authority or instruction of any kind from any Consenting Beneficiary and even if any contrary authority or instruction is or is purported to be given by or on behalf of any Consenting Beneficiary.

### **21.3 Standard of care of the Company**

21.3.1 Subject to Clause 6.1 and this Clause 21.3 and the other provisions of the Common Terms, the Company shall act in accordance with the standard of care imposed on a reasonable trustee in respect of the management, sale and investment of the Trust Financial Assets.

21.3.2 The Consenting Beneficiaries agree that the Company shall have no liability to any of them in connection with its duties set out in Clause 21.1 and this Clause 21.3 and any other provision of either Consenting Beneficiary Agreement, absent fraud on the part of the Company.

21.3.3 Having regard to the duties of the Company relating to the Common Terms but subject to the qualifications in Clauses 6.1 and 21.3.2 and any other provision of the Common Terms, the Company:

(i) shall not, save as permitted by the Common Terms:

(a) take, or (to the extent that, in its capacity as trustee, it has the power to control) permit another person to take, any action which would result in any Trust Financial Assets ceasing to be Trust Financial Assets but this shall not limit the Company's ability to sell any Trust Financial Asset (on terms that the proceeds of such sale become Trust Financial Assets), make distributions and applications and to account to the person beneficially entitled thereto in accordance with the Common Terms; and

(b) omit to take, or (to the extent that, in its capacity as fiduciary, it has the power to control) permit another person to omit to take, any action the omission of which would result in Trust Financial Assets ceasing to be Trust Financial Assets;

(ii) may, but shall not be obliged to, pending any sale, distribution and/or application in respect of any Trust Financial Asset pursuant to Clause 10.2:

(a) deposit prudently any Trust Financial Assets; and/or

(b) invest any Trust Financial Assets in any Money or Securities as it considers appropriate (in its absolute discretion) and vary, re-invest or sell any such Money or Securities.

21.3.4 However, notwithstanding Clauses 21.1, 21.3.1 and 21.3.3 or any other term of any Consenting Beneficiary Agreement:

(i) nothing in any Consenting Beneficiary Agreement shall impose on the Company any obligation to any person other than any party to any Consenting Beneficiary Agreement;

(ii) the Company shall not be obliged to take any action, or refrain from taking any action, or to procure the same in respect of any other person (to the extent it has power to do so):

(a) if it would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty or duty of confidentiality; and

- (b) until the Company has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with any Consenting Beneficiary Agreement;
- (iii) nothing in any Consenting Beneficiary Agreement shall require any interest, penalty or return (howsoever described) to be paid by the Company on any sum owing to such Consenting Beneficiary whether such interest, penalty or return (howsoever described) is referable to a delay, deferral, dispute or otherwise; and
- (iv) nothing in any Consenting Beneficiary Agreement shall restrict the Company from entering into a settlement with any Non-Consenting Beneficiary.

21.3.5 Section 1 of the Trustee Act 2000 shall not apply to the duties of the Company in relation to the trusts constituted by or referred to in the relevant Consenting Beneficiary Agreement (including any trust referred to in Clause 8.1 for the benefit of Consenting Beneficiaries). Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of the relevant Consenting Beneficiary Agreement, the provisions of the relevant Consenting Beneficiary Agreement shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of any relevant Consenting Beneficiary Agreement shall constitute a restriction or exclusion for the purposes of that Act.

21.3.6 Notwithstanding any other provision of the Common Terms, any liability for fraud shall not be excluded.

## **21.4 The Company's duty to collect in Trust Financial Assets**

Subject to the right of the Company to elect to have LBI or the LBI Trustee defer any LBI Distribution pursuant to Section 8.02(c)(A) of the Settlement Agreement, the Company shall, to the extent that it is able to do so in its capacity as trustee, use reasonable endeavours to collect from LBI the Securities and/or Money comprised in the LBI Distributions and to remove any impediment on any Security or Money so received being Trust Financial Assets, provided that the Company shall not be required to transfer any asset to which the Company is absolutely entitled nor to expend any amount on discharging any Legal Liability attaching to or associated with any Security or Money. If there is any such Legal Liability then the cost of discharging it shall be borne by the Omnibus Trust.

## **21.5 Right of the Company to make appropriations**

The Company shall not appropriate for itself any Trust Financial Assets save in accordance with, and to the extent of, its rights to make a Permitted Deduction or receive Net Distributions pursuant to the Common Terms or pursuant to Clause 12.

## **21.6 Reliance on advice and services**

The Company may engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, investment banks or other experts or professional advisers (whether obtained by the Company or by any other person) whose advice or services may at any time seem necessary, expedient or desirable including in connection with the valuation, receipt, holding, investment or sale of any asset forming part of or derived or converted from any property in the Omnibus Trust.

## **21.7 Appointment of custodians, nominees and agents**

21.7.1 The Company may appoint and pay any person to act as a custodian, nominee or agent on any terms in relation to any Trust Financial Assets as the Company may determine, including for the purpose of depositing with a custodian any document relating to any trust contemplated by the relevant Consenting Beneficiary Agreements and the Company shall not be responsible (absent fraud) under or in connection with the relevant Consenting Beneficiary Agreement for any loss or Legal Liabilities incurred or in respect of any Legal Claim or any proceedings brought by reason of the misconduct, omission or default on the part of any person appointed by it or be bound to supervise the proceedings or acts of any such person.

21.7.2 Without prejudice to any right on the part of the Company itself to take action against any such custodian, nominee, agent or other person appointed by or on behalf of the Company which right shall not be excluded by any term of any Consenting Beneficiary Agreement, such custodian, nominee, agent or other person shall be entitled to benefit (absent fraud) from the exculpatory provisions in Clause 21.3 as if it were the Company.

## **21.8 Indemnity insurance**

The Company may, but shall be under no obligation to, purchase and maintain, indemnity insurance against any future Legal Liability in connection with any LBI Asset Claim, Trust Entitlement or Trust Financial Asset.

## **21.9 Hedging**

The Company may, but shall be under no obligation to, enter into hedges in connection with one or more Trust Financial Assets. If it does so, then the Company will obtain advice from a reputable investment adviser on the form and pricing of the hedge. The benefit and the burden of any such hedge shall accrue to and be borne by the Omnibus Trust.

## **22 Corporation Events, Corporate Actions and Derived Financial Assets**

### **22.1 No obligation on the Company**

The Company may but shall be under no obligation to take any steps with regard to any Corporate Action or Corporation Event in relation to Securities which are held in the Omnibus Trust and each Consenting Beneficiary agrees that, except in the case of fraud, the Company shall not be liable to it by virtue of taking or failing to take any steps with regard to any Corporate Action or Corporation Event.

### **22.2 Derived Financial Assets form part of Trust Financial Assets**

To the extent that any Derived Financial Assets (including any income) are actually received by the Company as a result of the occurrence of a Corporate Action or a Corporation Event relating to a Trust Financial Asset, such Derived Financial Assets will be held in the Omnibus Trust.

## **23 Conflict of interest**

Each Consenting Beneficiary hereby authorises the Company to act under the Consenting Beneficiary Agreements (including the Common Terms) notwithstanding that the Company, or any of its Affiliates, may have a material interest in the Omnibus Trust and Settlement Agreement or that the Company may have a conflict of duty or interest.



## **24 Settlement Agreement**

The Company shall, having regard to the Common Terms Claims of the Consenting Beneficiaries, as a whole, comply with its obligations under the Settlement Agreement as they relate to the Omnibus Trust and take such action as may be reasonable in all circumstances to enforce its rights under the Settlement Agreement as they relate to the Omnibus Trust, where any non-compliance or failure to take such action, respectively, could impact materially and adversely on the LBI Distributions.

## **PART 9 – MISCELLANEOUS**

### **25 Turnover**

#### **25.1 Recoveries by Consenting Beneficiaries**

25.1.1 If a Consenting Beneficiary receives or recovers from any person (whether on, prior to or after the Consenting Beneficiary Accession Date) any amount relating to its LBI Asset Claim, the LBI Distributions, the Omnibus Claim or its Trust Entitlement (subject to the provisos below, each a “Turnover Recovery” and the USD Value of such Turnover Recovery, as at the date of receipt or recovery, being its “Recoverable Turnover Value”), then it shall immediately Notify the Company of such Turnover Recovery following the later of the Common Terms Effective Date and the date of such Turnover Recovery and (whether or not it Notifies the Company) (at the Company’s election):

- (i) the subsequent Gross Distribution(s) of such Consenting Beneficiary shall be reduced accordingly by the Recoverable Turnover Value; or
- (ii) following the later of the Common Terms Effective Date and the date of such Turnover Recovery such Consenting Beneficiary shall pay in cash immediately to the Company for the account of the Omnibus Trust (subject to any withholdings or deductions such Consenting Beneficiary is required by law to make from such payment to the Company) the Recoverable Turnover Value or such amount as would leave such Consenting Beneficiary in no better or worse after-tax position than it would be in had it not received such Turnover Recovery.

provided that in respect of both Clauses 25 1 1 and 25 1 1(ii) if the Recoverable Turnover Value constitutes or may result in any “Customer Double Recovery” as defined in the Settlement Agreement, then notwithstanding any other provision of any Consenting Beneficiary Agreement:

- (a) the Company shall be entitled to apply the proceeds of such Customer Double Recovery in accordance with Section 2.06(b) of the Settlement Agreement; and
- (b) the Consenting Beneficiary shall co-operate and do all that is necessary or desirable in the opinion of the Company to enable the prompt compliance by the Company with its obligations under and in connection with the Settlement Agreement in connection with any such Customer Double Recovery, and

further provided that the following receipts or recoveries shall be excluded from the definition of Turnover Recovery and Recoverable Turnover Value:

- (I) a permitted recovery pursuant to any Consenting Beneficiary Agreement;
- (II) a recovery pursuant to any CAPCO policy or LBHI guarantee of the Company’s or LBI’s obligations; or
- (III) a recovery (other than a recovery described in paragraph (II) above) under a Third Party Support Obligation in respect of a Legal Claim but, for the purpose of this paragraph (III), only

that part of any such recovery which, when aggregated with all other recoveries in respect of such Legal Claim, does not exceed such Legal Claim.

25.1.2 Amounts to be turned over in accordance with Clause 25.1.1 include any amount received or recovered from any person:

- (i) \_\_\_\_\_ in relation to any Released Common Terms Claim or from LBI in relation to any LBI Duplicate Claim; and
- (ii) \_\_\_\_\_ whether in satisfaction of an order, judgment, decision or award of a court or tribunal, whether in contravention of Clause 7.1 or otherwise, or a settlement or otherwise.

## **25.2 Covenants in relation to Intermediary Consenting Beneficiary Distribution**

Each Consenting Beneficiary undertakes to the Company, as at the Common Terms Effective Date, that where the Consenting Beneficiary:

25.2.1 has received an Intermediary Consenting Beneficiary Distribution on or prior to the Consenting Beneficiary Accession Date, promptly after the later of the Common Terms Effective Date and its relevant Consenting Beneficiary Accession Date; or

25.2.2 receives an Intermediary Consenting Beneficiary Distribution after the Consenting Beneficiary Accession Date, promptly following the later of the Common Terms Effective Date and the receipt of such Intermediary Consenting Beneficiary Distribution.

the Consenting Beneficiary shall:

- (i) \_\_\_\_\_ provide Notice of such Intermediary Consenting Beneficiary Distribution to the Company, together with information in reasonable detail about it; and
- (ii) \_\_\_\_\_ (whether or not it Notifies the Company) turn over to the Company such Intermediary Consenting Beneficiary Distribution to the extent required in accordance with Clause 25.1 (assuming for the purpose of this Clause 25.2 that any reference to the Recoverable Turnover Value in Clause 25.1.1 includes a reference to such Intermediary Consenting Beneficiary Distribution).

## **26 Third Party Support Obligations**

### **26.1 Surviving Third Party Supported Claims**

If:

26.1.1 the release by a Consenting Beneficiary of a Legal Claim which it has against any Released Claim Party pursuant to Clause 6.1 would affect a guarantee, indemnity or other obligation given by a Third Party (excluding any Released Claim Party) in respect of that Legal Claim (a “Third Party Support Obligation”) such that the Third Party Support Obligation would be extinguished by such release; and

26.1.2 no Legal Liability (including by reason of any subrogation or counter-indemnity) on the part of any Company-Related Released Party to such Third Party or any other person might arise or subsist under or in connection with any such Third Party Support Obligation.

then, notwithstanding Clause 6.1, that Released Common Terms Claim (a “Surviving Third Party Supported Claim”) shall not be released by the Consenting Beneficiary but shall continue to exist to the extent necessary for the Third Party Support Obligation to remain effective.

## **26.2 No entitlement to enforce Surviving Third Party Supported Claims**

Notwithstanding Clause 26.1, no Consenting Beneficiary shall be entitled to make, enforce or prove any Legal Claim against any Released Claim Party in respect of such Surviving Third Party Supported Claim, whether in any legal proceedings, by way of proof in any insolvency proceedings affecting any Released Claim Party or by way of set-off, netting, counterclaim or attachment or against any person who may derive a Legal Claim in respect of a Surviving Third Party Supported Claim, whether by reason of subrogation or otherwise.

## **26.3 Consenting Beneficiaries’ rights in respect of Surviving Third Party Supported Claims**

Surviving Third Party Supported Claims shall be treated as Released Common Terms Claims and shall not be taken into account by the Company for the purposes of calculating the Common Terms Claims of the relevant Consenting Beneficiary.

## **26.4 Discharge of Surviving Third Party Supported Claims**

Satisfaction by any person of a Common Terms Claim in respect of a Surviving Third Party Supported Claim of the Consenting Beneficiary shall constitute a valid discharge *pro tanto* of the Surviving Third Party Supported Claim against any Company-Related Released Party.

## **26.5 Limited recourse**

No person shall have any recourse in respect of a Surviving Third Party Supported Claim, other than against the Third Party with the relevant Third Party Support Obligation.

## **27 Effect of the Common Terms on Legal Claims**

Save as regards any reduction in Legal Liability as a result of any appropriation by way of Permitted Deductions in accordance with the Common Terms, nothing in the Common Terms shall:

27.1.1 release any Legal Claims of the Company against any person or discharge or affect any existing or future Legal Liability of any Consenting Beneficiary to the Company;  
or

27.1.2 save for the Released Common Terms Claims, release any claim of any Consenting Beneficiary against the Company or discharge or affect any existing or future Legal Liability of the Company to a Consenting Beneficiary.

## **28 Transfer of Trust Entitlement Positions to the Company**

### **28.1 Transfers to the Company**

28.1.1 Nothing in either Consenting Beneficiary Agreement shall:

- (i) restrict any Consenting Beneficiary from Transferring (in whole or in part) its rights and obligations under or in respect of any relevant Consenting Beneficiary Agreement, LBI Asset Claims, Common Terms Claim or Best Claim (a “Transferrable Interest”) to the Company or entering into any other agreement or arrangement pursuant to which the Company can take the

benefit of the rights (whether in whole or in part) of that Consenting Beneficiary under or in respect of its Transferrable Interest for such consideration as may be agreed between the Company and such Consenting Beneficiary; or

(ii) otherwise restrict the transfer or assignment of all or part of any Transferrable Interest to the Company.

28.1.2 The Company shall be entitled to accept a Transfer or any other agreement or arrangement referred to in Clause 28.1.1(i) and may accept a Transfer or any other agreement or arrangement referred to in Clause 28.1.1(i) from any Consenting Beneficiary or other Customer upon such terms and at such a price as the Company and such Consenting Beneficiary or other Customer may agree in respect of all or any part of its Transferrable Interest.

## **28.2 Company as Consenting Beneficiary**

To the extent the Company holds or is otherwise entitled to, or there is a Transfer to the Company of (in each case whether before or after the Common Terms Effective Date) all, or part, of any Transferrable Interest:

28.2.1 the Company shall be treated as a Consenting Beneficiary in respect of that Transferrable Interest (or that part thereof) for the purpose of benefiting from and preserving and enforcing its rights (including its voting rights in respect of any amendment, acceptance or approval threshold, subject to the proviso to the definition of Common Terms Effective Date) in connection with all, or part, of its Transferrable Interest (subject to any deductions for any Costs Liability or Tax Burden Liability attributable to such rights of the Company);

28.2.2 the Company in its capacity as a Consenting Beneficiary under each Consenting Beneficiary Agreement shall not be subject to any obligation under or in connection with any Consenting Beneficiary Agreement;

28.2.3 the Company in its capacity as Consenting Beneficiary under each Consenting Beneficiary Agreement shall benefit from such Consenting Beneficiary Agreement without the need for any further accession to such Consenting Beneficiary Agreement or the taking of any other action;

28.2.4 the Company in its capacity as a Consenting Beneficiary under each Consenting Beneficiary Agreement shall be treated as having received from, and (where applicable) delivered to, the Company any Information Pack or other relevant Notice, communication or document which the Company considers appropriate (in its absolute discretion) and without the need for the Company in any capacity to fulfil any requirements of Clause 42 in connection with any such receipt or delivery; and

28.2.5 any reference to “**Consenting Beneficiary**” for the purpose of any relevant Consenting Beneficiary Agreement shall be construed to exclude the Company, save to the extent that the Company determines it necessary or desirable (in its absolute discretion) from time to time for such exclusion not to apply (in whole or in part).

## **29 No effect on Non-Consenting Beneficiaries**

29.1.1 Unless and until a Non-Consenting Beneficiary becomes a Consenting Beneficiary by acceding to a Consenting Beneficiary Agreement, nothing in the Common Terms is intended to or shall have the effect of or be deemed to have the effect of:

- (i) modifying any Legal Claim of any such Non-Consenting Beneficiary against the Company or any other person or against or in respect of any LBI Distribution;
- (ii) affecting or adjusting the Trust Entitlements (if any) of any such Non-Consenting Beneficiary;
- (iii) affecting the Legal Claims of the Company or any other person against such Non-Consenting Beneficiary; or
- (iv) making such Non-Consenting Beneficiary or other Customer a party to or bound by the Common Terms or providing rights or benefits to such Non-Consenting Beneficiary (except that CRA Signatories who are not CRA Omnibus Beneficiaries shall be bound but not affected).

29.1.2 Nothing in the Common Terms shall operate so as to place the Company under any obligations to Non-Consenting Beneficiaries and the Company shall have no greater rights, powers or duties in respect of Non-Consenting Beneficiaries than it has in law before the entry into a Consenting Beneficiary Agreement incorporating the Common Terms.

## **30 General override**

Notwithstanding any of the other terms of the Consenting Beneficiary Agreements (including any of the Common Terms), nothing in such terms is intended to or shall have the effect of or be deemed to have the effect of requiring the Company to act or refrain from acting in breach of any law (including any Final Order). This Clause 30 is for the Company's benefit alone and may, in any particular instance or circumstances, be waived by the Company in its absolute discretion.

## **31 No proprietary Legal Claims**

31.1.1 The terms of the Omnibus Trust, as set out in these Common Terms do not, to the extent such trust is in favour of the Consenting Beneficiaries, at any time create or give rise to any proprietary interest of any nature whatsoever of any individual Consenting Beneficiary in any specific Security or Money comprised therein. The interest of the Consenting Beneficiaries in and to the Omnibus Trust is an interest in a share in the pool of property comprised in that trust, such share being as determined under the Common Terms.

31.1.2 The Company shall not be obliged under the Common Terms to recognise any interest of any person claiming through a Consenting Beneficiary into the trusts of the LBI Distributions constituted under the Common Terms or arising at law unless that person is a valid Trust Entitlement Transferee of that Consenting Beneficiary under and in accordance with the relevant Consenting Beneficiary Agreement.

31.1.3 No Consenting Beneficiary shall have any proprietary interest in or Legal Claim in relation to the Omnibus Claim or LBI Distributions other than its Proprietary Claim.

## **32 Third party rights**

### **32.1 Mutual enforcement of rights (including third party beneficiary rights)**

32.1.1 Where the Common Terms require the Company to perform obligations or discharge duties under a Consenting Beneficiary Agreement to Consenting Beneficiaries generally (including Consenting Beneficiaries party to the other Consenting Beneficiary Agreement), then each Consenting Beneficiary party to such Consenting Beneficiary Agreement may only enforce its rights against the Company under the Consenting Beneficiary Agreement to which such Consenting Beneficiary is party.

32.1.2 Where the Common Terms require any Consenting Beneficiary (“**Relevant Customer**”) to perform obligations or discharge duties under a Consenting Beneficiary Agreement (“**Relevant Agreement**”) for the benefit of all Consenting Beneficiaries generally, and not just those who are a party to that Consenting Beneficiary Agreement, then the Relevant Customer shall be obliged to perform such obligations and discharge such duties for the benefit of each Consenting Beneficiary party to the other Consenting Beneficiary Agreement who shall have rights as a third party beneficiary of the Relevant Agreement to enforce its rights as a Consenting Beneficiary against the Relevant Customer, provided that such Consenting Beneficiary:

- (i) is not in breach of its own obligations to the Company and to each Consenting Beneficiary party to the Relevant Agreement to perform its equivalent obligations in favour of Consenting Beneficiaries party to the Relevant Agreement; and
- (ii) shall be bound by the provisions of any jurisdiction clause in the Relevant Agreement as if it were a Consenting Beneficiary party to the Relevant Agreement in order to rely upon or enforce any of its rights as a third party beneficiary.

32.1.3 Where under these Common Terms any proprietary or beneficial interest is created in any property for the benefit of Consenting Beneficiaries generally, that interest is for the benefit of all Consenting Beneficiaries under each Consenting Beneficiary Agreement in accordance with and subject to the provisions of these Common Terms.

### **32.2 Third Party rights**

32.2.1 The Administrators and any subsequent supervisor, liquidator or other officeholder of the Company shall be entitled to enforce any term of the Consenting Beneficiary Agreements purporting to confer a benefit on them, as if they were parties to the Consenting Beneficiary Agreements.

32.2.2 Subject to Clause 32.2.1 and except as provided for in Clauses 4.4, 6, 7, 16.1.2, 21.7.2, 26.2, 26.5, 32.1.2, 34.2, 36, 37 and 52.3, nothing in the Common Terms is intended to, nor should it be construed as purporting to, confer any rights on, or to be enforceable by, any Third Party.

32.2.3 Any provision of the Common Terms which may be amended or waived in accordance with Clause 41 may be amended without the consent of any person named or described in Clauses 4.4, 6, 7, 16.1.2, 21.7.2, 26.2, 26.5, 32.1.2, 34.2, 36, 37 and 52.3.

### **33 Authority**

Each Consenting Beneficiary irrevocably authorises the Company to make such Legal Claims against, give such release or discharge to, sign or execute any agreement or instrument with, and/or take all such action (in each case, as the Company may reasonably consider appropriate) in relation to, any Intermediary, in the name of, and on behalf of, the Consenting Beneficiary for the purpose of establishing, pursuing or enforcing any distribution of, or any Legal Claim for the distribution of, any Security or Money from an Intermediary to the Company.

### **34 Power of the Company to delegate**

#### **34.1 Delegation**

The Company shall (without prejudice to the full terms of the relevant Consenting Beneficiary Agreement) have the right, to the extent that such rights are necessary or desirable for or reasonably incidental to the implementation of such relevant Consenting Beneficiary Agreement or these Common Terms, to:

34.1.1 employ and remunerate accountants, actuaries, lawyers and/or other professional advisers or agents (including any custodian, nominee or agent appointed pursuant to Clause 21.7); and

34.1.2 delegate in writing to any person (including any custodian, nominee or agent appointed pursuant to Clause 21.7) all or any of the functions, rights, obligations, authorities, powers and discretions conferred upon the Company under such relevant Consenting Beneficiary Agreement, and from time to time to revoke any such delegation, provided that the Company itself shall not be responsible (absent fraud on the part of the Company itself) for any act or omission of any such delegate (being in respect of the OSA, an OSA delegate and, in respect of the Amended and Restated CRA, a CRA delegate and in each case being a “Common Terms Delegate”).

#### **34.2 No challenge to the validity of acts of the Company or its Common Terms Delegates**

Subject to any mandatorily applicable provision of the Insolvency Act, no Consenting Beneficiary shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Company, or any Common Terms Delegate, in pursuance of its functions or duties under the relevant Consenting Beneficiary Agreement, or the exercise or non-exercise by the Company or any Common Terms Delegate, in good faith, of any power or discretion conferred upon it for the purposes of the relevant Consenting Beneficiary Agreement, and neither the Company nor any Common Terms 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 fraud of the Company or to the fraud of any Common Terms Delegate.

### **35 Consenting Beneficiaries to co-operate**

The Consenting Beneficiaries shall:

35.1.1 co-operate with and render such assistance to the Company as it may reasonably require, including the provision of information and documents, in connection with their LBI Asset Claims and the operation of the relevant Consenting Beneficiary Agreement;



35.1.2 provide such assistance as the Company may reasonably require in connection with gathering in any Trust Financial Assets, removing any impediments upon Security or Money being Trust Financial Assets or enforcing obligations owed to the Company under or in respect of any Consenting Beneficiary Agreement; and

35.1.3 use all reasonable endeavours to ensure that maximum effect is given to the relevant Consenting Beneficiary Agreement.

## **36 No liability for information**

36.1.1 Neither the Company, nor any other Company-Related Released Party, nor any member of Creditors' Common Terms Committee Group shall have any obligation, responsibility or Legal Liability (absent fraud) for any loss or damage arising directly or indirectly from any incorrect, misleading or omitted information (including any estimates or valuations) in connection with the LBI Assets or any Trust Entitlement, whether in the Books of the Company, the Information Memorandum, any Information Pack or any related communication or notice.

36.1.2 Each Consenting Beneficiary agrees that its sole remedy (if any) in respect of any such loss or damage arising from such incorrect, misleading or omitted information is to challenge any such incorrect, misleading or omitted information pursuant to Part 10 of these Common Terms.

36.1.3 Each Consenting Beneficiary agrees to hold harmless and indemnify the Company, each other Company-Related Released Party and each member of the Creditors' Common Terms Committee Group for any Legal Liability which any Company-Related Released Party or member of the Creditors' Common Terms Committee Group may suffer arising from or in connection with a dispute with that Consenting Beneficiary over any incorrect, misleading or omitted information in such information.

## **37 Non-reliance on Information Memorandum**

37.1 So far as permitted by law and except in the case of fraud, each Consenting Beneficiary agrees that neither the Company nor any other Released Persons shall be liable in respect of anything done or suffered by a Consenting Beneficiary in reliance on the Information Memorandum. The Consenting Beneficiary confirms that it made its own independent decision to enter into its Consenting Beneficiary Agreement and/or approve the Resolution and as to whether that Consenting Beneficiary Agreement is appropriate or proper for it based upon its own judgment and upon advice from its own advisers as it has deemed necessary. The Consenting Beneficiary confirms that it did not rely on any communication (written or oral) of or from the Company or any other Released Persons, including the Information Memorandum, as a recommendation or an inducement to enter into its Consenting Beneficiary Agreement and/or approve the Resolution, it being understood that information and explanations relating to the Common Terms and the Consenting Beneficiary Agreements in the Information Memorandum were not relied upon or treated as a recommendation or an inducement to enter into any Consenting Beneficiary Agreement.

37.2 Nothing in any Consenting Beneficiary Agreement has or will exclude any liability the Company may have under the regulatory system (as defined in the FSA Rules) which may not be excluded or restricted thereunder.

### **38 Amendment of foreign law contracts or arrangements**

Where the Common Terms purport to amend any contract or other arrangement (including any trust) which is governed by a law other than English law, the amendment will be effective to the maximum extent permitted under the proper law of the contract or arrangement. Each Consenting Beneficiary undertakes to the Company to take all actions that the Company requests (including executing such instruments or entering into such agreements, in each case governed by the relevant proper law) to perfect any amendments to such contracts or arrangements in order to ensure that such amendments are effective to the fullest extent possible under such governing law.

### **39 Further Assurances**

Each Consenting Beneficiary agrees, so far as permitted by applicable law, to sign and execute all such documents and do all such further acts and things as may be necessary, in the opinion of the Company, to give effect to the modification and releases contemplated by the Common Terms.

### **40 Costs Liability**

#### **40.1 Each Consenting Beneficiary agrees to pay to the Company:**

40.1.1 in the case of each OSA Consenting Beneficiary, the Costs Liability attributable or otherwise allocated to it, such payment being due on notice from the Company including pursuant to a Notice of Distribution and, whether or not so notified, permitted to be deducted from any Gross Distribution to that OSA Consenting Beneficiary pursuant to Part 4; and

40.1.2 in the case of each CRA Omnibus Beneficiary, the Costs Amount applicable to it, to the extent required pursuant to the Amended and Restated CRA.

### **41 Amendment of Common Terms**

#### **41.1 Consent to amend Common Terms**

41.1.1 Subject to Clauses 41.3 and 41.5, no amendment, modification or waiver in respect of the Common Terms shall be effective unless in writing and previously approved by:

(i) the Company; and

(ii) a Majority Consenting Beneficiary Consent; and

(iii) an Extraordinary Resolution under and as defined in the Amended and Restated CRA.

where:

“Majority Consenting Beneficiary Consent” means a vote, written consent or resolution approved by three-quarters by USD Value of all the Best Claims of Relevant Consenting Beneficiaries, the amount of each such Best Claim to be determined as at the date of the request for consent to the amendment, modification or waiver (or such other date as the Company may determine and, for the purpose of this Clause 41, if the amount of any such Best Claim is in dispute at such time, the Best Claim shall be the amount as provided by the Company in the Information Pack at that time).

and, for the purpose of determining whether the threshold of three-quarters by USD Value of all the Best Claims of Relevant Consenting Beneficiaries set out in this Clause 41.1.1 is satisfied, any approval pursuant to an Extraordinary Resolution under and as defined in the Amended and Restated CRA of an amendment, modification or waiver in respect of the Common Terms shall also be treated under this Clause 41.1.1 as an approval of such amendment, modification or waiver on the part of the relevant CRA Omnibus Beneficiaries which voted for (or otherwise expressly approved) such Extraordinary Resolution.

41.1.2 Notwithstanding Clause 41.1.1, any amendment, modification or waiver in respect of the Common Terms that affects the rights or obligations of any CRA Signatory that is not a Consenting Beneficiary will not be effective unless, to the extent an Extraordinary Resolution is required under and as defined in the Amended and Restated CRA, the amendment, modification or waiver is approved by the Company and by such an Extraordinary Resolution in respect of which such CRA Signatory is eligible to vote.

## **41.2 Powers of amendment of the Company**

In furtherance of Clause 41.1:

41.2.1 the Company may certify for the purpose of a vote, written consent or resolution pursuant to Clause 41.1, that it has determined, as it may do in its absolute discretion, that any such amendment, modification or waiver will materially affect some (but not all) of the Consenting Beneficiaries. In that event, “Relevant Consenting Beneficiaries” shall be those Consenting Beneficiaries certified by the Company as being those who will be materially affected for the purposes of such amendment, modification or waiver (and, in particular, for the purposes of determining whether or not such amendment, modification or waiver has been approved by a Majority Consenting Beneficiary Consent). Absent any such certification by the Company in respect of any particular proposed amendment, modification or waiver in respect of the Common Terms, the Relevant Consenting Beneficiaries shall be all the Consenting Beneficiaries as at the time set by the Company (in its sole discretion) for the purpose of such vote, written consent or resolution to approve such amendment, modification or waiver;

41.2.2 the Company is hereby authorised to agree for and on behalf of Consenting Beneficiaries, all amendments, modifications or waivers, if so directed by a Majority Consenting Beneficiary Consent; and

41.2.3 the Company shall not be responsible for having acted in good faith on a resolution purporting to have been passed by a Majority Consenting Beneficiary Consent (either in writing or, if at a meeting, in respect of which minutes of such meeting have been made) even if it is later found that there was a defect in the vote or consent or the constitution of the meeting or the passing of the resolution or that the vote, consent or resolution was not valid or binding on the Consenting Beneficiaries.

## **41.3 Amendment of Consenting Beneficiary Agreements**

Notwithstanding Clause 41.1, any amendment of any Consenting Beneficiary Agreement but not the Common Terms shall be made in accordance with the amendment provisions of such Consenting Beneficiary Agreement.

#### **41.4 Amendment of Settlement Agreement**

The Company shall not agree to any modification of the Settlement Agreement after the Common Terms Effective Date in a manner which would be materially prejudicial to the rights of the Consenting Beneficiaries (taken as a whole), unless such modification is consented to or required by:

41.4.1 a Majority Consenting Beneficiary Consent and an Extraordinary Resolution under and as defined in the Amended and Restated CRA; or

41.4.2 a Final Order.

#### **41.5 Minor technical or not materially prejudicial amendments**

The Company may, without the consent of the Consenting Beneficiaries, amend, modify or waive any term or condition of the Common Terms which is, in its opinion:

41.5.1 of a formal, minor or technical nature, or to correct a manifest error;

41.5.2 to enable compliance with a Final Order in respect of the Common Terms; or

41.5.3 not materially prejudicial to the interests of any Consenting Beneficiaries.

#### **41.6 Notice of outcome**

The Company shall inform the Consenting Beneficiaries, by written Notice in accordance with Clause 42, of any amendment of the Common Terms made in accordance with this Clause 41.

### **42 Notices**

#### **42.1 Notices to the Company**

42.1.1 Subject to Clause 42.1.2, any Notice or other communication to be given, or document to be sent to the Company, pursuant to a Consenting Beneficiary Agreement, except where the relevant Consenting Beneficiary Agreement otherwise expressly provides, shall be in writing in English and shall be delivered by the relevant Consenting Beneficiary by:

(i) being uploaded to the Portal, the address of which is [https://dm.pwc.com/LBIE\\_CIP/](https://dm.pwc.com/LBIE_CIP/); and/or

(ii) sending via electronic mail to the e-mail address specified in Clause 42.6.

42.1.2 The following communications shall be in writing in English and shall be sent by the Consenting Beneficiary to the Company by being uploaded to the Portal only, unless otherwise agreed by the Company (such agreement not to be unreasonably withheld for so long as the Portal is disabled or unavailable for more than one Business Day):

(i) any approval or non-approval of the Resolution;

(ii) any OSA Offer; and

(iii) any Information Pack Challenge Form and supporting evidence.

42.1.3 Without prejudice to Clauses 42.1.1 and 42.1.2, a Consenting Beneficiary shall only be permitted to submit any Notice, or other communication or send documents in writing in English to the Company by:

(i) registered pre-paid post or air mail, to the postal address specified in Clause 42.6; or

(ii) courier using an internationally recognised courier company, to the address specified in Clause 42.6,

with the prior written consent of the Company (which consent is hereby given in relation to the delivery of any original U.S. Withholding Tax Form).

#### **42.2 Notices to Consenting Beneficiaries**

The Company may give any Notice or other communication or send any document under or in connection with a Consenting Beneficiary Agreement to any Consenting Beneficiary by:

42.2.1 uploading the same to the Portal (in which case the Company shall Notify the Consenting Beneficiary, otherwise than via the Portal, that a Notice, communication or document has been (or will be) uploaded to the Portal);

42.2.2 electronic mail, airmail, registered pre-paid post or courier, to the relevant address specified in accordance with Clause 42.7; or

42.2.3 publishing it on the Website

where “address” includes any electronic mail address or postal address used for the purposes of such communications.

#### **42.3 Notices by Portal**

Any Notice, communication or document given via the Portal shall be deemed to have been received when it is first uploaded to the Portal or, if later, when the recipient is deemed (otherwise than via the Portal) to have received notice of the fact that it is (or will be) available on the Portal. For these purposes, if such deemed receipt would otherwise occur on a day which is not a Business Day in London or after 5.00 p.m. (London time) on any Business Day in London, the relevant Notice, communication or document shall be deemed to have been received at 9.30 a.m. (London time) on the next Business Day in London.

#### **42.4 Notices by electronic mail**

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

42.4.1 if sent by the Company, at the time as recorded by the Company that the electronic mail was sent; and

42.4.2 if sent by any other person, at the time of receipt recorded on the computer of the person to whom the electronic mail is addressed,

provided that, if such deemed receipt would otherwise occur on a day which is not a Business Day in London or after 5.00 p.m. (London time) on any Business Day in London, such Notice, communication or document shall be deemed to have been received at 9.30 a.m. (London time) on the next Business Day in London.

#### **42.5 Notices by registered post or courier**

42.5.1 Subject to Clause 42.5.2, any Notice or communication given or document sent by registered pre-paid post, air mail or courier shall be deemed to have been received at the time of delivery at the relevant address specified in or to be specified pursuant to this Clause 42.

42.5.2 If such receipt occurs on a day which is not a Business Day in London or after 5.00 p.m. (London time) on any Business Day in London, such Notice, communication or document shall be deemed to have been received at 9.30 a.m. (London time) on the next Business Day in London.

#### **42.6 Addresses for Notices to the Company (given otherwise than via the Portal)**

42.6.1 Any Notice, communication or document given via electronic mail to the Company is to be sent to [generalqueries@lbia-eu.com](mailto:generalqueries@lbia-eu.com);

42.6.2 Any Notice, communication or document given via registered pre-paid post, air mail or courier (using an internationally recognised courier company) to the Company is to be sent to the address notified to it by the Company from time to time.

#### **42.7 Addresses for Notices to Consenting Beneficiaries (given otherwise than via the Portal)**

42.7.1 Any Notice, communication or document given via electronic mail, registered pre-paid post, air mail or courier to a Consenting Beneficiary shall be sent to the relevant Consenting Beneficiary's electronic mail account or postal address (as applicable) as set out on the Portal, as amended from time to time by the relevant Consenting Beneficiary.

42.7.2 Each Consenting Beneficiary shall maintain such electronic mail account and postal address at its own risk and shall be responsible for informing the Company (via the Portal) of any changes to the electronic mail or postal address and/or providing an alternative address (as appropriate).

#### **42.8 Authority to sign Notices and documents**

In the case of a Notice, communication or document, including any Consenting Beneficiary Accession Document, which is signed or made (including by submission electronically) on behalf of a Consenting Beneficiary, the Company shall not be required to make enquiry as to the authority of the signatory of that Notice, communication or document to sign or make such Notice, communication or document on behalf of such Consenting Beneficiary.

#### **42.9 General notifications and advertisements**

The Company may also, in its absolute discretion, publish any information in respect of the relevant Consenting Beneficiary Agreement (including relevant dates pursuant to the relevant Consenting Beneficiary Agreement and communications from the Company), and any other Notice, communication or document required to be or capable of being given or sent under the relevant Consenting Beneficiary Agreement, on the Website.

#### **42.10 Notices on Website**

Any Notice, communication or document which is published on the Website shall be deemed to have been received when the material was first made available on the Website or, if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the Website.

#### **42.11 Accidental failure to send communication by the Company**

Accidental failure by the Company to send any Notice, communication or other document to any Consenting Beneficiary in accordance with this Clause 42 shall not be considered a breach of its obligations pursuant to the relevant Consenting Beneficiary Agreement. The

Company shall not be liable to any Consenting Beneficiary for such failure, or the non-receipt of any such Notice, communication or document by any relevant Consenting Beneficiary or any other person, and such failure or non-receipt shall not affect the provisions of the relevant Consenting Beneficiary Agreement as regards that Consenting Beneficiary or at all.

## **PART 10 – COMMON TERMS DISPUTE RESOLUTION MECHANISM**

### **43 Common Terms Disputes and Common Terms Disputing Parties**

**43.1** Subject to Clause 52.3, the dispute resolution mechanism (the “**Common Terms Dispute Resolution Mechanism**”) contained in this Part 10 of the Common Terms shall govern the resolution of any and all disputes between the Company on the one hand and a Consenting Beneficiary on the other hand (together the “**Common Terms Disputing Parties**”) as regards:

**43.1.1** the accuracy of the 19/9 Value figure and/or the Aggregate Market Value figure contained in an Information Pack of such Consenting Beneficiary (each an “**Information Pack Figure**”);

**43.1.2** the accuracy of any Permitted Deductions or any designation or treatment as an Attributable Payment as set out in any Notice of Distribution of such Consenting Beneficiary which has not, prior to the date of that Notice of Distribution, been finally determined or agreed (a “**Notice of Distribution Figure**”);

**43.1.3** the status of such Consenting Beneficiary as either eligible or otherwise to participate in any Common Terms Distribution to be made by the Company in accordance with Part 4 of the Common Terms, as determined in accordance with Clause 9.4 of the Common Terms and as indicated on the Portal (or as otherwise indicated by the Company) from time to time (the “**Eligibility Status**” of such Consenting Beneficiary); and

**43.1.4** subject to the provisions of these Common Terms, any other dispute arising out of or in relation to the interpretation of and/or the parties’ performance of any obligations arising under the OSA or the Common Terms,

each a “**Common Terms Dispute**” and each Information Pack, Notice of Distribution and Eligibility Status being a “**Common Terms Determination Notice**”.

**43.2** For the avoidance of doubt, this Common Terms Dispute Resolution Mechanism does not apply to disputes between the Company and Consenting Beneficiaries as to Legal Liabilities between them other than Legal Liabilities of any Consenting Beneficiary to the Company arising pursuant to the OSA or Common Terms.

### **44 Settlement of Common Terms Disputes**

For the avoidance of doubt, nothing in Clauses 43 to 52 of the Common Terms precludes the Common Terms Disputing Parties from entering into a compromise, arrangement or settlement of a Common Terms Dispute at any stage, whether by mediation or otherwise, nor precludes the Company from entering into a compromise, arrangement or settlement with any Consenting Beneficiary or person who claims to be a Consenting Beneficiary or a Non-Consenting Beneficiary.

### **45 Common Terms Dispute Notice**

**45.1** If a Consenting Beneficiary wishes to raise a Common Terms Dispute, it must:

**45.1.1** in respect of any disputed Information Pack Figure have made an OSA Offer or approved or not approved the Resolution (as applicable) and, at the time of doing so:

- (i) Notified the Company via the Portal by selecting “**Yes and add attachments**” to the question “**Do you dispute your 19/9 Value and/or Aggregate Market**



Value set out in the Best Claim statement contained in your Information Pack?” (set out at the “Information Pack Disputes” sub-section of the “Documents for submission” section on the LBI Omnibus Settlement page of the Portal); and

(ii) completed and uploaded the Information Pack Challenge Form (if the accuracy of both the 19/9 Value figure and the Aggregate Market Value figure are being challenged, the Consenting Beneficiary must have completed two forms, one for each challenge), each such form to have included:

(a) the figure that the Consenting Beneficiary considers to be the true amount of its 19/9 Value and/or Aggregate Market Value (as applicable) (each an “**Alleged Information Pack Figure**”);

(b) reasonable details of the nature and basis of the challenge and an explanation as to how its Alleged Information Pack Figure has been calculated; and

(c) if the Consenting Beneficiary is neither resident, nor has its principal place of business in England or Wales, details of, and appointment of, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute; and

(iii) uploaded via the Portal any supporting evidence with the Information Pack Challenge Form;

45.1.2 in respect of each disputed Notice of Distribution Figure, Notify the Company, by uploading via the Portal within five Business Days of receipt of the relevant Notice of Distribution, that it disputes that Notice of Distribution Figure, that Notice to include:

(i) in respect of each disputed Notice of Distribution Figure, the figure that the Consenting Beneficiary considers to be the true amount of the disputed Notice of Distribution Figure (an “**Alleged Notice of Distribution Figure**”);

(ii) reasonable details of the nature and basis of the challenge and an explanation as to how each Alleged Notice of Distribution Figure has been calculated; and

(iii) if the Consenting Beneficiary is neither resident, nor has its principal place of business, in England or Wales, details of, and appointment of, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute;

45.1.3 in respect of its Eligibility Status, Notify the Company that it has a dispute, that Notice to include:

(i) an explanation as to why the Consenting Beneficiary considers its Eligibility Status to be inaccurate, such explanation to include reasonable details of the nature and basis of the challenge; and

(ii) if the Consenting Beneficiary is neither resident, nor has its principal place of business, in England or Wales, details of, and appointment of, an agent to

accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute; and

45.1.4 in respect of any other dispute, Notify the Company that it has a dispute, that Notice to include:

- (i) reasonable details of the nature and basis of the dispute; and
- (ii) if the Consenting Beneficiary is neither resident, nor has its principal place of business in England or Wales, details of, and appointment of, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute.

each such Notice under Clauses 45.1.1 to 45.1.4 (together with any Notice by the Company pursuant to Clause 45.2) being a “Common Terms Dispute Notice” and each such Alleged Information Pack Figure and Alleged Notice of Distribution Figure being an “Alleged Figure”.

45.2 The Company may raise a Common Terms Dispute with any Consenting Beneficiary in respect of any matter falling within the scope of Clause 43.1.4. If the Company wishes to do so, it must Notify the relevant Consenting Beneficiary of the subject matter of the dispute, setting out in writing reasonable details of the dispute (such Notice also being a Common Terms Dispute Notice). Upon receipt of such a Common Terms Dispute Notice, if the relevant Consenting Beneficiary is neither resident, nor has its principal place of business, in England or Wales, it must (within 10 Business Days) Notify to the Company details of, and appointment of, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute.

45.3 If a Common Terms Dispute raised in accordance with Clause 45.1.3 has not been finally resolved (whether by agreement or in accordance with the terms of this Part 10) in the Consenting Beneficiary’s favour by any Cut-Off Date specified in any relevant Notice of Intended Distribution issued by the Company while the Common Terms Dispute is outstanding, then:

45.3.1 the Consenting Beneficiary’s Eligibility Status in respect of the relevant intended Common Terms Distribution, as indicated on the Portal (or as otherwise indicated by the Company) as at the date of the relevant Notice of Intended Distribution, shall (subject to Clause 9.5) become final and binding as at the Cut-Off Date for the purposes of that Common Terms Distribution;

45.3.2 the Consenting Beneficiary shall be deemed to have accepted the same; and

45.3.3 the Common Terms Dispute shall for the purpose of future Common Terms Distributions continue to be determined in accordance with the terms of this Part 10.

## 46 Amicable Resolution

Upon receipt by the Company (or delivery by the Company) of a Common Terms Dispute Notice, at the Company’s election the Common Terms Disputing Parties shall, for a period of 20 Business Days or such other period as the Company may specify, seek to resolve the Common Terms Dispute amicably. Where the Common Terms Dispute Notice is in respect of

an Information Pack Figure, for the purposes of this Clause 46, such Common Terms Dispute Notice is deemed to be received on the Common Terms Effective Date.

#### **47 Referral of Common Terms Dispute by Company**

**47.1** Where the parties are unable to resolve the Common Terms Dispute amicably within the time period referred to in Clause 46, or the Company elects pursuant to Clause 46 that the amicable resolution period referred to therein shall not apply, the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Common Terms Dispute relates, whether the Common Terms Dispute should be referred to:

**47.1.1** an independent expert (the “Common Terms Dispute Expert”); or

**47.1.2** the Court.

For the avoidance of doubt, nothing in Clauses 43 to 52 precludes the Company from referring a Common Terms Dispute, at its sole discretion, to the Court.

**47.2** Following its determination in accordance with Clause 47.1, the Company shall Notify the Consenting Beneficiary of its decision in writing (a “Common Terms Dispute Forum Notice”) and shall thereafter at a time determined by it in its commercially reasonable discretion (having regard to any other disputes to which the Company is party) take any necessary steps to commence the dispute resolution process. Subject to Clauses 50.9 and 50.14.5, the Company's decision as regards the forum for resolving the Common Terms Dispute pursuant to Clause 47 shall be final and binding.

#### **48 Most favourable award**

Irrespective of whether a Common Terms Dispute is referred to a Common Terms Dispute Expert or the Court pursuant to Clause 47, in respect of any disputed figure, the Common Terms Disputing Parties hereby agree that the outcome of any dispute cannot be more favourable to a Consenting Beneficiary than would have resulted from the Company and the Consenting Beneficiary having agreed to use the Alleged Figure (where applicable). The Consenting Beneficiary irrevocably waives any rights it may have to, and undertakes not to bring, a Legal Claim which would result in an outcome more favourable to it than would have resulted from using the Alleged Figure in any determination under these Common Terms.

#### **49 The Court**

Where the Company determines pursuant to Clause 47.1.2 that the Court shall determine a Common Terms Dispute, the Court shall have exclusive jurisdiction to settle that Common Terms Dispute. Such Proceedings shall be commenced by the Company and not by the relevant Consenting Beneficiary.

#### **50 The Common Terms Dispute Expert**

##### **50.1 Exclusive jurisdiction of the Common Terms Dispute Expert**

If a Consenting Beneficiary delivers to the Company (or the Company delivers to a Consenting Beneficiary) a Common Terms Dispute Notice, then the Company may in accordance with Clause 47 refer the Common Terms Dispute to a Common Terms Dispute Expert and such Common Terms Dispute Expert shall, subject to Clauses 50.9 and 50.14.5, have exclusive jurisdiction to settle that Common Terms Dispute.

##### **50.2 Confidentiality**

50.2.1 Subject to Clauses 16 and 50.2.2 and unless otherwise agreed by the Common Terms Disputing Parties, the Common Terms Disputing Parties shall keep confidential any information obtained during the process of determining the Common Terms Dispute, including the Common Terms Dispute Expert's decision.

50.2.2 No Consenting Beneficiary shall distribute, publish, reproduce or disclose such confidential information to any other person other than:

- (i) if and to the extent required by law or for the purposes of any judicial or arbitral proceedings;
- (ii) if and to the extent required by any securities exchange, regulatory or governmental body (including Tax Authority) to which that Common Terms Disputing Party is subject, wherever situated, whether or not the requirement for the information has the force of law;
- (iii) to its professional advisers and auditors; and/or
- (iv) to its direct shareholders and investors.

50.2.3 Upon final determination or settlement of a Common Terms Dispute, and upon request by the Company, the Consenting Beneficiary shall:

- (i) promptly return to the Company all documents and information made available to it by the Company in connection with the Common Terms Dispute (the "Common Terms Dispute Documentation") without retaining any copies; and/or
- (ii) promptly destroy the Common Terms Dispute Documentation. Where the Common Terms Dispute Documentation is to be destroyed, the Consenting Beneficiary shall Notify the Company of the destruction of the Common Terms Dispute Documentation within 10 Business Days of the Company's destruction request (or, if subject to any law or regulation preventing them from doing so, Notify the Company of such requirement).

### **50.3 Settlement of the Common Terms Dispute by a Common Terms Dispute Expert**

If the Company determines, pursuant to Clause 47, that a Common Terms Dispute Expert shall settle the Common Terms Dispute, then the Company shall provide in writing to the Consenting Beneficiary the names of two candidates willing to act as Common Terms Dispute Expert in relation to the Common Terms Dispute, together with contact details for those candidates.

### **50.4 Attributes of the Common Terms Dispute Expert**

Each Common Terms Dispute Expert shall, as considered appropriate by the Company (in its absolute discretion):

50.4.1 be an individual with one or more of the following attributes:

- (i) an individual who in the reasonable opinion of the Company has the appropriate financial or other expertise in relation to the subject matter of the Common Terms Dispute; and/or
- (ii) an individual who is a member of the English bar and has been appointed Queen's Counsel;

50.4.2 in the reasonable opinion of the Company, be capable of discharging the functions and powers of the Common Terms Dispute Expert under the Common Terms, with the appropriate expertise having regard to the nature of the Common Terms Dispute; and

50.4.3 confirm that he has no conflict of interest in accepting the appointment, provided that having previously acted as a Common Terms Dispute Expert or a Valuation Expert or Adjudicator (as defined in the Amended and Restated CRA) shall not of itself be considered a conflict of interest.

#### **50.5 Election of the Common Terms Dispute Expert**

Within five Business Days of receipt of the names of two candidates in accordance with Clause 50.3, the Consenting Beneficiary shall Notify the Company which of the candidates it elects to act as the Common Terms Dispute Expert, following which the Company shall take steps to confirm his appointment and to agree the terms of such appointment. Such election shall, subject to Clauses 50.9 and 50.14.5 be final and binding.

#### **50.6 Powers of the Common Terms Dispute Expert**

The Common Terms Dispute Expert shall have the powers, rights and duties conferred upon him by these Common Terms. The Common Terms Dispute Expert shall act as an expert and not as an arbitrator.

#### **50.7 Terms of appointment of the Common Terms Dispute Expert**

The Common Terms Dispute Expert shall be retained on such reasonable terms as may be agreed by the Company.

#### **50.8 Acceptance of appointment by the Common Terms Dispute Expert**

As soon as reasonably practicable, the Common Terms Dispute Expert shall notify the Common Terms Disputing Parties in writing that he has accepted the appointment and provide account details for payment of the Deposit.

#### **50.9 Failed appointment of the Common Terms Dispute Expert**

If the Common Terms Dispute Expert chosen by the Consenting Beneficiary is unable or unwilling to accept the appointment, or is unable to agree the terms of his appointment to the satisfaction of the Company:

50.9.1 the Company shall, as soon as reasonably practicable, provide in writing to the Consenting Beneficiary a new Common Terms Dispute Forum Notice; and

50.9.2 Clause 47.2 and the remainder of this Common Terms Dispute Resolution Mechanism shall apply accordingly.

#### **50.10 Provision of certain documents and a Deposit to the Common Terms Dispute Expert**

Within 10 Business Days of the receipt of confirmation given by the Common Terms Dispute Expert pursuant to Clause 50.8, the Consenting Beneficiary shall, in relation to any Common Terms Dispute raised by the Consenting Beneficiary pursuant to Clause 43, provide to the Common Terms Dispute Expert (copied simultaneously to the Company in respect of Clauses 50.10.1 and 50.10.2):

50.10.1 a copy of the relevant Common Terms Dispute Notice together with any supporting documents provided with the Common Terms Dispute Notice;

50.10.2 if applicable, a copy of the relevant Common Terms Determination Notice and/or any other document provided by the Company to the Consenting Beneficiary relating to the Common Terms Dispute; and

50.10.3 a deposit of US\$50,000 on account of the Common Terms Dispute Expert's fees (the "Deposit"). No referral to the Common Terms Dispute Expert may proceed without payment of the Deposit and the Deposit shall be payable in respect of each Common Terms Dispute Notice. The Consenting Beneficiary shall simultaneously Notify the Company that the Deposit has been provided to the Common Terms Dispute Expert.

50.11 Where the Company has raised a Common Terms Dispute pursuant to Clause 45.2, the Company shall, within 10 Business Days of receipt of confirmation given by the Common Terms Dispute Expert pursuant to Clause 50.8, provide to the Common Terms Dispute Expert (copied simultaneously to the Consenting Beneficiary) the documents referred to in Clause 50.10.1 and any other documents it considers appropriate (in its absolute discretion).

#### **50.12 Provision of information to the Common Terms Dispute Expert**

The Common Terms Disputing Parties shall, within 20 Business Days of the receipt by the Common Terms Dispute Expert of the documents and (if applicable) the Deposit in accordance with Clauses 50.10 and/or 50.11, provide the Common Terms Dispute Expert with written submissions setting out details of their respective positions (including, in the case of a valuation dispute, valuations and assumptions behind those valuations), together with any additional documentation or information that they wish to be taken into account by the Common Terms Dispute Expert.

#### **50.13 Determination of the Common Terms Dispute on the basis of documents already supplied**

The Common Terms Dispute Expert shall be entitled, but not obliged, to rely exclusively upon the documents supplied to him pursuant to Clauses 50.10 to 50.12 when determining the Common Terms Dispute.

#### **50.14 Provision of additional documentation and timetable**

50.14.1 Following the receipt of the documents supplied pursuant to Clauses 50.10 to 50.12, the Common Terms Dispute Expert shall, as soon as reasonably practicable and in any event within 20 Business Days:

- (i) Notify the Common Terms Disputing Parties in writing of whether he requires additional evidence or representations to be provided to him; and
- (ii) provide details of any further procedure and timetable he wishes to adopt for resolving the Common Terms Dispute.

50.14.2 The Common Terms Dispute Expert shall, in his absolute discretion, consider such matters as he thinks fit in making his determination. The Common Terms Dispute Expert shall be entitled to consult with such advisers, including legal advisers and experts, and to take into account such information or evidence obtained from these sources, as he may deem appropriate. Subject to Clause 48, the Common Terms Dispute Expert shall be entitled (but is not obliged) to substitute his own valuation for those provided by the Common Terms Disputing Parties.

50.14.3 Each Common Terms Disputing Party shall respond promptly (and, subject to Clause 51.4 at its own expense) to all reasonable requests for information and other

assistance that the Common Terms Dispute Expert requests in connection with making his determination.

50.14.4 The Common Terms Dispute Expert may, but is not obliged to, require the Common Terms Disputing Parties to appear before him and address him on any matters, in which case the Common Terms Disputing Parties shall appear on such date and at such place as the Common Terms Dispute Expert shall reasonably prescribe. If the Common Terms Dispute Expert requires the parties to appear before him, the Common Terms Dispute Expert shall be entitled to prescribe and lay down such reasonable procedures or provisions as he, in his absolute discretion, deems appropriate for the purposes of assisting him in reaching his determination.

50.14.5 If, in the course of considering the Common Terms Dispute, the Common Terms Dispute Expert considers that the Common Terms Dispute gives rise to matters outside his area of expertise (and in respect of which he does not consider himself able to rely on advisers pursuant to Clause 50.14.2), he shall notify the Common Terms Disputing Parties that he no longer considers himself capable of determining the Common Terms Dispute (a “**Common Terms Appointment Cessation Notice**”). Upon receiving a Common Terms Appointment Cessation Notice from the Common Terms Dispute Expert the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Common Terms Dispute relates, whether the Common Terms Dispute should be referred in accordance with Clause 47 to the Court for determination or whether the Company should refer the Common Terms Dispute to an alternative Common Terms Dispute Expert to determine the dispute. The Company shall Notify the Consenting Beneficiary of its decision in writing within five Business Days of receipt of a Common Terms Appointment Cessation Notice, following which the election and appointment procedure set out in Clause 47 or Clause 50.3 (as the case may be) and the remainder of this Part 10 shall be followed as if such notice was a Common Terms Dispute Forum Notice.

50.14.6 Upon the conclusion of the procedure adopted pursuant to this Clause 50, the Common Terms Dispute Expert shall, as soon as reasonably practicable, inform the Common Terms Disputing Parties in writing of his decision. The Common Terms Dispute Expert shall not be obliged to give reasons, unless requested by the Company in its absolute discretion, for his decision as if such Notice was a Common Terms Dispute Forum Notice.

50.14.7 The Common Terms Disputing Parties and the Common Terms Dispute Expert will use their reasonable endeavours to ensure the determination of the Common Terms Dispute within 60 Business Days of the appointment of the Common Terms Dispute Expert.

## **51 Appeals and costs**

### **51.1 Right of appeal and liability**

The decision of the Common Terms Dispute Expert on any Common Terms Dispute referred to him in accordance with the Common Terms shall, insofar as the law allows, be final and binding. There shall be no right of appeal therefrom, nor shall there be any right to make any claim against the Common Terms Dispute Expert in respect thereof, save in the case of any loss arising from the Common Terms Dispute Expert's fraud.

## **51.2 Rate of remuneration**

The Common Terms Dispute Expert shall be entitled to be remunerated at such reasonable rate as may be agreed by the Company and to be reimbursed his reasonable fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) in carrying out his duties under the Common Terms.

## **51.3 Apportionment of remuneration of the Common Terms Dispute Expert**

Any fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) incurred by the Common Terms Dispute Expert in respect of a Common Terms Dispute shall be apportioned between the Common Terms Disputing Parties in such proportions as the Common Terms Dispute Expert may determine in his absolute discretion taking into account: (i) the degree to which he deems either of the Common Terms Disputing Parties' positions to have been lacking in reasonable foundation; and (ii) their conduct during the course of the dispute resolution process, and shall be paid in accordance with Clauses 51.5 and 51.6.

## **51.4 Apportionment of costs of the Common Terms Disputing Parties**

Any fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) reasonably incurred by the Common Terms Disputing Parties, from the date of receipt of a Common Terms Dispute Notice by the Company or Consenting Beneficiary (as applicable), in respect of a Common Terms Dispute determined by the Common Terms Dispute Expert, shall be apportioned between the Common Terms Disputing Parties in such proportions as the Common Terms Dispute Expert may determine in his absolute discretion taking into account: (i) the degree to which he deems either of the Common Terms Disputing Parties' positions to have been lacking in reasonable foundation; and (ii) their conduct during the course of the dispute resolution process, and shall be paid in accordance with Clauses 51.5 and 51.6.

## **51.5 Costs borne by a Consenting Beneficiary**

Any fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) directed by the Common Terms Dispute Expert to be borne by a Consenting Beneficiary shall be borne in full by that Consenting Beneficiary. Any Deposit paid pursuant to Clause 50.10 shall be applied against this amount and then, if there is a shortfall, the Consenting Beneficiary shall be liable to the Company to discharge such shortfall in full without set-off, deduction, defence to payment or counterclaim. Any amount of the Deposit not applied against obligations of the Consenting Beneficiary shall be returned by the Common Terms Dispute Expert to the Consenting Beneficiary.

## **51.6 Costs borne by the Company and/or the Administrators**

Any fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) directed by the Common Terms Dispute Expert to be borne by the Company and/or the Administrators shall be borne by the Company and paid as an expense of the Administration.

## **52 Miscellaneous dispute issues**

### **52.1 Failure by Consenting Beneficiary to comply with Common Terms Dispute Resolution Mechanism**



If the Consenting Beneficiary fails to:

52.1.1 comply with any time limit (as amended in accordance with Clause 52.4, as applicable); or

52.1.2 otherwise take any step or action in the manner,

specified by any provision of this Part 10 (including Clauses 45.1.1, 45.2, 50.5, 50.10, 50.12 and 50.14), then it shall be deemed:

(i) irrevocably to have abandoned the relevant Common Terms Dispute;

(ii) to have accepted the relevant Common Terms Determination Notice or, as applicable, the Company's position in relation to the matter raised in a Common Terms Dispute; and

(iii) to have given up any rights subsequently to raise a dispute in relation to the same subject matter.

Subject to Clause 13.1.2, any disputed Common Terms Determination Notice (or, as applicable, the Company's position in relation to the matter raised in the Common Terms Dispute) is then final and binding.

## **52.2 Exclusivity of Common Terms Dispute Resolution Mechanism**

52.2.1 The Common Terms Dispute Resolution Mechanism shall be the exclusive method for determining any Common Terms Dispute and Consenting Beneficiaries shall be barred from bringing any other proceedings in any jurisdiction in respect of the Common Terms Dispute.

52.2.2 Where the Common Terms provide that a Notice, determination or other matter is final and binding (including in Clauses 5.2, 8.2.4, 13.1.2, 13.1.3, 14.2.4, 45.3.1, 47.2, 50.5, 51.1 and 52.1), such Notice, determination or matter shall not be capable of dispute by any Consenting Beneficiary, whether pursuant to the Common Terms Dispute Resolution Mechanism or otherwise.

## **52.3 Jurisdiction of the Court**

Notwithstanding the foregoing, nothing in these Common Terms prevents the Court from having jurisdiction to hear applications for directions brought by the Administrators in the Administration or prevents the Administrators from bringing such applications.

## **52.4 Extension of time limits of the Common Terms Dispute Resolution Mechanism**

Save in respect of Clause 45.1 (the time limit for which may not be extended), any of the time limits in this Common Terms Dispute Resolution Mechanism may be extended:

52.4.1 by written agreement between the Common Terms Disputing Parties; or

52.4.2 by the Common Terms Dispute Expert.

## **PART 11 – REGULATORY STATUS**

### **53 Regulatory status**

#### **53.1 FSA as regulator**

53.1.1 The Company is authorised and regulated by the FSA.

53.1.2 The Common Terms are supplemental to the standard terms of business of the Company. In the event of an irreconcilable conflict between any provision of the Common Terms and the standard terms of business of the Company, the Common Terms shall prevail except where that would give rise to a failure to comply with FSA Rules, in which case the standard terms of business shall prevail to the extent necessary (but no more than is strictly necessary) in relation to that provision only.

53.1.3 No Consenting Beneficiary will have an individual entitlement to any particular Trust Financial Asset. On that basis, the Company does not consider that the sale of the Trust Financial Assets will amount to execution of a customer order and will not be subject to FSA Rules on best execution. The provisions of Clause 21.3 are, however, designed to provide comparable protections reflecting the interests of Consenting Beneficiaries as a whole.

#### **53.2 Professional client**

The sale of any part of any LBI Distribution by the Company pursuant to Clause 20 of the Common Terms shall be performed on the basis that each Consenting Beneficiary is a “professional client” and following such categorisation processes as are required under the rules of the FSA. Each Consenting Beneficiary acknowledges and agrees that it will keep the Company informed of any change that could affect its categorisation pursuant to the FSA Rules.

#### **53.3 Retail client**

53.3.1 Although each Consenting Beneficiary would be entitled to request that the Company treats it as a “retail client” subject to additional levels of client protection under FSA Rules, each Consenting Beneficiary confirms to the Company that it does not wish to be so treated.

53.3.2 Each Consenting Beneficiary acknowledges and agrees that professional clients are entitled to fewer protections under the FSA Rules than “retail clients”. In particular:

(i) Communications with retail clients and financial promotions

In relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a retail client, the Company must ensure that information:

(a) includes the Company’s name;

(b) is accurate and in particular does not emphasise any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks;

(c) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and

(d) does not disguise, diminish or obscure important items, statements or warnings.

This requirement does not apply in the case of professional clients.

When the Company communicates advertisements and other financial promotions to retail clients, the Company is required to ensure that certain form and content requirements are included and that certain internal approval and record-keeping procedures are followed. Most of these rules are inapplicable to financial promotions to professional clients.

The Company is, however, in addition required to ensure that all information provided to both retail and professional clients is clear, fair and not misleading.

(ii) Suitability

If the Company makes a personal recommendation or manages investments for a professional client, the Company is entitled to assume that, in relation to the products, transactions and services for which the professional client is so classified, the client has the necessary level of experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio. In the case of a retail client, this assumption may not be made and the Company would be required to satisfy itself that the retail client does have the necessary level of experience and knowledge.

(iii) Appropriateness

When assessing appropriateness for a professional client, the Company may assume that the professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client. In the case of a retail client, this assumption may not be made and the Company would be required to satisfy itself that the retail client does have the necessary level of experience and knowledge.

(iv) Reporting to clients

The Company's obligations to report to clients in respect of transactions (including trade confirmations and periodic statements) are more stringent and detailed in the case of retail clients.

(v) Training and competence requirements

More stringent requirements as to training and competence of a firm's staff apply to certain staff that provide services to retail clients.

(vi) Complaints handling

The FSA's rules on the handling of client complaints generally apply only to eligible complainants (as defined) and sometimes only to retail clients. Professional clients are generally not eligible complainants. Accordingly, by electing to be treated as a professional client, each Consenting Beneficiary will lose the protection of FSA's client complaint handling rules.

(vii) Financial Ombudsman Service

As professional clients, the Consenting Beneficiaries will also normally lose the right of access to the Financial Ombudsman Service.

53.3.3 To the extent that the Company is providing a service to the Consenting Beneficiaries in selling any part of any LBI Distribution, each Consenting Beneficiary confirms that the Company is entitled to assume and does so assume that each Consenting Beneficiary has the necessary knowledge and experience to enable it to comprehend, analyse and confirm the appropriateness of the actions being undertaken by the Company in providing that service and, in particular, any decision to sell any part of any LBI Distribution.

## **PART 12 – DEFINITIONS AND INTERPRETATION**

### **54 Definitions**

In these Common Terms, unless inconsistent with the subject or context, the following expressions bear the following meanings:

|  |   |
|--|---|
| <b><u>"19/9 Position"</u></b>            | <u>means, in respect of any LBI Asset Claim Customer, the Securities positions as at 19 September 2008 shown in its Information Pack</u>  |
| <b><u>"19/9 Shortfall"</u></b>           | <u>means, in respect of a Consenting Beneficiary, the USD Value of the amount (if positive and zero otherwise) by which:</u><br><u>(i) the 19/9 Value of that Consenting Beneficiary,</u><br><u>is greater than,</u><br><u>(ii) the Cumulative Gross Allocation allocated to such Consenting Beneficiary at the time of the final Common Terms Distribution</u> |
| <b><u>"19/9 Shortfall Claim"</u></b>     | <u>has the meaning set out in Clause 5.1.1</u>  |
| <b><u>"19/9 Value"</u></b>               | <u>means, in respect of any LBI Asset Claim Customer the USD Value as at 19 September 2008 of:</u><br><u>(i) its 19/9 Position;</u><br><u>(ii) its SIPA Cash; and</u><br><u>(iii) Money derived from mergers, maturities and redemptions between 15 September 2008 and 19 September 2008 in respect of Securities listed in its Information Pack</u>            |
| <b><u>"Adjusted Available Funds"</u></b> | <u>has the meaning set out in Clause 9.7</u>  |
| <b><u>"Administration"</u></b>           | <u>means the administration of the Company under the Administration Order</u>   |
| <b><u>"Administration Date"</u></b>      | <u>means 15 September 2008</u>  |
| <b><u>"Administration Order"</u></b>     | <u>means the order of the Court dated 15 September 2008 made under paragraph 12 of Schedule B1 of the Insolvency Act under which Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann and Michael John Andrew Jervis were appointed joint administrators of the Company</u>  |
| <b><u>"Administrators"</u></b>           | <u>means the persons from time to time serving as joint administrators in the Administration who, as at the date of the Information Memorandum, are Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell, Paul David Copley and Russell Downs of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, United Kingdom</u>          |
| <b><u>"Advisers"</u></b>                 | <u>means:</u><br><u>(i) Linklaters LLP; and</u>   |



**"Affiliate"**

**"Aggregate Market Value"**

(ii) any other professional advisers to the Administrators means, in relation to the Company, any Subsidiary, a Holding Company or any other Subsidiary of that Holding Company

means, in respect of any LBI Asset Claim Customer, the aggregate of:

(i) the USD Value on the Fixing Date of its SIPA Cash;

(ii) the USD Value on the Fixing Date of its 19/9 Position, provided that:

(a) to the extent that any Security which was comprised in the 19/9 Position of that LBI Asset Claim Customer has been replaced by any Money or other Securities as a result of maturities, redemptions, mergers, reclassifications, reorganisations or other Corporate Actions and/or Corporation Events occurring between 15 September 2008 and the Fixing Date, then the USD Value of such Securities shall be deemed to be the USD Value of such Money or other Securities on the Fixing Date; and

(b) to the extent that during the period from 15 September to the Fixing Date there was any payment of Money in respect of principal, maturities, redemptions or capital payments in respect of any Security which was comprised in the 19/9 Position of that LBI Asset Claim Customer (or other Securities in lieu thereof as described in paragraph (ii)(a) of this definition), then, to the extent that it is not already included in paragraph (ii)(a) of this definition, the USD Value of such Money; and

(iii) its Income Amount.

provided that there shall be no double counting in the calculation of the Aggregate Market Value of any LBI Asset Claim Customer

has the meaning set out in Clause 45.1

**"Alleged Figure"**

**"Alleged Information Pack Figure"**

has the meaning set out in Clause 45.1.1(ii)(a)

**"Alleged Notice of Distribution Figure"**

has the meaning set out in Clause 45.1.2(i)

**"Amended and Restated CRA"**

means the CRA as further amended and restated following the passing of the Resolution and the satisfaction of the conditions in the Resolution

**"Attributable Amount"**

means, in respect of any Consenting Beneficiary, any Attributable Reserve or Attributable Payment in each case in



**“Attributable Payment”**

respect of that Consenting Beneficiary

means, in respect of any Consenting Beneficiary, any payment or discharge of an obligation (or any part of any obligation) made out of the Omnibus Trust where such payment or discharge is determined by the Company under Clause 8.2.3(i)(b) to be an Attributable Payment in respect of that Consenting Beneficiary

**“Attributable Reserve”**

means, in respect of any Consenting Beneficiary any Reserve determined by the Company under Clause 8.2.3(i)(a) to be an Attributable Reserve in respect of that Consenting Beneficiary

**“Available Funds”**

has the meaning set out in Clause 9.6

**“Best Claim”**

has the meaning set out in Clause 4.2

**“Books”**

means books, records or other information in any form, including paper, electronically stored data, magnetic media, film and microfilm. For the avoidance of doubt, the Books in respect of the Company shall not include books, records or other information:

- (i) owned by persons other than the Company but to which the Company has access (whether full or partial); or
- (ii) which the Company cannot locate or access

**“Business Day”**

means:

- (i) a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York;
- (ii) in the case of an obligation to be performed in a country other than the United Kingdom or the United States of America, a day on which banks are open for general business in such country;
- (iii) in the case of the determination of an event or circumstance required to be calculated by reference to a day in any country other than the United Kingdom or the United States of America, a day on which banks are open for general business in such country; or
- (iv) in the case of any country, a day on which banks are open for general business in such country

**“CAPCO”**

means Customer Asset Protection Company, an insurance company licensed by the state of Vermont, United States of America

**“Capped Net 19/9 Shortfall Claim”**

has the meaning set out in Clause 5.4

**“CASS Rules”**

means the rules set out in Chapters 7 and 7A of the FSA's Client Assets Sourcebook (as amended)

**“Catch-Up Distribution”**

has the meaning set out in Clause 9.8.3(iii)

**“Catch-up QCB”**

has the meaning set out in Clause 9.8.3(iii)

**“CDD”**

means a claims determination deed or similar agreement between the Company and an LBI Asset Claim Customer in



|  |   |
|--|---|
|  | <u>which, in whole or in part, the Customer's unsecured Legal Claims against the Company are agreed between the LBI Asset Claim Customer and the Company and by which the Customer's rights in respect of or in connection with any LBI Asset Claim are preserved</u>   |
| <u>"Client Money"</u>                              | <u>means Money which is client money pursuant to and as defined in the FSA Rules and which was, or ought to have been, held by the Company</u>  |
| <u>"Code"</u>                                      | <u>means the United States Internal Revenue Code of 1986, as amended</u>  |
| <u>"Common Terms"</u>                              | <u>means the common terms set out in this Schedule</u>  |
| <u>"Common Terms Appointment Cessation Notice"</u> | <u>has the meaning set out in Clause 50.14.5</u>  |
| <u>"Common Terms Claims"</u>                       | <u>has the meaning set out in Clause 3.1</u>  |
| <u>"Common Terms Delegate"</u>                     | <u>has the meaning set out in Clause 34.1</u>   |
| <u>"Common Terms Determination Notice"</u>         | <u>has the meaning set out in Clause 43.1</u>   |
| <u>"Common Terms Dispute"</u>                      | <u>has the meaning set out in Clause 43.1</u>   |
| <u>"Common Terms Dispute Documentation"</u>        | <u>has the meaning set out in Clause 50.2.3(i)</u>  |
| <u>"Common Terms Dispute Expert"</u>               | <u>has the meaning set out in Clause 47.1.1</u>   |
| <u>"Common Terms Dispute Forum Notice"</u>         | <u>has the meaning set out in Clause 47.2</u>   |
| <u>"Common Terms Dispute Notice"</u>               | <u>has the meaning set out in Clause 45.1</u>   |
| <u>"Common Terms Dispute Resolution Mechanism"</u> | <u>has the meaning set out in Clause 43.1</u>   |
| <u>"Common Terms Disputing Parties"</u>            | <u>has the meaning set out in Clause 43.1</u>   |
| <u>"Common Terms Distribution"</u>                 | <u>means, in respect of any Distribution Date or prospective Distribution Date, all and any of the distributions and other applications to be made on that Distribution Date or prospective Distribution Date, respectively, by the Company in accordance with these Common Terms</u>   |
| <u>"Common Terms Effective Date"</u>               | <u>means the first date on which all of the following have occurred:</u><br>(i) <u>the Resolution is passed;</u><br>(ii) <u>OSA Offers are received and accepted (and not revoked) by the Company pursuant to the OSA in respect of Best Claims of OSA Eligible Offerors sufficient to equal or exceed 40 per cent. of the aggregate of Best Claims of all OSA Eligible Offerors; and</u><br>(iii) <u>all conditions to the effectiveness of the Settlement</u> |



Agreement have been satisfied or waived in accordance with the terms thereof, such that the Settlement Agreement is fully effective, provided that, the "100% Conditions" as defined in Section 11.06(b)(i) of the Settlement Agreement are satisfied and not waived,

and, in and for the purpose of this definition only, any reference to any "Best Claim":

(a) is to the Best Claim as set out in the original Information Pack issued with the Information Memorandum to each OSA Eligible Offeror; and

(b) shall exclude the Best Claim of the Company in its capacity as a Consenting Beneficiary

"Companies Act"

means the Companies Act 2006

"Company"

means Lehman Brothers International (Europe) (in administration), incorporated in England and Wales with registered number 2538254

"Company-Related Released Party"

means each of the Company (including any Common Terms Delegate), the Administrators, the Advisers and their firms and in each case their and their firms' members, agents, custodians, nominees, partners, officers, directors, employees and representatives

"Comparative QCB"

has the meaning set out in Clause 9.8.3(iii)(b)

"Consenting Beneficiary"

means any OSA Consenting Beneficiary or, following the passing of the Resolution, any CRA Omnibus Beneficiary (in each case as construed in accordance with Clause 28.2)

"Consenting Beneficiary Accession Date"

means, in respect of:

(i) any OSA Consenting Beneficiary, the date of its OSA Acceptance Notice; and

(ii) any CRA Omnibus Beneficiary, the date on which the Resolution is passed

"Consenting Beneficiary Accession Document"

means, in respect of:

(i) any OSA Consenting Beneficiary either:

(a) its OSA Offer (which without limitation may be in the form of an electronic confirmation or file howsoever described); or

(b) its OSA Accession Deed; and

(ii) any CRA Omnibus Beneficiary, its approval or non-approval of the Resolution (if any),

together with any ancillary document thereto (including any power of attorney) and any Information Pack Challenge Form of any such Consenting Beneficiary

"Consenting Beneficiary

means the OSA and the Amended and Restated CRA, and



**Agreements**

**“Corporate Action”**

**“Consenting Beneficiary Agreement”** means either of them

means a subscription rights issue, a tender offer (such as a takeover offer, exchange offer or other similar offer or proposal) which may be of a security for a security, cash, any other securities or assets, or any combination of these, a scheme of arrangement pursuant to Part 26 of the Companies Act, a security subdivision/security split, a reverse security split, a bonus issue or a bonus rights issue, an exercise of voting rights, an exercise of conversion rights in relation to convertible bonds/warrants, a capital reorganisation, a merger, an election in relation to dividends (whether for cash or securities), and any other analogous or similar action

**“Corporation Event”**

means:

- (i) payment of a dividend;
- (ii) payment of a coupon;
- (iii) payment of a redemption amount;
- (iv) an exchange of a security for a security, of a security or cash for cash, of cash or a security for any other securities or assets, or of a security for any combination of these; and
- (v) any other analogous or similar event.

in each case, where the relevant event would not qualify as a Corporate Action

**“Costs Amount”**

has the meaning set out in the Amended and Restated CRA

**“Costs Liability”**

means, in respect of an OSA Consenting Beneficiary, an amount on each Distribution Date equal to:

- (i) the relevant Costs Liability Percentage,  
multiplied by,
- (ii) the Cumulative Gross Allocation to that Consenting Beneficiary up to and including that Distribution Date (but without double-counting any portion of the Cumulative Gross Allocation to which the Costs Liability Percentage has previously been applied),

(plus VAT on the underlying costs and expenses, if applicable), provided that such Costs Liability shall not exceed US\$2,500,000 (plus VAT on the underlying costs and expenses, if applicable) for a Consenting Beneficiary taking into account any costs already paid by that Consenting Beneficiary to the Company with respect to the disposition of assets by the Administrators

**“Costs Liability Percentage”**

means 1.00 per cent

**“Court”**

means the High Court of Justice in England and Wales



|   |   |
|---|---|
| <b><u>“CRA”</u></b>                                     | <u>means the Claim Resolution Agreement between the Company and the Signatories (as defined therein) dated 29 December 2009 as amended and restated on 8 December 2011</u>  |
| <b><u>“CRA Omnibus Beneficiaries”</u></b>               | <u>means all LBI Asset Claim Customers which are CRA Signatories and “CRA Omnibus Beneficiary” means any such person</u>  |
| <b><u>“CRA Signatory”</u></b>                           | <u>means a Signatory as defined in the Amended and Restated CRA</u>   |
| <b><u>“Creditors’ Common Terms Committee Group”</u></b> | <u>means the members of the Creditors’ Committee as defined in the Amended and Restated CRA, including any sub-committees thereof and any person co-opted onto or otherwise treated as a member of the Creditors’ Committee as defined in the Amended and Restated CRA (whether formally or not), and their investment managers and investment managers’ affiliates, and each of their respective advisers, firms, members, agents, custodians, nominees, partners, officers, directors and employees, at all times only in their respective capacities described in this definition, which ultimately derive from the role of the Creditors’ Committee as defined in the Amended and Restated CRA and, where the context requires, means them individually or collectively</u> |
| <b><u>“Cumulative Gross Allocation”</u></b>             | <u>has the meaning set out in Clause 9.8.1</u>  |
| <b><u>“CUSIP number”</u></b>                            | <u>means the number assigned to a Security by the Committee on Uniform Securities Identification Procedures</u>   |
| <b><u>“Customer”</u></b>                                | <u>means a person accepted by the Company as being a customer (howsoever described) of the Company pursuant to a legal agreement, standard terms of business or practice</u>  |
| <b><u>“Customer Name Securities”</u></b>                | <u>means Securities registered in the name of a Customer but does not include Securities registered in the name of the Customer which, by endorsement or otherwise, are in negotiable form</u>  |
| <b><u>“Cut-Off Date”</u></b>                            | <u>means, in respect of a Common Terms Distribution or proposed Common Terms Distribution, the Cut-Off Date nominated by the Company pursuant to Clause 9.2.1</u>   |
| <b><u>“Deposit”</u></b>                                 | <u>has the meaning set out in Clause 50.10.3</u>  |
| <b><u>“Derived Financial Asset”</u></b>                 | <u>means any Security or Money (including any income) received by or on behalf of the Company arising out of any Omnibus Settlement Assets (including any LBI Distribution or out of any other Derived Financial Asset) and shall include the sale proceeds (net of any UCDP Expenses as defined in the Settlement Agreement) received by the Company of any Security which is a Trust Financial Asset sold under Clause 20 and the proceeds of any hedging permitted by Clause 21.9</u>  |
| <b><u>“Distribution Date”</u></b>                       | <u>means, in respect of a Common Terms Distribution or proposed Common Terms Distribution, such date or dates as the Company may nominate pursuant to Clause 9.2.1 as the proposed</u>  |



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| <u><b>"Eligibility Status"</b></u>   | <u>Distribution Date for such Common Terms Distribution</u>  |
| <u><b>"Explanatory Notes"</b></u>    | <u>has the meaning set out in Clause 43.1.3</u>  |
| <u><b>"FATCA"</b></u>                | <u>has the meaning set out in Clause 13.1.3(iii)</u><br><u>means:</u><br><u>(i) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;</u><br><u>(ii) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the U.S. and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (i) above; or</u><br><u>(iii) any agreement pursuant to the implementation of paragraph (i) or (ii) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction</u> |
| <u><b>"Final Order"</b></u>          | <u>means an order made by a court of competent jurisdiction, whose rulings are binding on the Company, provided that:</u><br><u>(i) the order is in full force and effect; and</u><br><u>(ii) either:</u><br><u>(a) the order is not capable of being appealed; or</u><br><u>(b) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought)</u>   |
| <u><b>"Financial Instrument"</b></u> | <u>means any financial instrument, including any share, instrument creating or acknowledging indebtedness, instrument creating or acknowledging entitlements to investments, warrant or unit in a collective investment scheme, that is capable of being credited to an account of the Company with an Intermediary, excluding money</u>   |
| <u><b>"Fixing Date"</b></u>          | <u>means 30 November 2012</u>  |
| <u><b>"FSA"</b></u>                  | <u>means the Financial Services Authority of the United Kingdom</u>  |
| <u><b>"FSA Handbook"</b></u>         | <u>means the handbook containing rules, principles and guidance made by the FSA under powers given to it by the FSMA as modified, amended or revised from time to time</u>   |
| <u><b>"FSA Rules"</b></u>            | <u>means the FSMA and the FSA Handbook</u>   |
| <u><b>"FSMA"</b></u>                 | <u>means the Financial Services and Markets Act 2000 and, to any extent relevant, the Financial Services Acts 2010 and 2012</u>  |
| <u><b>"GAC Code"</b></u>             | <u>means the "Global Account Code" number assigned for identification purposes to a portfolio of a Customer of the Company</u>   |
| <u><b>"Gross Distribution"</b></u>   | <u>has the meaning set out in Clause 9.8</u>   |



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| <u><b>“Holding Company”</b></u>                                  | <u>means, in relation to the Company, any other company, corporation or legal entity in respect of which it is a Subsidiary</u>   |
| <u><b>“Income Amount”</b></u>                                    | <u>means, in respect of any LBI Asset Claim Customer, the amount of income which would have been earned (before tax and without any reinvestment of income) on the Securities comprised in that LBI Asset Claim Customer’s 19/9 Position during the period from 15 September 2008 to the Fixing Date and taking into account any change in the amount or nature of those Securities as a result of capital redemptions, Corporate Actions or Corporation Events during that period but not including any amount of capital payment referred to at paragraph (ii)(a) or (ii)(b) of the definition of Aggregate Market Value)</u>   |
| <u><b>“Information Memorandum”</b></u>                           | <u>means the information memorandum issued by the Company in relation to the OSA and the Resolution</u>   |
| <u><b>“Information Pack”</b></u>                                 | <u>has the meaning set out in Clause 13.1.1</u>   |
| <u><b>“Information Pack Challenge Form”</b></u>                  | <u>means the challenge form in the form provided with the Information Pack</u>  |
| <u><b>“Information Pack Figure”</b></u>                          | <u>has the meaning set out in Clause 43.1.1</u>   |
| <u><b>“Information Representation”</b></u>                       | <u>has the meaning set out in Clause 17.2</u>   |
| <u><b>“Initial Representation”</b></u>                           | <u>has the meaning set out in Clause 17.1</u>   |
| <u><b>“Insolvency Act”</b></u>                                   | <u>means the Insolvency Act 1986</u>  |
| <u><b>“Insolvency Rules”</b></u>                                 | <u>means the Insolvency Rules 1986</u>  |
| <u><b>“Intermediary”</b></u>                                     | <u>means a custodian, clearing system, depository, nominee or other person who holds assets (including, for the avoidance of doubt, rights in respect of Securities or Post-Administration Client Money) on behalf of or to the order of the Company, and which has a direct contractual or fiduciary relationship with the Company in relation to those assets</u>   |
| <u><b>“Intermediary Consenting Beneficiary Distribution”</b></u> | <u>means any asset or benefit received by a Consenting Beneficiary on or after the Administration Date from LBI or its custodians or depositories, by way of delivery of Security, payment of Money, set-off or otherwise equivalent to a Permitted Deduction or a Net Distribution under the relevant Consenting Beneficiary Agreement, in or towards satisfaction of an LBI Asset Claim of that Consenting Beneficiary, as determined by the Company</u><br><u>For the avoidance of doubt, “Intermediary Consenting Beneficiary Distribution” includes any such assets or benefits received by a Consenting Beneficiary between the Administration Date and its Consenting Beneficiary Accession Date</u> |
| <u><b>“IRS”</b></u>  | <u>means the United States Internal Revenue Service</u>   |
| <u><b>“ISIN”</b></u>   | <u>means International Securities Identification Number</u>   |



**"LBHI Guarantee Claim"**

means a Legal Claim against Lehman Brothers Holding Inc. under a guarantee granted by it of the Company's obligations to Customers

**"LBI"**

means Lehman Brothers Inc.

**"LBI Asset"**

means any Securities or Money which was recorded in the Books of the Company at the Time of Administration:

(i) as being held in a segregated manner for Customers of the Company separately from other property held by the Company which other property is available to the unsecured creditors of the Company; and

(ii) as being:

(a) held in physical form by LBI for the Company's Customers provided that it is:

(i) not a Customer Name Security; and

(ii) segregated from other property held in physical form by LBI which is not held in the account of a customer of LBI; or

(b) if not held in physical form by LBI, held in an account designated in the Books of LBI as an account in the name of the Company held by the Company for the benefit of Customers.

subject to:

(iii) adjustments subsequently made by the Company so as to:

(a) exclude Securities and Money that, following the Time of Administration, ceased to be so held or credited by LBI; and

(b) include Securities and Money that became so held or credited.

in either such case as a result of a sale, purchase, rehypothecation, return from rehypothecation, or other transfer instruction given by the Company to LBI before the Time of Administration and implemented by LBI prior to commencement of the SIPA Liquidation Proceedings and as shown in the adjusted Books of the Company

**"LBI Asset Claim"**

means, in respect of a Customer, a Legal Claim (other than an unsecured claim against the Company) whether such claim ranks *pari passu* or in priority or as an administration expense in the Company's general estate in relation to any LBI Asset

**"LBI Asset Claim Customer"**

means a Customer with an LBI Asset Claim

**"LBI Distribution"**

means any receipt of Omnibus Settlement Assets by the Company from LBI but excluding any Customer Name Securities

**“LBI Duplicate Claim”**

in favour of a Customer

means the “Duplicative Claims” as defined in the Settlement Agreement

**“LBI Trustee”**

means James W. Giddens in his capacity as trustee of LBI in the SIPA Liquidation Proceedings

**“Legal Claim”**

means a claim existing in law (whether present or future and whether presently known or unknown) of whatsoever nature, including:

- (i) a proprietary claim, a claim for breach of contract, tort, restitution and/or breach of trust
- (ii) a claim for loss of market value, income or interest;
- (iii) a claim for damages for special, indirect, incidental and/or consequential loss, punitive or 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;
- (iv) the ability to enforce any right to:
  - (a) seek or enforce judgment;
  - (b) exercise any remedy (for damages or otherwise, including damages for special, indirect, incidental and/or consequential loss, punitive or 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);
  - (c) seek an indemnity and/or contribution, whether for losses (including special, indirect, incidental, consequential loss, punitive or 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), fees (including any VAT thereon), costs, charges or expenses (including third party costs, together with any applicable irrecoverable VAT) of any nature; or
  - (d) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or liability whatsoever,

whether arising by, amongst other things, reason of insolvency or the termination, whether voluntary or for cause, of any contractual obligation or for any failure of a person to perform



**"Legal Liabilities"**

any contractual, legal or regulatory obligation or otherwise

means all liabilities, costs, losses, expenses, demands, duties and obligations of every description, existing in law, 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 "Legal Liability" means any one of them

**"Liquidation Event"**

means either an order by the Court to compulsorily wind up the Company or the commencement of a creditors' voluntary winding-up in respect of the Company (both pursuant to the Insolvency Act and the Insolvency Rules)

**"Majority Consenting Beneficiary Consent"**

has the meaning set out in Clause 41.1

**"Money"**

means any cash or cash equivalents in any currency other than any Security, including a positive cash balance reflected in any account or ledger, but shall not include any Pre-Administration Client Money

**"Net 19/9 Shortfall Claim"**

has the meaning set out in Clause 5.3

**"Net Distribution"**

has the meaning set out in Clause 10.1

**"Non-Consenting Beneficiary"**

means any LBI Asset Claim Customer who is not a Consenting Beneficiary

**"Notice"**

means any notice given in accordance with Clause 42, and "Notify", "Notifying" and "Notified" shall be construed accordingly

**"Notice of Distribution"**

has the meaning set out in Clause 14.2.1

**"Notice of Distribution Figure"**

has the meaning set out in Clause 43.1.2

**"Notice of Intended Distribution"**

has the meaning set out in Clause 14.1.1

**"Omnibus Claim"**

means the omnibus customer property claim filed by the Company on behalf of itself and its Customers in the SIPA Liquidation Proceedings of LBI docketed as claim numbers: 900005782/900005953, and 900007955/900007941 and 900008199 (and the LBIE Failed Trade Claim (as defined in the Settlement Agreement) to the extent it relates to claims identified by such claim numbers), as supplemented, modified or amended from time to time up to the date of the Settlement Agreement

**"Omnibus Settlement Assets"**

means any Security or Money distributed to or for the account of the Company by the LBI Trustee in accordance with the Settlement Agreement in respect of the Allowed Omnibus Claim (as defined in the Settlement Agreement) being:

- (i) the Omnibus Securities, the Omnibus Cash in Lieu Payment and the Omnibus Cash Payment;
- (ii) the Omnibus Shortfall Claim; and
- (iii) the Specified Post-Filing Income.



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|  | <u>in each of paragraphs (i) to (iii) above, as defined in the Settlement Agreement</u>   |
| <u>“Omnibus Trust”</u>                         | <u>means the trust under which the LBI Distributions and any other Trust Financial Assets (including any Reserves) are held as described in Clause 8.1 and, as the context may require, the assets constituting the trust property thereof</u>  |
| <u>“OSA” or “Omnibus Settlement Agreement”</u> | <u>means the Omnibus Settlement Agreement between the Company and the OSA Consenting Beneficiaries</u>  |
| <u>“OSA Acceptance Notice”</u>                 | <u>has the meaning set out in clause 1.1 of the OSA</u>   |
| <u>“OSA Accession Deed”</u>                    | <u>has the meaning set out in clause 1.1 of the OSA</u>   |
| <u>“OSA Consenting Beneficiary”</u>            | <u>means:</u><br><u>(i) any OSA Eligible Offeror who has received an OSA Acceptance Notice; and</u><br><u>(ii) any OSA Eligible Offeror which accedes to the OSA in accordance with clause 8 of the OSA</u>   |
| <u>“OSA Distribution Liability”</u>            | <u>means, in respect of any OSA Consenting Beneficiary and any Gross Distribution to be made on a Distribution Date, the aggregate of:</u><br><u>(i) the final ascertained amount of the outstanding indebtedness (if any) of such Consenting Beneficiary owing to the Company;</u><br><u>(ii) any amount which the Company is under a legal obligation to retain out of the Gross Distribution of the Consenting Beneficiary for the account of any other person claiming by or through such Consenting Beneficiary; and</u><br><u>(iii) any other outstanding Legal Liabilities which such Consenting Beneficiary from time to time agrees with the Company that the Company may satisfy from any Gross Distribution</u><br><u>provided that no amount due under Clauses 17.5, 18.6 or 51.5 shall be treated as an OSA Distribution Liability</u> |
| <u>“OSA Documents”</u>                         | <u>has the meaning set out in clause 1.1 of the OSA</u>   |
| <u>“OSA Eligible Offeror”</u>                  | <u>has the meaning set out in clause 1.1 of the OSA</u>   |
| <u>“OSA Offer”</u>                             | <u>has the meaning set out in clause 1.1 of the OSA</u>   |
| <u>“Permitted Deductions”</u>                  | <u>has the meaning set out in Clause 10.3</u>   |
| <u>“Pledgor”</u>                               | <u>means in relation to any Security Interest, the party over whose assets the Security Interest has been created</u>   |
| <u>“Portal”</u>                                | <u>means a secure online facility made available by the Company to Customers</u>  |
| <u>“Post-Administration Client”</u>            | <u>means any Client Money which is received by the Company after</u>  |



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| <u><b>Money</b></u>                               | <u>the Time of Administration and for which the Company remains accountable, but, for the avoidance of doubt, shall not include Pre-Administration Client Money or Pre-Administration Client Money Claims (as such term is defined in the Amended and Restated CRA but replacing references to “Signatory” with “Consenting Beneficiary”)</u>   |
| <u><b>“Pre-Administration Client Money”</b></u>   | <u>means any Client Money which was received or held by the Company prior to the Time of Administration and for which the Company remained accountable at the Time of Administration and any money earned or arising at any time in respect thereof, whether before or after the Time of Administration</u>   |
| <u><b>“Proceedings”</b></u>                       | <u>means any process, action, 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</u>   |
| <u><b>“Proprietary Claim”</b></u>                 | <u>means, in respect of each Consenting Beneficiary, its proprietary claim as set out in Clause 4.1</u>   |
| <u><b>“Qualifying Consenting Beneficiary”</b></u> | <u>has the meaning set out in Clause 9.5.1</u>  |
| <u><b>“receipt”</b></u>                           | <u>means, in respect of the receipt of any LBI Distribution or Omnibus Settlement Asset, any part of any LBI Distribution or Omnibus Settlement Asset being received, which receipt occurs when any LBI Distribution or Omnibus Settlement Asset is unconditionally transferred by the LBI Trustee to or to the order of the Company and the property received is the property actually so paid or transferred, after the application of any withholding or deduction, cost, expense, transfer or registration fee or any other deduction or withholding of any nature whatsoever made before it comes into the hands or control of the Company and “receive” and “received” shall be construed accordingly</u> |
| <u><b>“Recoverable Turnover Value”</b></u>        | <u>has the meaning set out in Clause 25.1.1</u>   |
| <u><b>“Released Claim Party”</b></u>              | <u>means, in respect of a Consenting Beneficiary, each Company-Related Released Party together with each other Consenting Beneficiary.</u><br><u>For the avoidance of doubt:</u><br><u>(i) _____ Lehman Brothers Holding Inc.; and</u><br><u>(ii) _____ CAPCO,</u><br><u>shall not be Released Claim Parties for the purpose of Clause 6</u>  |
| <u><b>“Released Common Terms Claims”</b></u>      | <u>has the meaning set out in Clause 6.1</u>  |
| <u><b>“Released Persons”</b></u>                  | <u>has the meaning set out in Clause 6.1</u>  |



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| <u><b>“Relevant Consenting Beneficiaries”</b></u>            | <u>has the meaning set out in Clause 41.2.1</u>   |
| <u><b>“Relevant Qualifying Consenting Beneficiaries”</b></u> | <u>has the meaning set out in Clause 9.7</u>  |
| <u><b>“Representation”</b></u>                               | <u>means any Initial Representation or Information Representation</u>   |
| <u><b>“Reserves”</b></u>                                     | <u>has the meaning set out in Clause 8.2 and “Reserve”, “Reserved” and “Reserving” shall be construed accordingly</u>   |
| <u><b>“Reserved Securities”</b></u>                          | <u>means any Securities set aside in any Reserve from time to time</u>  |
| <u><b>“Resolution”</b></u>                                   | <u>means an Extraordinary Resolution (under and as defined in the CRA) proposed by the Company, providing for the amendment of the CRA in order to incorporate the Common Terms into the CRA</u>  |
| <u><b>“Security” or “Securities”</b></u>                     | <u>means any Financial Instrument or any right in respect of any Financial Instrument against a custodian, clearing system, depository, nominee or other person who holds assets (including, for the avoidance of doubt, rights in respect of assets) on behalf of or to the order of a person who holds such Financial Instrument</u>  |
| <u><b>“Security Claim”</b></u>                               | <u>means any Legal Claim asserted by a Security Interest Claimant that it has a Security Interest</u>   |
| <u><b>“Security Interest”</b></u>                            | <u>means any legal, equitable or possessory interest (or equivalent under a legal system outside England) of a person (a “Security Interest Claimant”) in an identified or identifiable asset that is in the nature of a lien, pledge or security that encumbers the entitlement of the Pledgor to that asset until one or more obligations of the Pledgor to the Security Interest Claimant are discharged in full</u> |
| <u><b>“Security Interest Claimant”</b></u>                   | <u>has the meaning set out in the definition of “Security Interest”</u>   |
| <u><b>“Settlement Agreement”</b></u>                         | <u>means the settlement agreement dated 21 February 2013 between the Company and the LBI Trustee with respect to, among other things, the Omnibus Claim</u>   |
| <u><b>“Shortfall Claim Cap”</b></u>                          | <u>means US\$ 200,000,000</u>   |
| <u><b>“Shortfall Claims Determination Notice”</b></u>        | <u>has the meaning set out in Clause 5.2</u>  |
| <u><b>“SIPA”</b></u>   | <u>means the U.S. Securities Investor Protection Act of 1970</u>  |
| <u><b>“SIPA Cash”</b></u>                                    | <u>means, for any LBI Asset Claim Customer, Money representing the net sale proceeds attributable to the settlement of Securities transactions for the sale of long and rehypothecated positions and short sales between 15 September 2008 and 19 September 2008</u>  |
| <u><b>“SIPA Liquidation”</b></u>                             | <u>means the SIPA liquidation of LBI commenced pursuant to an order of the United States District Court, Southern District of New York dated 19 September 2008</u>  |



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| <b><u>“SIPA Liquidation Proceedings”</u></b>          | <u>means the liquidation proceedings under the Securities Investor Protection Act 1970 commenced against LBI as of 19 September 2008</u>  |
| <b><u>“SIPC”</u></b>                                  | <u>means the Securities Investor Protection Corporation, all of its past and present employees, professionals and advisers and its successors, assigns and personal representatives</u>   |
| <b><u>“Statutory Trust”</u></b>                       | <u>means the statutory trust created by the CASS Rules</u>  |
| <b><u>“Subsidiary”</u></b>                            | <u>means, in relation to the Company or its Holding Company, any company, corporation or other legal entity:</u><br><u>(i) which is controlled, directly or indirectly, by the Company or its Holding Company;</u><br><u>(ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the Company or its Holding Company; or</u><br><u>(iii) which is a subsidiary of another Subsidiary of the Company or its Holding Company,</u><br><u>and, for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to determine the composition of the majority of its board of directors or equivalent body</u> |
| <b><u>“Surviving Third Party Supported Claim”</u></b> | <u>has the meaning set out in Clause 26.1</u>   |
| <b><u>“Tax” or “Taxation”</u></b>                     | <u>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, 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 Consenting Beneficiary or any other person</u>  |
| <b><u>“Tax Authority”</u></b>                         | <u>means any taxing or other authority 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</u>   |
| <b><u>“Tax Burden Liability”</u></b>                  | <u>has the meaning set out in Clause 18.4.1</u>   |
| <b><u>“Tax Reserve”</u></b>                           | <u>has the meaning set out in Clause 8.2.1(vi)</u>  |
| <b><u>“Third Party”</u></b>                           | <u>means, in relation to any contract, a person who is not a party to that contract</u>   |
| <b><u>“Third Party Support Obligation”</u></b>        | <u>has the meaning set out in Clause 26.1.1</u>   |
| <b><u>“Time of Administration”</u></b>                | <u>means 7.56 a.m. (London time) on the Administration Date</u>   |
| <b><u>“Transfer”</u></b>                              | <u>means, in relation to any asset or liability, the assignment, novation, sale or any other form of transfer (including any succession in title arising by operation of insolvency or any other</u>  |



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|  | <u>law), which is effective to transfer the title to, rights of and obligations under such asset or liability, as the case may be, from one person to another and "Transferred" and "Transferring" shall be construed accordingly</u>  |
| <b><u>"Trust Entitlement"</u></b>            | <u>means:</u><br><ul style="list-style-type: none"> <li><u>(i) in respect of each Consenting Beneficiary, its Proprietary Claim; and</u></li> <li><u>(ii) in respect of any Non-Consenting Beneficiary, its proprietary rights in respect of its LBI Assets to the extent that such rights subsist (if at all) in law or are agreed by the Company</u></li> </ul>  |
| <b><u>"Trust Entitlement Transferee"</u></b> | <u>means any Consenting Beneficiary to whom one or more Common Terms Claims have been Transferred</u>  |
| <b><u>"Trust Entitlement Transferor"</u></b> | <u>means any Customer who makes a Transfer of its Common Terms Claims to a Consenting Beneficiary</u>  |
| <b><u>"Trust Financial Assets"</u></b>       | <u>means:</u><br><ul style="list-style-type: none"> <li><u>(i) any Omnibus Settlement Assets which are received by the Company from the LBI Trustee (including any LBI Distribution) from time to time; and</u></li> <li><u>(ii) any Derived Financial Asset</u></li> </ul>  |
| <b><u>"Turnover Recovery"</u></b>            | <u>has the meaning set out in Clause 25.1.1</u>  |
| <b><u>"US dollars" "USD" or "US\$"</u></b>   | <u>means the lawful currency of the United States of America</u>   |
| <b><u>"U S Person"</u></b>                   | <u>means any person that is a "United States person" as defined in Section 7701(a)(30) of the Code</u>   |
| <b><u>"U.S. Withholding Tax Form"</u></b>    | <u>means:</u><br><ul style="list-style-type: none"> <li><u>(i) in the case of any person that is treated as a U.S. Person for U.S. federal income tax purposes, an IRS Form W-9 certifying that such person is a U.S. Person and is not subject to U.S. federal backup withholding tax;</u></li> <li><u>(ii) in the case of any person that is not a U.S. Person, whichever of the following is applicable:</u> <ul style="list-style-type: none"> <li><u>(a) if such person is treating all payments received (or to be received) by it as (A) effectively connected to a U.S. trade or business or (B) attributable to a permanent establishment in the United States of America pursuant to any applicable treaty, an IRS Form W-8ECI;</u></li> <li><u>(b) if such person is acting as principal, is the beneficial owner for U.S. federal income tax purposes of any payments received (or to be received) by it, and is claiming an exemption from U.S. federal withholding tax pursuant to Section 892 of the Code, an IRS Form W-8EXP;</u></li> </ul> </li> </ul> |



- (c) if such person is acting as principal, is the beneficial owner for U.S. federal income tax purposes of any payments received (or to be received) by it, an IRS Form W-8BEN that, if applicable, claims the benefits of an income tax treaty to which the United States of America is a party and establishes any exemption from, or reduction of, U.S. federal withholding Tax pursuant to such tax treaty which such person is claiming; or
- (d) to the extent such person is not acting as principal, is not the beneficial owner for U.S. federal income tax purposes of any payments received (or to be received) by it or is an entity treated as a partnership for U.S. federal income tax purposes, an IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8EXP, IRS Form W-8BEN, IRS Form W-9, and/or other certification documents from each principal or beneficial owner, as applicable; and
- (iii) any other U.S. federal tax form requested by the Company that:
  - (a) might enable the Company or any other Consenting Beneficiary to mitigate any liability to Tax or to reclaim any amount deducted or withheld, whether by the Company or any other person, for or on account of any Tax; or
  - (b) is required in order to allow the Company to make a payment in accordance with the relevant Consenting Beneficiary Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate

“USD Value”

means, in relation to a Consenting Beneficiary, unless otherwise specifically provided in the Common Terms, in respect of any Security or Money at a particular time, the value in US dollars of such Security or Money as set out in the Information Pack

“VAT”

means value added tax as provided for in the (UK) Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental to it or in any primary or subordinate legislation promulgated by the European Union or any body or agency thereof and any Tax similar or equivalent to value added tax imposed by any country other than the United Kingdom and any similar sales or turnover Tax replacing or introduced in addition to any of the foregoing

“Website”

means the Company's site on the website of



## **55 Interpretation**

### **55.1 Construction**

In the Common Terms, unless the context otherwise requires or unless otherwise expressly provided:

55.1.1 references to any specified provision of the Common Terms shall be construed as references to that provision subject to any amendment, addition or condition approved or imposed pursuant to Clause 41;

55.1.2 references to any agreement or instrument are a reference to that agreement or instrument as amended, novated, supplemented, extended, restated or replaced as permitted or not prohibited by the Common Terms;

55.1.3 references to the "Company" shall include (except to the extent the context requires otherwise and, for the purpose of this definition of "Company", excluding the Administrators) any agent, custodian, depositary, nominee or representative (howsoever described) of the Company, including any entity appointed pursuant to Clause 18.7, 21.7 or 34 (so that, for the avoidance of doubt and without limitation, any references in these Common Terms to the Company making a payment, distribution, application, disposition, withholding or deduction include any payment, distribution, application, disposition, withholding or deduction made by any such person acting on behalf of the Company);

55.1.4 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;

55.1.5 references to the "Administrators" shall be construed as being to the Administrators both jointly and severally and to any other person who is appointed as an administrator in substitution for any administrator or as an additional administrator in conjunction with the Administrators;

55.1.6 the "Company", any "Consenting Beneficiary", any "OSA Eligible Offeror", any "LBI Asset Claim Customer", any "Non-Consenting Beneficiary" or any other person shall be construed (subject to Clause 28.2) so as to include its successors in title, permitted assigns and permitted transferees;

55.1.7 references to an "application":

(i) are to the act of:

(a) deduction, withholding or appropriation (or where the context so admits, to the money or value so deducted, withheld or appropriated) of all or any part of a Gross Distribution by way of a Permitted Deduction pursuant to Clause 10.1; or



- (b) paying money or transferring value (or where the context so admits to the money or value so paid or transferred) from the Company to any person; and
- (ii) include any appropriation or other application out of a Gross Distribution and any payment or transfer of value described in Clause 55.1.7(i)(b).
- and “**apply**” and “**applied**” shall have a similar meaning, unless the context otherwise requires;
- 55.1.8 references to an “**appropriation**” are to the Company retaining for itself for its own benefit any money or value and “**appropriate**” and “**appropriated**” shall have a similar meaning, unless the context otherwise requires;
- 55.1.9 references to a “**disposition**” are to any distribution or application;
- 55.1.10 references to a “**distribution**”:
- (i) are to the act of paying money or transferring value (or where the context so admits, to the money or value so paid or transferred) from the Company to a Consenting Beneficiary or a Non-Consenting Beneficiary in respect of that person’s Trust Entitlement; and
- (ii) include the payment of a Net Distribution out of a Gross Distribution pursuant to Clause 9.9.
- and “**distribute**” and “**distributed**” shall have a similar meaning unless the context otherwise requires;
- 55.1.11 references to an asset being “**held**” shall be construed to include it being “custodied” and “**hold**” shall be construed in the same manner;
- 55.1.12 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- 55.1.13 words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
- 55.1.14 headings are for ease of reference only and shall not affect the interpretation of the Common Terms;
- 55.1.15 references to Clauses and Parts are to Clauses and Parts of the Common Terms;
- 55.1.16 if there is any ambiguity, inconsistency, discrepancy or conflict between the Common Terms and any other part of the Information Memorandum, the Common Terms shall prevail;
- 55.1.17 the language which governs the interpretation of the Common Terms is the English language. All notices to be given by the Company or any Consenting Beneficiary and all other communications and documentation, which notices, communications or documentation are in any way relevant to the Common Terms or the performance or termination of the Common Terms, shall be in the English language;
- 55.1.18 the words “**include**”, “**includes**”, “**including**” and “**such as**” are to be construed without limitation;

55.1.19 references to “**indebtedness**” include any obligation (whether incurred as principal or surety or otherwise) for the payment or repayment of Money (including any interest), whether present or future, actual or contingent;

55.1.20 references to a right, claim, benefit, entitlement, interest, duty or obligation existing, or which a person has, “**in law**” shall include any of the foregoing (whether proprietary or personal, whether present or future, whether ascertained or unascertained or disputed, whether severally or jointly, whether as principal or surety, whether actual, contingent or prospective in nature and howsoever arising) or any similar chose in action or property existing under contract or any rule of equity or law or under other binding and enforceable rule of law or regulation;

55.1.21 references to a “**judgment**” include any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;

55.1.22 references to a “**law**” include common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and “**lawful**” and “**unlawful**” shall be construed accordingly);

55.1.23 no personal liability shall attach to any of the Administrators, the Advisers and/or their firms and in each case their and their firms’ members, agents, partners, officers, directors, employees or representatives for any representation or statement made by such a person in any certificate, notice, document or other communication given by or on behalf of the Company by any such person save in the case of fraud, in which case liability (if any) shall be determined in accordance with applicable law;

55.1.24 references to “**Proceedings against the Company**” include any of the following actions other than actions to enforce any rights or obligations under the Common Terms after at least 20 Business Days’ notice to the Company of such intended enforcement and the grounds for it:

(i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Company, the Omnibus Trust, any Company-Related Released Party or any of their property;

(ii) enforcing, levying, attaching (including any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Company, the Omnibus Trust, any Company-Related Released Party or any of their property;

(iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Company, the Omnibus Trust, any Company-Related Released Party or any of their property;

(iv) asserting any right of set-off, directly or indirectly, against any obligation due to the Company, the Omnibus Trust, any Company-Related Released Party or any of their property, except as contemplated or allowed by the Common Terms;

- (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Common Terms; and
- (vi) prosecuting or otherwise asserting any right, claim or cause of action released pursuant to the Common Terms.

## **55.2 Action which is “reasonably practicable”**

In determining whether any action is “reasonably practicable” for the Company for the purposes of the Common Terms, regard shall be had to:

55.2.1 the fact that the Company is in administration;

55.2.2 the fact that the Company is not operating as an investment bank whose business includes prime brokerage services;

55.2.3 the actual limitations on access to the Books of the Company and other resources;

55.2.4 the materiality of the likely impact of such action on the Company’s aim to control costs and to deal with matters arising under the Common Terms expeditiously; and

55.2.5 any other matters of order or more general application.