

<b>“Voting Rights”</b>	means the value attributed to 8% Interest Claims, Specified Interest Claims and Higher Rate Claims for the purpose of Voting at the relevant Scheme Meeting(s)
<b>“Waterfall I”</b>	means a joint application issued on 14 February 2013 by the respective administrators of the Company, LBL and LBHI2, with LBHI as a respondent, seeking a determination as to, among other things, the existence and priority ranking of certain claims in respect of the Surplus, and the rights and obligations of the Company as against its contributories, heard by the High Court, the Court of Appeal and the Supreme Court, the Supreme Court judgment being given on 17 May 2017
<b>“Waterfall II”</b>	means the application issued on 12 June 2014 (as amended pursuant to the orders of David Richards J dated 9 March 2015 and Hildyard J dated 9 October 2015) by the Administrators, with Burlington Loan Management Limited, CVI GVF (Lux) S.à r.l., Hutchinson Investors, LLC, the Subordinated Creditor and York Global Finance BDH, LLC as respondents, seeking determination of issues that impact the potential entitlements of the Company’s creditors to payments from the Surplus, split into Tranche A and Tranche B (with case citation, in respect of the Court of Appeal decision, [2017] EWCA Civ 1462), and Tranche C (with case citation, in respect of the first instance decision, [2016] EWHC 2417 (Ch))
<b>“Waterfall III”</b>	means the application issued on 25 April 2016 by the Administrators with the respective joint administrators of LBHI2, LBL and LBEL as respondents, seeking determination of issues relating to the rights and obligations of the Company, LBHI2, LBL, LBEL and LBH PLC arising out of (i) the Company’s status as an unlimited liability company and (ii) certain recharge arrangements among those entities, and the associated cross-application issued on 17 October 2016 by the administrators of LBL
<b>“Waterfall Proceedings”</b>	means Waterfall I, Waterfall II and Waterfall III as the context requires
<b>“Website”</b>	means the website which can be accessed at <a href="https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html">https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html</a>
<b>“Wentworth Parties”</b>	means: <ul style="list-style-type: none"> <li>(i) LBHI;</li> <li>(ii) Wentworth Sons Senior Claims S.à. r.l.;</li> <li><del>(iii) the Subordinated Creditor;</del></li> <li><del>(iv)</del><u>(iii)</u> the Shareholder;</li> <li><del>(v)</del><u>(iv)</u> King Street Capital Management, L.P.;</li> </ul>

~~(vi)~~(v) Elliott Management Corporation; and

~~(vii)~~(vi) in respect of ~~(vii)~~— and ~~(vi)~~(v) above, their respective Affiliates that are parties to the Lock Up Agreement

<b>“WHT Deduction”</b>	has the meaning given to it in Clause 18.1.1
<b>“WHT Deduction Certificate”</b>	has the meaning given to it in Clause 18.1.3(ii)
<b>“WHT Determination Event”</b>	has the meaning given to it in Clause 18.3
<b>“WHT Proceedings”</b>	means the application issued by the Administrators on 22 December 2015, with HMRC as respondent, seeking directions of the High Court in relation to the application of section 874 of the Income Tax Act to payments of Statutory Interest (with case citations, in respect of the first instance decision, [2016] EWHC 2492 (Ch), and in respect of the Court of Appeal decision, [2017] EWCA Civ 2124)
<b>“WHT Repayment”</b>	has the meaning given to it in Clause 18.3.1
<b>“WHT Repayment Event”</b>	has the meaning given to it in Clause 18.3.2

## Interpretation

- 1.2** In this Scheme, unless the context otherwise requires or unless otherwise expressly provided:
- 1.2.1** references to any specified provision of this Scheme shall be construed as references to that provision subject to any modification, addition or condition approved or imposed pursuant to Clause 42;
  - 1.2.2** references to a person include any company, unincorporated association or partnership whether or not having separate legal personality, and references to a company include any company, corporation or body corporate, wherever incorporated;
  - 1.2.3** references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
  - 1.2.4** all monetary amounts stated in this Scheme are in GBP unless expressly stated otherwise;
  - 1.2.5** a reference to **“GBP”** is to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland;
  - 1.2.6** references to specific Insolvency Rules shall include references to the equivalent provisions of the Insolvency Rules 1986 (if the context so allows);
  - 1.2.7** a reference to a **“judgment”** includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
  - 1.2.8** a reference to a **“law”** includes common or customary law and any constitution, decree, judgment, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever;

the final decision regarding which Decision Notice to issue pursuant to Clause 11.2 shall be made by the Company in its sole discretion.

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

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

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

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

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

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

- 15.1** Subject to the provisions of Part V and Part VI the Company shall pay the Applicable CI Payment to the relevant Certifying Creditor in respect of the Certification Claim to which it relates within 20 Business Days of the later of:

**15.1.1** the Applicable CI Payment in respect of such Certification Claim being determined in accordance with Clause 11 or 13; and

**15.1.2** publication of an Issued Scheme Outcome Statement (other than an Insufficient Funds Statement).

- 15.2** For the avoidance of doubt, the Company shall pay the Applicable CI Payment in respect of a Certification Claim in accordance with Clause 15.1, notwithstanding that, at the time of such payment, an Applicable CI Payment may not have been determined in respect of all of such Certifying Creditor's Certification Claims.

- 15.3** Where a Certifying Creditor has notified the Company of a UCC Challenge prior to the Bar Date, the determination of its Certification(s) pursuant to this Part IV shall be stayed, and any time periods set out in this Part IV shall be suspended, until such time as the UCC Challenge has been either agreed in accordance with Clause 20.1 or finally determined by the Courts in accordance with Clause 20.2 (as applicable).

### **16 Undetermined Certification Claims**

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

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

## PART VI: DISPUTE RESOLUTION PROCEDURE

### 23 The Adjudicator

#### 23.1 Engagement

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

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

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

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

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

#### 23.2 Support Team

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

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

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

#### 23.3 Independence and conflicts of interest

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

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

returned to the Company or, as applicable, the relevant serving Appellant Certifying Creditor.

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

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

#### **23.4 Liability**

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

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

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

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

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

- 26.4.3 the Company shall deduct the amount payable in respect of its costs and the Administrators' costs in relation to the Appeal from the Appellant Certifying Creditor's Scheme Distribution; and
- 26.4.4 in the event that the amount payable in costs exceeds the Appellant Certifying Creditor's Scheme Distribution entitlement, the Appellant Certifying Creditor shall pay the balance to the Administrators within 15 Business Days of written demand by the Company.

## 27 Confidentiality

27.1 Each Appellant Certifying Creditor, the Company, the Adjudicator and the Support Team shall maintain the confidentiality of any Certification, any Decision Notice, any information provided pursuant to any Additional Information Request, any Appeal and any documentation or information provided to it pursuant to Clause 11.3 and shall not disclose to any person (including for the avoidance of doubt the Wentworth Parties) save for the Subordinated Creditor and/or the Operating Committee ~~the Adjudicator's determination or any such~~ information ~~concerning or documentation provided exclusively in the course of the Appeal or pursuant to Clause 11.3~~, save where:

- 27.1.1 the Appellant Certifying Creditor and the Company have agreed otherwise in writing;
- 27.1.2 the information is already in the public domain;
- 27.1.3 the disclosure is necessary in connection with legal proceedings or is otherwise required by law or any regulatory body;
- 27.1.4 the disclosure is required by current insolvency practice or to enable the Administrators properly to carry out the duties of their office;
- 27.1.5 the disclosure is made by the Administrators to any subsequent supervisor, liquidator or other officeholder of the Company;
- 27.1.6 the Administrators consider it desirable in the course of carrying out the duties of their office to disclose the Adjudicator's determination in respect of an Appeal; or
- 27.1.7 the disclosure is made to a professional adviser that is bound by professional duties of confidentiality.

27.2 Each of the Subordinated Creditor and each member of the Operating Committee shall maintain the confidentiality of any ~~Appeal disclosed to it~~ Certification, any Decision Notice, any information provided pursuant to any Additional Information Request, any Appeal and any documentation or information provided ~~to it~~ pursuant to Clause 11.3 which is disclosed to it and shall not disclose to any person ~~the Adjudicator's determination or any~~ (including for the avoidance of doubt the Wentworth Parties) such information ~~concerning or documentation provided exclusively in the course of the Appeal or pursuant to Clause 11.3~~, save where:

- 27.2.1 the Appellant Certifying Creditor and the Company have agreed otherwise in writing;
- 27.2.2 the information is already in the public domain;
- 27.2.3 the disclosure is necessary in connection with legal proceedings (including any Chapter 11 case, if relevant) or is otherwise required by law or any regulatory body;

27.2.4 the disclosure is made to a professional adviser that is bound by professional duties of confidentiality; or

27.2.5 in respect of the Subordinated Creditor only, the disclosure is made to an Affiliate that has, prior to any such disclosure, entered into a confidentiality undertaking in favour, and to the satisfaction, of the relevant Appellant Certifying Creditor and/or the Company (as applicable).

**27.3** The Subordinated Creditor shall use all such information as it receives which is confidential within the meaning of Clause 27.2 only for the purposes of the Scheme and shall ensure that all documentation containing confidential information within the meaning of Clause 27.2 in its possession is destroyed or returned to the Company once it is no longer reasonably required for the purposes of the Scheme.

**27.4** The Subordinated Creditor shall also ensure that the circulation of such information as it receives which is confidential within the meaning of Clause 27.2 is managed such that such information is only provided to such individuals as is reasonably necessary for it to exercise its rights under the Scheme.