

Second LBIE Admitted Claims Auction

Terms and Conditions

1 Definitions and interpretation

1.1 Definitions

“Acceptance” means your irrevocable acceptance of the Offer of Participation and agreement to be bound by the terms of the Contractual Documents, confirmed by a Primary User providing such confirmation in the manner prescribed on the LBIE Surplus Portal;

“Acceptance Deadline” means 5 p.m. (London time) on 14 July 2016 (or such later date as is notified to Eligible Creditors by LBNL by email and announced on PwC’s LBIE Website);

“Administration” means the administration of LBIE under the order of the High Court of Justice in England and Wales dated 15 September 2008;

“Affiliate” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

“Aggregated Sterling Entitlements” means, in respect of a Claim Pool, the aggregated Surplus Entitlements (GBP Equivalent) of each Eligible Admitted Claim allocated to such Claim Pool and included in the Auction;

“Applicable Claim Pool” means the Claim Pool identified as such in the Offer of Participation;

“Assigned Rights” has the meaning given to it in Clause 5 (*Sale and assignment*);

“Auction” means the auction process to be run by LBIE (as auction agent), pursuant to which LBIE will market each Claim Pool and seek to obtain a Clearing Price in respect of the Eligible Admitted Claims that have been allocated to a Claim Pool;

“Bid Acceptance Date” means, with regard to a Claim Pool, the date on which LBIE determines the End Purchaser for such Claim Pool and the relevant Sale and Assignment Agreement becomes effective;

“Business Days” means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York;

“CDD” means a claims determination deed entered into between an Eligible Creditor (or its Predecessor-in-Title) and LBIE in relation to such Eligible Creditor’s ordinary unsecured claim against LBIE;

“Claim” means a claim in law, in equity or otherwise and of whatsoever nature:

- (i) including any and all claims, actions, Liabilities, rights and obligations for breach of contract, tort, statute, restitutionary claims and breach of trust;
- (ii) whether arising by reason of, amongst other things, insolvency or the termination, whether voluntary or for cause, of any contractual obligation or for any failure of a person to perform any contractual, legal or regulatory obligation or otherwise; and/or

- (iii) for, amongst other things, the enforcement of any right to, or any Liability in respect of a right to:
 - (a) seek or enforce judgment;
 - (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 available had an obligation been duly performed in a timely manner, or otherwise), costs and expenses of any nature; or
 - (c) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or Liability whatsoever;

“Claim Pool” means any of the USD Claim Pool, the Euro Claim Pool or the Other Claim Pool (as applicable);

“Claim Pool Reserve Price” means:

- (i) in respect of the USD Claim Pool, a sterling denominated amount equal to 80 per cent. of the relevant Aggregated Sterling Entitlements;
- (ii) in respect of the Euro Claim Pool, a sterling denominated amount equal to 83 per cent. of the relevant Aggregated Sterling Entitlements; and
- (iii) in respect of the Other Claim Pool, a sterling denominated amount equal to 85 per cent. of the relevant Aggregated Sterling Entitlements;

“Clearing Price” means, in respect of a Claim Pool, the sterling denominated amount to be paid by the End Purchaser of such Claim Pool, which shall be established pursuant to the Auction and confirmed by LBIE, and shall not be less than the Claim Pool Reserve Price for such Claim Pool;

“Contractual Documents” means the Offer of Participation (including your Acceptance) and these Terms and Conditions;

“Creditor Agreement(s)” means a document or documents referred to as such in the Eligible Agreement or which otherwise gives rise to the Identified Eligible Admitted Claim;

“Data Protection Legislation” means any legislation in force from time to time which implements the European Community’s Directive 95/46/EC and Directive 2002/58/EC, including the Data Protection Act 1998 and the Privacy and Electronic Communication (EC Directive) Regulations 2003 in the United Kingdom;

“Date of Acceptance” means the date of your Acceptance;

“Dispute” has the meaning given to it in Clause 27.2;

“Distributions” means, in respect of an Identified Eligible Admitted Claim, all cash, securities, amounts and assets and/or other property distributed or received or payable on account of, or exchanged in return for any of the foregoing, in relation to such Identified Eligible Admitted Claim;

“Dominant Currency” means, in respect of an Eligible Admitted Claim, the dominant currency that has been determined by LBIE (in its sole discretion) on the following basis:

- (i) each post set-off underlying claim component comprised in the relevant Eligible Admitted Claim (a “claim component”) shall be notionally converted into sterling (unless such claim component is already denominated in sterling) at the relevant exchange rate specified in the UCC1 and aggregated with claim components with the same Reference Currency (or where there is a contractual currency which is known to LBIE and is different to the Reference Currency, the relevant contractual currency); and
- (ii) the Reference Currency (or where there is a contractual currency which is known to LBIE and is different to the Reference Currency, the relevant contractual currency) of the largest aggregated sterling sum calculated pursuant to (i) above shall be the dominant currency of that Eligible Admitted Claim;

“Eligible Admitted Claims” means all the admitted ordinary unsecured claims of all Eligible Creditors which LBIE has determined (in its sole discretion) are eligible to be sold pursuant to the LACA II (which includes the Identified Eligible Admitted Claim);

“Eligible Agreement” means any CDD or any other agreement entered into by and between the Legal Entity (or its Predecessor-in-Title) and LBIE or any admittance letter issued by LBIE to the Legal Entity (or its Predecessor-in-Title) pursuant to which an ordinary unsecured claim has been admitted by LBIE, as identified in the Offer of Participation;

“Eligible Creditor” means each unsecured creditor of LBIE who LBIE has determined (in its sole discretion) is eligible to participate in the LACA II;

“End Purchaser” means, in respect of a Claim Pool, the bidder in the Auction who LBIE has confirmed to be the successful bidder in relation to the Eligible Admitted Claims allocated to such Claim Pool and included in the Auction;

“Euro Claim Pool” means the aggregated Eligible Admitted Claims of Eligible Creditors who have validly accepted an offer from LBNL to participate in the LACA II in accordance with the Contractual Documents, where the Dominant Currency of such Eligible Admitted Claims is Euro;

“Excluded Information” has the meaning given to it in Clause 11.1.5;

“Holding Company” means, in relation to a person, any other person in respect of which it is a Subsidiary;

“Identified Eligible Admitted Claim” means the admitted ordinary unsecured claim established pursuant to the Eligible Agreement identified in the Offer of Participation;

“Identified Eligible Admitted Claim Surplus Entitlement (GBP Equivalent)” means the sterling denominated amount representing the potential claim to the Surplus in relation to the Identified Eligible Admitted Claim, as identified in the Offer of Participation and the UCC2 and as calculated by LBIE (in its sole discretion and on the assumptions set out in the UCC2 Explanatory Note);

“Identified Eligible Admitted Claim Value” means the sterling value of the Identified Eligible Admitted Claim as identified in the Offer of Participation;

“Individual Reserve Price” means, in respect of the Identified Eligible Admitted Claim, the individual reserve price as identified in the Offer of Participation, which:

- (i) if the Applicable Claim Pool is the USD Claim Pool, is equal to 80 per cent. of the Identified Eligible Admitted Claim Surplus Entitlement (GBP Equivalent);
- (ii) if the Applicable Claim Pool is the Euro Claim Pool, is equal to 83 per cent. of the Identified Eligible Admitted Claim Surplus Entitlement (GBP Equivalent); or
- (iii) if the Applicable Claim Pool is the Other Claim Pool, is equal to 85 per cent. of the Identified Eligible Admitted Claim Surplus Entitlement (GBP Equivalent);

“Joint Administrators” means, on 15 June 2016, Anthony Victor Lomas, Steven Anthony Pearson, Paul David Copley, Russell Downs and Julian Guy Parr (Anthony Victor Lomas, Steven Anthony Pearson, Russell Downs and Julian Guy Parr each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT), each a joint administrator of LBIE, acting as agents only, for and on behalf of LBIE and without personal liability;

“LACA II” means the second LBIE admitted claims auction (including the Auction), as further described (i) in the announcement made on 15 June 2016 on PwC’s LBIE Website and (ii) on the LBIE Surplus Portal and in the relevant documents available on it;

“LACA II Fee” means, in respect of the Identified Eligible Admitted Claim, a fee equal to 1 per cent. (inclusive of any applicable value added tax payable) of the Identified Eligible Admitted Claim Value, as identified in the Offer of Participation;

“LBIE” means Lehman Brothers International (Europe) (in administration), a company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ, acting by the Joint Administrators;

“LBIE Client Information Portal” means the online portal pursuant to which LBIE communicates with its creditors, available at https://dm.pwc.com/lbie_cip/;

“LBIE Surplus Portal” means the “Surplus Portal” on the LBIE Client Information Portal;

“LBNL” means Lehman Brothers Nominees Limited, a company incorporated in England and Wales with registration number 01973097 whose registered office is at Level 23, 25 Canada Square, London E14 5LQ;

“Legal Entity” means the entity as identified in the Offer of Participation;

“Lehman Brothers Foundation Europe” means The Lehman Brothers Foundation Europe, a registered charity (charity number 1088535) incorporated in England and Wales with registered number 04279406 whose registered address is Level 23, 25 Canada Square, London E14 5LQ;

“Liabilities” means all liabilities, duties and obligations of every description, whether deriving from contract, common law, case law, legal provisions, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed or otherwise and whether owed or incurred severally or jointly or as principal or surety, and **“Liability”** means any one of them;

“Liens” has the meaning given to it in Clause 10.1.6;

“Loss” has the meaning given to it in Clause 14 (*Indemnity*);

“Offer of Participation” means LBNL’s offer to you to participate in the LACA II, dated 15 June 2016 and available on the LBIE Surplus Portal, in respect of the Identified Eligible Admitted Claim;

“Other Claim Pool” means the aggregated Eligible Admitted Claims of Eligible Creditors who have validly accepted an offer from LBNL to participate in the LACA II in accordance with the Contractual Documents, where the Dominant Currency of such Eligible Admitted Claims is a currency other than Euro or USD;

“Payment” has the meaning given to it in Clause 8.1;

“Personal Data” means any personal data (as such term is defined in Data Protection Legislation) processed as part of the Auction;

“Post-Transfer Distributions” has the meaning given to it in Clause 15.1;

“Predecessor-in-Title” means, in the event that you are not the original creditor of LBIE in respect of the Assigned Rights and have acquired the Assigned Rights (or any part thereof) from an Affiliate, such Affiliate;

“Primary User” means an individual acting on behalf of the Legal Entity who is validly appointed to enter into legal, valid, binding and enforceable obligations on behalf of the Legal Entity;

“Proceedings” means the “Waterfall I”, “Waterfall II” and “Waterfall III” proceedings relating to the Administration, details of which are available on PwC’s LBIE Website;

“Purchase Price” means, in respect of the Identified Eligible Admitted Claim, the sterling denominated amount calculated by:

- (i) dividing the Clearing Price for the Applicable Claim Pool by the Aggregated Sterling Entitlements for the Applicable Claim Pool;
- (ii) multiplying the amount calculated in (i) by the Identified Eligible Admitted Claim Surplus Entitlement (GBP Equivalent); and
- (iii) deducting the LACA II Fee from the amount calculated in (ii);

“PwC’s LBIE Website” means the website available at: <http://www.pwc.co.uk/services/business-recovery/administrations/lehman.html>;

“Reference Currency” means “Reference Currency” as such term is used in the UCC1;

“Relevant Persons” means: (i) LBNL, LBIE, the Joint Administrators and their firm; (ii) the members, partners, directors, officers and employees of those persons identified in (i) (as applicable); and (iii) the agents, advisers and representatives of those persons identified in (i) and (ii);

“Retained Distributions” means, in respect of an Identified Eligible Admitted Claim, Distributions which have, at the Date of Acceptance, already been made by LBIE equal, in aggregate, to the Identified Eligible Admitted Claim Value;

“Sale and Assignment Agreement” means, in respect of a Claim Pool, a sale and assignment agreement between LBNL and an End Purchaser in respect of the Eligible Admitted Claims allocated to such Claim Pool and sold, conveyed, transferred and assigned to LBNL pursuant to the Contractual Documents;

“Settlement Date” means the date falling two Business Days after the Transfer Date;

“SSI” means Standard Settlement Instructions as set out in the LBIE Client Information Portal;

“Subsidiary” means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006;

“Surplus” means the surplus in LBIE’s estate after the payment of debts proved;

“Surplus Entitlement (GBP Equivalent)” means, in respect of an Eligible Admitted Claim, a sterling denominated amount representing the potential claims to the Surplus in relation to such Eligible Admitted Claim, as identified in the relevant UCC2 and as calculated by LBIE (in its sole discretion and on the assumptions set out in the UCC2 Explanatory Note);

“Tax Deduction” has the meaning given to it in Clause 8.4;

“Termination Right” has the meaning given to it in Clause 9.1;

“Transfer Date” means, in respect of the Applicable Claim Pool, the date on which the Transfer Time occurs, which will be notified to the relevant Eligible Creditors by LBNL by email and announced on PwC’s LBIE Website;

“Transfer Notice” means a document pursuant to which any rights, title and interests in, to and under, or arising out of, in connection with and/or related to the Assigned Rights are transferred, substantially in the form set out in Schedule 1 (*Form of Transfer Notice*);

“Transfer Time” means, in respect of the Applicable Claim Pool, the time that LBNL confirms in writing to LBIE that all of the conditions precedent to the transfer set out in Clause 7 (*Conditions precedent*) are satisfied in respect of the Applicable Claim Pool;

“UCC1” means the unsecured claim certificate available on the LBIE Client Information Portal from 15 June 2016 in respect of the Identified Eligible Admitted Claim, setting out, among other things, the Identified Eligible Admitted Claim Value and the claim components of the Identified Eligible Admitted Claim;

“UCC2” means the second unsecured claim certificate (which should be read together with the UCC2 Explanatory Note) available on the LBIE Client Information Portal from 15 June 2016 in respect of the Identified Eligible Admitted Claim, setting out, among other things, the Identified Eligible Admitted Claim Value and the Identified Eligible Admitted Claim Surplus Entitlement (GBP Equivalent);

“UCC2 Explanatory Note” means the explanatory note in relation to the UCC2 available on the LBIE Client Information Portal from 15 June 2016, setting out, among other things, an explanation of, and assumptions in relation to, the Surplus Entitlement (GBP Equivalent); and

“USD Claim Pool” means the aggregated Eligible Admitted Claims of Eligible Creditors who have validly accepted an offer from LBNL to participate in the LACA II in accordance with the Contractual Documents, where the Dominant Currency of such Eligible Admitted Claims is USD.

1.2 Interpretation

In the Contractual Documents, unless the context otherwise requires or unless otherwise expressly provided:

1.2.1 a reference to **“you”** is a reference to the Legal Entity (and **“your”** shall be construed accordingly);

- 1.2.2 references to a “**person**” or “**entity**” 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 any person or entity shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
- 1.2.4 a reference to the Joint Administrators shall be construed as being to the joint administrators of LBIE from time to time, both jointly and severally, including to any other person who is appointed as an administrator in substitution for any Joint Administrator or as an additional administrator in conjunction with the Joint Administrators;
- 1.2.5 a reference to a Clause or a Schedule is a reference to a clause or a schedule of these Terms and Conditions;
- 1.2.6 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- 1.2.7 a reference to any document, agreement or instrument is a reference to that document, agreement or instrument as amended, novated, supplemented, extended, restated or replaced from time to time;
- 1.2.8 words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
- 1.2.9 headings are for ease of reference only and shall not affect the interpretation of the Contractual Documents;
- 1.2.10 references to time are to London time;
- 1.2.11 in the event of a conflict or inconsistency between the provisions of the Contractual Documents, the Insolvency Act 1986 and the Insolvency Rules 1986, for the purposes of the Contractual Documents, and to the extent permissible, the provisions of the Contractual Documents shall prevail;
- 1.2.12 the language which governs the interpretation of the Contractual Documents is the English language. All notices to be given by any parties and all other communications and documentation which are in any way relevant to the Contractual Documents or the performance of the Contractual Documents shall be in writing in the English language;
- 1.2.13 references to “**sterling**” are to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland;
- 1.2.14 references to “**Euro**” are to the lawful currency for the time being of any member state of the European Union that adopts or has adopted, and in each case continues to adopt, the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;
- 1.2.15 references to “**USD**” are to the lawful currency for the time being of the United States of America;
- 1.2.16 the words “**include**” and “**including**” mean include and including, without limitation;

- 1.2.17 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;
- 1.2.18 a reference to a “**judgment**” includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction; and
- 1.2.19 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**” shall be construed accordingly).

2 Acceptance

On the Date of Acceptance, the Legal Entity irrevocably agrees to participate in the LACA II and be bound by the terms of the Contractual Documents in respect of the Identified Eligible Admitted Claim, on and subject to these Terms and Conditions.

3 Inclusion in the Auction

- 3.1 Provided that the following conditions are satisfied prior to the Acceptance Deadline, the Identified Eligible Admitted Claim will be included in the Auction:

- 3.1.1 Acceptance has been completed;
- 3.1.2 the Legal Entity has provided the information required by LBIE (at its sole discretion) to enable LBIE to comply with LBIE’s “Know Your Customer” requirements (as determined at LBIE’s sole discretion); and
- 3.1.3 the Legal Entity has provided any information which has been requested by LBNL (in its sole discretion) in order to enable the completion of the sale and assignment pursuant to Clause 5 (*Sale and assignment*) and Clause 6 (*Transfer*).

- 3.2 In the event that the conditions precedent to inclusion in the Auction set out in Clause 3.1 are not satisfied prior to the Acceptance Deadline:

- 3.2.1 save in respect of Clause 1 (*Definitions and interpretation*), Clause 11 (*Acknowledgements*), Clause 12 (*Non-reliance*), Clause 14 (*Indemnity*), Clause 16 (*No representation*), Clause 18 (*Third parties*), Clause 19 (*Costs*), Clause 20 (*Confidentiality*), Clause 21 (*Whole agreement*), Clause 22 (*Invalidity*) and Clause 27 (*Governing law and jurisdiction*), in relation to the Identified Eligible Admitted Claim only, the Contractual Documents shall automatically and immediately terminate and neither the Relevant Persons nor you shall have any further rights or obligations under the Contractual Documents;
- 3.2.2 subject to Clause 3.2.1, LBIE and you shall have the same interests, rights, entitlements, claims and defences in respect of the Identified Eligible Admitted Claim as if Acceptance had never occurred; and
- 3.2.3 you shall not have any Claim against any Relevant Person whatsoever, including for costs, damages, compensation or otherwise, arising out of or in relation to the Contractual Documents and/or the LACA II.

4 Allocation to the Applicable Claim Pool and disclosure of information

4.1 At the Acceptance Deadline, you irrevocably agree to:

- 4.1.1** the inclusion of the Identified Eligible Admitted Claim in the Applicable Claim Pool and the marketing of the Identified Eligible Admitted Claim, for the purposes of the Auction, by LBIE to potential third party purchasers;
- 4.1.2** the disclosure by LBIE of information (including any notices) relating to the Identified Eligible Admitted Claim (such information being derived from one or more of the UCC1, the UCC2, the Eligible Agreement, any Creditor Agreements and any other information held by LBIE) to LBNL and/or any potential third party purchasers of the Applicable Claim Pool who have entered into a suitable confidentiality agreement (as determined by LBIE in its sole discretion) with LBIE;
- 4.1.3** LBIE providing evidence to LBNL of the anti money-laundering checks carried out on you by LBIE to the extent that the Financial Conduct Authority requires LBNL to provide such evidence to the Financial Conduct Authority; and
- 4.1.4** subject to the transfer of the Identified Eligible Admitted Claim in accordance with Clause 5 (*Sale and assignment*) and Clause 6 (*Transfer*), on or at any time after the Transfer Time, LBIE making available or delivering by any means it sees fit (in its sole discretion) to the End Purchaser (or as the End Purchaser directs): (i) a copy of the Eligible Agreement; (ii) a copy of the UCC1; (iii) a copy of the UCC2; (iv) copies of each relevant Creditor Agreement; (v) copies of any applicable proofs of debt; (vi) any notices relating to the Identified Eligible Admitted Claim which are in the possession or control of LBIE (including any termination and valuation notices); and (vii) any other information contained in LBIE's books and records relating to the Identified Eligible Admitted Claim, at LBIE's sole discretion.

4.2 For the avoidance of doubt, you acknowledge and agree that the disclosure and transmission of information in accordance with Clause 4.1, including of the information to be provided to LBNL and/or potential third party purchasers pursuant to Clause 4.1.2 and the information contained in the documentation to be provided to the End Purchaser pursuant to Clause 4.1.4, may:

- 4.2.1** to the extent the Legal Entity is an individual, include information comprising Personal Data belonging to that individual, including, but not limited to, the Legal Entity's name; and
- 4.2.2** result in the transfer and transmission of information outside of the European Union.

5 Sale and assignment

Subject to Clause 6 (*Transfer*), Clause 7 (*Conditions precedent*) and Clause 9 (*Termination*), at the Transfer Time, in consideration for the right to receive payment of the Purchase Price in accordance with Clause 8 (*Payment*), you irrevocably agree to sell, convey, transfer and assign to LBNL all of your rights, title and interests in, to and under, or arising out of, in connection with and/or related to:

- 5.1.1** the Identified Eligible Admitted Claim, including any and all rights to receive any and all amounts paid or payable in respect of the Identified Eligible Admitted Claim (including principal, interest (whether at the statutory rate or a contractual rate),

dividends, penalties, fees, expenses, damages and any other amounts, and in each case whether accruing prior to, on or after the Transfer Date);

- 5.1.2 the Eligible Agreement;
- 5.1.3 the Creditor Agreement(s);
- 5.1.4 the proof of debt relating to the Identified Eligible Admitted Claim, including any and all rights to lodge, withdraw, supplement or amend such proof of debt;
- 5.1.5 all causes of action, Claims (including any currency conversion/loss claims or rights to statutory interest and/or contractual interest), voting and other rights held by you, whether against LBIE or any other party, in connection with the Identified Eligible Admitted Claim, including under or in connection with the Eligible Agreement or the Creditor Agreement(s) or arising under any law; and
- 5.1.6 any Distributions,

in each case, excluding the Retained Distributions, and together the “**Assigned Rights**”.

6 Transfer

In order to effect the transfer agreed to pursuant to Clause 5 (*Sale and assignment*), you:

- 6.1.1 subject to Clause 7 (*Conditions precedent*), Clause 9 (*Termination*) and the rest of this Clause 6, at the Transfer Time, irrevocably sell, convey, transfer and assign to LBNL all of your rights, title and interests in, to and under, or arising out of, in connection with and/or related to, the Assigned Rights; and
- 6.1.2 irrevocably appoint LBNL as your agent to:
 - (i) negotiate, and enter into, any agreement or deed with LBIE, pursuant to which LBIE and LBNL (acting as your agent) agree to modify, waive or amend (as LBIE and LBNL consider necessary or desirable, in their absolute discretion) any restrictions on, or any procedural requirements in relation to, any transfer contained in the Eligible Agreement or the Creditor Agreement(s) (as applicable); and
 - (ii) negotiate and enter into a Transfer Notice with LBIE pursuant to which the title to the Assigned Rights shall be transferred to LBNL.

7 Conditions precedent

The sale, conveyance, transfer and assignment pursuant to Clause 5 (*Sale and assignment*) and Clause 6 (*Transfer*) is conditional on and shall only occur on the satisfaction of the following conditions:

- 7.1.1 LBIE having received a bid pursuant to the Auction that would result in a Clearing Price being achieved for the Applicable Claim Pool;
- 7.1.2 LBIE confirming to LBNL in writing that it holds: (i) a fully executed Sale and Assignment Agreement between LBNL and the End Purchaser; and (ii) a fully executed (but undated and unreleased) Transfer Notice between LBNL and the End Purchaser, in relation to the Identified Eligible Admitted Claim;
- 7.1.3 LBNL not being aware of any breach of the representations and warranties made by you in Clause 10 (*Representations and warranties*);

- 7.1.4 the Termination Right not having been exercised; and
- 7.1.5 LBNL having received the Clearing Price for the Applicable Claim Pool from the End Purchaser.

8 Payment

- 8.1 Subject to the rest of this Clause 8, on the Settlement Date, LBNL shall pay, or procure the payment of, the Purchase Price to the bank account details contained in the Legal Entity's SSI ("**Payment**"). For the avoidance of doubt, Payment shall not be made by LBIE itself but may for administrative convenience be facilitated through the LBIE Client Information Portal.
- 8.2 Payment on the Settlement Date is subject to you confirming, providing and/or updating (as applicable) the Legal Entity's SSI for a bank account capable of receiving payments denominated in sterling before 5 p.m. on 14 July 2016 (or such later date as is notified to Eligible Creditors by LBNL by email and announced on PwC's LBIE Website).
- 8.3 If you have not confirmed, provided and/or updated (as applicable) the Legal Entity's SSI in accordance with Clause 8.2, Payment may be made after the Settlement Date. If such confirmation, provision and/or update remains outstanding for three months after the Settlement Date, you agree that you waive all rights to the payment of the Purchase Price. In such circumstances, the Purchase Price in respect of the Identified Eligible Admitted Claim will be donated to Lehman Brothers Foundation Europe.
- 8.4 If LBNL receives any sum in respect of the Purchase Price subject to any withholding or deduction on account of tax or any withholding or deduction on account of tax is otherwise required to be made, whether by LBNL or any other person, in respect of the payment of the Purchase Price (a "**Tax Deduction**"), the Purchase Price will be payable pursuant to this Clause 8 less any such Tax Deduction.
- 8.5 You hereby irrevocably and unconditionally consent to the provision of the Legal Entity's SSI by LBIE to LBNL for the purposes of making the Payment and confirm that LBNL shall not be liable for any errors in the information provided by LBIE and that LBIE shall not be liable for any errors in such information or any misuse of such information by LBNL.

9 Termination

- 9.1 At any time before the Bid Acceptance Date, LBNL by notice in writing to LBIE may terminate the LACA II in respect of one or more Claim Pools (the "**Termination Right**"). If the Termination Right is exercised by LBNL in respect of the Applicable Claim Pool, you will be notified of this by LBNL by email and on PwC's LBIE Website.
- 9.2 In the event that LBNL exercises the Termination Right pursuant to Clause 9.1 or any of the conditions precedent in Clause 7 (*Conditions precedent*) are not met by 31 August 2016 (or such later date as is notified to the relevant Eligible Creditors by LBNL by email and announced on PwC's LBIE Website):
- 9.2.1 save in respect of Clause 1 (*Definitions and interpretation*), Clause 4 (*Allocation to the Applicable Claim Pool and disclosure of information*), Clause 11 (*Acknowledgements*), Clause 12 (*Non-reliance*), Clause 14 (*Indemnity*), Clause 16 (*No representation*), Clause 18 (*Third parties*), Clause 19 (*Costs*), Clause 20 (*Confidentiality*), Clause 21 (*Whole agreement*), Clause 22 (*Invalidity*), Clause 23

(Set-off) and Clause 27 (*Governing law and jurisdiction*), the Contractual Documents shall automatically and immediately terminate and neither the Relevant Persons nor you shall have any further rights or obligations under the Contractual Documents;

- 9.2.2 subject to Clause 9.2.1, LBIE and you shall have the same interests, rights, entitlements, claims and defences in respect of the Identified Eligible Admitted Claim as if Acceptance had never occurred; and
- 9.2.3 you shall not have any Claim against any Relevant Person whatsoever, including for costs, damages, compensation or otherwise, arising out of or in relation to the Contractual Documents, the LACA II and/or the exercise of the Termination Right (if applicable).

10 Representations and warranties

10.1 You represent, warrant and covenant to LBNL, LBNL's successors and assigns and the End Purchaser on the Date of Acceptance, the Acceptance Deadline, the Transfer Date and the Settlement Date that:

- 10.1.1 to the extent the Legal Entity is a company, the Legal Entity is duly organised and validly existing under the laws of its jurisdiction of organisation or incorporation and, if relevant under such laws, in good standing;
- 10.1.2 you have the power to participate in the LACA II and to agree to, and to perform your obligations under, the Contractual Documents and to execute any documentation relating to the LACA II that you are required by the Contractual Documents or by LBNL to deliver and have taken all necessary action to authorise such participation, agreement, performance, execution or delivery, and your Primary User(s) is/are properly authorised to bind you in relation to the LACA II, including by making the Acceptance;
- 10.1.3 your obligations under the Contractual Documents constitute your valid, legal, binding and enforceable obligations, and there is not pending or, to your knowledge, threatened against you or any of your Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator, that would adversely affect the Assigned Rights or any action taken or to be taken by you under the Contractual Documents;
- 10.1.4 the entry into, and performance of your obligations under, the Contractual Documents does not and will not conflict with:
 - (i) any law, rule or regulation applicable to you;
 - (ii) your constitutional documents (to the extent you are a company); or
 - (iii) any agreement or instrument binding upon you or any of your assets that could affect the Assigned Rights;
- 10.1.5 except for filings that are expressly contemplated by the Contractual Documents, no notice, consent or approval of, or any other action by, any authority or entity is or will be required for you to execute and deliver, and perform your obligations under, the LACA II;

- 10.1.6 you are the sole legal and beneficial owner of, and have good title to, the Assigned Rights, including the Identified Eligible Admitted Claim, free and clear of any pledge, lien, claim, security interest, participation, hypothecation, factoring agreement or other encumbrance of any type or kind in any jurisdiction (collectively “**Liens**”) and the Contractual Documents will transfer to LBNL such good title free and clear of any Liens;
- 10.1.7 you have read, understood and accept the Contractual Documents and your UCC1 and all information and statements set out therein are true and accurate;
- 10.1.8 you have read and understood your UCC2 and the UCC2 Explanatory Note;
- 10.1.9 other than with respect to the Retained Distributions, neither you nor any of your Predecessors-in-Title have received any payment or Distribution (and no payment or Distribution has been received on your behalf or on behalf of your Predecessors-in-Title) in full or partial satisfaction of the Assigned Rights;
- 10.1.10 neither you nor any of your Predecessors-in-Title have engaged (or shall engage) in any act, conduct or omission, or have had (or shall have) any relationship with LBIE or LBNL or any of its or their Affiliates that will reduce or impair or otherwise adversely affect the Assigned Rights or result in LBNL receiving proportionately less in payments or Distributions under, or less favourable treatment (including the timing of payments or Distributions) for, the Assigned Rights than is received by other general unsecured creditors holding claims of the same class or type (including with respect to your particular Eligible Agreement or Creditor Agreements) against LBIE;
- 10.1.11 the Eligible Agreement has not been revoked, withdrawn, amended or modified in whole or in part after execution thereof, and no other agreements have been entered into by you or any Predecessor-in-Title (or to which you or any Predecessor-in-Title are bound) that affect or may affect the Identified Eligible Admitted Claim or the “admitted claim amount” (as set out in the UCC1) other than the Eligible Agreement;
- 10.1.12 all conditions with respect to the effectiveness of the Eligible Agreement have been duly satisfied or waived, all your obligations under the Eligible Agreement have been fulfilled and performed, and you have not breached (and will not breach) any terms or provisions of the Eligible Agreement;
- 10.1.13 no broker, finder, agent or other entity acting on your behalf is entitled to any commission or fee for which LBNL could be responsible; and
- 10.1.14 (i) no petition for insolvency (to the extent that you are a company) or bankruptcy (to the extent that you are an individual) proceedings, or any analogous process, in respect of your assets has been filed, or is threatened to be filed, (ii) you are not unable to honour your obligations as they fall due and the value of your assets is not less than your liabilities (taking into account contingent and prospective liabilities), and (iii) you have not commenced negotiations with one or more of your creditors with a view to the general readjustment or rescheduling of your indebtedness.

10.2 LBNL represents, warrants and covenants to the Eligible Creditor on the Date of Acceptance and the Transfer Date that:

- 10.2.1 it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- 10.2.2 it has the power to participate in the LACA II and to agree to and to perform its obligations under the Contractual Documents and to execute any documentation relating to the LACA II that it is required by the Contractual Documents or by LBIE to deliver and has taken all necessary action to authorise such participation, agreement, performance, execution or delivery, and its signatories are properly authorised to bind it in relation to the LACA II;
- 10.2.3 its obligations under the Contractual Documents constitute its valid, legal, binding and enforceable obligations, and there is not pending or to its knowledge, threatened against it any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator, that would adversely affect any action taken or to be taken by it under the Contractual Documents;
- 10.2.4 to the best of its knowledge and belief, the entry into, and performance of its obligations under, the Contractual Documents does not and will not conflict with:
 - (i) any law, rule or regulation applicable to it;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument that is binding on it or any of its assets, except where any violation would not have a material effect on LBNL or materially adversely affect the ability of LBNL to perform its obligations under the LACA II; and
- 10.2.5 except for filings that are expressly contemplated by the Contractual Documents, to the best of its knowledge and belief, no notice, consent or approval of, or any other action by, any authority or entity is or will be required for it to execute and deliver, and perform its obligations under, the LACA II.

11 Acknowledgements

You represent and warrant and agree that the Contractual Documents and the exclusions and limitations contained therein are fair and reasonable having regard to the following:

- 11.1.1 you are a sophisticated entity or person (as applicable) and have adequate information concerning the financial condition of LBIE and the Administration to make an informed decision regarding the sale of the Assigned Rights;
- 11.1.2 you have independently and without reliance on any Relevant Person, and based on such information as you have deemed appropriate, made your own decision to enter into the Contractual Documents;
- 11.1.3 you acknowledge that no Relevant Person has any obligation to assess the appropriateness of the Individual Reserve Price or the Claim Pool Reserve Price and that you have considered the Individual Reserve Price and made your own assessment of the Individual Reserve Price;
- 11.1.4 you are aware that information which may be pertinent to the decision to enter into the Contractual Documents is available to you and can be obtained from publicly available sources;

- 11.1.5 you acknowledge that the Relevant Persons may possess, and may come into possession of, material non-public information concerning the Assigned Rights, LBIE and/or the Administration (“**Excluded Information**”);
- 11.1.6 you acknowledge that the Relevant Persons will not disclose or otherwise provide such Excluded Information to you and you have nevertheless determined to enter into the Contractual Documents and to proceed with the LACA II; and
- 11.1.7 you acknowledge that the Relevant Persons shall not have any liability to you, and you waive and release any claims that you might have against the Relevant Persons arising out of the non-disclosure of such Excluded Information; provided, however, that the Excluded Information shall not limit, contradict or render untrue any representation or warranty made by LBNL in the Contractual Documents.

12 Non-reliance

- 12.1 So far as permitted by law and except in the case of fraud, the Relevant Persons shall not be liable in respect of anything done or suffered by you in reliance on, and you waive any right which you may have against any Relevant Person by reason of your use of or reliance on, any information provided or communications or announcements made to you in connection with the LACA II and/or the Contractual Documents, including the UCC2 and the UCC2 Explanatory Note.
- 12.2 You are not relying on any communication and/or announcement, including the UCC2 and the UCC2 Explanatory Note, (written or oral) of or from any Relevant Person as a recommendation or an inducement to participate in the LACA II, it being understood that information and explanations relating to the LACA II and/or the Contractual Documents in any communication and/or announcement shall not be relied upon or treated as a recommendation or an inducement to enter into the LACA II and/or the Contractual Documents.
- 12.3 No person has been authorised in connection with the LACA II to give any information or make any representation other than those contained in the Contractual Documents and any such information or representation shall not be relied upon as having been authorised by any Relevant Person.

13 Release

Notwithstanding Clause 11 (*Acknowledgments*) and Clause 12 (*Non-reliance*) and subject to any rights you may have arising in relation to Clause 8 (*Payment*) and Clause 10.2, at the Transfer Time, you unconditionally and irrevocably release and forever discharge each of the Relevant Persons from any and all losses, costs, charges, expenses, Claims, demands, actions, causes of action, Liabilities, rights and obligations (including those which arise hereafter upon a change in the relevant law), howsoever arising, whether known or unknown, whether arising in equity or under common law or statute or by reason of breach of contract or in respect of any tortious or negligent act or omission (whether or not loss or damage caused thereby has yet been suffered) or otherwise, whether arising out of or in connection with the Assigned Rights and/or the LACA II or not, whether in existence now or coming into existence at some time in the future, and whether or not in the contemplation of you and/or any Relevant Person on the Transfer Date.

14 Indemnity

If a Relevant Person incurs any liability, damages, cost, loss or expense (including, without limitation, legal fees, costs or expenses) (a “**Loss**”) in respect of any breach or alleged breach by you of any representation, warranty or agreement made by you and contained in the Contractual Documents, you shall pay to such Relevant Person on demand an amount equal to such Loss.

15 After the Transfer Date

- 15.1** You agree that in the event that you receive any Distributions with respect to the Assigned Rights after the Transfer Date (“**Post-Transfer Distributions**”), such Post-Transfer Distributions shall be promptly returned to LBIE.
- 15.2** In the event you receive any notices or other documents from (or on behalf of) LBIE in respect of the Assigned Rights after the Transfer Date, you shall promptly notify LBIE that you are no longer the owner of the Assigned Rights and upon LBIE’s request shall return such notices or documents to LBIE.
- 15.3** In the event that all or any portion of the Assigned Rights are not assignable by you to the End Purchaser, then you grant to the End Purchaser a 100 per cent. participation interest in the Assigned Rights, in a manner consistent with the provisions of the Contractual Documents and applicable law.
- 15.4** You agree and acknowledge that as of the Transfer Time you will no longer be able to access any information regarding the Identified Eligible Admitted Claim (including the Eligible Agreement, the UCC1, the UCC2 and any Creditor Agreement(s)) via the LBIE Client Information Portal.

16 No representation

- 16.1** None of the Relevant Persons make any representation as to whether any payment made to, or amount received by, you (or any other Eligible Creditor) pursuant to the LACA II in relation to the Identified Eligible Admitted Claim (or any other Eligible Admitted Claim, as applicable) will be the same, greater or less than any amount you (or such other Eligible Creditor) would or may have otherwise received in respect of the Identified Eligible Admitted Claim (or any other Eligible Admitted Claim, as applicable) had you (or they) not participated in the LACA II, whether on the judicial or consensual resolution of the Proceedings or otherwise.
- 16.2** You agree and acknowledge that by participating in the LACA II and having the right to receive payment of the Purchase Price pursuant to the LACA II in return for the sale of the Assigned Rights, you transfer to LBNL any and all rights in respect of such Assigned Rights, including any rights to payment of statutory interest or amounts in respect of currency conversion claims.

17 Assignment

LBNL may, at any time on or after the Transfer Time, transfer or assign all or any portion of the Assigned Rights sold, conveyed, transferred or assigned to it, together with all rights, title and interests of LBNL in and to the Contractual Documents, without the consent of, or notice to, you.

18 Third parties

18.1 A person who is not a party to the Contractual Documents has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of the Contractual Documents provided that:

18.1.1 each of the Relevant Persons shall be entitled to rely on Clauses 1 (*Definitions and interpretation*), 9 (*Termination*), 11 (*Acknowledgements*), 12 (*Non-reliance*), 13 (*Release*), 14 (*Indemnity*), 16 (*No representation*), 18 (*Third parties*) and 19 (*Costs*) and 25.4;

18.1.2 LBIE can also rely on Clauses 8 (*Payment*) and 15 (*After the Transfer Date*); and

18.1.3 the End Purchaser can rely on Clauses 1 (*Definitions and interpretation*), 10 (*Representations and warranties*) and 18 (*Third parties*),

of these Terms and Conditions.

18.2 The Contractual Documents may be terminated and any term may be amended or waived without the consent of any person named or described in Clause 18.1.

19 Costs

19.1 The Relevant Persons shall not have any responsibility or obligation in relation to your costs in connection with the LACA II including for the avoidance of doubt, your entry into or performance of the Contractual Documents.

19.2 To the extent applicable, you shall bear the cost of any stamp duty, transfer, registration, documentation and notarial or similar fees, taxes and duties in all jurisdictions where such fees, taxes and duties are payable as a result of the transactions contemplated by the Contractual Documents. You shall be responsible for arranging the payment of such fees, taxes and duties, including fulfilling any administrative or reporting obligation imposed by the jurisdiction in question in connection with the payment of such fees, taxes and duties.

20 Confidentiality

20.1 Subject to Clause 20.2, you agree to maintain the confidentiality of any information received or obtained in connection with the LACA II which relates to the Contractual Documents.

20.2 Clause 20.1 shall not prohibit disclosure or use of information if and to the extent:

20.2.1 the disclosure or use is required by law, regulation, or by the order of any court or governmental authority of competent jurisdiction;

20.2.2 the disclosure is made to professional advisers who need to know such information to discharge their duties, provided that such professional advisers undertake to comply with the provisions of this Clause 20 in respect of such information as if they were party to the Contractual Documents;

20.2.3 the information is or becomes publicly available (other than by breach of the Contractual Documents); or

20.2.4 LBNL has given prior written approval to the disclosure or use,

provided that prior to disclosure or use of any information pursuant to Clause 20.2.1, notice is given (to the extent legally possible) by the party disclosing the information to LBNL of the disclosure, and the nature and extent of the disclosure.

21 Whole agreement

- 21.1** The Contractual Documents constitute the complete agreement between LBNL and you with respect to the LACA II to the exclusion of any terms implied by law which may be excluded by contract and supersede all prior or contemporaneous negotiations, agreements or representations of every nature whatsoever with respect thereto, between LBNL, LBIE and you in relation to the Identified Eligible Admitted Claim or any of the matters dealt with in the Contractual Documents.
- 21.2** You acknowledge that you have not been induced to participate in the LACA II by any representation, warranty or undertaking not expressly incorporated into the Contractual Documents.

22 Invalidity

- 22.1** If, at any time, any of the provisions of the Contractual Documents become invalid, illegal or unenforceable in any respect under the law of any jurisdiction, neither the validity, legality or enforceability of that provision under the law of any other jurisdiction nor the validity, legality and enforceability of any other provisions of the Contractual Documents under the law of that jurisdiction, shall in any way be affected or impaired thereby.
- 22.2** Subject to Clause 22.1, if any provision in the Contractual Documents shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the parties.
- 22.3** Subject to Clause 22.1, to the extent it is not possible to delete or modify the provision, in whole or in part, under Clause 22.2, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of the Contractual Documents and the legality, validity and enforceability of the remainder of the Contractual Documents shall, subject to any deletion or modification, not be affected.

23 Set-off

Save for any Tax Deductions, any payment to be made by any party to the Contractual Documents shall be made without set-off, counterclaim or deduction of any kind, save as required by law.

24 Counterparts

The Contractual Documents may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument.

25 Notices

- 25.1** All demands, notices, consents and communications to be given or document to be sent pursuant to or in connection with the LACA II:

- 25.1.1 by you to LBNL shall be in writing in English and shall be delivered by electronic mail to lbni@lbia-eu.com (or to such other electronic mail address as may be notified (in accordance with this Clause 25) to you from time to time);
- 25.1.2 by you to LBIE and/or the Joint Administrators shall be in writing in English and shall be delivered by electronic mail to generalqueries@lbia-eu.com (or to such other electronic mail address as may be notified (in accordance with this Clause 25) to you from time to time);
- 25.1.3 to you by LBNL shall be given by:
- (i) electronic mail to one of the addresses confirmed by you on the LBIE Client Information Portal (or as otherwise provided to LBIE); or
 - (ii) uploading to the relevant section of the LBIE Client Information Portal (if applicable); and
- 25.1.4 to you by LBIE and/or the Joint Administrators shall be given by:
- (i) electronic mail to one of the addresses confirmed by you on the LBIE Client Information Portal (or as otherwise provided to LBIE); or
 - (ii) uploading to the relevant section of the LBIE Client Information Portal (if applicable).

25.2 Notices by the LBIE Client Information Portal

- 25.2.1 Any notice, information or communication given on, or by a document uploaded to, the LBIE Client Information Portal shall be sufficiently served by uploading the same to the LBIE Client Information Portal pursuant to Clause 25.1.3(ii) or 25.1.4(ii) (as appropriate).
- 25.2.2 Any notice, information or communication given on, or by a document uploaded to, the LBIE Client Information Portal shall be deemed to have been received at the time and date uploaded to the LBIE Client Information Portal.

25.3 Notices by electronic mail

- 25.3.1 Any notice, information or communication given, and any document sent by, electronic mail shall be sufficiently served by sending the same by electronic mail to the address specified or referred to in Clause 25.1.
- 25.3.2 Any notice, information or communication given, and any document sent by, electronic mail shall be deemed to have been received at the time recorded on the computer of the person to whom the electronic mail is addressed.

25.4 Accidental omission

The accidental omission by LBNL and/or LBIE and/or the Joint Administrators to send any notice, communication or document in accordance with this Clause 25, or the non-receipt of any such notice, communication or document by you, shall not affect the provisions of the Contractual Documents.

26 Authority to sign notices and documents and bind

In the case of:

26.1.1 any notice, communication or other document in connection with the LACA II which is signed or executed on your behalf; and

26.1.2 Acceptance by a Primary User,

LBNL shall not be required to make enquiry as to the authority of (i) the signatory of that notice, communication or other document to sign or execute such notice, communication or other document on your behalf or (ii) the relevant Primary User to provide such Acceptance.

27 Governing law and jurisdiction

27.1 The Contractual Documents and any non-contractual obligations arising out of or in connection with them are governed by English law.

27.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with the Contractual Documents (including a dispute relating to the existence, validity or termination of the Contractual Documents and any non-contractual obligation arising out of or in connection with the Contractual Documents) (a “**Dispute**”).

27.3 The parties to the Contractual Documents agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

Schedule 1

Form of Transfer Notice

OMNIBUS TRANSFER NOTICE – TRANSFER TO LBNL

To: Lehman Brothers International (Europe) (in administration) (“**LBIE**”)
Level 23
25 Canada Square
London
E14 5LQ
United Kingdom

And by email to: david.swanson@lbia-eu.com and rebecca.browne@lbia-eu.com

Attention: David Swanson

From: Lehman Brothers Nominees Limited (“**LBNL**”) (acting as agent for and on behalf of each Participating Creditor (as defined below)) (the “**Transferor**”)

Level 23
25 Canada Square
London
E14 5LQ
United Kingdom

And by email to: lbni@lbia-eu.com

Attention: C Møller

and

From: Lehman Brothers Nominees Limited (the “**Transferee**”)

Level 23
25 Canada Square
London
E14 5LQ
United Kingdom

And by email to: lbni@lbia-eu.com

Attention: C Møller

[•] 2016

Dear Sirs

Transfer Notice in respect of the transfer of the Assigned Rights of each Participating Creditor – [USD][Euro][Other] Claim Pool

- 1 The terms of this agreement shall be effective on the date of this agreement.
- 2 We refer to the offer of participation from LBNL (acting as principal and not as agent of the Participating Creditors (defined below)) to each Eligible Creditor, dated 15 June 2016 (the “**Offer of Participation**”), pursuant to which LBNL offered Eligible Creditors the option to participate in the second LBIE admitted claims auction.
- 3 We also refer to the terms and conditions incorporated into the Offer of Participation (the “**Terms and Conditions**”).
- 4 Unless otherwise defined herein, terms defined in the Terms and Conditions shall have the same meaning in this agreement.
- 5 Pursuant to the Contractual Documents, each Eligible Creditor who accepted the terms of the Contractual Documents and whose Eligible Admitted Claim was included in the Auction (each a “**Participating Creditor**”) irrevocably agreed, among other things:
 - (i) subject to certain conditions, and in consideration for the right to receive the Purchase Price, to sell, convey, transfer and assign all of its rights, title and interests in, to and under, or arising out of, in connection with and/or related to the Assigned Rights to the Transferee; and
 - (ii) to appoint LBNL as its agent to negotiate and enter into a Transfer Notice pursuant to which the title to such Assigned Rights shall be transferred to the Transferee.
- 6 This is a Transfer Notice.
- 7 Each Participating Creditor’s Identified Eligible Admitted Claim was allocated to a Claim Pool. This Transfer Notice is in relation to the transfer of the Assigned Rights of all Participating Creditors whose Identified Eligible Admitted Claims were allocated to the [USD][Euro][Other] Claim Pool only.
- 8 The Transferor and the Transferee agree that:
 - (i) the terms of this agreement may not be revoked or amended without the prior written consent of LBIE;
 - (ii) subject to the satisfaction of clause 7 (*Conditions precedent*) of the Terms and Conditions, the Assigned Rights of each Participating Creditor whose Identified Eligible Admitted Claim was allocated to the [USD][Euro][Other] Claim Pool are hereby assigned by the Transferor to the Transferee;
 - (iii) the proof of debt and accompanying information lodged by or on behalf of each Participating Creditor or Predecessor-in-Title whose Identified Eligible Admitted Claim was allocated to the [USD][Euro][Other] Claim Pool shall stand as the Transferee’s proof of debt;
 - (iv) any Distributions, and/or any other benefit given in lieu thereof, by LBIE and/or the Joint Administrators to (or at the direction of) the Transferee shall constitute a good discharge by LBIE and the Joint Administrators of their obligations in respect of the relevant Participating Creditor’s Assigned Rights; and
 - (v) the terms of this agreement shall not prevent LBIE and/or the Joint Administrators from making further requests for information from the Transferee in relation to each such Participating Creditor’s Assigned Rights.

9 The Transferor agrees that:

- (i) LBIE and/or the Joint Administrators shall be permitted to disclose to the Transferee and the Transferee's directors, employees, officers, agents, advisers and representatives (together, the "**Transferee's Representatives**") any and all documentation and/or information submitted by the Transferor, or any Participating Creditor (or its Predecessor-in-Title) whose Identified Eligible Admitted Claim was allocated to the [USD][Euro][Other] Claim Pool, or on their behalf, to LBIE and/or the Joint Administrators in support of the Assigned Rights of the relevant Participating Creditor (including, but not limited to, any proof of debt and any substantiating documents (as referenced in rule 2.72 of the Insolvency Rules 1986)); and
- (ii) the Transferee and the Transferee's Representatives shall be permitted to rely on and utilise all such information.

10 Representations and warranties

The Transferee makes the representations and warranties set out in this Clause 10 to LBIE and the Joint Administrators on the date of this agreement.

10.1 Basic representations

- 10.1.1** It is duly organised and validly existing under the laws of its jurisdiction of incorporation or organisation and, if relevant under such laws, in good standing.
- 10.1.2** It has the power to execute, deliver and perform its obligations under this agreement and has taken all necessary action to authorise such execution, delivery and performance and the signatory or signatories (as applicable) are properly authorised to execute this agreement on its behalf.
- 10.1.3** The execution, delivery and performance of its obligations under this agreement do not and will not conflict with any law or regulation applicable to it, its constitutional documents, 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.
- 10.1.4** Its obligations under this agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms.

10.2 No insolvency proceedings

- 10.2.1** No petition for insolvency proceedings in respect of it or its assets has been filed or is threatened to be filed.
- 10.2.2** It is not unable to honour its obligations as they fall due and the value of its assets is not less than its liabilities (taking into account contingent and prospective liabilities).

10.3 No agency

It is acting as principal and not as agent in entering into this agreement and in respect of the Assigned Rights, the Eligible Agreements, the Creditor Agreements and all transactions and trades thereunder.

11 Each person signing this agreement on behalf of the Transferor and Transferee (as appropriate) represents that they are an authorised signatory executing this agreement for

and on behalf of, and with the authority to bind, the Transferor or the Transferee (as applicable) to this agreement, and each such person acknowledges that LBIE and/or the Joint Administrators reserve the right to require evidence of power and authority and/or any supporting documentation or supplementary information from any person who purports to execute this agreement on behalf of each of the Transferor and Transferee (as appropriate).

- 12** The Transferor and Transferee agree that the Joint Administrators have countersigned this agreement as agents for and on behalf of LBIE and neither they, their firm, its members, partners, directors, officers, employees, agents, advisers or representatives shall incur any personal liability whatsoever in respect of any of the obligations undertaken by LBIE; or in respect of any failure on the part of LBIE 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 hereunder shall arise and continue notwithstanding the termination of the agency of the Joint Administrators and shall operate as a waiver of any and all claims (including, but not limited to, claims in tort, equity and common law as well as under the laws of contract).
- 13** Any person who is not a party to this agreement shall have no right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce or enjoy the benefit of any term of this agreement provided that the Joint Administrators shall be entitled to rely on all Clauses of this agreement and the Joint Administrators' firm, its members, partners, directors, officers, employees, agents, advisers and representatives shall be entitled to rely on Clauses 10, 11, 12 and 13 of this agreement as if they were a party to it.
- 14** This agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this agreement by executing any such counterpart.
- 15** This agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 16** The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute relating to the existence, validity or termination of this agreement) (a "**Dispute**").
- 17** The parties to this agreement agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

In witness whereof this agreement has been signed on behalf of the parties on the day and year stated at the beginning of this agreement.

Signed for and on behalf of **Lehman Brothers Nominees Limited**, acting as agent, for and on behalf of each of the Participating Creditors

By:

Title:

Signed for and on behalf of **Lehman Brothers Nominees Limited**

By:

Title:

Acknowledged and agreed by

.....
Joint Administrator

for and on behalf of **Lehman Brothers International (Europe) (in administration)** acting as its agent and without personal liability

Date: