

Dated 17 October 2016

Lehman Brothers Nominees Limited

and

each Participating Creditor  
(as defined in this Agreement)

**PARTICIPATION AND SALE AGREEMENT**

**Linklaters**

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**This Participation and Sale Agreement** (this “**Agreement**”) is made on 17 October 2016 between:

- (1) **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 (“**LBNL**”); and
- (2) each **PARTICIPATING CREDITOR** (as defined in this Agreement).

**Background:**

- (A) Pursuant to an order of the High Court, Chancery Division of England and Wales, LBIE entered into administration on 15 September 2008.
- (B) LBNL and certain creditors of LBIE wish to enter into an arrangement pursuant to which such creditors will sell their admitted ordinary unsecured claims against LBIE to LBNL on the satisfaction of certain conditions.
- (C) The sale and purchase of such claims will be effected pursuant to this Agreement.

**It is agreed** as follows:

## **1 Definitions and interpretation**

### **1.1 Definitions**

“**Additional Information**” means, in relation to a Participating Eligible Admitted Claim, any information submitted before the close of the LACA III Offer Period by the relevant Participating Creditor on the LBIE Surplus Portal (whether provided before or after the date on which such Participating Creditor received a LACA III Acceptance Notice in relation to such Participating Eligible Admitted Claim) in the box entitled “Additional Information”, including any documents or other information uploaded thereto, which has not been deleted or otherwise removed by such Participating Creditor prior to end of the LACA III Offer Period;

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

“**Admitted Claim Value**” means the sterling value of a Participating Eligible Admitted Claim as identified on the LBIE Surplus Portal as the “Identified Eligible Admitted Claim Value” in respect of such Participating Eligible Admitted Claim;

“**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;

“**Applicable Pool**” means, in relation to a Participating Eligible Admitted Claim, the Pool identified as the “Pool” on the LBIE Surplus Portal in respect of such Participating Eligible Admitted Claim;

“**Approved Party**” means (i) any person who, to the best of the relevant Participating Creditor’s knowledge and belief, is not an Eligible Bidder, and (ii) in relation to a particular Participating Creditor, a person in which such Participating Creditor, or one of its Affiliates, has a legal, beneficial and/or economic interest;

“**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 the Assigned Rights relating to each Participating Eligible Admitted Claim and seek to obtain a Clearing Price for the Assigned Rights relating to each such Participating Eligible Admitted Claim;

**“Bid Acceptance Date”** means the first date on which a Sale and Assignment Agreement becomes effective;

**“Business Day”** 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 unsecured creditor of LBIE and LBIE in relation to such 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;

**“Clearing Price”** means, in respect of a Participating Eligible Admitted Claim, the sterling denominated amount to be paid by an End Purchaser, which shall be established pursuant to the Auction and confirmed by LBIE (as auction agent) to the relevant End Purchaser, which shall not be less than the Offered Price in respect of the Participating Eligible Admitted Claim to which it relates;

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

**“Data Protection Legislation”** means the following legislation to the extent applicable from time to time: (i) national laws implementing the Data Protection Directive (95/46/EC) and the Directive on Privacy and Electronic Communications (2002/58/EC); (ii) the General Data Protection Regulation (2016/679); and (iii) any other similar national privacy law;

**“Data Subject”** has the meaning given to it in the Data Protection Legislation;

**“Dispute”** has the meaning given to it in Clause 28.2;

**“Distributions”** means, in respect of a Participating 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 Participating Eligible Admitted Claim;

**“Eligible Agreement”** means any CDD or any other agreement entered into by and between an unsecured creditor of LBIE and LBIE or any admittance letter issued by LBIE to an unsecured creditor of LBIE pursuant to which an ordinary unsecured claim has been admitted by LBIE, identified as an “Eligible Agreement” on the LBIE Surplus Portal in respect of such ordinary unsecured claim;

**“Eligible Bidder”** means a person who has been identified as a potential bidder in the Auction by LBIE (as auction agent and in its sole discretion) prior to 17 October 2016, as communicated by LBIE (as auction agent) on or before 17 October 2016 to such potential bidder and/or any other relevant person related to such potential bidder (as determined by LBIE as auction agent, in its sole discretion);

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

**“End Purchaser”** means, in respect of the Assigned Rights relating to a Participating Eligible Admitted Claim, the bidder in the Auction who LBIE has confirmed to be the successful bidder in relation to such Assigned Rights;

**“Excluded Information”** has the meaning given to it in Clause 12.1.6;

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

**“Identified Eligible Admitted Claim”** means an admitted ordinary unsecured claim established pursuant to an Eligible Agreement, as identified for the relevant Eligible Creditor on the relevant page of the LBIE Surplus Portal;

**“Joint Administrators”** means, on 17 October 2016, 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 III”** means the third LBIE admitted claims auction (including the Auction), as further described (i) in the announcement made on 17 October 2016 on PwC’s LBIE Website and (ii) on the LBIE Surplus Portal and in the relevant documents available on it;

**“LACA III Acceptance Deadline”** means 5 p.m. (London time) on 15 November 2016 (or such later date as is notified to Eligible Creditors by LBNL by email and announced on PwC’s LBIE Website);

**“LACA III Acceptance Notice”** means, in respect of an Identified Eligible Admitted Claim, a Notice given by LBNL to the relevant Eligible Creditor in which the LACA III Offer relating to such Identified Eligible Admitted Claim is accepted by LBNL;

**“LACA III Offer”** means, in respect of an Identified Eligible Admitted Claim, an offer made by an Eligible Creditor to LBNL in respect of the sale of such Identified Eligible Admitted Claim, made in accordance with Clause 3 (*LACA III Offer*);

**“LACA III Offer Period”** means the period from 12 p.m. (London time) on 17 October 2016 until 5 p.m. (London time) on 14 November 2016 (or, in respect of each date, such later date as is notified to Eligible Creditors by LBNL by email and announced on PwC’s LBIE Website);

**“LBHI Affiliate”** means an Affiliate of Lehman Brothers Holdings Inc., a corporation incorporated under the laws of the State of Delaware, United States of America, with registered number 2024634, whose registered address is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, United States of America, and whose principal place of business is at 1271 Avenue of the Americas, New York, NY 10020, United States of America, or any person who was an Affiliate of Lehman Brothers Holdings Inc. at 14 September 2008;

**“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/](https://dm.pwc.com/lbie_cip/);

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

**“LBNL”** has the meaning given to it in the parties clause;

**“Legal Entity”** means the entity identified as the “Legal Entity” on the LBIE Surplus Portal in respect of a Participating Eligible Admitted Claim;

**“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 10.1.9;

**“Loss”** has the meaning given to it in Clause 15 (*Indemnity*);

**“Notice”** means any notice given in accordance with Clause 26 (*Notices*);

**“Offered Price”** means, in respect of a Participating Eligible Admitted Claim, the price set by the relevant Participating Creditor in its LACA III Offer for such Participating Eligible Admitted Claim at which such Participating Eligible Admitted Claim may be sold, conveyed, transferred or assigned (subject to any deductions required by this Agreement) pursuant to the Auction;

**“Participating Creditor”** means an Eligible Creditor who has made a LACA III Offer to LBNL and who has received a LACA III Acceptance Notice in relation to such LACA III Offer;

**“Participating Eligible Admitted Claim”** means an Identified Eligible Admitted Claim in respect of which a LACA III Acceptance Notice has been received by the relevant Eligible Creditor in accordance with Clause 26 (*Notices*);

**“Participation Fee”** means a fee of £150,000 payable by each End Purchaser identified pursuant to Round 1 (subject to the maximum fee payable by each individual End Purchaser being £150,000), which will be confirmed to the relevant End Purchaser(s) by LBIE (as auction agent), payable in addition to the relevant Clearing Price(s);

**“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;

**“Pool”** means either of Pool A or Pool B (as applicable);

**“Pool A”** means the aggregated Participating Eligible Admitted Claims where each such Participating Eligible Admitted Claim has an Admitted Claim Value equal to or less than £18,000,000.00;

**“Pool B”** means the aggregated Participating Eligible Admitted Claims where each such Participating Eligible Admitted Claim has an Admitted Claim Value of more than £18,000,000.00;

**“Post-Transfer Distributions”** has the meaning given to it in Clause 16.1;

**“Potential Uplift”** means, in relation to a Participating Eligible Admitted Claim, a sterling denominated amount calculated by:

- (i) calculating the aggregate of (a) the Offered Price for the Participating Eligible Admitted Claim and (b) the Offered Price for each Related Claim; and
- (ii) deducting the amount calculated in paragraph (i) above from the total amount bid by the End Purchaser of the Participating Eligible Admitted Claim for the Participating Eligible Admitted Claim and any Related Claims (such amount to exclude any applicable Participation Fee);

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

**“Pro Rata Share”** means, in respect of a Participating Eligible Admitted Claim, a percentage calculated by multiplying by 100, the amount calculated by dividing (i) the Offered Price for the Participating Eligible Admitted Claim by (ii) the aggregate of the Offered Price for the Participating Eligible Admitted Claim and the Offered Price for each Related Claim;

**“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:

- (i) in respect of a Participating Eligible Admitted Claim allocated to Pool A:
  - (a) if the Clearing Price payable by the relevant End Purchaser for such Participating Eligible Admitted Claim is equal to the Offered Price for such

- Participating Eligible Admitted Claim, a sterling denominated amount equal to the Offered Price of such Participating Eligible Admitted Claim; or
- (b) if the Clearing Price payable by the relevant End Purchaser for such Participating Eligible Admitted Claim is greater than the Offered Price for such Participating Eligible Admitted Claim:
    - A. a sterling denominated amount equal to the Offered Price of such Participating Eligible Admitted Claim; plus
    - B. a sterling denominated amount equal to such Participating Eligible Admitted Claim's Pro Rata Share of the Potential Uplift; and
  - (ii) in respect of a Participating Eligible Admitted Claim allocated to Pool B:
    - (a) if the Clearing Price payable by the relevant End Purchaser for such Participating Eligible Admitted Claim is equal to the Offered Price for such Participating Eligible Admitted Claim, a sterling denominated amount equal to the Offered Price of such Participating Eligible Admitted Claim;
    - (b) if a single End Purchaser has been identified for all of the Participating Eligible Admitted Claims allocated to Pool B in a Round, if the Clearing Price payable by the relevant End Purchaser for the Participating Eligible Admitted Claim is greater than the Offered Price for such Participating Eligible Admitted Claim:
      - A. a sterling denominated amount equal to the Offered Price of such Participating Eligible Admitted Claim; plus
      - B. a sterling denominated amount equal to such Participating Eligible Admitted Claim's Pro Rata Share of the Potential Uplift; or
    - (c) if, in any other circumstances apart from that set out in paragraph (b) above, the Clearing Price payable by the relevant End Purchaser for the Participating Eligible Admitted Claim is greater than the Offered Price for such Participating Eligible Admitted Claim, a sterling denominated amount equal to the Clearing Price payable by the relevant End Purchaser for such Participating Eligible Admitted Claim;

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

**"Related Claim"** means, in relation to a Participating Eligible Admitted Claim, all other Participating Eligible Admitted Claims:

- (i) which were allocated to the same Pool as such Participating Eligible Admitted Claim; and
- (ii) in respect of which the same End Purchaser is identified pursuant to the same Round as for such Participating Eligible Admitted Claim;

**"Relevant Persons"** means: (i) each of 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 a Participating Eligible Admitted Claim, Distributions which have, at the date on which a LACA III Acceptance Notice is sent by LBNL in respect of such Participating Eligible Admitted Claim, already been made by LBIE equal, in aggregate, to the Admitted Claim Value of such Participating Eligible Admitted Claim;

**“Round”** means either of Round 1 or Round 2 (as applicable);

**“Round 1”** means the first round of the Auction;

**“Round 2”** means the second round of the Auction;

**“Sale and Assignment Agreement”** means, in respect of a Participating Eligible Admitted Claim, a sale and assignment agreement between LBNL and an End Purchaser in respect of all of the Assigned Rights relating to such Participating Eligible Admitted Claim in respect of which such End Purchaser has been confirmed as the End Purchaser, and sold, conveyed, transferred and assigned to LBNL pursuant to this Agreement;

**“Settlement Date”** means, in respect of a Participating Eligible Admitted Claim, 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;

**“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 a Participating Eligible Admitted Claim, the date on which the Transfer Time in respect of such Participating Eligible Admitted Claim occurs, which will be notified to the relevant Participating Creditor by LBNL by email and announced on PwC’s LBIE Website;

**“Transfer Notice”** means, in respect of a Participating Eligible Admitted Claim, 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 relating to the Participating Eligible Admitted Claim are transferred, substantially in the form set out in Schedule 1 (*Form of Transfer Notice*);

**“Transfer Time”** means, in respect of a Participating Eligible Admitted Claim, 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 Assigned Rights relating to such Participating Eligible Admitted Claim;

**“UCC1”** means, in respect of a Participating Eligible Admitted Claim, the unsecured claim certificate for such Participating Eligible Admitted Claim, published in April 2016 (as updated by LBIE from time to time) and as available to the relevant Participating Creditor on the LBIE Client Information Portal from 17 October 2016, setting out, among other things, the Admitted Claim Value in respect of such Participating Eligible Admitted Claim and the claim components of such Participating Eligible Admitted Claim;

**“UCC2”** means, in respect of a Participating Eligible Admitted Claim, the second unsecured claim certificate for such Participating Eligible Admitted Claim (which should be read



together with the UCC2 Explanatory Note), published in June 2016 (as updated by LBIE from time to time) and as available to the relevant Participating Creditor on the LBIE Client Information Portal from 17 October 2016 in respect of such Participating Eligible Admitted Claim; and

**“UCC2 Explanatory Note”** means the explanatory note in relation to each UCC2 published in June 2016 and as available to each Participating Creditor on the LBIE Client Information Portal from 17 October 2016.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires or unless otherwise expressly provided:

- 1.2.1 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;
- 1.2.2 references to any person or entity shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
- 1.2.3 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;
- 1.2.4 a reference to a Clause or a Schedule is a reference to a clause of or a schedule to this Agreement;
- 1.2.5 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- 1.2.6 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;
- 1.2.7 words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
- 1.2.8 headings are for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.9 references to time are to London time;
- 1.2.10 in the event of a conflict or inconsistency between the provisions of this Agreement, the Insolvency Act 1986 and the Insolvency Rules 1986, for the purposes of this Agreement, and to the extent permissible, the provisions of this Agreement shall prevail;
- 1.2.11 the language which governs the interpretation of this Agreement 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 this Agreement or the performance of this Agreement shall be in writing in the English language;

- 1.2.12 references to “**sterling**” and “**£**” are to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland;
- 1.2.13 the words “**include**” and “**including**” mean include and including, without limitation;
- 1.2.14 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;
- 1.2.15 a reference to a “**judgment**” includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction; and
- 1.2.16 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 Effective date**

This Agreement shall be binding on each Participating Creditor from the time that it receives a LACA III Acceptance Notice from LBNL in accordance with Clause 26 (*Notices*).

## **3 LACA III Offer**

### **3.1 Terms of the LACA III Offer**

- 3.1.1 Each Eligible Creditor has been invited to make a separate LACA III Offer in respect of one or more of its Identified Eligible Admitted Claims on the terms of this Agreement, and subject to the conditions set out in this Agreement, to enter into and be bound by this Agreement in relation to such Identified Eligible Admitted Claim(s).
- 3.1.2 Eligible Creditors must make a separate LACA III Offer in respect of each of their Identified Eligible Admitted Claims.
- 3.1.3 When making a LACA III Offer, Eligible Creditors shall specify the price at which they would be willing to sell the Identified Eligible Admitted Claim to which the LACA III Offer relates and shall acknowledge the Pool to which their Identified Eligible Admitted Claim will be allocated.
- 3.1.4 Eligible Creditors may make a LACA III Offer at any time during the LACA III Offer Period electronically via, and in accordance with the instructions contained in, the LBIE Surplus Portal, and subject to the provisions of Clause 3.3.

### **3.2 Acceptance of LACA III Offer by LBNL**

- 3.2.1 LBNL may, in its absolute discretion:
- (i) accept any LACA III Offer by way of a LACA III Acceptance Notice before the LACA III Acceptance Deadline;
  - (ii) accept LACA III Offers on one or more dates before the LACA III Acceptance Deadline; and
  - (iii) choose not to accept a LACA III Offer of an Eligible Creditor in its absolute discretion (whether or not it accepts or has already accepted any other

LACA III Offer from such Eligible Creditor in respect of any other Identified Eligible Admitted Claim, or a LACA III Offer of any other Eligible Creditor).

**3.2.2** Upon LBNL accepting a LACA III Offer of an Eligible Creditor by way of a LACA III Acceptance Notice, such Eligible Creditor agrees that it will:

- (i) automatically be bound by this Agreement in respect of the Identified Eligible Admitted Claim to which such LACA III Offer relates; and
- (ii) thereby become a party to this Agreement as a Participating Creditor, together with:
  - (a) any other Eligible Creditor which has already become a party to this Agreement; and
  - (b) any other Eligible Creditor, as from the time it receives its LACA III Acceptance Notice, which has made a LACA III Offer that LBNL subsequently accepts.

**3.2.3** Unless and until such time as a LACA III Offer of an Eligible Creditor is accepted by way of a LACA III Acceptance Notice, such Eligible Creditor shall not be treated as a Participating Creditor in relation to such Identified Eligible Admitted Claim and the Identified Eligible Admitted Claim to which such LACA III Offer relates shall not be treated as a Participating Eligible Admitted Claim.

### **3.3 Submission of LACA III Offer**

**3.3.1** Each Participating Creditor hereby acknowledges that it has:

- (i) made (or authorised the making of) its LACA III Offer(s) to LBNL via the LBIE Surplus Portal; and
- (ii) in making such LACA III Offer(s), confirmed, in respect of each of its Participating Eligible Admitted Claim(s):
  - (a) the Offered Price for each such Participating Eligible Admitted Claim; and
  - (b) the Pool to which each such Participating Eligible Admitted Claim will be allocated.

**3.3.2** Without prejudice to any other provision in this Agreement, LBNL shall have and reserves the right to:

- (i) accept a LACA III Offer as being validly made to LBNL even if such LACA III Offer is not entirely in order or complete or is not received in the manner stated in this Agreement; or
- (ii) require evidence of the power and authority of a Participating Creditor or any person acting on its behalf in respect of such LACA III Offer or any supporting documentation or supplementary information (including in relation to anti money laundering checks), if any, from any person who makes a LACA III Offer to LBNL.

## **4 Allocation to the Applicable Pool and disclosure of information**

**4.1** At the LACA III Acceptance Deadline, each Participating Creditor irrevocably agrees to:

- 4.1.1** the inclusion of each of its Participating Eligible Admitted Claim(s) in the Applicable Pool and the marketing of such Participating Eligible Admitted Claim(s), 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 each Participating Eligible Admitted Claim which it holds (such information being derived from one or more of the relevant UCC1(s), UCC2(s), Eligible Agreement(s), Creditor Agreement(s) and any other information held by LBIE, including any Offered Price and any Additional Information) to LBNL and/or any potential third party purchasers 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 such Participating Creditor 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** in relation to each Participating Eligible Admitted Claim which it holds, subject to the transfer of the Assigned Rights relating to such Participating Eligible Admitted Claim in accordance with Clause 5 (*Sale and assignment*) and Clause 6 (*Transfer*), on or at any time after the relevant Transfer Time in respect of such Participating Eligible Admitted Claim:
- (i) 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): (a) a copy of the relevant Eligible Agreement; (b) a copy of the relevant UCC1; (c) a copy of the relevant UCC2; (d) copies of each relevant Creditor Agreement(s); (e) copies of any applicable proofs of debt; (f) copies of any notices relating to such Participating Eligible Admitted Claim which are in the possession or control of LBIE (including any termination and valuation notices); and (g) copies of any other information contained in LBIE's books and records relating to such Participating Eligible Admitted Claim, at LBIE's sole discretion (including any Additional Information); and
  - (ii) in relation to any Participating Eligible Admitted Claims in respect of which the Applicable Pool is Pool B, LBIE providing any contact details that LBIE considers (in its sole discretion) to be the relevant contact details in respect of such Participating Eligible Admitted Claim to the End Purchaser.
- 4.2** For the avoidance of doubt, each Participating Creditor acknowledges and agrees 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, the information contained in the documentation to be provided to the End Purchaser pursuant to Clause 4.1.4(i) and the contact details to be provided to the End Purchaser pursuant to Clause 4.1.4(ii), and the disclosure of any Additional Information pursuant to Clause 4.3, may:
- 4.2.1** include information comprising Personal Data, including the Legal Entity's name where it is an individual; and
  - 4.2.2** result in the transfer of Personal Data outside of the European Economic Area.
- 4.3** In relation to each Participating Eligible Admitted Claim, at the time the relevant Participating Creditor receives a LACA III Acceptance Notice from LBNL in relation to such

Participating Eligible Admitted Claim, such Participating Creditor irrevocably agrees to the disclosure to, and use by, LBIE and the Joint Administrators of any Additional Information.

## 5 Sale and assignment

Subject to Clause 6 (*Transfer*), Clause 7 (*Conditions precedent*) and Clause 9 (*Termination*), in relation to each Participating Eligible Admitted Claim, at the Transfer Time in respect of the relevant Participating Eligible Admitted Claim and in consideration for the right to receive payment of the Purchase Price in respect of such Participating Eligible Admitted Claim in accordance with Clause 8 (*Payment*), the Participating Creditor who holds such Participating Eligible Admitted Claim irrevocably agrees to sell, convey, transfer and assign to LBNL all of its rights, title and interests in, to and under, or arising out of, in connection with and/or related to:

- 5.1.1 such Participating Eligible Admitted Claim, including any and all rights to receive any and all amounts paid or payable in respect of such Participating 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 in respect of such Participating Eligible Admitted Claim);
- 5.1.2 any Eligible Agreement in relation to such Participating Eligible Admitted Claim;
- 5.1.3 any Creditor Agreement(s) in relation to such Participating Eligible Admitted Claim;
- 5.1.4 any relevant proofs of debt relating to such Participating 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 such Participating Creditor, whether against LBIE or any other party, in connection with such Participating Eligible Admitted Claim, including under or in connection with any relevant Eligible Agreement or any relevant Creditor Agreement(s) or arising under any law; and
- 5.1.6 any Distributions in relation to such Participating Eligible Admitted Claim, in each case, excluding the Retained Distributions relating to such Participating Eligible Admitted Claim, and together, in respect of such Participating Eligible Admitted Claim, the “**Assigned Rights**”.

## 6 Transfer

In order to effect a transfer of a Participating Eligible Admitted Claim agreed to pursuant to Clause 5 (*Sale and assignment*), the relevant Participating Creditor:

- 6.1.1 subject to Clause 7 (*Conditions precedent*), Clause 9 (*Termination*) and the remainder of this Clause 6, at the Transfer Time in respect of such Participating Eligible Admitted Claim, irrevocably sells, conveys, transfers and assigns to LBNL 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 in respect of such Participating Eligible Admitted Claim; and
- 6.1.2 irrevocably appoints LBNL as its agent to:

- (i) negotiate, and enter into, any agreement or deed with LBIE, pursuant to which LBIE and LBNL (acting as agent for each of the Participating Creditors) 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 any applicable Eligible Agreement(s) or Creditor Agreement(s)); and
- (ii) negotiate and enter into a Transfer Notice with LBIE pursuant to which the title to the Assigned Rights in respect of such Participating Eligible Admitted Claim shall be transferred to LBNL.

## **7 Conditions precedent**

In relation to a Participating Eligible Admitted Claim, the sale, conveyance, transfer and assignment of the Assigned Rights relating to such Participating Eligible Admitted Claim 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 such Participating Eligible Admitted Claim;
- 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 of such Participating Eligible Admitted Claim; and (ii) a fully executed (but undated and unreleased) Transfer Notice between LBNL and the End Purchaser of such Participating Eligible Admitted Claim, in each case in relation to the Participating Eligible Admitted Claim;
- 7.1.3 LBNL not being aware of any breach of the representations and warranties made by the relevant Participating Creditor in Clause 10 (*Representations and warranties*);
- 7.1.4 the Termination Right not having been exercised in respect of such Participating Eligible Admitted Claim; and
- 7.1.5 LBNL having received the Clearing Price for such Participating Eligible Admitted Claim from the End Purchaser of such Participating Eligible Admitted Claim, along with any applicable Participation Fee.

## **8 Payment**

- 8.1 In respect of a Participating Eligible Admitted Claim sold, conveyed, transferred and assigned pursuant to this Agreement, subject to the remainder of this Clause 8, on the Settlement Date in respect of such Participating Eligible Admitted Claim, LBNL shall pay, or procure the payment of, the Purchase Price in respect of such Participating Eligible Admitted Claim to the bank account details contained in the relevant 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 in respect of a Participating Eligible Admitted Claim on the Settlement Date in respect of such Participating Eligible Admitted Claim is subject to the relevant Participating Creditor 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

November 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 a Participating Creditor has not confirmed, provided and/or updated (as applicable) the Legal Entity's SSI in accordance with Clause 8.2, Payment in respect of such Participating Eligible Admitted Claim may be made after the Settlement Date in respect of such Participating Eligible Admitted Claim. If such confirmation, provision and/or update remains outstanding for three months after the Settlement Date in respect of such Participating Eligible Admitted Claim, the relevant Participating Creditor agrees that it waives all rights to the payment of the Purchase Price in respect of such Participating Eligible Admitted Claim. In such circumstances, the Purchase Price in respect of the Participating Eligible Admitted Claim will be donated to Lehman Brothers Foundation Europe.
- 8.4** In respect of a Participating Eligible Admitted Claim sold, conveyed, transferred and assigned pursuant to this Agreement, if LBNL receives any sum in respect of the relevant 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 in respect of such Participating Eligible Admitted Claim will be payable pursuant to this Clause 8 less any such Tax Deduction.
- 8.5** Each Participating Creditor hereby irrevocably and unconditionally consents to the provision of the relevant Legal Entity's SSI by LBIE to LBNL for the purposes of making any Payment and confirms 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 III in respect of one or more Participating Eligible Admitted Claims (the "**Termination Right**"). If the Termination Right is exercised by LBNL in respect of a Participating Eligible Admitted Claim, the relevant Participating Creditor will be notified of this by LBNL by email.
- 9.2** In respect of such Participating Eligible Admitted Claim(s) only: (i) in the event that LBNL exercises the Termination Right in respect of a Participating Eligible Admitted Claim pursuant to Clause 9.1; or (ii) any of the conditions precedent in Clause 7 (*Conditions precedent*) are not met with respect to such Participating Eligible Admitted Claim by 31 January 2017 (or such later date as is notified to the relevant Participating Creditor 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 Pool and disclosure of information*), Clause 12 (*Acknowledgements*), Clause 13 (*Non-reliance*), Clause 15 (*Indemnity*), Clause 17 (*No representation*), Clause 19 (*Third parties*), Clause 20 (*Costs*), Clause 21 (*Confidentiality*), Clause 22 (*Whole agreement*), Clause 23 (*Invalidity*), Clause 24 (*Set-off*) and Clause 28 (*Governing law and jurisdiction*), and this Clause 9, this Agreement shall automatically and immediately terminate and neither the Relevant Persons nor the Participating Creditor(s) who hold such Participating Eligible Admitted Claim(s) shall have any further rights or obligations under this Agreement;

- 9.2.2** subject to Clause 9.2.1, LBIE and the Participating Creditor(s) who hold such Participating Eligible Admitted Claim(s) shall have the same interests, rights, entitlements, claims and defences in respect of the Participating Eligible Admitted Claim(s) as if this Agreement had not become effective; and
- 9.2.3** the Participating Creditor(s) who hold such Participating Eligible Admitted Claim(s) shall not have any Claim against any Relevant Person whatsoever, including for costs, damages, compensation or otherwise, arising out of or in relation to this Agreement, the LACA III and/or the exercise of the Termination Right (if applicable).

## **10 Representations and warranties**

**10.1** Each Participating Creditor, in respect of each Participating Eligible Admitted Claim which it holds, represents, warrants and covenants to LBNL, LBNL's successors and assigns and the End Purchaser of such Participating Eligible Admitted Claim on each of the date on which it receives a LACA III Acceptance Notice in respect of such Participating Eligible Admitted Claim, the LACA III Acceptance Deadline, the Transfer Date in respect of such Participating Eligible Admitted Claim and the Settlement Date in respect of such Participating Eligible Admitted Claim 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** it has the power to participate in the LACA III and to agree to, and to perform its obligations under, this Agreement and to execute any documentation relating to the LACA III that it is required by this Agreement or by LBNL to deliver and it has taken all necessary action to authorise such participation, agreement, performance, execution or delivery, and its Primary User(s) is/are properly authorised to bind it in relation to the LACA III, including by making the LACA III Offer in respect of the Participating Eligible Admitted Claim;
- 10.1.3** any Additional Information: (i) shall not form part of the LACA III Offer in respect of such Participating Eligible Admitted Claim; (ii) shall have no legally binding effect on LBNL, LBNL's successors and assigns or the End Purchaser of such Participating Eligible Admitted Claim; and (iii) shall in no way vary or amend the terms of this Agreement in relation to such Participating Eligible Admitted Claim;
- 10.1.4** its obligations under this Agreement constitute its valid, legal, binding and enforceable obligations, and there is not pending or, to its knowledge, threatened against it or any of its 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 in relation to such Participating Eligible Admitted Claim or any action taken or to be taken by it under this Agreement;
- 10.1.5** the entry into, and performance of its obligations under, this Agreement do not and will not conflict with:
- (i) any law, rule or regulation applicable to it;
  - (ii) its constitutional documents (to the extent it is a company); or



- (iii) any agreement or instrument binding upon it or any of its assets that could affect the Assigned Rights in relation to such Participating Eligible Admitted Claim;
- 10.1.6 it is not aware of any restrictions, requirements or obligations, including any confidentiality agreements, that would prevent LBIE from making available or delivering to an End Purchaser any documents or information in relation to such Participating Eligible Admitted Claim;
- 10.1.7 except for filings that are expressly contemplated by this Agreement, 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, this Agreement or the LACA III;
- 10.1.8 in relation to such Participating Eligible Admitted Claim, the entire legal and beneficial title of the Assigned Rights in relation to such Participating Eligible Admitted Claim is held by either:
  - (i) it;
  - (ii) one of its Affiliates;
  - (iii) an Approved Party; or
  - (iv) a combination of it, one or more of its Affiliates and/or one or more Approved Party,
- and, as at the date on which such Participating Creditor submits the LACA III Offer in relation to such Participating Eligible Admitted Claim (as such date is recorded on the LBIE Surplus Portal), such Participating Creditor is the only person entitled to receive 100 per cent. of the Distributions in relation to such Participating Eligible Admitted Claim and does not have any obligation to transfer or account for any or all of such Distributions to any person who is not an Affiliate or an Approved Party;
- 10.1.9 the owner(s) of the entire legal and beneficial title of such Participating Eligible Admitted Claim have good title to the Assigned Rights in relation to such Participating Eligible Admitted Claim, including the Participating 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 this Agreement will transfer to LBNL such good title free and clear of any Liens;
- 10.1.10 it has read, understood and accepts this Agreement and the UCC1 in respect of such Participating Eligible Admitted Claim and all information and statements set out therein are true and accurate;
- 10.1.11 it has read and understood the UCC2 in respect of such Participating Eligible Admitted Claim and the UCC2 Explanatory Note and it acknowledges that the UCC2 and the UCC2 Explanatory Note were published in June 2016 and that since then: (i) there have been significant currency movements; (ii) further judgments have been received in relation to the Proceedings; (iii) the Supreme Court is hearing the ‘Waterfall I’ appeal in the week commencing 17 October 2016; and (iv) the Joint Administrators’ sixteenth progress report was published on 7 October 2016, and that the UCC2 and the UCC2 Explanatory Note have not been updated to reflect these developments;

- 10.1.12** other than with respect to the Retained Distributions in respect of such Participating Eligible Admitted Claim, it has not received any payment or Distribution (and no payment or Distribution has been received on its behalf) in full or partial satisfaction of the Assigned Rights relating to such Participating Eligible Admitted Claim;
- 10.1.13** it has not engaged (and shall not engage) in any act, conduct or omission, or had (or shall have) any relationship with LBIE or LBNL or any LBHI Affiliate that will reduce or impair or otherwise adversely affect the Assigned Rights in relation to such Participating Eligible Admitted Claim 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 in relation to such Participating Eligible Admitted Claim than is received by other general unsecured creditors holding claims of the same class or type (including with respect to the relevant Eligible Agreement or Creditor Agreements) against LBIE;
- 10.1.14** any Eligible Agreement(s) in relation to such Participating Eligible Admitted Claim 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 it (or to which it is bound) that affect or may affect such Participating Eligible Admitted Claim(s) or the “admitted claim amount” (as set out in the relevant UCC1 in respect of such Participating Eligible Admitted Claim) other than the relevant Eligible Agreement in relation to each of such Participating Eligible Admitted Claim;
- 10.1.15** all conditions with respect to the effectiveness of any Eligible Agreement(s) in relation to such Participating Eligible Admitted Claim have been duly satisfied or waived, all its obligations under such Eligible Agreement(s) have been fulfilled and performed, and it has not breached (and will not breach) any terms or provisions of such Eligible Agreement(s);
- 10.1.16** no broker, finder, agent or other entity acting on its behalf is entitled to any commission or fee for which LBNL could be responsible;
- 10.1.17** (i) no petition for insolvency (to the extent that it is a company) or bankruptcy (to the extent that it is an individual) proceedings, or any analogous process, in respect of its assets has been filed, or is threatened to be filed, (ii) 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), and (iii) it has not commenced negotiations with one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness; and
- 10.1.18** any Personal Data in the Additional Information (or otherwise provided by the Participating Creditor to a Relevant Person) has been collected fairly and lawfully (including by observing any requirement to obtain consents from Data Subjects, as relevant) so as to enable such data to be:
- (i) transmitted to and processed by the Relevant Persons (as applicable); and
  - (ii) disclosed to the Relevant Persons, the End Purchaser and any potential bidder in the Auction,
- in compliance with the Data Protection Legislation.

**10.2** LBNL represents, warrants and covenants to each Participating Creditor on the date on which it sends a LACA III Acceptance Notice to such Participating Creditor and on the relevant 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 III and to agree to and to perform its obligations under this Agreement and to execute any documentation relating to the LACA III that it is required by this Agreement 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 III;

**10.2.3** its obligations under this Agreement 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 this Agreement;

**10.2.4** to the best of its knowledge and belief, the entry into, and performance of its obligations under, this Agreement 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 III; and

**10.2.5** except for filings and other actions that are expressly contemplated by this Agreement, 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, this Agreement or the LACA III.

## **11 Undertakings**

Each Participating Creditor undertakes, in respect of each of its Participating Eligible Admitted Claim(s) in relation to which the Applicable Pool is Pool B, to (and to procure that each other current legal and/or beneficial owner of such Participating Eligible Admitted Claim will) use reasonable endeavours to comply with any reasonable requests of the End Purchaser (or its successors or assigns) of such Participating Eligible Admitted Claim pursuant to which such End Purchaser requests information from the Participating Creditor in relation to such Participating Creditor's "cost of funding" (as such term is defined pursuant to the Proceedings or any other judgment binding in the English courts (from time to time), or as otherwise defined or developed by LBIE and/or the Joint Administrators in the context of LBIE).

## 12 Acknowledgements

Each Participating Creditor represents, warrants and agrees that this Agreement and the exclusions and limitations contained herein are fair and reasonable having regard to the following:

- 12.1.1 it is a sophisticated entity or person (as applicable) and has adequate information concerning the financial condition of LBIE and the Administration to make an informed decision regarding the sale of the relevant Assigned Rights in relation to each of its Participating Eligible Admitted Claim(s);
- 12.1.2 it has independently and without reliance on any Relevant Person, and based on such information as it has deemed appropriate, made its own decision to enter into this Agreement;
- 12.1.3 it acknowledges that no Relevant Person has influenced or advised on its setting of any Offered Price, which has been set solely by it based on such independently obtained information and advice as it has deemed appropriate, and that no Relevant Person has any obligation to assess the appropriateness of the Offered Price;
- 12.1.4 it acknowledges Additional Information will be provided to potential third party purchasers, LBIE and the Joint Administrators in the form submitted by the Participating Creditor and that no Relevant Person will review or amend any Additional Information before such Additional Information is provided to any third party purchaser, LBIE and/or the Joint Administrators;
- 12.1.5 it is aware that information which may be pertinent to the decision to enter into this Agreement is available to it and can be obtained from publicly available sources;
- 12.1.6 it acknowledges 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**");
- 12.1.7 it acknowledges that the Relevant Persons will not disclose or otherwise provide such Excluded Information to it and it has nevertheless determined to enter into this Agreement and to proceed with the LACA III; and
- 12.1.8 it acknowledges that the Relevant Persons shall not have any liability to it, and it waives and releases any Claims that it 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 this Agreement.

## 13 Non-reliance

- 13.1 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 any Participating Creditor in reliance on, and each Participating Creditor waives any right which it may have against any Relevant Person by reason of its use of or reliance on, any information provided or communications or announcements made to it in connection with the LACA III and/or this Agreement, including any UCC1, any UCC2 and the UCC2 Explanatory Note.
- 13.2 No Participating Creditor is relying on any communication and/or announcement, including any UCC1, any 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 III, it being understood that information and explanations relating to the LACA III and/or this Agreement in any communication and/or announcement shall not be relied upon or treated as a recommendation or an inducement to enter into the LACA III and/or this Agreement.

- 13.3** No person has been authorised in connection with the LACA III to give any information or make any representation other than those contained in this Agreement and any such information or representation shall not be relied upon as having been authorised by any Relevant Person.

## **14 Release**

Notwithstanding Clause 12 (*Acknowledgements*) and Clause 13 (*Non-reliance*) and subject to any rights such Participating Creditor may have arising in relation to Clause 8 (*Payment*) and Clause 10.2, in relation to a Participating Eligible Admitted Claim:

**14.1.1** at the earlier of (i) the Transfer Time in relation to such Participating Eligible Admitted Claim and (ii) 31 January 2017, the relevant Participating Creditor unconditionally and irrevocably releases and forever discharges 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, arising out of or in connection with the LACA III, whether in existence now or coming into existence at some time in the future, and whether or not in the contemplation of such Participating Creditor and/or any Relevant Person on the relevant Transfer Date; and

**14.1.2** to the extent not already released pursuant to Clause 14.1.1, at the Transfer Time in relation to such Participating Eligible Admitted Claim, the relevant Participating Creditor unconditionally and irrevocably releases and forever discharges 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 in relation to such Participating Eligible Admitted Claim and/or the LACA III or not, whether in existence now or coming into existence at some time in the future, and whether or not in the contemplation of such Participating Creditor and/or any Relevant Person on the Transfer Date in relation to such Participating Eligible Admitted Claim.

## **15 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 a Participating Creditor of any representation, warranty or agreement made by

such Participating Creditor and contained in this Agreement, such Participating Creditor shall pay to such Relevant Person on demand an amount equal to such Loss.

## **16 After the Transfer Date**

- 16.1** Each Participating Creditor agrees that in the event that it receives any Distributions with respect to the Assigned Rights in relation to any of its Participating Eligible Admitted Claim(s) after the relevant Transfer Date(s) ("**Post-Transfer Distributions**"), such Post-Transfer Distributions shall be promptly returned to LBIE.
- 16.2** In the event a Participating Creditor receives any notices or other documents from (or on behalf of) LBIE in respect of the Assigned Rights in relation to any of its Participating Eligible Admitted Claim(s) after the relevant Transfer Date(s), such Participating Creditor shall promptly notify LBIE that it is no longer the owner of such Assigned Rights and at LBIE's request shall return such notices or documents to LBIE.
- 16.3** In the event that all or any portion of the Assigned Rights in relation to a Participating Creditor's Participating Eligible Admitted Claim(s) are not assignable by a Participating Creditor to LBNL, then, with effect from the relevant Transfer Date(s), such Participating Creditor grants to any relevant End Purchaser a 100 per cent. participation interest in such Assigned Rights, in a manner consistent with the provisions of this Agreement and applicable law.
- 16.4** Each Participating Creditor agrees and acknowledges that as of the relevant Transfer Time(s) it will no longer be able to access any information regarding its relevant Participating Eligible Admitted Claim(s) (including any relevant Eligible Agreement(s), any relevant UCC1(s), any relevant UCC2(s) and any relevant Creditor Agreement(s)) via the LBIE Client Information Portal.

## **17 No representation**

- 17.1** None of the Relevant Persons makes any representation as to whether:
- 17.1.1** any Participating Eligible Admitted Claim will be sold or whether the Purchase Price for a Participating Eligible Admitted Claim will be greater than the Offered Price for such Participating Eligible Admitted Claim;
- 17.1.2** any payment made to, or amount received by, any Participating Creditor whose Participating Eligible Admitted Claim(s) are sold pursuant to the LACA III in relation to their Participating Eligible Admitted Claim(s) will be the same, greater or less than any amount such Participating Creditor would or may have otherwise received in respect of such Participating Eligible Admitted Claim(s) had such Participating Creditor not participated in the LACA III, whether on the judicial or consensual resolution of the Proceedings or otherwise; or
- 17.1.3** the Purchase Price in respect of any Participating Eligible Admitted Claim sold pursuant to the LACA III will be the same, greater or (subject to the level at which the relevant Offered Price is set) less than any amount the relevant Participating Creditor might have received pursuant to the first LBIE admitted claims auction and/or the second LBIE admitted claims auction.
- 17.2** Each Participating Creditor agrees and acknowledges that by participating in the LACA III and having the right to receive payment of the Purchase Price pursuant to the LACA III in return for the sale of the Assigned Rights in relation to its Participating Eligible Admitted

Claim(s), as applicable, such Participating Creditor will 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.

## **18 Assignment**

LBNL may, at any time on or after the Transfer Time in respect of a Participating Eligible Admitted Claim, transfer or assign all or any portion of the Assigned Rights relating to such Participating Eligible Admitted Claim sold, conveyed, transferred or assigned to it, together with all rights, title and interests of LBNL in and to this Agreement, without the consent of, or notice to, any Participating Creditor.

## **19 Third parties**

**19.1** A 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:

**19.1.1** each of the Relevant Persons shall be entitled to rely on Clause 1 (*Definitions and interpretation*), Clause 9 (*Termination*), Clause 10.1.18, Clause 12 (*Acknowledgements*), Clause 13 (*Non-reliance*), Clause 14 (*Release*), Clause 15 (*Indemnity*), Clause 17 (*No representation*), Clause 20 (*Costs*), Clause 26.4 and Clause 28 (*Governing law and jurisdiction*), and this Clause 19;

**19.1.2** LBIE can also rely on Clause 4 (*Allocation to the Applicable Pool and disclosure of information*), Clause 8 (*Payment*) and Clause 16 (*After the Transfer Date*);

**19.1.3** the Joint Administrators can also rely on Clause 4 (*Allocation to the Applicable Pool and disclosure of information*); and

**19.1.4** an End Purchaser can rely on Clause 1 (*Definitions and interpretation*), Clause 10 (*Representations and warranties*), Clause 11 (*Undertakings*) and Clause 19 (*Third parties*).

**19.2** This Agreement may be terminated and any term may be amended or waived without the consent of any person named or described in Clause 19.1.

## **20 Costs**

**20.1** The Relevant Persons shall not have any responsibility or obligation in relation to any Participating Creditor's costs in connection with the LACA III, including, for the avoidance of doubt, such Participating Creditor's entry into or performance of this Agreement.

**20.2** To the extent applicable, each Participating Creditor 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 in respect of its Participating Eligible Admitted Claim(s) as a result of the transactions contemplated by this Agreement. Such Participating Creditor 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.

## **21 Confidentiality**

- 21.1** Subject to Clause 21.2, each Participating Creditor agrees to maintain the confidentiality of any information received or obtained in connection with the LACA III which relates to this Agreement.
- 21.2** Clause 21.1 shall not prohibit disclosure or use of information if and to the extent:
- 21.2.1** the disclosure or use is required by law, regulation, or by the order of any court or governmental authority of competent jurisdiction;
  - 21.2.2** 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 21 in respect of such information as if they were party to this Agreement;
  - 21.2.3** the information is or becomes publicly available (other than by breach of this Agreement); or
  - 21.2.4** LBNL has given prior written approval to the disclosure or use,
- provided that prior to disclosure or use of any information pursuant to Clause 21.2.1, 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.

## **22 Whole agreement**

- 22.1** This Agreement (including, for the avoidance of doubt, any relevant LACA III Offer and relevant LACA III Acceptance Notice) constitutes the complete agreement between LBNL and each Participating Creditor with respect to the LACA III to the exclusion of any terms implied by law which may be excluded by contract and supersedes all prior or contemporaneous negotiations, agreements or representations of every nature whatsoever with respect thereto, between LBNL, LBIE and any Participating Creditor in relation to each Participating Eligible Admitted Claim or any of the matters dealt with in this Agreement.
- 22.2** For the avoidance of doubt, any Additional Information shall not form part of the agreement between LBNL and such Participating Creditor with respect to the LACA III.
- 22.3** Each Participating Creditor acknowledges that it has not been induced to participate in the LACA III by any representation, warranty or undertaking not expressly incorporated into this Agreement.

## **23 Invalidity**

- 23.1** If, at any time, any of the provisions of this Agreement 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 this Agreement under the law of that jurisdiction, shall in any way be affected or impaired thereby.
- 23.2** Subject to Clause 23.1, if any provision of this Agreement 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.



**23.3** Subject to Clause 23.1, to the extent it is not possible to delete or modify the provision, in whole or in part, under Clause 23.2, 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 this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall not, subject to any deletion or modification, be affected.

## **24 Set-off**

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

## **25 Counterparts**

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

## **26 Notices**

### **26.1 Notices**

All demands, notices, consents and communications to be given or documents to be sent pursuant to or in connection with the LACA III:

**26.1.1** by a Participating Creditor to LBNL shall be in writing in English and shall be delivered by electronic mail to [lbnl@lbia-eu.com](mailto:lbnl@lbia-eu.com) (or to such other electronic mail address as may be notified (in accordance with this Clause 26) to Participating Creditors from time to time);

**26.1.2** by a Participating Creditor 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](mailto:generalqueries@lbia-eu.com) (or to such other electronic mail address as may be notified (in accordance with this Clause 26) to Participating Creditors from time to time); and

**26.1.3** to a Participating Creditor by LBNL, LBIE and/or the Joint Administrators shall be given by:

- (i) electronic mail to one of the addresses confirmed by such Participating Creditor 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).

### **26.2 Notices by the LBIE Client Information Portal**

**26.2.1** 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 26.1.3(ii).

**26.2.2** 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.

### **26.3 Notices by electronic mail**

**26.3.1** 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 26.1.

**26.3.2** 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.

### **26.4 Accidental omission**

Except in relation to any LACA III Acceptance Notice, 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 26, or the non-receipt of any such notice, communication or document by a Participating Creditor, shall not affect the provisions of this Agreement.

## **27 Authority to sign notices and documents and bind**

In the case of:

**27.1.1** any notice, communication or other document in connection with the LACA III which is signed or executed on behalf of a Participating Creditor; and

**27.1.2** any LACA III Offer made 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 behalf of such Participating Creditor or (ii) the relevant Primary User to make such LACA III Offer.

## **28 Governing law and jurisdiction**

**28.1** This Agreement, and any non-contractual obligations arising out of or in connection with it, is governed by English law.

**28.2** 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 and any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

**28.3** 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.

## Schedule 1

### Form of Transfer Notice

#### **OMNIBUS TRANSFER NOTICE – TRANSFER TO LBNL [Round 1, Pool A][Round 1, Pool B][Round 2, Pool A][Round 2, Pool B]**

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](mailto:david.swanson@lbia-eu.com) and [rebecca.browne@lbia-eu.com](mailto:rebecca.browne@lbia-eu.com)

Attention: David Swanson

From: Lehman Brothers Nominees Limited (“**LBNL**”) (acting as agent for and on behalf of each relevant Participating Creditor) (the “**Transferor**”)  
Level 23  
25 Canada Square  
London  
E14 5LQ  
United Kingdom

And by email to: [lbni@lbia-eu.com](mailto: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](mailto:lbni@lbia-eu.com)

Attention: C Møller

\_\_\_\_\_ 2016

Dear Sirs

**Transfer Notice in respect of the transfer of the Assigned Rights in relation to each Participating Eligible Admitted Claim listed in Schedule 1 (*Transferring Claims*)**

- 1 The terms of this agreement shall be effective on the date of this agreement.
- 2 We refer to the participation and sale agreement dated 17 October 2016 (the **"Participation and Sale Agreement"**) between LBNL and each Participating Creditor (as defined in the Participation and Sale Agreement).
- 3 Unless otherwise defined herein, terms defined in the Participation and Sale Agreement shall have the same meaning in this agreement.
- 4 Pursuant to the Participation and Sale Agreement each Participating Creditor, in respect of each of its Participating Eligible Admitted Claims, irrevocably agreed, among other things:
  - (i) subject to certain conditions, and in consideration for the right to receive the Purchase Price in respect of each of the relevant Participating Eligible Admitted Claims, 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 in respect of such Participating Eligible Admitted Claims 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 the Assigned Rights in respect of the relevant Participating Eligible Admitted Claims shall be transferred to the Transferee.
- 5 This is a Transfer Notice.
- 6 This Transfer Notice is in relation to the transfer of the Assigned Rights of all of the Participating Eligible Admitted Claims listed in 0 (*Transferring Claims*) only (each a **"Transferring Claim"** and together the **"Transferring Claims"**).
- 7 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 Participation and Sale Agreement in respect of each Transferring Claim, the Assigned Rights in respect of each Transferring Claim are hereby assigned by the Transferor to the Transferee;
  - (iii) the proof of debt and accompanying information lodged by or on behalf of the relevant Participating Creditor (or any previous holder of the Transferring Claim) in respect of each Transferring Claim shall stand as the Transferee's proof of debt;
  - (iv) in relation to each Transferring Claim, 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 Assigned Rights in respect of such Transferring Claim; 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 the Assigned Rights in respect of the Transferring Claims.
- 8 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 any previous holder of a Transferring Claim, or on any of their behalves, to LBIE and/or the Joint Administrators in support of the Assigned Rights in respect of the Transferring Claims (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.

## **9 Representations and warranties**

The Transferee makes the representations and warranties set out in this Clause 9 to LBIE and the Joint Administrators on the date of this agreement.

### **9.1 Basic representations**

- 9.1.1 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.
- 9.1.2 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.
- 9.1.3 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.
- 9.1.4 Its obligations under this agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms.

### **9.2 No insolvency proceedings**

- 9.2.1 No petition for insolvency proceedings in respect of it or its assets has been filed or is threatened to be filed.
- 9.2.2 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).

### **9.3 No agency**

It is acting as principal and not as agent in entering into this agreement and in respect of the Assigned Rights, any relevant Eligible Agreements, any relevant Creditor Agreements and all transactions and trades thereunder, in each case in relation to the Transferring Claims.

- 10** 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).

- 11** 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, or any of their respective 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).
- 12** 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, and any of their respective agents, advisers and representatives shall be entitled to rely on Clauses 9 (*Representations and warranties*), 10 and 11 and this Clause 12 of this agreement as if they were a party to it.
- 13** 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.
- 14** This agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 15** 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**").
- 16** 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:

**Schedule 1  
Transferring Claims**

Each Participating Eligible Admitted Claim in the table below is a Transferring Claim.

	Deed ID	Current Creditor GAC	Current Creditor Name
1			
2			
3			
4			
5			

SAMPLE