

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

_____ IN RE LIBOR-BASED FINANCIAL ) INSTRUMENTS ANTITRUST LITIGATION )	MDL No. 2262
_____ THIS DOCUMENT RELATES TO: ) Case No. 12-CV-1025 (NRB) )	Master File No. 1:11-md-2262-NRB ECF Case
_____ BONDHOLDER PLAINTIFF ACTION ) _____ )	

**SETTLEMENT AGREEMENT BETWEEN  
BONDHOLDER PLAINTIFFS AND UBS AG**

This Settlement Agreement is made and entered into on July 12, 2016 (the "Execution Date"), between Plaintiffs Ellen Gelboim and Linda Zacher (collectively, the "Bondholder Plaintiffs"), individually and on behalf of the Bondholder Class in the Bondholder Action, and defendant UBS AG ("UBS"), by and through Bondholder Plaintiffs' Counsel and UBS's Counsel, respectively. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, the Bondholder Plaintiffs are prosecuting the Bondholder Action on their own behalf and on behalf of the Bondholder Class against Defendants, including UBS.

WHEREAS, the Bondholder Plaintiffs have alleged, among other things, that UBS violated the Sherman Act, 15 U.S.C. § 1, by conspiring to manipulate the U.S. Dollar LIBOR rate;

WHEREAS, the Bondholder Plaintiffs allege that they and the other members of the Bondholder Class suffered monetary damages as a result of UBS's (and the other Defendants') alleged conduct;

WHEREAS, UBS has denied and continues to deny each and all of the claims and allegations of wrongdoing made by Bondholder Plaintiffs in the Bondholder Action and all charges of wrongdoing or liability against UBS arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Bondholder Action;

WHEREAS, UBS maintains that it has meritorious defenses to the claims of liability and damages made by Bondholder Plaintiffs;

WHEREAS, the Bondholder Plaintiffs, for themselves individually and on behalf of each member of the Bondholder Class, and UBS agree that neither this Agreement nor any statement

made in the negotiation thereof shall be deemed or construed to be an admission or evidence of anything, including, without limitation: (i) the merit or lack of merit of any claim or defense; (ii) any violation of any statute or law; (iii) any liability or wrongdoing by UBS; (iv) the truth of any of the claims or allegations alleged in the Bondholder Action; or (v) an admission of liability by any Person, including, without limitation, Released Parties;

WHEREAS, UBS agrees to cooperate with Bondholder Plaintiffs' Counsel and Bondholder Plaintiffs as set forth below in this Agreement;

WHEREAS, this Agreement is the product of arm's-length negotiations between Bondholder Plaintiffs' Counsel and UBS's Counsel, under the guidance and oversight of Mediator Layn R. Phillips, and this Agreement embodies all of the terms and conditions of the settlement agreed upon between UBS and Bondholder Plaintiffs, both for themselves individually and on behalf of each Class Member;

WHEREAS, Bondholder Plaintiffs' Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Bondholder Action, the legal and factual defenses thereto, and the applicable law, that: (i) it is in the best interests of the Bondholder Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount to be paid by UBS under this Agreement and the non-monetary consideration to be provided to the Bondholder Plaintiffs by UBS under this Agreement, are obtained for the Bondholder Class; and (ii) the settlement set forth in this Agreement is fair, reasonable, and adequate and in the best interests of the Bondholder Class;

WHEREAS, UBS, while continuing to deny that it is liable for the claims asserted against it in the Bondholder Action and believing that it has good and meritorious defenses thereto, has

nevertheless agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to put fully to rest this controversy, to avoid the risks inherent in complex litigation, and to obtain complete dismissal of the Bondholder Action as against UBS and a release of the claims as set forth herein;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Agreement, it is hereby agreed, by and among the Bondholder Plaintiffs (for themselves individually and on behalf of the Class and each member thereof) and UBS, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Bondholder Action shall be finally and fully settled, compromised, and dismissed with prejudice as to UBS and the other Released Parties, without costs, except as stated herein, and releases be extended, as set forth below.

**1. DEFINITIONS.**

As used in this Agreement, the following capitalized terms have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this Settlement Agreement, together with any exhibits attached hereto, which are incorporated herein by reference.

1.2 “Alternative Judgment” means a Judgment entered by the Court but in a form other than proposed by Bondholder Plaintiffs’ Counsel and UBS.

1.3 “Authorized Claimant” means any Bondholder Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution from the Net Settlement Fund pursuant to the Distribution Plan or order of the Court.

1.4 “Bondholder Action” means *Ellen Gelboim, et al. v. Credit Suisse Group AG, et al.*, No. 12-cv-1025 (NRB), filed in the U.S. District Court for the Southern District of New

York.

1.5 “Bondholder Class” or “Settlement Class” shall mean the class described in paragraph 3.2 below.

1.6 “Bondholder Class Member” or “Class Member” means a person or entity who is a member of the Bondholder Class and has not timely and validly excluded himself, herself, or itself in accordance with the procedures established by the Court.

1.7 “Bondholder Plaintiffs” means Ellen Gelboim and Linda Zacher, collectively.

1.8 “Bondholder Plaintiffs’ Counsel” means Morris and Morris LLC Counselors At Law and Weinstein Kitchenoff & Asher LLC.

1.9 “Claims Administration” shall have the meaning set forth in paragraph 5.2.

1.10 “Claims Administrator” means the qualified and experienced third party to be retained by Bondholder Plaintiffs’ Counsel and approved by the Court to manage and administer the process by which the Bondholder Class will be notified of this Agreement and by which each eligible member of the Bondholder Class is paid pursuant to this Agreement.

1.11 “Class Distribution Order” means the order by the Court to distribute the Net Settlement Fund to Authorized Claimants in accordance with the Distribution Plan and this Agreement.

1.12 “Class Notice” means the Notice and Summary Notice, collectively.

1.13 “Court” means the United States District Court for the Southern District of New York.

1.14 “Defendants” means Credit Suisse Group AG; Bank of America Corporation; Bank of America, N.A.; JPMorgan Chase & Co.; JPMorgan Chase Bank, NA; HSBC Holdings plc; HSBC Bank plc; Barclays Bank plc; Lloyds Banking Group plc; WestLB AG; Westdeutsche

Immobilienbank AG; UBS AG; The Royal Bank of Scotland Group plc; Deutsche Bank AG; Citibank NA; Citigroup Inc.; Coöperatieve Centrale Raiffeisen Boerenleenbank B.A.; The Norinchukin Bank; The Bank of Tokyo-Mitsubishi UFJ, Ltd.; Royal Bank of Canada; and any other Person or Persons who are named as defendants in the Bondholder Action at any time up to and including the date a Preliminary Approval Order is issued.

1.15 “Distribution Plan” means any plan or formula of allocation whereby the Net Settlement Fund shall be distributed to Authorized Claimants.

1.16 “Effective Date” or “Effective Date of Settlement” means the date described in paragraph 4.1 below.

1.17 “Escrow Agent” means the entity jointly designated as such by Bondholder Plaintiffs’ Counsel and UBS, and any successor agent, to maintain the Settlement Fund.

1.18 “Execution Date” means the date of execution of this Agreement by counsel for all Parties hereto.

1.19 “Fairness Hearing” means the hearing to be held by the Court to determine whether the Settlement set forth in this Agreement shall receive final approval pursuant to Federal Rule of Civil Procedure 23.

1.20 “Fee and Expense Application” shall have the meaning set forth in paragraph 7.1 below.

1.21 “Fee and Expense Award” shall have the meaning set forth at in paragraph 7.2 below.

1.22 “Final” means, with respect to any court order, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes “Final”

when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph 1.22, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or approving the Distribution Plan, and/or any order issued in respect of the Fee and Expense Application, shall not in any way delay or prevent the Judgment from becoming Final. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. §1651, shall be taken into account in determining the above-stated times.

1.23 “Judgment” means the order of the Court finally approving the settlement set forth in this Agreement and dismissing the Bondholder Action against UBS with prejudice in conformity with paragraph 3.7 below.

1.24 “LIBOR” means the London Interbank Offered Rate.

1.25 “Mediator” means Layn R. Phillips, or if he is unable or unwilling to serve in that capacity, some other party mutually agreed upon by the Parties, pursuant to paragraph 16.14 below.

1.26 “Net Settlement Fund” shall have the meaning set forth at paragraph 8.9(ix) below.

1.27 “Notice” means the notice of proposed settlement of the class action to be provided to the Bondholder Class as provided in this Agreement and applicable order(s) of the

Court.

1.28 “Parties” or “Settling Parties” means UBS and Bondholder Plaintiffs.

1.29 “Person(s)” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, municipality, state, state agency, any entity that is a creature of any state, any government or any political subdivision, authority, office, bureau or agency of any government, and any business or legal entity, and any spouses, heirs, predecessors, successors, representatives, or assignees of the foregoing.

1.30 “Preliminary Approval Order” means an order of the Court that preliminarily approves the settlement set forth in this Agreement.

1.31 “Proof of Claim and Release” means the form to be sent to Bondholder Class Members, pursuant to order(s) of the Court, by which any Bondholder Class Member may make a claim against the Net Settlement Fund.

1.32 “Released Claims” means any and all manner of claims, rights, demands, suits, matters, issues, causes of action, cross-claims, counter-claims, charges, liabilities, obligations, debts, setoffs, rights of recovery or liabilities for obligations of any kind whatsoever (however demanded), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys’ fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint or several), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any LIBOR-Based Debt Security not issued by any Defendant or by any subsidiary or affiliate of any Defendant, as obligor, that were alleged



or that could have been alleged in the Bondholder Action, from the beginning of time.

1.33 “Released Party” or “Released Parties” means UBS, each of its past, present, and future, direct and indirect parents (including holding companies), subsidiaries, corporate affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), divisions, predecessors, and successors, and each of their respective current and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders of UBS), attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns of each of the foregoing. Released Parties does not include any of the other current Defendants.

1.34 “Releasing Party” or “Releasing Parties” means, individually and collectively, Bondholder Plaintiffs and each and every Bondholder Class Member, on behalf of themselves and any of their respective past, present, or future officers, directors, stockholders, agents, employees, fiduciaries, beneficiaries, legal or other representatives, partners, associates, trustees, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, and any other Person legally entitled to bring Released Claims on their behalf or by reason of their relationship to any of the foregoing Persons, whether or not they object to the settlement set forth in this Agreement and whether or not they make a claim for payment from the Net Settlement Fund.

1.35 “Settlement Amount” means seventeen million, nine hundred thousand dollars (\$17,900,000.00), which includes any and all attorneys’ fees, costs, incentive payments to class representatives, and expenses of class notice and claims administration. For the avoidance of doubt, none of the Released Parties will have the responsibility or obligation to make any further payment than the Settlement Amount.

1.36 “Settlement Fund” means the Escrow Account, established pursuant to paragraph 8 of this Agreement, including all monies held therein in accordance with the terms of this Agreement.

1.37 “Settling Defendant” means UBS.

1.38 “Settling Defendant’s Claims” means any claim, including unknown claims, that any Released Party may have against a Releasing Party or Bondholder Plaintiffs’ Counsel relating to the institution, prosecution or settlement of the Bondholder Action, except for claims to enforce any of the terms of this Agreement.

1.39 “Summary Notice” means the summary notice of proposed settlement and hearing for publication that may be directed by order(s) of the Court.

1.40 “Taxes” shall have the meaning set forth in paragraph 10.3 below.

1.41 “Tax Expenses” shall have the meaning set forth in paragraph 10.3 below.

1.42 “UBS” means UBS AG, a financial services corporation with its global headquarters located in Basel and Zurich, Switzerland.

1.43 “UBS’s Counsel” means Gibson, Dunn & Crutcher LLP.

## **2. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT.**

2.1 The Settling Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms of this Agreement. This includes UBS’s serving notice on those persons and entities required to receive notice pursuant to 28 U.S.C. § 1715.

## **3. PRELIMINARY APPROVAL ORDER, NOTICE AND FAIRNESS HEARING.**

3.1 As soon as reasonably practicable following the execution of this Agreement, Bondholder Plaintiffs’ Counsel shall submit to the Court a motion, with UBS’s support and

which motion shall be subject to reasonable consultation and agreement with UBS before being submitted to the Court, requesting entry of the Preliminary Approval Order. That motion shall:

- (i) seek certification of the Bondholder Class for purposes of settlement only, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3);
- (ii) request preliminary approval of the settlement set forth in this Agreement as fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23;
- (iii) seek the appointment of the Bondholder Plaintiffs as class representatives of the Bondholder Class under Federal Rule of Civil Procedure 23;
- (iv) seek appointment of Bondholder Plaintiffs' Counsel as class counsel under Federal Rule of Civil Procedure 23(g);
- (v) if practicable at the time the motion is filed or otherwise at a later time, seek approval of the form and method of dissemination of (1) the Notice, which shall be mailed along with a proof of claim form via first-class mail or as otherwise directed by the court, and (2) the Summary Notice, which shall be published based upon the recommendations of the Claims Administrator. With the object of reducing the costs of Class Notice, Bondholder Plaintiffs' Counsel shall, to the extent they deem reasonable, coordinate the provision of Class Notice pertaining to this Agreement with the provision of notice for any other settlements that may be reached in the Bondholder Action. The Claims Administrator will also establish and maintain a dedicated settlement website, from which each member of the Bondholder Class can view and download relevant documents, including the Notice, Summary Notice, and Proof of Claim and Release form;

- (vi) if practicable at the time the motion is filed or otherwise at a later time, seek appointment of a qualified claims administrator as the Claims Administrator;
- (vii) seek appointment of an Escrow Agent;
- (viii) seek a stay of all proceedings in the Bondholder Action against UBS until the Court renders a final decision on approval of the settlement set forth in this Agreement; and
- (ix) attach a proposed form of order, which shall include such provisions as are typical in such orders, including to the extent applicable (1) a finding that the proposed plan of notice complies with Federal Rule of Civil Procedure 23 and the requirements of due process, (2) setting a date for the Fairness Hearing, and (3) a provision that, if final approval of the settlement is not obtained, the settlement is null and void, and the Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses, subject to the terms of this Agreement.

3.2 The Settling Parties hereby stipulate for purposes of the settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied and, subject to Court approval, the following class shall be certified:

The “Settlement Class” shall be composed of all persons and entities (other than defendants in the Bondholder Action and their affiliated persons and entities) who owned (including beneficially or in “street name”) any debt security that was assigned a unique identification number by the CUSIP system, on which interest was payable at any time between August 1, 2007, and May 31, 2010, and where that interest was payable at a rate expressly tied to the U.S. Dollar LIBOR rate (“LIBOR-Based Debt Security”); provided, however that any such securities that were issued by any defendant, including its subsidiaries and affiliates, as obligor, are excluded from the definition of LIBOR-Based Debt Security.

The term LIBOR-Based Debt Security includes specifically without limitation government bonds, municipal bonds, corporate bonds, notes, debentures, certificates of deposit (“CDs”), collateralized securities, collateralized debt

obligations, collateralized loan obligations, asset-based securities (“ABS”), and mortgage-backed securities (“MBS”).

Excluded from the Settlement Class are Defendants; Released Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Party, or co-conspirator; any entity in which any Defendant, Released Party, or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Party, or co-conspirator and any person acting on their behalf. Also excluded from the Settlement Class are any judicial officers presiding over this action and the members of their immediate families and judicial staffs, respectively.

3.3 If the settlement as described herein is finally disapproved by any court, is terminated as provided herein or is reversed or vacated following any appeal taken therefrom, then this stipulation for the purposes of Settlement that the above Settlement Class should be certified becomes null and void, and UBS reserves all rights to contest that the Bondholder Action should be certified as a class action. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the settlement, and that if the settlement set forth in the Settlement Agreement does not receive the Court’s final approval, if the Court’s approval is reversed or vacated on appeal, or if this Settlement Agreement otherwise fails to close, this agreement as to certification of the settlement classes becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the settlement class, or in support of an argument for certifying a class for any purpose related to this proceeding.

3.4 In the event that the Court preliminarily approves the settlement, Bondholder Plaintiffs’ Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Preliminary Approval Order and any other applicable order(s) of the Court, provide Class

Members whose identities can be determined after reasonable efforts with notice of the date of the Fairness Hearing, to be scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed settlement. The Notice may be sent solely for this settlement or combined with notice of other settlements or of any litigation class. The Notice shall also explain the general terms of the settlement set forth in this Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application, and a description of Bondholder Class Members' rights to object to the settlement, request exclusion from the Bondholder Class, and appear at the Fairness Hearing. The text of the Notice shall be agreed upon by Bondholder Plaintiffs' Counsel and UBS before the Notice's submission to the Court for approval thereof.

3.5 Bondholder Plaintiffs' Counsel shall submit to the Court for its approval a Summary Notice in accord with the Notice, and a plan for publication thereof, and shall cause the Summary Notice, as approved by the Court, to be published in such manner as may be approved by the Court.

3.6 Subject to the provisions of this Agreement, Counsel for the Settlement Class shall be responsible for arranging for Class Notice, Claims Administration, and distribution of the Settlement Fund, and for obtaining any necessary Court approvals. Unless agreed to by UBS in its sole discretion, UBS shall have no responsibility for providing publication or distribution of the settlement or any notice of the settlement to Bondholder Class Members or for paying for the cost of providing notice of this Settlement to Class Members (except as provided by paragraph 8.3 below). The Settling Parties shall mutually agree on any content relating to UBS that will be used by Bondholder Plaintiffs' Counsel and/or the Claims Administrator in any settlement-related communications, press releases or other media publications, including on

websites.

3.7 If the Preliminary Approval Order is entered by the Court, Bondholder Plaintiffs shall seek, following reasonable consultation and agreement with UBS, and UBS shall support, entry of a Judgment that meets all of the following criteria:

- (i) certifies the Settlement Class pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) solely for the purpose of the settlement;
- (ii) approves fully and finally the settlement set forth in this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation according to its terms;
- (iii) finds that the Class Notice constituted due, adequate, and sufficient notice of the settlement set forth in this Agreement and the Fairness Hearing and meets the requirements of due process and the Federal Rules of Civil Procedure;
- (iv) directs that, as to the Released Parties, the Released Claims shall be released and the Bondholder Action shall be dismissed with prejudice and, except as provided for in this Agreement, without costs; provided, however, that such dismissal shall not affect, in any way, the right of Bondholder Plaintiffs or Bondholder Class Members to pursue claims against other Defendants and claims, if any, outside the scope of the Released Claims;
- (v) orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action, arbitration, or other proceeding asserting any Released Claims against any Released Party in any jurisdiction;

- (vi) retains with the Court continuing and exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of the settlement and all future proceedings relating thereto;
- (vii) determines under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to UBS shall be final and entered forthwith; and
- (viii) contains such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

#### **4. EFFECTIVE DATE OF SETTLEMENT.**

4.1 The Effective Date of Settlement shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all of the following events: (i) the payment by UBS to the Settlement Fund has been made pursuant to this Agreement; (ii) entry of the Preliminary Approval Order; (iii) final approval by the Court of the settlement set forth in this Agreement, following Class Notice and the Fairness Hearing; (iv) no Party has exercised his, her, or its rights to terminate this Agreement pursuant to paragraph 11 below; and (v) entry by the Court of a Judgment, and the Judgment becomes Final, or, in the event that the Court enters an Alternative Judgment and neither Bondholder Plaintiffs nor UBS elects to terminate this Agreement, and such Alternative Judgment becomes Final.

4.2 Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, or petition for a writ of certiorari or its equivalent, pertaining solely to any Distribution Plan and/or Fee and Expense Application, shall not in any way delay or preclude the Effective Date.

4.3 The terms and covenants of this Agreement shall survive entry and finality of the



Judgment or Alternative Judgment.

**5. CLAIMS ADMINISTRATOR.**

5.1 Pursuant to the Preliminary Approval Order and subject to Court approval, Bondholder Plaintiffs' Counsel shall engage a Claims Administrator.

5.2 The Claims Administrator shall, under the direction of the Court and/or Bondholder Plaintiffs' Counsel, take all steps reasonably necessary to effectuate the notice plan approved by order(s) of the Court, assist in the development of the Distribution Plan, assist in the identification of Bondholder Class Members, administer and calculate the claims submitted by Bondholder Class Members, oversee distribution of the Net Settlement Fund to Authorized Claimants in accordance with the Distribution Plan, and perform such other tasks and duties as directed by the Court and/or Bondholder Plaintiffs' Counsel to effectuate this Agreement (collectively, "Claims Administration").

**6. SCOPE AND EFFECT OF SETTLEMENT.**

6.1 The obligations incurred pursuant to this Agreement shall be in full and final disposition of: (i) The Bondholder Action as against UBS; (ii) any and all Released Claims as against all Released Parties; and (iii) any and all Settling Defendant's Claims as against all Releasing Parties.

6.2 Upon the Effective Date of Settlement, and in exchange for the receipt of the Settlement Amount provided for herein, the sufficiency of which is hereby acknowledged, each of the Releasing Parties, and any other Person claiming against the Settlement Fund (now or in the future) through or on behalf of any Releasing Party:

- (i) shall be deemed to have, and by operation of the Judgment, shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released

Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of claim;

- (ii) shall forever be barred and enjoined from instituting, commencing, or prosecuting in any forum any Released Claim in any lawsuit, arbitration or other proceeding against any of the Released Parties in any court or venue in any jurisdiction worldwide; and
- (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

6.3 Upon the Effective Date of Settlement, each of the Released Parties:

- (i) shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever released and discharged Bondholder Plaintiffs, Bondholder Plaintiffs' Counsel, and each and all Bondholder Class Members from each and every one of the Settling Defendant's Claims;
- (ii) shall forever be barred and enjoined from prosecuting the Settling Defendant's Claims; and
- (iii) agrees and covenants not to sue on the basis of the Settling Defendant's Claims, or to assist any third party in commencing or maintaining any such suit related to the Settling Defendant's Claims.

6.4 The releases provided in this Agreement shall become effective immediately upon occurrence of the Effective Date of Settlement without the need for any further action, notice, condition, or event.

6.5 In the event that this Agreement is terminated pursuant to paragraph 11, or any

condition for the final approval of this Agreement is not satisfied, the release and covenant not to sue provisions of the foregoing paragraphs shall be null and void and unenforceable.

**7. FEE AND EXPENSE APPLICATION.**

7.1 At the time Bondholder Plaintiffs' Counsel submit an application or applications (the "Fee and Expense Application") to the Court for an award from the Settlement Fund, such application will seek: (i) attorneys' fees not in excess of 33-1/3% of the Settlement Amount; and (ii) reimbursement of litigation expenses, plus interest, incurred in connection with the prosecution of the Bondholder Action. In addition, Bondholder Plaintiffs' Counsel may also seek service awards to Bondholder Plaintiffs in conjunction with their representation of the Bondholder Class in this litigation. UBS will take no position regarding the Fee and Expense Application or any request for service awards to Bondholder Plaintiffs.

7.2 Attorneys' fees, expenses, service awards and interest as are awarded by the Court ("Fee and Expense Award") shall be paid from the Settlement Fund to Bondholder Plaintiffs' Counsel immediately upon entry by the Court of an order awarding such amounts, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Bondholder Plaintiffs' Counsel's joint and several obligation to repay those amounts to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if and when, as a result of any appeal and further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed, or return of the Settlement Fund is required consistent with the provisions of paragraph 11.3 below. In such event, Bondholder Plaintiffs' Counsel shall, within ten (10) business days from the event which requires repayment of the Fee and Expense Award, refund to the Settlement Fund the Fee and Expense Award paid to them,

along with interest thereon at the same rate at which interest is accruing in the Settlement Fund.

7.3 Notwithstanding any other provision of this Agreement to the contrary, the parties shall request that the Fee and Expense Application be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the settlement, and that any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or the settlement of the Bondholder Action, or affect or delay the finality or binding nature of any of the releases granted hereunder. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees or expenses to Bondholder Plaintiffs' Counsel and/or to any other Person who may assert some claim thereto, or any Fee and Expense Award that the Court may make in this Action.

7.4 Bondholder Plaintiffs and Bondholder Plaintiffs' Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses relating to this settlement, including, but not limited to, attorneys' fees and past, current or future litigation expenses, and any service award approved by the Court. The Released Parties shall have no responsibility for any costs, fees or expenses incurred for or by Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents or representatives other than as set forth in paragraph 8.3.

## **8. THE SETTLEMENT FUND.**

8.1 The Settlement Fund shall be established as an escrow account and administered by the Escrow Agent, subject to approval by the Court. The Settlement Fund shall be administered pursuant to this Agreement and subject to the Court's continuing supervision and control. No monies shall be paid from the Settlement Fund without the specific authorization of Bondholder Plaintiffs' Counsel. Counsel for the Parties agree to cooperate, in good faith, to

form an appropriate escrow agreement in conformance with this Agreement.

8.2 UBS shall pay \$17,900,000 to be deposited into the Settlement Fund, which shall constitute the sole recovery against any of the Released Parties. None of the Released Parties shall have any obligation to make any further payment, subject to paragraph 8.3 below. Under no circumstances will UBS be required to pay more than the Settlement Amount. Attorneys' fees, costs, incentive payments to class representatives, expenses of Class Notice and Claims Administration, any Fee and Expense Award, Taxes and tax expenses, Escrow Agent costs, and any other costs associated with the implementation shall be paid exclusively out of the Settlement Fund.

8.3 In the event that the settlement is not approved by the Court, UBS shall be entitled to a refund of the Settlement Fund in full, including any interest accrued thereon, except that refund shall be reduced by (i) costs and expenses actually and reasonably incurred at the time of non-approval in connection with notice and administration of the settlement by Bondholder Class Counsel, up to a cap of \$500,000; and (ii) 50% of the costs actually and reasonably incurred at the time of non-approval in connection with the acquisition of data necessary for Bondholder Plaintiffs to develop a Distribution Plan, up to a maximum of \$325,000. In the event Bondholder Plaintiffs reach a settlement with any other Defendant, items (i) and (ii) above shall be reduced proportionally in accord with the funds paid in those settlements.

8.4 UBS shall cause the payment of the \$17,900,000 to be paid to the Escrow Agent by wire transfer within fifteen (15) business days following the Execution Date, provided that within five (5) business days following the Execution Date, Bondholder Plaintiffs' Counsel shall provide UBS with such information as UBS may require to complete the wire transfer. Should Bondholder Plaintiffs' Counsel provide such information later than five (5) business days, UBS

shall cause the payment to be made within ten (10) business days after the information is provided.

8.5 This Settlement is not a claims-made settlement, and if all conditions of the Settlement are satisfied and the Judgment is entered and becomes Final, no portion of the Settlement Fund will be returned to UBS. If any portion of the Net Settlement Fund remains following distribution pursuant to paragraph 9 and is of such an amount that, in the discretion of the Claims Administrator in coordination with Bondholder Plaintiffs' Counsel, it is not cost effective or efficient to redistribute to the Bondholder Class, then such remaining funds, after payment of any further notice and administration costs and Taxes and Tax Expenses and other costs and expenses related to the Action, shall be donated to a non-profit charitable organization selected by Bondholder Plaintiffs' Counsel and approved by the Court.

8.6 Without prejudice to the Bondholder Plaintiffs' right to seek enforcement of this Agreement by motion or otherwise, if the Settlement Amount is not timely received by the Escrow Agent, then Bondholder Plaintiffs' Counsel may terminate this Agreement if the following occur: (i) Bondholder Plaintiffs' Counsel has notified UBS's Counsel in writing of Bondholder Plaintiffs' Counsel's intention to terminate this Agreement; and (ii) the entire Settlement Amount is not received into the Settlement Fund within ten (10) business days after Bondholder Plaintiffs' Counsel has provided such written notice.

8.7 The Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the

investment guidelines set forth in this paragraph shall be borne by the Settlement Fund.

8.8 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and the Distribution Plan approved by the Court.

8.9 The Settlement Fund shall be applied as follows:

- (i) to pay all the costs and expenses reasonably and actually incurred in connection with providing Class Notice and the administration of the settlement, including, without limitation, locating members of the Bondholder Class, soliciting Bondholder Class Members' claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, and processing proof of claim and release forms;
- (ii) to pay the Taxes and Tax Expenses described in paragraph 10.3 hereof;
- (iii) to pay Escrow Agent costs;
- (iv) to pay the cost for the acquisition of data necessary for Bondholder Plaintiffs to develop an Allocation Plan;
- (v) to pay any other Court-approved fees and expenses;
- (vi) to pay any Fee and Expense Award, if and to the extent allowed by the Court;
- (vii) to pay any service award;
- (viii) to pay all costs and expenses reasonably and actually incurred in assisting Settlement Class Members with the filing and processing of claims; and
- (ix) to distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Authorized Claimants for the Bondholder Class, as allowed by the Court pursuant

to the Class Distribution Order.

8.10 With the object of reducing the costs of Class Notice, Bondholder Plaintiffs' Counsel shall use reasonable efforts to coordinate the provision of Class Notice pertaining to this Agreement with the provision of notice for any other settlements that may be reached. In all events, UBS shall have no liability for the costs of Class Notice beyond those set forth in paragraph 8.3 above.

**9. DISTRIBUTION OF THE NET SETTLEMENT FUND.**

9.1 At a time and in a manner determined by the Court, Bondholder Plaintiffs' Counsel shall submit for Court approval a Distribution Plan for the Bondholder Class that will provide for the distribution of the Net Settlement Fund.

9.2 Upon the Effective Date and thereafter, and in accordance with the terms of this Agreement, the Distribution Plan, or any order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

- (i) Each Bondholder Class Member who claims to be an Authorized Claimant shall be required to submit to the Claims Administrator a verified completed Proof of Claim and Release, supported by such documents as specified in the Proof of Claim and Release and as are reasonably available to such Bondholder Class Member.
- (ii) Except as otherwise ordered by the Court, each Bondholder Class Member who fails to submit a Proof of Claim and Release within such period as may be ordered by the Court or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Agreement and the settlement set forth herein, but shall



in all other respects be subject to and bound by the provisions of this Agreement, the releases contained in this Agreement, and the Judgment.

- (iii) The Net Settlement Fund shall be distributed to Authorized Claimants, and in no event shall there be any reversion to UBS. The distribution to Authorized Claimants shall be substantially in accordance with the Distribution Plan to be approved by the Court upon such further notice to the Bondholder Class as may be required. Any such Distribution Plan is not a part of this Agreement. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the Effective Date.
- (iv) Each Class Member shall be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Judgment, regardless of whether such Class Member seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Net Settlement Fund.
- (v) Except for the obligation to fund the settlement or cause it to be funded as detailed in this Settlement Agreement, UBS shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund.

9.3 Bondholder Plaintiffs' Counsel will apply to the Court for the Class Distribution Order.

9.4 Subject to paragraph 8.5 above, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) following distribution pursuant to paragraph 9.2, Bondholder Plaintiffs' Counsel shall submit an additional

Distribution Plan to the Court for approval.

9.5 Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery pursuant to the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Class Member and the validity and amount of the claimant's claim. Other than the obligations set forth in paragraph 14.1, no discovery shall be allowed to be directed to UBS or any of the Released Parties, and no discovery shall be allowed on the merits of the Action or settlement in connection with processing of the proofs of claim.

## **10. TAXES.**

10.1 The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph 10, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

10.2. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Settlement Fund, and (iii) timely and properly filing applicable federal, state and local tax returns necessary or advisable with

respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this paragraph 10) shall be consistent with this paragraph 10 and, in all events, shall reflect that all Taxes, as defined in paragraph 10.3, below, on the income earned by the Settlement Fund shall be paid from the Settlement Fund as provided in paragraph 9, above.

10.3. All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon UBS or its counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”), and (ii) expenses and costs incurred in connection with the operation and implementation of this paragraph 10, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph 10 (collectively, “Tax Expenses”), shall be paid from the Settlement Fund; in all events, UBS and its counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. Solely with funds from the Settlement Fund, the Escrow Agent shall indemnify and hold harmless UBS and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification).

10.4 Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall timely be paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate

reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(I)(2)); neither UBS nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their respective tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph 10.

10.5 Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission or determination of the Escrow Agent, Claims Administrator, or Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Distribution Plan; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. The Escrow Agent shall indemnify and hold harmless the Parties out of the Settlement Fund from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

## **11. TERMINATION OF THE SETTLEMENT.**

11.1 Bondholder Plaintiffs, through Bondholder Plaintiffs' Counsel, and UBS, through UBS's Counsel, shall, in each of their separate discretions, have the right to terminate the settlement set forth in this Agreement by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto within thirty (30) days of the date on which any of the following occurs:

- (i) the Court enters an order declining to enter the Preliminary Approval Order in any

material respect;

- (ii) the Court enters an order refusing to approve this Agreement or any material part of it;
- (iii) the Court enters an order declining to enter the Judgment in any material respect;
- (iv) the Court enters an Alternative Judgment;
- (v) the Judgment is vacated, modified or reversed by a court of appeal or any higher court in any material respect; or
- (vi) an Alternative Judgment is vacated, modified or reversed by a court of appeal or any higher court in any material respect.

11.2 Notwithstanding this paragraph 11, the Court's determination as to the Fee and Expense Application or any Distribution Plan, or any determination on appeal from any such order, shall not provide grounds for termination of this Agreement or settlement. Without limiting the foregoing, UBS shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action as to UBS and a full discharge of the Released Claims as to the Released Parties.

11.3 Except as otherwise provided herein, in the event the settlement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties to this Agreement shall be deemed to have reverted to their respective status in the Bondholder Action as of the Execution Date, with all of their respective legal claims and defenses preserved as they existed on that date, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of

UBS, together with any interest earned thereon (and, if applicable, repayment of any Fee and Expense Award referred to in paragraph 7.2 hereof), less any Taxes due, if any, with respect to such income, and less costs of administration and notice actually incurred and paid or payable from the Settlement Fund (subject to the provision of paragraph 8.3 above) shall be returned to UBS within ten (10) business days from the date of the Termination Notice. At the request of UBS's Counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to UBS. Neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Bondholder Action or any other lawsuit, arbitration or other proceeding for any purpose (other than to enforce the terms remaining in effect).

11.4 Neither UBS nor UBS's Counsel shall directly, or indirectly, solicit or encourage any Person to request exclusion from the Settlement Class.

## **12. BONDHOLDER PLAINTIFFS' RELEASE AND COVENANT NOT TO SUE.**

12.1 Upon the Effective Date, and in exchange for the receipt of the Settlement Amount provided for herein, the sufficiency of which is hereby acknowledged, the Releasing Parties, and any other Person claiming against the Settlement Fund (now or in the future) through or on behalf of any Releasing Party, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged Released Parties from any and all Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claim in any lawsuit, arbitration or other proceeding against any Released Party in any court or tribunal in any jurisdiction worldwide. Each Releasing Party shall be deemed to have released all Released Claims against the Released Parties regardless of whether any such Releasing Party ever seeks or obtains by any means,

including, without limitation, by submitting a Proof of Claim and Release, any distribution from the Settlement Fund or Net Settlement Fund. The releases set forth herein are given pursuant to New York law and are to be construed under New York law, including N.Y. General Obligations Law § 15-108, which bars claims for contribution by joint tortfeasors and other similar claims.

12.2 This Agreement is expressly intended to absolve Released Parties from any claims for contribution, indemnification or similar claims from other Defendants in the Action, arising out of or related to the Released Claims, in the manner and to the fullest extent permitted under the law of New York or any other jurisdiction that might be construed or deemed to apply to any claims for contribution, indemnification or similar claims against any Released Party. Notwithstanding the foregoing, should any court determine that any Defendant is/was legally entitled to any kind of contribution or indemnification from UBS arising out of or related to Released Claims, the Releasing Parties agree that any money judgment subsequently obtained by the Releasing Parties against any Defendant shall be reduced to an amount such that, upon paying the entire amount by such Defendant, the Defendant would have no claim for contribution, indemnification or similar claims against UBS.

12.3 Upon the Effective Date of Settlement, and in exchange for entry of the Judgment provided for herein, the sufficiency of which is hereby acknowledged, each of the Released Parties shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever released and discharged Bondholder Plaintiffs, Bondholder Plaintiffs' Counsel, and each and all Bondholder Class Members from each and every one of the Settling Defendant's Claims; shall forever be enjoined from instituting, commencing or prosecuting the Settling Defendant's Claims; and agrees and covenants not to sue on the basis of the Settling Defendant's Claims, or

to assist any third party in commencing or maintaining any such suit related to the Settling Defendant's Claims.

**13. UNKNOWN CLAIMS/CALIFORNIA CIVIL CODE SECTION 1542.**

13.1 With respect to any and all Released Claims and Settling Defendant's Claims, the Parties stipulate and agree that by operation of the Judgment, upon the Effective Date, Releasing Parties and Released Parties shall have expressly waived, and each Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, the provisions, rights and benefits of Section 1542 of the California Civil Code. The releases set forth in paragraph 12 above constitute a waiver of Section 1542 of the California Civil Code (to the extent it applies hereto), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

13.2 The releases set forth in paragraph 12 above also constitute a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Releasing Parties and the Released Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims or Settling Defendant's Claims, as the case may be, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts, whether or not concealed or hidden. In entering and



making this Agreement, the Releasing Parties and the Released Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law. Bondholder Class Plaintiffs and the Released Parties acknowledge, and Bondholder Class Members shall be deemed to have acknowledged, that the inclusion of unknown claims in the definition of Released Claims and Settling Defendant's Claims was separately bargained for and was a key element of the Settlement Agreement.

**14. NON-MONETARY CONSIDERATION.**

14.1 UBS will provide counsel for the Settlement Class with reasonable cooperation, which shall consist of the following confirmatory discovery, solely to the benefit of Bondholder Plaintiffs and the Settlement Class, and for so long as the Bondholder Action is actively litigated:

- (i) production of the underlying documents and data (including any translations thereof), related to USD LIBOR, that UBS produced to the CFTC and DOJ, for the period of August 9, 2007, to May 31, 2010 (the "Class Period") within fourteen (14) days of the execution of the Settlement Agreement;
- (ii) following a reasonable search, production of the incremental underlying documents and data, related to USD LIBOR, that UBS produced to the FSA but which were not produced to the CFTC and DOJ, for the Class Period, if any exist;
- (iii) contemporaneous production of the documents and data relevant to the Released Claims that UBS produces in response to subpoenas or demands in the other cases in the USD LIBOR MDL, No. 11-md-2262 (the "MDL"), including any related privilege logs;
- (iv) identification of the UBS custodians included in the produced documents and corresponding Bates ranges for each;

- (v) reasonable cooperation in providing an authenticity and business records certification as appropriate and as reasonably requested in support of Bondholder Plaintiffs' efforts to seek admission into evidence of documents or data contained in the above productions into evidence for summary judgment purposes and at trial;
- (vi) last known addresses and contact information for former employees of UBS who are relevant to the Released Claims, to the extent in UBS's possession;
- (vii) a proffer of facts known to UBS relevant to the Released Claims, including a description of the process for setting USD LIBOR, the individuals and entities involved, and UBS's participation in that process, as soon as practicable following execution of a settlement agreement but no later than fourteen (14) days afterwards, which can be extended by the mutual consent of the Parties, which consent shall not be unreasonably withheld;
- (viii) to the extent reasonably necessary following the above proffer, making up to three current, mutually agreeable UBS employees available for an informal interview, the scope of the interview to be mutually agreed upon;
- (ix) an agreement not to object to subpoenas for deposition or trial testimony by UBS or UBS employees based on relevance or burden; and
- (x) an agreement not to object to counsel for the Settlement Class's participation in any deposition of any UBS employee or designee in other cases in the MDL.

14.2 All cooperation will be coordinated in such a manner so that all unnecessary duplication and expense is avoided. Such cooperation shall be subject to applicable privileges;

data privacy, bank secrecy, and other statutory restrictions; and an appropriate protective order or similar protection.

14.3 Any cooperation provided by UBS will be used solely in connection with and for the purposes of the Bondholder Action. Any disputes about the scope of cooperation or UBS's compliance with its confirmatory discovery obligations will be resolved by the Mediator.

14.4 Notwithstanding any other provision in this Agreement, UBS may assert, where applicable, the attorney work-product doctrine, the attorney-client privilege, the common interest privilege, the joint defense privilege, the bank regulatory or examination privilege, obligations under any applicable data privacy laws or regulations, and/or any other applicable privilege or protection with respect to any documents, interviews, declarations, and/or affidavits, depositions, testimony, material, and/or information requested under this Settlement Agreement. For any documents withheld from production of documents to Bondholder Class Plaintiffs pursuant to this Settlement Agreement, UBS shall, if directed by the Mediator, create a privilege log describing withheld documents in sufficient detail so as to explain the nature of the privilege asserted or the basis of any law, regulation, policy, instruction, directive, or other rule of any governmental body protecting disclosure of such documents. This privilege log shall be produced to Bondholder Class Plaintiffs only upon direction of the Mediator if a dispute arises, and after production of the privilege log, the Parties will make a good faith effort to resolve the dispute. In the event that UBS and Bondholder Plaintiffs' Counsel are unable to resolve disagreements regarding a claim of privilege or work product, the Parties will seek resolution of the disputes from the Mediator. Any documents, declarations, affidavits, deposition testimony and/or information provided to Plaintiffs' Counsel pursuant to this provision shall be covered by the protective orders in place in the Action. None of the cooperation provisions are intended to,

nor do they, waive any such privileges or protections. UBS agrees that its Counsel will meet with Bondholder Plaintiffs' Counsel as is reasonably necessary to discuss any applicable privilege or protection. Any disputes regarding privilege that cannot be resolved among the Parties shall be resolved by the Mediator.

14.5 If any document protected by the attorney-client privilege, attorney work-product doctrine, the common interest doctrine, the joint defense privilege and/or any other applicable privilege or protection is accidentally or inadvertently produced, the document shall be promptly returned to UBS's Counsel, and its production shall in no way be construed to have waived any privilege or protection attached to such document or information.

14.6 Bondholder Plaintiffs' Counsel agree, unless ordered by a court or upon agreement by UBS, that under no circumstances shall Bondholder Plaintiffs' Counsel produce documents or information obtained from UBS to any Person, including without limitation, counsel for any Class Member in the Bondholder Action, whether or not it excludes itself from the Class for purposes of the settlement.

14.7 If one or more putative members of the Settlement Class timely exercise their rights to be excluded from the Settlement Class ("Opt-Outs"), the processes set forth in this paragraph shall apply.

- (i) Plaintiffs shall provide a list of those Persons, if any, who have filed a request to be excluded from the Settlement Class ("Request for Exclusion"), together with all such Requests for Exclusion, to UBS no later than five (5) business days before the deadline set by the Court for the filing of Requests for Exclusion. If, after UBS receives the list of the Opt-Outs, it decides to request some relief, the Parties shall first meet and confer in good faith. If the Parties are unable to reach

agreement and UBS asserts that the total Requests for Exclusion represent a material portion of claims that would be eligible for compensation under the Settlement, and their exclusion would materially reduce the value of the settlement to UBS, then UBS may present the issue of the appropriate remedy to the Mediator. The Mediator's determinations, which shall be made after a consolidated mediation involving the Parties, shall be binding on the Parties.

- (ii) The Mediator shall have sole discretion to determine what, if any, reduction in remedy is warranted due to a material impact on the value of the Settlement to UBS by the Requests for Exclusion. The Mediator is not required to grant any reduction if he determines no such reduction is appropriate.
- (iii) In the event the Mediator determines some reduction is appropriate, the amount of the reduction shall be paid to UBS from the Settlement Fund.
- (iv) In the alternative to seeking a reduction, UBS may seek to terminate the Agreement if, upon application, the Mediator determines in his sole discretion that the reduction remedy is not adequate to preserve the essential benefits of the Settlement to UBS. Any application by UBS for termination relief under this paragraph must be made in writing within fourteen (14) days following the receipt from Plaintiffs of the list of Opt-Outs and accompanying information required to be provided, or within seven (7) days of a determination on the reduction remedy by the Mediator, whichever is later. If termination relief is granted to UBS, such termination will be deemed to occur under paragraph 11 and the effect will be the same as a termination by that paragraph's terms.

- (v) Promptly after receipt of any such materials, Bondholder Plaintiffs' Counsel shall deliver to UBS's counsel copies of all (a) Requests for Exclusion received (including all information provided by the Persons or entities making the requests concerning their transactions and/or potential claims), (b) information the Claims Administrator possesses concerning the total potential value of the Released Claims by Persons who have timely requested exclusion, and (c) written revocations of Requests for Exclusion.
- (vi) The Parties and their Counsel agree that they will make no effort to suggest, solicit, facilitate or otherwise encourage potential Class Members to exclude themselves from the Settlement.

**15. RESERVATION OF BONDHOLDER CLASS MEMBERS' RIGHTS AGAINST OTHER DEFENDANTS.**

15.1 All rights of Bondholder Plaintiffs and any Bondholder Class Member against other former, current, or future Defendants or co-conspirators, or any other Person other than the Released Parties, with respect to any of the Released Claims are specifically reserved by Bondholder Plaintiffs and the Bondholder Class Members.

**16. MISCELLANEOUS.**

16.1 The Parties to this Agreement intend the settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Bondholder Plaintiffs and any Bondholder Class Member against the Released Parties with respect to the Bondholder Action and the Released Claims. Accordingly, Bondholder Plaintiffs and UBS agree not to assert in any judicial proceeding that the Bondholder Action was brought by Bondholder Plaintiffs or defended by UBS in bad faith or without a reasonable basis. The Parties further agree not to assert in any judicial proceeding that any Party violated Federal Rule of Civil Procedure 11 in

connection with the Bondholder Action. The Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent and experienced legal counsel and the Mediator.

16.2 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

16.3 The administration and consummation of the settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application, the Plan of Distribution, and enforcing the terms of this Agreement.

16.4 For the purpose of construing or interpreting this Agreement, the Agreement shall be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

16.5 This Agreement shall constitute the entire agreement between Bondholder Plaintiffs and UBS pertaining to the settlement of the Bondholder Action against UBS and supersedes any and all prior and contemporaneous undertakings of Bondholder Plaintiffs and UBS in connection therewith. No representations, warranties or inducements have been made to any Settling Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein. All terms of this Agreement are contractual and not mere recitals. The terms of this Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Bondholder

Class Members. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Bondholder Plaintiffs, and Bondholder Plaintiffs' Counsel, shall be binding upon all Class Members.

16.6 This Agreement shall not be modified or amended in any respect except by a writing executed by Bondholder Plaintiffs, through Bondholder Plaintiffs' Counsel, and UBS, through UBS's Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and modifications may be made without notice to the Bondholder Class unless notice is required by law or by the Court.

16.7 Nothing in this Agreement constitutes an admission by UBS as to the merits of the allegations made in the Bondholder Action, the validity of any defenses that could be asserted by UBS, or the appropriateness of certification of any class other than the Bondholder Class under Federal Rule of Civil Procedure 23 for purposes of settlement only. This Agreement is without prejudice to the rights of UBS to do either or both of the following:

- (i) challenge the Court's certification of any class, including the Bondholder Class, in the Bondholder Action should the Agreement not be approved or implemented for any reason; and/or
- (ii) oppose any certification or request for certification in any other proposed or certified class action.

16.9 Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, of any allegation made in the Action, or of any wrongdoing or liability of Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any



liability, fault or omission of the Released Parties in any civil, criminal, or administrative proceeding before any court, administrative agency, arbitration panel or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Released Parties may file this Agreement and/or the Judgment in any action for any purpose or in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations described in this paragraph 16.9 apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

16.10 All terms of this Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

16.11 Except as provided for herein, UBS, Bondholder Plaintiffs, their respective counsel, and the Bondholder Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York only for the specific purposes of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

16.12 The Parties acknowledge that this Agreement makes no determination as to which Bondholder Class Members are entitled to any distribution from the Net Settlement Fund or as to the formula for determining the amounts to be distributed.

16.13 The proposed Distribution Plan is not a necessary term of this Agreement, and it is not a condition of this Agreement that any particular Distribution Plan be approved. The Released Parties shall take no position with respect to the proposed Distribution Plan or such Distribution Plan as may be approved by the Court. The Distribution Plan is a matter separate and apart from the settlement between the Parties, and any decision by the Court concerning a particular Distribution Plan shall not affect the validity or finality of the proposed settlement, including the scope of the release.

16.14 If any disputes arise out of finalization of the settlement documentation or of the settlement itself, said disputes are to be resolved by Judge Phillips, first by way of mediation, and if mediation is unsuccessful, then by way of final, binding non-appealable arbitration before Judge Phillips. If for any reason Judge Phillips is unavailable or has a conflict, the Parties will agree on a substitute mediator so that this clause may be enforced or, failing that, jointly petition JAMS to appoint a mediator.

16.15 This Agreement may be executed in one or more counterparts by Bondholder Plaintiffs and UBS, and all executed counterparts and each of them shall be deemed to be one and the same instrument. A facsimile or “pdf” signature shall be deemed an original signature for purposes of executing this Agreement.

16.16 Bondholder Plaintiffs and UBS acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Agreement to the extent they have deemed it necessary to do so. Therefore, Bondholder Plaintiffs and UBS, and their respective counsel, agree that they will not seek to set aside any part of this Agreement on the grounds of mistake. Moreover, Bondholder Plaintiffs and UBS, and their respective counsel, understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be

other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

16.17 Each of the undersigned attorneys represents that she or he is fully authorized by her or his client(s) to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval. Bondholder Plaintiffs' Counsel, on behalf of Bondholder Plaintiffs, represent that they are, subject to Court approval, authorized to take all action required or permitted to be taken by or on behalf of the Bondholder Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Bondholder Class that they deem appropriate. Each of the undersigned attorneys shall use her or his best efforts to effectuate this Agreement.

**17. SIGNATURES.**

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Agreement as of the date first herein written above.

Dated: 7/12/16

*Bondholder Plaintiffs' Counsel on behalf of  
Bondholder Plaintiffs individually and the  
Bondholder Class*

By: 

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Dated: July 12, 2016

UBS AG

By: Markus U. Diethelm

Name: Markus U. Diethelm

By: John T. Behrendt

Name: John T. Behrendt