

THE BOARD OF THE PENSION PROTECTION FUND

FORM OF CONTINGENT ASSET

TYPE C(i): LETTER OF CREDIT OR BANK GUARANTEE WITH EVERGREEN DURATION

VERSION: ~~2.0~~ ([CONSULTATION DRAFT SEPTEMBER 2006](#))[2009](#)

NOTE:

Please refer to the Pension Protection Fund guidance on contingent assets and other documentation on the Pension Protection Fund website www.pensionprotectionfund.org.uk. However, it is your responsibility to obtain legal advice before using the Pension Protection Fund's standard documentation – you should not rely on the guidance note or on other documentation published by the Pension Protection Fund. The Board accepts no responsibility to trustees/managers or any other person for the efficacy of the standard documentation or for any legal effects that such documentation may have if used in any circumstances.

This document contains alternative language depending on whether a letter of credit or a bank guarantee is to be created. The appropriate version should be selected throughout.

This cover page should be deleted before using the document.

[This is a draft form of agreement for consultation purposes and may be amended prior to a finalised version 3.0 being published, expected to be in December 2009. Parties wishing to enter into new agreements between publication of this consultation draft and the final version 3.0 should continue to use version 2.0 \(September 2006\). Please see the Board's consultation document dated September 2009 for further details.](#)

To: [●] and [●] as trustees of the [● pension scheme]¹ (each a **Beneficiary Trustee** and together the **Beneficiaries Trustees**); and

The companies listed in Schedule 1 (Companies) [(each a **Company** and together the **Companies**)]/[(the **Company**)]

[DATE]

Dear Sirs,

[Irrevocable Standby Letter of Credit]/[Guarantee]² no. [●]

[ISSUING BANK] (the **Issuing Bank**) issues this [irrevocable standby letter of credit (**Letter of Credit**)]/[guarantee (**Guarantee**)] in favour of the **Beneficiaries Trustees** on the following terms:

1. Definitions

In this [Letter of Credit]/[Guarantee]:

Business Day means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.

Demand means a demand for a payment under this [Letter of Credit]/[Guarantee] in the form of Schedule 2 (Form of Demand).

Expiry Date means 31 March, 20[●]³.

Fitch means Fitch Ratings Limited or any successor to its ratings business.

Insolvency Event means:

- (a) an 'insolvency event' as defined in section 121 of the Pensions Act 2004 or regulations made from time to time thereunder; or
- (b) the receipt by the Pension Protection Fund of an application or notification from the **Beneficiaries Trustees** or the Pensions Regulator that an employer is unlikely to continue as a going concern, which is purported to be made in accordance with section 129 of the Pensions Act 2004 or regulations made from time to time thereunder.

Minimum Replacement Amount means the amount calculated in accordance with Schedule 3 from time to time.

Moody's means Moody's Investors Service Limited or any successor to its ratings business.

Pension Protection Fund means the Board of the Pension Protection Fund as established under Part 2 of the Pensions Act 2004.

¹ References to the "Scheme" will need to be amended appropriately where the document relates to one section only of a sectionalised scheme.

² Choose references to letter of credit or guarantee throughout the document.

³ The term of the letter of credit should at least cover a full levy year.

Requisite Rating means, in respect of a person, that the person has long term unsecured debt instruments in issue which are neither subordinated nor guaranteed, which have a rating of at least one of the following:

- (a) AA- or better by Fitch;
- (b) Aa3 or better by Moody's; or
- (c) AA- or better by S&P.

S&P means Standard and Poor's Rating Services, a Division of the McGraw Hill Companies, Inc. or any successor to its ratings business.

Scheme means the [● pension scheme] (registration number [●])⁴.

Total [L/C]/[Guaranteed]⁵ Amount means £[●].

A party to this [Letter of Credit]/[Guarantee] or any other person includes its successors in title, permitted assigns and permitted transferees and this [Letter of Credit]/[Guarantee] shall be enforceable by the successors in office of the Trustees as trustees of the Scheme.

2. Issuing Bank's agreement

- (a) The **Beneficiaries Trustees** may request a drawing under this [Letter of Credit]/[Guarantee] by giving to the Issuing Bank a duly completed Demand by 5 p.m. on any day falling on or before the Expiry Date. Subject to the provisions of this [Letter of Credit]/[Guarantee], any number of Demands may be given.
 - (b) A Demand may only be given:
 - (i) upon the occurrence of an Insolvency Event in respect of [the]/[a] Company which occurs on or before the Expiry Date;
 - (ii) in the circumstances set out in paragraph 3(a) (Expiry and renewal); or
 - (iii) if any step is taken to wind up the Scheme or any part or section of the Scheme.

The Issuing Bank is not required to investigate or confirm whether any of the events set out above have occurred.

- (c) Subject to the terms of this [Letter of Credit]/[Guarantee], the Issuing Bank unconditionally and irrevocably undertakes to the **Beneficiaries Trustees** that, within 5 Business Days of receipt by it of a Demand validly presented under this [Letter of Credit]/[Guarantee], it must pay to the **Beneficiaries Trustees** the amount which is demanded for payment in that Demand.
- (d) The Issuing Bank will not be obliged to make a payment under this [Letter of Credit]/[Guarantee] to the extent that the aggregate of all payments made by it under this [Letter of Credit]/[Guarantee] would exceed the Total [L/C]/[Guaranteed] Amount.
- (e) In circumstances where:

⁴ References to the "Scheme" will need to be amended appropriately where the document relates to one section only of a sectionalised scheme.

⁵ Use "Total L/C Amount" for a letter of credit or "Total Guaranteed Amount" for a bank guarantee.

- (i) a Demand may be given in accordance with paragraph (b) above; and
- (ii) the liability of the Compan[y]/[ies] to the **BeneficiariesTrustees** is not finally determined,

the **BeneficiariesTrustees** may:

- (iii) make a Demand for the Total [L/C]/[Guaranteed] Amount; and
 - (iv) place any monies received by them from the Issuing Bank under this [Letter of Credit]/[Guarantee] in an interest-bearing suspense account to be applied against the Compan[y's]/[ies'] liability to the **BeneficiariesTrustees**, once finally determined.
- (f) If at any time:
- (i) monies in a suspense account have been applied against the finally determined liability to the **BeneficiariesTrustees** of [the]/[every] Company in respect of which an Insolvency Event has occurred prior to that time; and
 - (ii) no event has occurred prior to that time which would entitle the **BeneficiariesTrustees** to make a demand under subparagraphs (b)(ii) or (b)(iii) above;

then[, subject to paragraph (g) below,]⁶ the **BeneficiariesTrustees** shall pay any amount remaining to the credit of such suspense account at the direction of [●]/[the Company].

- (g) [The **BeneficiariesTrustees** shall only be required to make the payment referred to in paragraph (f) above:
- (i) if at the relevant time there remains one or more Companies in respect of which no Insolvency Event has occurred; and
 - (ii) to the extent that the **BeneficiariesTrustees** are provided with a replacement [letter of credit]/[bank guarantee] with a face value at least equal to the amount to be paid by the **BeneficiariesTrustees** and otherwise satisfying the requirements set out in paragraph 3(a)(i) (other than subparagraph (a)(i)(B)) below.]⁷

3. Expiry and renewal

- (a) The [Company]/[Companies] must:
- (i) not less than 30 days prior to the Expiry Date, procure that a person with a Requisite Rating and otherwise satisfying the requirements for recognition by the Pension Protection Fund as set out in its most recently published policies enters into a replacement [letter or letters of credit]/[guarantee or guarantees] with the **BeneficiariesTrustees** which is/are:
 - (A) either on the same terms as set out in this [Letter of Credit]/[Guarantee], or in the Pension Protection Fund's most recently published standard form of [letter of credit]/[bank guarantee] (subject only to variations which will be notified to the Pension Protection Fund and which do not have a materially

⁶ Delete where there is only a single company.

⁷ Delete where there is only a single company.

detrimental effect on the rights of the **BeneficiariesTrustees** as compared with the required form); and

- (B) in an amount which is equal to or greater than the Minimum Replacement Amount; and
 - (C) for a tenor of at least 12 months to 31 March in the next calendar year following the Expiry Date; or
- (ii) if [it]/[they] fail[s] to procure a replacement [letter or letters of credit]/[bank guarantee or guarantees] in accordance with subparagraph (i) above, pay, or procure the payment of, to the **BeneficiariesTrustees** (for application in accordance with the rules of the Scheme) the Minimum Replacement Amount on the date falling not less than 5 Business Days prior to the Expiry Date,

provided that, if the [Company]/[Companies] fail[s] to take any of the steps referred to in subparagraphs (i) and (ii) above the **BeneficiariesTrustees** may submit a Demand on the Expiry Date for the Total [L/C]/[Guaranteed] Amount.

- (b) At 5 p.m. (London time) on the Expiry Date the obligations of the Issuing Bank under this [Letter of Credit]/[Guarantee] will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under this [Letter of Credit]/[Guarantee] that remains unpaid. The Issuing Bank will only be released from its obligations under this [Letter of Credit]/[Guarantee] prior to the Expiry Date if:
- (i) the Compan[y]/[ies] pay[s] to the **BeneficiariesTrustees** the Minimum Replacement Amount in accordance with subparagraph (a)(ii) above;
 - (ii) the **BeneficiariesTrustees** notify the Issuing Bank that the Minimum Replacement Amount is zero in accordance with paragraph 4; or
 - (iii) the **BeneficiariesTrustees** notify the Issuing Bank that such obligations are so released.
- (c) When the Issuing Bank is no longer under any obligation under this [Letter of Credit]/[Guarantee], the **BeneficiariesTrustees** must return the original of this [Letter of Credit]/[Guarantee] to the Issuing Bank.

4. Reduction of Total [L/C]/[Guaranteed] Amount

On receipt by the Issuing Bank of a written notice from the **BeneficiariesTrustees** stating that, as at the date of such notice, the Minimum Replacement Amount is less than the Total [L/C]/[Guaranteed] Amount, the Total [L/C]/[Guaranteed] Amount shall be reduced to the Minimum Replacement Amount as stated in that notice. If the notice states that the Minimum Replacement Amount is zero, then the obligations of the Issuing Bank under this [Letter of Credit]/[Guarantee] will cease with no further liability on the part of the Issuing Bank except in respect of any Demand validly presented under this [Letter of Credit]/[Guarantee] that remains unpaid. The Issuing Bank shall promptly confirm to the **BeneficiariesTrustees** such reduction in the Total [L/C]/[Guaranteed] Amount or, as the case may be, cancellation of the [Letter of Credit]/[Guarantee].

5. Payments

All payments under this [Letter of Credit]/[Guarantee] must be made in sterling and for value on the due date to the account of the **BeneficiariesTrustees** specified in the Demand.

6. Delivery of Demand

Each Demand must be in writing, and may be given in person, by post, fax, e mail, telex or any other electronic communication and must be received in legible form by the Issuing Bank at its address as follows:

[●]

For the purposes of this [Letter of Credit]/[Guarantee], electronic communication will be treated as being in writing.

7. Assignment

- (a) The Issuing Bank and the Compan[y]/[ies] acknowledge that the rights and obligations of the **Beneficiaries**Trustees under this [Letter of Credit]/[Guarantee] may be transferred to the Pension Protection Fund as a result of the operation of Section 161 of and Schedule 6 to the Pensions Act 2004.
- (b) The Issuing Bank may not assign or transfer any of its rights and obligations under this [Letter of Credit]/[Guarantee] other than with the prior written consent of the **Beneficiaries**Trustees.

8. [ISP]/[URDG]⁸

Except to the extent it is inconsistent with the express terms of this [Letter of Credit]/[Guarantee], this [Letter of Credit]/[Guarantee] is subject to the [International Standby Practices 1998 (International Chamber of Commerce Publication No. 590)⁹]/[Uniform Rules for Demand Guarantees (International Chamber of Commerce Publication No. 458)¹⁰].

9. Governing Law

This [Letter of Credit]/[Guarantee] is governed by English law.

10. Jurisdiction

- (a) The English courts have non-exclusive jurisdiction to settle any dispute in connection with this [Letter of Credit]/[Guarantee].
- (b) The English courts are the most appropriate and convenient courts to settle any such dispute.
- (c) This paragraph is for the benefit of the **Beneficiaries**Trustees only. To the extent allowed by law, a **Beneficiary**Trustee may take:
- (i) proceedings in any other court; and
 - (ii) concurrent proceedings in any number of jurisdictions.

⁸ ISP is the correct reference for letters of credit, URDG for guarantees.

⁹ For letters of credit

¹⁰ For bank guarantees

Yours faithfully,

[ISSUING BANK]

By:

We agree to the above

Beneficiaries

Trustees

[●] as trustee of the [● pension scheme]

By:

[●] as trustee of the [● pension scheme]

By:

Compan[y]/[ies]

[●]

By:

SCHEDULE 1

COMPANIES

Company name	Registration number	Address

SCHEDULE 2
FORM OF DEMAND

To: [ISSUING BANK]

[DATE]

Dear Sirs,

[Irrevocable Standby Letter of Credit]/[Guarantee] no. [●] issued in favour of [●] and [●] as trustees of the [● pension scheme] (the [Letter of Credit]/[Guarantee])

We refer to the [Letter of Credit]/[Guarantee]. Terms defined in the [Letter of Credit]/[Guarantee] have the same meaning when used in this Demand.

1. We certify that:

[an Insolvency Event has occurred in relation to *[name of Company]*.]

OR

[the Compan[y]/[ies] [has]/[have] not complied with [its]/[their obligations in respect of paragraphs 3(a)(i) and 3(a)(ii) (Expiry and renewal) of the [Letter of Credit]/[Guarantee].]

OR

[a step has been taken to wind up the Scheme.]

We therefore demand payment of the sum of [●].

2. Payment should be made to the following account:

Name: [●]

Account Number: [●]

Bank: [●]

3. The date of this Demand is not later than the Expiry Date.

Yours faithfully,

(Authorised Signatory)

For

~~[BENEFICIARY]~~

[TRUSTEE]

SCHEDULE 3

MINIMUM REPLACEMENT AMOUNT

1. Definitions

In this Schedule:

C_0 means the amount of any Eligible Deficit-Reduction Contributions as at the Reference Date.

C_1 means the amount of any Eligible Deficit-Reduction Contributions as at the MRA Measurement Date.

Deemed Value as at a Measurement Date means:

- (a) in respect of a Pension Protection Fund Recognised Arrangement which provides for security to be granted in favour of the **Beneficiaries**Trustees, the lower of:
- (i) the value of the assets subject to the security as set out in the most recent Eligible Valuation; and
 - (ii) the amount set opposite the description of that security in the table below:

Description of security	Deemed Value
Security where the liability of the chargor under that security is expressed to be limited to a fixed amount.	The fixed amount specified as the limit on the liability of the chargor
Security where the liability of the chargor under that security is expressed to be limited to either (A) the lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being funded to at least a specified percentage level (as calculated under section 179 of the Pensions Act 2004) on the date on which any liability under that security arose were a valuation to be conducted on that date, or to (B) the lower of the amount referred to in (A) and a fixed amount (“F”).	The lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being funded to at least that percentage level (as calculated under section 179 of the Pensions Act 2004) on the Measurement Date, based on the assets and liabilities of the Scheme as set out in the most recent Eligible Valuation prior to the Measurement Date and adding the amount of any Eligible Deficit-Reduction Contributions as at that Measurement Date; or, where (B) applies, the lower of such amount and F.

Description of security	Deemed Value
Security where the liability of the chargor under that security is expressed to be limited to either (A) an amount equal to the entire aggregate liability, on the date on which any liability under that security arose, of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the Scheme, were a debt under Section 75(2) of the Pensions Act 1995 to have become due on that date, or to (B) the lower of the amount referred to in (A) and a fixed amount (“G”).	The lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being at least 125 per cent. funded (as calculated under section 179 of the Pensions Act 2004) on the Measurement Date, based on the assets and liabilities of the Scheme as set out in the most recent Eligible Valuation prior to the Measurement Date and adding any Eligible Deficit-Reduction Contributions as at the measurement Date; or, where (B) applies, the lower of such amount and G.

- (b) in respect of a Pension Protection Fund Recognised Arrangement which is a letter of credit or a bank guarantee issued by a Regulated Entity, the face amount of that letter of credit or bank guarantee.

Deficit-Reduction Contributions means deficit-reduction contributions made to the Scheme calculated on the basis specified by the Pension Protection Fund in its most recently published policies.

Eligible Deficit-Reduction Contributions as at a Measurement Date means any Deficit-Reduction Contributions made to the Scheme between:

- (a) the date of the most recent Eligible Valuation prior to the Measurement Date; and
- (b) the Measurement Date, provided that:
- (i) the Eligible Deficit-Reduction Contributions as at a Reference Date shall only include Deficit-Reduction Contributions which were validly certified to the Pension Protection Fund in accordance with its policies no later than 6 days after that Reference Date; and
- (ii) the Eligible Deficit-Reduction Contributions as at the MRA Measurement Date shall only include Deficit-Reduction Contributions which were validly certified to the Pension Protection Fund in accordance with its policies no later than that MRA Measurement Date.

Eligible Valuation means:

- (a) in relation to the assets or liabilities of the Scheme, either:
- (i) a valuation of those assets and liabilities carried out on the basis set out in section 179 of the Pensions Act 2004 and which has been provided to the Pension Protection Fund in accordance with section 179 of the Pensions Act 2004; or
- (ii) a statement provided to the ~~Beneficiaries~~ Trustees by the Scheme Actuary, setting out prudent approximations as to the asset and liability figures which would have resulted if the Scheme Actuary had conducted a valuation on the basis set out in section 179 of the Pensions Act 2004 as at a specific date; and

- (b) in relation to an asset charged in favour of the [Beneficiaries Trustees](#), a valuation of that asset which complies with all requirements published by the Pension Protection Fund (whether in relation to the date or method of the valuation or otherwise) for the recognition of security over such an asset for the purposes of calculating the risk-based levy in accordance with Part 2 of the Pensions Act 2004 and which has been certified to the Pension Protection Fund in accordance with those requirements,

and references to "the most recent Eligible Valuation prior to" a date shall mean the Eligible Valuation whose effective date is on or prior, and as near as possible, to that date.

L₀ means the total liabilities of the Scheme as set out in the most recent Eligible Valuation prior to a Reference Date.

L₁ means the total liabilities of the Scheme as set out in the most recent Eligible Valuation prior to a MRA Measurement Date.

Measurement Date means the date on which the one of the variables in this Schedule is measured.

MRA Measurement Date means the date on which the Minimum Replacement Amount is measured.

n₀ means the face value of this [Letter of Credit]/[Guarantee] as at a Reference Date.

n₁ has the meaning given to it in Paragraph 2 below.

N₀ means the aggregate Deemed Value as at a Reference Date of all Pension Protection Fund Recognised Arrangements, except this [Letter of Credit]/[Guarantee], in respect of which the Scheme benefited on that Reference Date.

N₁ means the aggregate Deemed Value as at a MRA Measurement Date of all Pension Protection Fund Recognised Arrangements, except this [Letter of Credit]/[Guarantee], in respect of which the Scheme will benefit immediately following that MRA Measurement Date.

Pension Protection Fund Recognised Arrangement means an arrangement constituted by an agreement in Pension Protection Fund Standard Form which satisfies all criteria specified by the Pension Protection Fund for recognition as a contingent asset for the purposes of calculating the risk-based levy in accordance with Part 2 of the Pensions Act 2004 and which has been the subject of a valid certification to the Pension Protection Fund in Pension Protection Standard Form which either:

- (a) provides for security to be granted in favour of the [Beneficiaries Trustees](#) over assets owned by the Compan[y]/[ies] or a third party; or
- (b) is a bank guarantee or letter of credit issued by a Regulated Entity.

Pension Protection Fund Standard Form means, in relation to an agreement or a certificate, the standard form of that agreement or certificate most recently published by the Pension Protection Fund prior to the date on which that agreement was entered into or that certificate was given.

Reference Date means the 1 April immediately preceding any MRA Measurement Date.

Regulated Entity means an entity which satisfies all criteria specified by the Pension Protection Fund for the issuer of a letter of credit or bank guarantee which will be recognised as a contingent asset for the purposes of calculating the risk-based levy in accordance with Part 2 of the Pensions Act 2004.

S_0 means the assets of the Scheme as set out in the most recent Eligible Valuation prior to a Reference Date.

S_1 means the assets of the Scheme as set out in the most recent Eligible Valuation prior to a MRA Measurement Date.

Scheme Actuary means the actuary to the Scheme.

2. Minimum Replacement Amount

The Minimum Replacement Amount as at any Measurement Date shall be the lowest non-negative amount n_1 satisfying at least one of the following two requirements:

$$(a) \quad \frac{S_1 + C_1 + N_1 + n_1}{L_1} \geq \frac{S_0 + C_0 + N_0 + n_0}{L_0};$$

and/or

$$(b) \quad \frac{S_1 + C_1 + N_1 + n_1}{L_1} \geq [\quad]^{11};$$

provided that the Minimum Replacement Amount shall never exceed the Total [L/C]/[Guaranteed] Amount.

¹¹ See PPF consultation document September 2009, section 3.4