

THE BOARD OF THE PENSION PROTECTION FUND

FORM OF CONTINGENT ASSET

TYPE C(ii): LETTER OF CREDIT OR BANK GUARANTEE WITH FIXED DURATION TO SUPPORT A PLANNED SCHEDULE OF DEFICIT REDUCTION CONTRIBUTIONS

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 [●]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.

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.

Planned Contributions means the amounts set out in Schedule 3 to be paid to the **Beneficiaries Trustees** by way of contributions to the Scheme on the dates set out in that Schedule, and **Planned Contribution** means any of such amounts.⁴

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/bank guarantee must extend at least [5 days] beyond the date on which the last Planned Contribution is due.

⁴ The total of the Planned Contributions must be no less than the Total L/C/Guaranteed Amount.

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 [●])⁵.

Total [L/C]/[Guaranteed]⁶ Amount means £[●], as such amount may be reduced in accordance with paragraph 4.

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 **BeneficiariesTrustees** may request a drawing under this [Letter of Credit]/[Guarantee] by giving to the Issuing Bank a duly completed Demand by 5 p.m. (London time) 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) if the **BeneficiariesTrustees** have not received a Planned Contribution, or any other amount due and payable by [the Company]/[any of the Companies], in each case within [5] Business Days of its due date for payment;
 - (ii) upon the occurrence of an Insolvency Event in respect of [the]/[a] Company which occurs on or before the Expiry Date; 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) If a Demand is made pursuant to subparagraph (b)(i) above, the amount demanded shall not exceed the Planned Contribution or other amount due but not paid. If a Demand is made pursuant to subparagraph (b)(ii) above or (b)(iii) above, the amount demanded shall not exceed the Total [L/C]/[Guaranteed] Amount.
- (d) Subject to the terms of this [Letter of Credit]/[Guarantee], the Issuing Bank unconditionally and irrevocably undertakes to the **BeneficiariesTrustees** 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 **BeneficiariesTrustees** the amount which is demanded for payment in that Demand.

⁵ References to the "Scheme" will need to be amended appropriately where the document relates to one section only of a sectionalised scheme.

⁶ Use "Total L/C Amount" for a letter of credit or "Total Guaranteed Amount" for a bank guarantee.

- (e) 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.
- (f) In circumstances where:
- (i) a Demand may be given in accordance with subparagraph (b)(ii) or (b)(iii) 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.
- (g) 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)(i) or (b)(iii) above;
- then[, subject to paragraph (h) below,]⁷ the **BeneficiariesTrustees** shall pay any amount remaining to the credit of such suspense account at the direction of [●]/[the Company].
- (h) [The **BeneficiariesTrustees** shall only be required to make the payment referred to in paragraph (g) 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]/[guarantee] with a face value at least equal to the amount to be paid by the **BeneficiariesTrustees** and otherwise on the same terms as this [Letter of Credit]/[Guarantee].]⁸

3. Expiry and renewal

- (a) 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 Total [L/C]/[Guaranteed] Amount is reduced to zero pursuant to paragraph 4; or
 - (ii) the **BeneficiariesTrustees** notify the Issuing Bank that such obligations are so released.

⁷ Delete where there is only a single company.

⁸ Delete where there is only a single company.

- (b) When the Issuing Bank is no longer under any obligation under this [Letter of Credit]/[Guarantee], the **Beneficiaries**Trustees must return the original of this [Letter of Credit]/[Guarantee] to the Issuing Bank.

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

Upon receipt by the Issuing Bank of a written notice in the form of Schedule 4, stating that a Planned Contribution has been received, the Total [L/C]/[Guaranteed] Amount shall be reduced by the amount of that Planned Contribution (or, if the amount of the Planned Contribution exceeds the Total [L/C]/[Guaranteed] Amount, to zero).

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 **Beneficiaries**Trustees 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 purpose of this [Letter of Credit]/[Guarantee], electronic communication will be treated as being in writing.

7. Assignment

- (i) 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.
- (j) 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]⁹

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)¹⁰]/[Uniform Rules for Demand Guarantees (International Chamber of Commerce Publication No. 458)¹¹].

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].

⁹ ISP is the correct reference for letters of credit, URDG for guarantees.

¹⁰ For letters of credit

¹¹ For bank guarantees

- (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.

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:

[a [Planned Contribution/amount payable by *[name of Company]*] of [●], which was due to be paid on [●], was not received within 5 Business Days of the date due]

OR

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

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
PLANNED CONTRIBUTIONS¹²

| Contribution date | Amount |
|--------------------------|---------------|
| [Date] | [£●] |
| [Date] | [£●] |
| [Date] | [£●] |
| TOTAL | [£●] |

¹² In order to obtain recognition for levy purposes, the trustees will need to provide advance confirmation from the Scheme Actuary that, based on information available at the time, the Planned Contributions are expected to constitute deficit-reduction contributions.

SCHEDULE 4

FORM OF NOTICE OF RECEIPT OF PLANNED CONTRIBUTION

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:
 - (a) a Planned Contribution of [●] was received on [●]; and
 - (b) such amount was received by way of deficit-reduction contribution.
2. We request that the Total [L/C]/[Guaranteed] Amount be reduced by the amount of the Planned Contribution referred to above.

Yours faithfully,

(Authorised Signatory)

For

~~[BENEFICIARY]~~

[TRUSTEE]