

PENSION TRUSTEE

THIS IS A CLAIMS MADE CERTIFICATE OF INSURANCE

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the *Insurer*, including statements made in the proposal and materials accompanying it, and subject to all terms conditions and limitations of their Certificate the *Insurer* agrees with the *Trustees*, *Employees* and the *Sponsoring Employer Company* as follows:

SECTION 1. INSURING AGREEMENT

- 1.1 The *Insurer* will pay on behalf of the *Trustees* and *Employees* all *Loss* which they are legally obligated to pay, or which the *Sponsoring Employer Company* or *Pension Fund* is legally required or permitted to pay the *Trustees* and *Employees* as advancements or indemnity under applicable trusts, indemnity laws or agreements, for a *Claim* against a *Trustee* or *Employee* for a *Wrongful Act*, provided the *Claim* is first made against a *Trustee* or *Employee* during the *Certificate Period*, or *Discovery Period* if applicable.
- 1.2 The *Insurer* shall also pay on behalf of the *Sponsoring Employer Company*, *Corporate Trustee Company* or *Pension Fund* all *Loss* which they are legally obligated to pay for a *Claim* for a *Wrongful Act* provided the *Claim* is first made against the *Sponsoring Employer Company*, *Corporate Trustee Company* or *Pension Fund* during the *Certificate Period* or *Discovery Period* if applicable.
- 1.3 The *Insurer* shall also pay on behalf of the *Trustees* *Loss* arising from any regulatory or administrative proceedings or any other official investigation, including any fact-finding investigation, with regard to any allegation of a *Wrongful Act* committed by any *Insured*.

SECTION 2. DEFINITIONS

- 2.1 *Certificate Period* means the period of time shown in Item 3 of the Schedule of this Certificate.
- 2.2 *Claim* means any notice received by the *Sponsoring Employer Company*, or by an *Insured* alleged to have committed a *Wrongful Act*, of the intention of a person or entity to hold an *Insured* responsible for the results of any *Wrongful Act*, including any demand received by an *Insured* for money or services naming an *Insured* as defendant, or the institution of arbitration proceedings against an *Insured*.
- 2.3 *Corporate Trustee Company* means any company whether a *Subsidiary* of the *Sponsoring Employer Company* or not which is duly appointed to act as *Trustee* of the *Pension Fund*.
- 2.4 *Defence Costs* means reasonable legal fees, costs and expenses incurred by an *Insured* which are necessary to defend or appeal a *Claim* covered by this Certificate.
- 2.5 *Discovery Period* means the period of time in Section 5.1 which shall run from the date this Certificate expires.
- 2.6 *Employee* means any individual person who whilst in employment of the *Sponsoring Employer Company* or a director or officer of the *Sponsoring Employer Company* or *Corporate Trustee Company* administers the *Pension Fund*.
- 2.7 *Insured(s)* means all persons who were, now are or shall be *Trustees* or *Employees*.
The term *Insured(s)* shall also include:
 - (1) the lawful spouses of such *Trustees* or *Employees*;
 - (2) the estates, heirs or legal representatives of deceased persons who were *Trustees* or *Employees* at the time of the *Wrongful Act* upon which the *Claim* is based;
 - (3) the legal representatives of *Trustees* or *Employees* in the event of incompetency, insolvency or bankruptcy;
 - (4) the *Sponsoring Employer Company*;
 - (5) the *Pension Fund*;
 - (6) the *Corporate Trustee Company*.
- 2.8 *Insurer* means the *Insurer(s)* stated in Item 13 of the Schedule
- 2.9 *Loss* means any damages, judgements, settlements and *Defence Costs*. *Loss* shall not include fines or penalties imposed by law, punitive or exemplary damages (other than exemplary damages awarded in an action for libel or slander) or any matter deemed uninsurable under the law.

2.10 Notification means:

Written notice of any *Claim* given to *Us* by *You* or the *Company* within the *Certificate Period* or during a *Discovery Period*. However, if a *Claim* is made against *You* in the 7 days prior to the expiry of the *Certificate Period* written notice can be given to *Us* within 14 days of the *Certificate Period* expiring.

2.11 *Pension Fund* means any employer sponsored pension fund or scheme shown in Item 2 of the Schedule.

2.12 *Sponsoring Employer Company* means the company shown in Item 1 of the Schedule and any *Subsidiary*.

2.13 *Subsidiary* means any company as defined by Section 736 of the Companies Act 1985 or any re-enactment.

2.14 *Trustee* means any individual person who is duly appointed as trustee of the *Pension Fund* or as a director or officer of the *Corporate Trustee Company*.

2.15 *Wrongful Act* means any actual or alleged breach of trust, breach of duty, breach of statutory provision, neglect, error or omission, misstatement, misleading statement or other act wrongfully committed or attempted by an *Insured* after the *Sponsoring Employer Company* first became a principal or participating employer in relation to the *Pension Fund*, and claimed against an *Insured* solely by means of their status acting on behalf of the *Pension Fund*.

SECTION 3. EXCLUSIONS

The *Insurer* shall not be liable to make any payment for *Loss* based on arising from or attributable to:

- 3.1** (a) an *Insured* who is found by any Court to be fraudulent, dishonest or criminal; or
(b) any personal profit or advantage gained by an *Insured* to which such *Insured* was not legally entitled.

For determining the applicability of Exclusion 3.1 (a) or 3.1 (b) a *Wrongful Act* of one *Insured* shall not be imputed to any other *Insured*.

3.2 *Claims* arising from or attributable to proceedings which existed prior to or were pending at the date stated in Item 6 of the Schedule or which arise from matters substantially the same as alleged or established in such proceedings

3.3 *Claims* arising from or attributable to any claims or circumstances that should have been notified to any certificate or policy of insurance which inception prior to the inception of this Certificate or which arise from matters substantially the same as alleged or established in such proceedings

3.4 the failure to procure funds to the *Pension Fund* in accordance with the trust deeds (or other similar document) or failure to collect contributions from the *Sponsoring Employer Company* or any other source which is owed to the *Pension Fund*. However this exclusion shall not apply to the negligence of a *Trustee* whilst acting in such capacity.

3.5 any injury, damage, expense, cost, loss, liability or legal obligation in any way related to pollution however caused including shareholder or derivative *Claims* arising from or attributable to such pollution. Pollution includes the actual, alleged or potential presence in or introduction into the environment of any substance, if such substance has, or is alleged to have, the effect of making the environment impure, harmful or dangerous. Environment includes any air, land, structure or the air therein, watercourse or water, including ground water.

It is agreed, however, that this exclusion shall not apply to *Defence Costs* up to a limit of GBP 500,000 in the aggregate for the *Certificate Period* (which limit shall be part of and not in addition to the *Limit of Liability* shown in Item 4 of the Schedule) provided, however, that on or before the date specified in Item 6 of the Schedule, the *Sponsoring Employer Company*, *Employee* or any person insured under this Certificate did not know of could have reasonably foreseen that there existed any situation, circumstance or *Wrongful Act* which could give rise to a *Claim*.

3.6 any war, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any unlawfully constituted authority.

3.7 any act of Terrorism.

For the purposes of this Exclusion, Terrorism shall mean any act(s) of force and/or violence by any person(s) acting alone or on behalf or in connection with any organisation that is:

- (a) for political, religious or other ends; and/or
(b) directed towards the over-throwing or influencing of any Government de jure or de facto; and/or
(c) for the purpose of putting the public or any part of the public in fear.

- 3.8** any *Claim* brought in the jurisdiction of the USA or Canada or any *Claim* brought elsewhere to enforce a judgement in the USA or Canada whether by way of reciprocal agreement or otherwise.
- 3.9** loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising from or any consequential loss or any legal liability of whatsoever nature
directly or indirectly caused by or contributed to by or arising from
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
 - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 3.10** (a) bodily injury, sickness, disease or death of any person, or
(b) damage to or destruction of any tangible property including loss of use of such property.

SECTION 4. CONDITIONS

4.1 Limit of Liability

The amount shown in Item 4 of the Schedule is the *Insurers* maximum aggregate liability for all *Loss* including *Defence Costs*, arising from all *Claims* first made during the *Certificate Period* and the *Discovery Period* if applicable. The maximum limit of liability that the *Insurer* shall be liable for under this Certificate and any other policy issued to the same *Insured* for any *Claim* involving both policies shall be the sum shown in Item 4 of the Schedule.

Two or more *Claims* arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as a single *Claim*. All such *Claims* shall be treated as though first made during the *Certificate Period* or *Discovery Period* in which the earliest *Claim* was first made.

4.2 Deductible

The *Insurer* shall have no obligation to pay *Loss* or *Defence Costs* until the *Insured* has incurred *Loss* in the amount of the deductible shown in Item 5 of the Schedule if applicable, except that, if the *Sponsoring Employer Company* or *Pension Fund* is unable to pay the amount of deductible due to insolvency then subject to all other terms and conditions of this Certificate the *Insurer* shall pay such *Loss* and be subrogated to the *Insureds* rights of indemnity.

The deductible shall apply to all *Loss* which is claimed against the *Sponsoring Employer Company*, or the *Pension Fund*, or for which advancement or indemnification by the *Sponsoring Employer Company* or *Pension Fund* is required or permissible under applicable trusts, indemnity laws or agreements regardless of whether or not they actually advance or indemnify the *Trustees* or *Employees* for such *Loss*.

4.3 Claims

It is a condition precedent that the *Sponsoring Employer Company* or one of the *Insureds* must give *Notification* to the *Insurer* of any *Claim* first made during the *Certificate Period* as soon as practicable, but in no event later than 30 days after the expiration of this Certificate, or, in the case of *Claims* first made during the *Discovery Period*, if applicable, no later than 30 days after the *Discovery Period* expires.

The *Sponsoring Employer Company* and any *Insured* shall give the *Insurer* such information and cooperation as it may reasonably require. Notice and all information shall be sent in writing to the *Insurer(s)* at the address shown in Item 10 of the Schedule.

Neither the *Sponsoring Employer Company* or any *Insured* shall admit liability for or settle any *Claim* or incur *Defence Costs* without the *Insurers* prior written consent, which consent shall not be unreasonably withheld. The *Insurer* shall at times have the right, but not the duty to associate in the investigation, defence or settlement of any *Claim* to which this Certificate may apply.

If during the *Certificate Period* or *Discovery Period*, if applicable, the *Sponsoring Employer Company* or any *Insured* shall become aware of an actual or alleged *Wrongful Act* which may subsequently give rise to a *Claim* and during such period give immediate notice to the *Insurer* of such *Wrongful Act*, the *Claim* later made against any *Insured* arising out of that *Wrongful Act*, shall for the purposes of this Certificate be treated as a *Claim* made during the *Certificate Period* or *Discovery Period*, if applicable, in which such notice was first given. Notice of such *Wrongful Act* must contain a specific description of the actual or alleged *Wrongful Act*, state by whom it was committed or alleged to have been committed, and describe the material facts or circumstances which may give rise to a *Claim*.

4.4 Advancement of Defence Costs

The *Insurer* shall advance *Defence Costs* for which the *Sponsoring Employer Company* or *Pension Fund* cannot advance or indemnify under trusts, indemnity laws or agreements prior to the final payment or settlement of any *Claim*. Notwithstanding the above the *Insurer* shall advance *Defence Costs* on an ongoing basis prior to the final payment or settlement of any *Claim* where such *Defence Costs* are incurred with the written consent of the *Insurer*. However, such advance payments for a *Claim* deemed not to be covered under this *Certificate* or a *Claim* that is deemed to be excluded must be returned to the *Insurer* upon demand

If a *Claim* against an *Insured* or *Insureds* includes causes of action against uninsured defendants, allegations of uninsured damages, uninsured acts or other uninsured matters, the *Insurer*, the *Sponsoring Employer Company*, the *Pension Fund* and the *Insureds* agree to use their best efforts to determine a reasonable allocation of defence costs, settlements and damages between the *Insurer*, the *Sponsoring Employer Company*, the *Pension Fund* and the *Insureds*.

4.5 Takeovers and Mergers

If during the *Certificate Period* the *Sponsoring Employer Company* merges with or consolidates into another entity, or any person or entity acquires 50% or more of the issued share capital of the *Sponsoring Employer Company*, then the cover provided under this *Certificate* is amended so as to apply only to *Wrongful Acts* committed prior to the effective date of such transaction.

The *Sponsoring Employer Company* shall give written notice of such transaction within 30 days of the effective date of such transaction.

In the event of such takeover or merger the *Sponsoring Employer Company* may cancel this *Certificate* on behalf of the *Sponsoring Employer Company*, the *Pension Fund* and all *Insureds* by sending written notice to the *Insurer*, stating when thereafter the cancellation shall be effective, whereupon the *Insurer* shall refund the unearned premium at customary rates.

4.6 Other Insurance

The insurance provided by this *Certificate* shall apply in excess of any other valid and collectible insurance.

4.7 Subrogation

In the event the *Insurer* makes any payment under this *Certificate*, the *Insurer* shall be subrogated to all the *Sponsoring Employer Company's*, the *Pension Fund's* and the *Insured's* rights of recovery, and the *Sponsoring Employer Company*, the *Pension Fund* and the *Insureds* shall cooperate with the *Insurer* in securing such rights.

4.8 Certificate Interpretation

The laws of England and Wales shall prevail in the event of any dispute regarding interpretation of this *Certificate*.

4.9 Cancellation

This *Certificate* shall be cancelled in respect of the *Sponsoring Employer Company*, the *Pension Fund* and all *Insureds* at the earliest of the following times:

Immediately upon the *Sponsoring Employer Company* mailing to the *Insurer* written notice of cancellation; 45 days after the *Insurer* mails to the *Sponsoring Employer Company* written notice of cancellation; upon expiration of the *Certificate Period* shown in Item 3 of the Schedule; or at such other times that may be agreed upon by the *Sponsoring Employer Company* and the *Insurer*.

The *Insurer* shall refund the unearned premium at short rate if this *Certificate* is cancelled by the *Sponsoring Employer Company*. If cancelled by the *Insurer* the return premium if any shall be computed pro-rata.

4.10 New Pension Funds

If during the *Certificate Period* the *Sponsoring Employer Company* becomes a principal or participating employer in relation to any additional *Pension Funds* or newly created *Pension Funds*, cover shall only apply in respect of *Wrongful Acts* committed after the date such responsibility for the pension fund was assumed or created unless the additional or newly created *Pension Funds* have total assets that exceed the sum stated in Item 12 of the Schedule.

The *Sponsoring Employer Company* shall provide written notice to the *Insurer* of such addition or creation, and the *Insurer* shall reserve the right to charge additional premium and/or apply new terms and conditions in respect of such addition or creation that exceeds the sum stated in Item 12 of the *Schedule*.

4.11 Contracts (Rights of Third Parties) Act 1999 Clause

This contract does not, and is not intended to, confer or create any right enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the contract; and the parties to this contract reserve the right to amend or rescind the contract without giving notice to, or requiring the consent of, any third party.

4.12 Proposal Form Disclosure and Severability

The *Insurer* has relied upon the statements made in the proposal and materials accompanying it in granting cover under this Certificate. All such statements and materials form the basis of the contract of insurance.

However the proposal shall be construed as a separate proposal by the *Sponsoring Employer Company*, the *Pension Fund* and each of the *Insured*, and with respect to statements and particulars made in the proposal, no statements made or information possessed by the *Sponsoring Employer Company* the *Pension Fund* or any *Insured* shall be imputed to any other to determine whether cover is available for any *Claim*.

SECTION 5. DISCOVERY PERIOD

5.1 If the *Insurer* refuses to renew this Certificate the *Sponsoring Employer Company* may upon payment of an additional 75% of the full annual premium extend the cover under this Certificate for a period of 12 months which shall run from the date this Certificate expires, for any *Claim* first made against an *Insured* during the *Discovery Period*, but only in respect of *Wrongful Acts* committed or alleged to have been committed before the date of expiration of the *Certificate Period*.

The *Sponsoring Employer Company's* right to exercise the *Discovery Period* must be by notice to the *Insurer* in writing within 10 days of expiration of the *Certificate Period*.

The right to exercise the *Discovery Period* does not apply in the event of cancellation of the Certificate resulting from non-payment of the premium. The *Insurer's* offer of renewal terms, conditions, limits of liability or premium different from those of the expiring policy shall not constitute a refusal to renew.

Section 6. Extensions

6.1 Employee Benefit Programmes

Cover as is provided under this Certificate shall extend to pay the *Loss* of any *Trustee* or *Employee* of the *Sponsoring Employer Company* which they are legally obligated to pay for a *Claim* arising out of the administration of any employment benefit programme established or maintained by the *Sponsoring Employer Company* to the extent that such employment benefit programme was established or maintained for the purposes of providing for its employees, families or beneficiaries, through insurance or otherwise, medical, surgical or hospital benefits, or benefits in the event of sickness, accident, disability, death, unemployment, hardship, day care, scholarship or apprenticeship.

6.2 Employee Share Ownership Programme

Cover as is provided under this Certificate shall extend to pay the *Loss* of any *Trustee* or *Employee* of the *Sponsoring Employer Company* for *Loss* which they are legally obligated to pay for a *Claim* arising out of the administration of any *Employee Share Ownership Programme*.

6.3 Pensions Ombudsman and OPRA Awards

Notwithstanding anything contained to the contrary in 2. Definitions *Loss*, cover as is provided under this Certificate shall extend to pay a monetary award (including fines and penalties) imposed upon an *Insured* by the Pensions Ombudsman and/or by the Occupational Pensions Regulatory Authority and/or the Pension Regulator or any successor body in connection with any *Claim* provided that the premium for this extension shall not be paid by the *Pension Fund* or out of *Pension Fund* assets.

The term 'monetary award' shall not include fines or penalties imposed in connection with an act for which the insured has been prosecuted.

6.4 Retired Trustees Extension

If the *Sponsoring Employer Company* does not renew this Certificate or replace it with any other insurance providing pension trustee liability coverage and the *Discovery Period Option* detailed in Section 5 of this Certificate has not been purchased then any *Insured Trustee* or *Employee* will be automatically entitled to a 72 month *Discovery Period* at no additional premium after the expiry of the *Certificate Period* provided that the *Insured Trustee* or *Employee* retired from all employment prior to the expiry of the *Certificate Period*.

Except as otherwise provided in this endorsement, all terms, provisions and conditions of this Certificate shall have full force and effect.

6.5 Pre-Agreed Run-Off Coverage

In the event of an occurrence taking place as described in Section 4.5. the *Insured* shall be entitled to request from *Us* a replacement run-off Certificate. In such event *We* agree to offer a replacement run-off Certificate:

- (a) for a period of 12 months for a premium of no more than 150% of the annual or annualised equivalent of the premium stated at Item 7 of the Schedule; or
- (b) for a period of 24 months for a premium of no more than 200% of the annual or annualised equivalent of the premium stated at Item 7 of the Schedule; or
- (c) for a period of 36 months for a premium of no more than 250% of the annual or annualised equivalent of the premium stated at Item 7 of the Schedule; or
- (d) for any other period or premium as may mutually agreed between the *Company* and *Us*.

It is agreed, however, that if *You* or the *Company* have provided *Notification* or have made us aware of a *Wrongful Act* that could give rise to a *Claim*, then *We* are not bound to provide a replacement run-off Certificate for the premiums stated above. In this case, however, *We* may offer the *Company* a replacement run-off Certificate on such terms and conditions as *We* decide are appropriate and at our discretion.

If any such replacement Certificate is purchased, then:

- (i) it will take effect from the effective date of an occurrence as described in Section 4.5. of this Certificate; and
- (ii) it will only apply to *Wrongful Acts* actually or allegedly committed by *You* prior to the effective date of an occurrence as described in Section 4.5. of this Certificate; and
- (iii) *We* will refund the relevant proportion of the premium calculated pro rata as at the effective date of the merger, consolidation or acquisition (regardless of the provisions of Section 4.9 of this Certificate); and
- (iv) it may not be cancelled and the premium for it is not refundable (save that *We* may cancel it due to non-payment of premium in accordance with the terms of this Certificate by giving 30 days written notice to the *Company*); and
- (v) it will not provide Retirement Cover or a Discovery Period as provided for in Sections 6.5 and 5.1 of this Certificate (unless agreed by *Us* to the contrary).

Please note that this page replaces the content on the inside back cover of this Certificate.

Our Regulatory Status

This insurance is underwritten by DUAL Corporate Risks Limited (Company No. 4160680) on behalf of Arch Insurance Company (Europe) Limited (Company No. 4977362). Both DUAL Corporate Risks Limited and Arch Insurance Company (Europe) Limited are authorised and regulated by the Financial Services Authority. The Registration Numbers at the FSA are 312593 and 229887 respectively. These details may be checked by visiting the Financial Services Authority website at www.fsa.gov.uk/register. Alternatively the Financial Services Authority may be contacted on 0845 606 1234.

DUAL Corporate Risks Limited is a member of the Financial Services Compensation Scheme (FSCS). Compensation under the scheme for insurance advising and arranging is covered for 100% of the first GBP 2,000 and 90% of the remainder of the cost, without any upper limit. However for risks incepting on or after 1st January 2010, compensation under the scheme for insurance advising and arranging is covered for 90% of the claim, without any upper limit.

Arch Insurance Company (Europe) Limited is a member of the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if it is unable to meet its liabilities under this insurance certificate. This depends upon the type of business and the circumstances of the claim. Further Information about the compensation scheme arrangements is available from the FSCS or by visiting the FSCS website at www.fscs.org.uk.

How to Complain

We intend to provide an excellent service to you, however, we recognise that there may be occasions when you feel that this has not been achieved. If you are unhappy with any aspect of the service that you receive, please contact either your insurance broker or

The Executive Chairman
DUAL Corporate Risks Limited
140 Leadenhall Street
London
EC3V 4QT

Please state the nature of your complaint, the certificate and/or claim number.

If after taking this action you are still unhappy with our response you may be able to contact your Insurer directly. We can provide you with the relevant contact details on request.

Having taken this action, if you feel that your complaint has not been handled satisfactorily, you may seek assistance from:

FSA The Financial Services Authority 25 The North Colonnade Canary Wharf London E14 5HS The Financial Ombudsman Service will become involved if you are an eligible complainant as defined by the rules of the Financial Services Authority.

Or if your Certificate is provided by a Lloyd's syndicate (as named on your Certificate of Insurance):

Lloyd's Policyholder & Market Assistance Lloyd's, One Lime Street, London EC3M 7HA Telephone – 020 7327 5693 Email: complaints@lloyds.com