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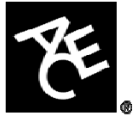
OPDU

Elite

**Pension Trustee Liability
Insurance Policy**

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ACE European Group
Limited
UK Head Office:
The ACE Building
100 Leadenhall Street
London EC3A 3BP
020 7173 7000 tel
020 7173 7800 fax
www.aceeurope.co.uk

Occupational Pensions
Defence Union
90 Fenchurch Street
London EC3M 4ST

020 7204 2400 tel
020 7204 2477 fax
www.opdu.com

OPDU

Elite IV Pension Trustee Liability Insurance Policy

In consideration of the payment of the premium and subject to all terms conditions and limitations of the Policy the Insurer agrees with the Insured as follows:-

1. Insuring Agreement

- i) The Insurer will pay on behalf of the Trustees or Employees all Loss which the Trustees or Employees are legally obligated to pay, or which the Sponsoring Employer Company or Pension Scheme is legally required or permitted to pay to the Trustees or 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 Policy Period, or Discovery Period if applicable, and notified to the Insurer in accordance with the requirements of this Policy.
- ii) The Insurer will pay on behalf of the Sponsoring Employer Company or Corporate Trustee Company all Loss which the Sponsoring Employer Company or Corporate Trustee Company are legally obligated to pay for a Claim for a Wrongful Act provided the Claim is first made against the Sponsoring Employer Company or Corporate Trustee Company during the Policy Period, or Discovery Period if applicable, and notified to the Insurer in accordance with the requirements of this Policy.
- iii) The Insurer will pay on behalf of the Pension Scheme all Exonerated Loss which is suffered as a direct consequence of a Wrongful Act by a Trustee who has been exonerated for such Wrongful Act, provided the Wrongful Act is first discovered during the Policy Period, or Discovery Period if applicable, and notified to the Insurer in accordance with the requirements of this Policy.
- iv) The Insurer will pay on behalf of the Insured all Investigation Expenses in respect of an Investigation, provided the Investigation is instigated during the Policy Period, or Discovery Period if applicable, and notified to the Insurer in accordance with the requirements of this Policy.
- v) The Insurer will pay on behalf of the Insured all Mitigation Expenses incurred in taking action to prevent, limit or mitigate the Insured's exposure to an actual or potential Claim for a Wrongful Act, provided that the Wrongful Act is first discovered during the Policy Period, or Discovery Period if applicable, and notified to the Insurer in accordance with the requirements of this Policy.

SIGNED for and on behalf of the Insurer

Andrew Kendrick *Chairman and Chief Executive Officer*

This Policy should be checked and if incorrect returned immediately for correction

2. Definitions

- (1) **Authorised Insured** means the Insured who acts on behalf of each and every Insured with respect to the giving and receiving of notice of a Claim or Investigation or of a circumstance that may give rise to a Claim or to an Investigation, the payment of premiums and the receiving of any return premium that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy.
- (2) **Bail Bond Costs** means the reasonable premium (not including any collateral) for a bond or other financial instrument to guarantee a Trustees' or Employees' contingent obligation for bail or equivalent in any jurisdiction required by a Court in respect of any Claim. The sub-limit of liability for Bail Bond Costs is 10% of the Limit of Liability.
- (3) **Benefit** means any obligation under a Pension Scheme to a participant or beneficiary, which is a payment of money or property, or the grant of a privilege or perquisite.
- (4) **Claim** means:
 - (a) any written demand made against an Insured based upon a Wrongful Act whether or not containing a demand for monetary damages, asserting legal liability on the part of the Insured;
 - (b) any civil or arbitral proceeding against an Insured;
 - (c) any criminal proceedings against an Insured;
 - (d) any administrative or regulatory proceeding or official investigation commenced against an Insured based upon a specified Wrongful Act;
 - (e) a contribution notice as issued by the Pensions Regulator under Section 38 of the Pensions Act 2004; or
 - (f) any Extradition Proceeding.
- (5) **Corporate Trustee Company** means a company established by the Sponsoring Employer Company or any predecessor thereof and duly appointed solely to act as Trustee of the Pension Scheme.
- (6) **Court Application Costs** means all reasonable legal and other professional charges, costs and expenses incurred by an Insured in and for the purpose of any actual or proposed Court or arbitral proceedings, or in connection with any complaint made or dispute referred to the Pensions Ombudsman, and which the Insured has incurred or been ordered to pay.
- (7) **Defence Costs** means all reasonable fees, costs and expenses (including lawyers', arbitrators' and experts' fees) incurred by an Insured, which are necessary to defend or appeal a Claim covered by this Policy which are not Investigation Expenses, Mitigation Expenses, Prosecution Costs or Public Relations Expenses, and which are incurred with the written consent of the Insurer, such consent not to be unreasonably withheld or delayed. Defence Costs do not include the wages, salary or other remuneration of an Insured, nor any Value Added Tax or similar tax to the extent that such tax can be recovered by the Insured.
- (8) **Discovery Period** means the period of time in Section 5 of this Policy.
- (9) **Document** means all documents and computer record systems but excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments whether printed or reproduced by any other method, which are the property of the Insured or for which the Insured is legally responsible and which relate to the Pension Scheme.
- (10) **Employee** means any natural person (including director, officer, committee or board member, administrator, pension scheme manager, internal dispute manager or employee) who whilst in employment of the Sponsoring Employer Company, Corporate Trustee Company, Trustee or Pension Scheme provides services in relation to the Pension Scheme.
- (11) **Exonerated Loss** means the amount which the Pension Scheme has paid or become liable to pay in Benefits or mistaken Benefits as a direct consequence of the Wrongful Act, after deduction of the amount which the Pension Scheme would have paid or would have been liable to pay in Benefits under the trust deed and rules of the Pension Scheme if the Wrongful Act had not occurred.

- (12) Extradition Proceedings means:
- (a) a request for extradition, a warrant for arrest or other proceedings under the provisions of the United Kingdom Extradition Act 2003 in respect of or against an Employee or Trustee for any actual or alleged act or omission connected with the Pension Scheme;
 - (b) any associated appeals and applications for judicial review; or
 - (c) any application or appeal to the European Court of Human Rights; or
 - (d) the equivalent of the above in any other jurisdiction.

A Wrongful Act is not required for cover for Extradition Proceedings.

- (13) Insured means a natural person who was, is or shall be a Trustee or Employee in his or her capacity as Trustee or Employee. Insured is specifically extended to include the lawful spouse, domestic partner or civil partner of such a Trustee or Employee and the estate, heirs or legal representatives of such a Trustee or Employee in the event of death, incapacity, insolvency or bankruptcy, provided always that the Claim against such a Trustee or Employee would have been covered in the absence of the death, incapacity, insolvency or bankruptcy.

Insured also means the Sponsoring Employer Company, the Pension Scheme and the Corporate Trustee Company.

In addition, if noted in a specific written endorsement to this Policy, Insured also includes any other natural person or entity, including directors and officers of said entity, in their capacity as a Trustee of the Pension Scheme.

- (14) Insurer means ACE European Group Limited.
- (15) Investigation means an investigation or proceeding connected with the Pension Scheme, outside of the United States of America, by the Pensions Ombudsman, the Pensions Regulator, the Pensions Regulator Tribunal, the Pension Protection Fund or equivalent body or entity, instigated during the Policy Period or Discovery Period if applicable, and having the power to require the Insured to provide evidence or documents.

A Wrongful Act is not required for cover for an Investigation.

- (16) Investigation Expenses means the reasonable legal costs and related professional fees incurred by an Insured with the prior written consent of the Insurer, such consent not to be unreasonably withheld or delayed, in relation to an Investigation up to the limit shown in Item 7 of the Schedule (such limit shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Schedule); provided that such costs are not available from any other source of insurance or indemnification other than as advancement or indemnity under applicable trusts, indemnity laws or agreements.

Investigation Expenses do not include the wages, salaries or other remuneration of any Trustee or Employee nor any Value Added Tax or similar tax to the extent that such tax can be recovered by the Insured.

- (17) Loss
- (a) means any damages, judgements, settlements and awards for which an Insured is legally liable in respect of a Claim (including distress awards or compensation as determined by the Pensions Ombudsman, the Pensions Regulator, the Pensions Regulator Tribunal, the Pension Protection Fund or equivalent body or entity);
 - (b) includes Defence Costs;
 - (c) includes Exonerated Loss;
 - (d) includes Investigation Expenses;
 - (e) includes Mitigation Expenses;
 - (f) includes Prosecution Costs;
 - (g) includes Public Relation Expenses.

Where the Loss, or part of the Loss, is in respect of Benefits, Loss will be calculated as being the amount which the Trustee has paid or becomes liable to pay out of the Pension Scheme in Benefits as a direct consequence of a Wrongful Act, after deduction of the amount the Pension Scheme would have paid or would have been liable to pay in Benefits under the trust deed and rules of the Pension

Scheme if the Wrongful Act had not occurred.

In the event that such Benefits are payable by an Insured who is a natural person as a personal obligation, Loss means the amount that they are liable to pay as a direct consequence of a Wrongful Act.

Loss shall not include fines or penalties (other than civil fines and penalties under 7. Extensions (b) of this Policy) imposed by law, taxes or sums payable in relation to taxes and any sum deemed uninsurable under the law under which this Policy is construed. Loss shall also not include the wages, salaries, fees or expenses of an Insured nor any Value Added Tax or similar tax to the extent that such tax can be recovered by the Insured.

- (18) Mitigation Expenses means the costs and expenses of measures taken by or on behalf of an Insured which are reasonably required to prevent, limit or mitigate the Insured's exposure to Loss to an actual or potential Claim for a Wrongful Act, insofar as this loss, if it occurred, would be covered by this Policy, and which are incurred with the written consent of the Insurer, such consent not to be unreasonably withheld or delayed, up to GBP 500,000 (such limit shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Schedule).

Where Mitigation Expenses include the payment of Benefits, they shall be calculated as being the amount of such Benefits which are a direct consequence of a Wrongful Act, after deduction of the amount the Pension Scheme would have paid or would have been liable to pay in Benefits under the trust deed and rules of the Pension Scheme if the Wrongful Act had not occurred.

Mitigation Expenses do not include the wages, salary or other remuneration of an Insured, nor any Value Added Tax or similar tax to the extent that such tax can be recovered by the Insured.

- (19) OPDU means the Occupational Pensions Defence Union.
- (20) OPDU Advisory Council means the council established under the OPDU Rules.
- (21) OPDU Advisory Panel Expert means the individual appointed under the OPDU Rules
- (22) OPDU Rules means the standard terms of business of OPDU
- (23) Pension Scheme means any employer sponsored scheme(s), plan(s) or arrangement(s) established or maintained wholly outside the United States of America and stated in Item 5 of the Schedule.
- (24) Policy means this policy and any endorsement thereto.
- (25) Policy Period means the period of time shown in Item 2 of the Schedule of this Policy.
- (26) Pollutant means any contaminant, irritant or other matter or substance including but not limited to oil, smoke, vapour, soot, asbestos, asbestos-containing materials, fumes, fungi, acids, alkalis, nuclear or radioactive material, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- (27) Pollution means the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any Pollutant whether in solid, liquid, gas, odour, noise, vibration, electromagnetic radiation, ionising radiation, thermal or other form at any time.
- (28) Proposal means the proposal form submitted by the Insured in applying for this Policy and all information and documentation accompanying it and also such proposal forms and accompanying information and documentation concerning any previous policy issued by the Insurer of which the Policy is a replacement, renewal or continuation.
- (29) Prosecution Costs means the legal and other professional fees, costs and expenses to resist any application for or to bring legal proceedings to obtain the discharge or revocation of:
- (a) an order disqualifying a Trustee from holding such office; or
 - (b) an interim or interlocutory order:
 - (i) confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an Employee or Trustee for any actual or alleged act or omission connected with the Pension Scheme; or
 - (ii) creating a charge over real property or personal assets of an Employee or Trustee for any actual or alleged act or omission connected with the Pension Scheme
 - (c) an order of a court imposing a restriction of the Employee's or Trustee's liberty for any actual or alleged act or omission connected with the Pension Scheme; or

- (d) the deportation of an Employee or Trustee following revocation of otherwise proper, current and valid immigration status for any actual or alleged act or omission connected with the Pension Scheme.
- (30) Public Relation Expenses means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which an Insured may, in the reasonable exercise of its discretion, engage in order to prevent or limit adverse effects or negative publicity which it is anticipated may arise from any Claim or Investigation (including to disseminate the findings of a final adjudication in favour of an Insured), not including any Value Added Tax or similar tax to the extent that such tax can be recovered by the Insured. The sub-limit of liability for all Public Relation Expenses is GBP 100,000 (such limit shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Schedule).
- (31) Retired Trustee means a Trustee or Employee who has ceased to hold such office prior to expiry of the Policy.
- (32) Schedule means the schedule to this Policy.
- (33) Sponsoring Employer Company means the company shown in Item 1 of the Schedule and any Subsidiary.
- (34) Subsidiary means a company that the Sponsoring Employer Company directly or indirectly:
 - (a) controls through holding a majority of the voting rights; or
 - (b) controls through the right to appoint or remove a majority of its board of directors; or
 - (c) controls alone, pursuant to a written agreement with other shareholders, a majority of voting rights therein; or
 - (d) holds more than half of the issued share capital.

Provided that the cover under this Policy by virtue of any Subsidiary being an Insured only extends to Claims made against an Insured for Wrongful Acts committed or alleged to have been committed by an Insured whilst such entity is or was a Subsidiary.

- (35) Third Party Service Provider means those persons declared in the Proposal as having been appointed by the Trustee, Pension Scheme or Sponsoring Employer Company to provide services in relation to the Pension Scheme and who where necessary are licensed or regulated in that regard by statute or any recognised professional body or institution.
- (36) Trustee means any natural person, including a director or officer of a Corporate Trustee Company, who is, will be or has been appointed as trustee or acts or acted as a constructive trustee of the Pension Scheme in accordance with the provisions of the Pension Scheme or by Court Order.
Trustee shall not include any natural person who ceases or ceased to act as a trustee due to disqualification by the Pensions Regulator or equivalent body or entity for any act committed after the date of such disqualification.
- (37) Wrongful Act means any actual or alleged breach of trust, breach of duty, breach of statutory provision, maladministration, neglect, administrative error or wrongful omission, misstatement, misleading statement or any other act committed or allegedly committed by an Insured in relation to the Pension Scheme.

3. Exclusions

The Insurer shall not be liable to make any payment under this Policy:

- 1. (a) based on, arising from or attributable to any dishonest or fraudulent act or omission or an intentional breach of any statute, provision, regulation or law by an Insured; or
- (b) based on, arising from or attributable to any personal profit or advantage gained by an Insured to which such Insured was not legally entitled;

provided that this exclusion shall only apply if it is established through a judgment or any other final adjudication (including any appeal thereof) or any formal written admission by such Insured that the relevant conduct occurred.

For the purposes of determining the applicability of this Exclusion, the Wrongful Act of an Insured shall not be imputed to any other Insured.

2. based on, arising from or attributable to any pending or prior litigation or other proceedings or Investigation involving an Insured and issued or otherwise begun before the date shown in Item 6 (a) of the Schedule or alleging or derived from the same or substantially the same facts or circumstances alleged in the pending or prior litigation or proceedings or Investigation.
3. based on, arising from or attributable to any fact, circumstance, act, omission, Wrongful Act or other matter of which notice has been given under any policy existing or expired before or on the date shown in Item 2 of the Schedule.
4. based on, arising from or attributable to the failure to fund or procure funds to the Pension Scheme in accordance with the law or the trust deeds (or other similar provisions) or failure to collect contributions which are owed to the Pension Scheme from the Sponsoring Employer Company or any other source, including without limitation any Financial Support Direction. However this exclusion shall not apply to Loss resulting from a Claim against a Trustee or Employee alleging that such failure to fund or procure funds or to collect contributions arises from, is attributable to or is based upon the negligence of that Trustee or Employee.
5. based on, arising from, attributable to, in consequence of or in any way involving directly or indirectly Pollution.

Provided that this exclusion shall not apply to Defence Costs for a Claim brought outside the United States of America based on or arising from or attributable to Pollution up a maximum amount of GBP 1,000,000, which shall apply in the aggregate for the Policy Period including the Discovery Period if applicable (such limit shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Schedule) involving an Insured, unless the Claim was first made before the date shown in Item 6 (b) of the Schedule or alleging or derived from the same or substantially the same facts or circumstances alleged in any such Claim.
6. for any bodily injury (other than for mental or emotional distress), sickness, disease or death of any natural person, or any damage to or destruction of any tangible property including loss of use of such property, other than a Document.
7. for any Claim:
 - (a) against the Sponsoring Employer Company for any breach of any contract of employment or for any actual or constructive, wrongful or unfair dismissal;
 - (b) against any director or officer of the Sponsoring Employer Company for any act or omission solely in his capacity as a director.

4. Conditions

(a) Limit of Liability

- (i) The amount shown in Item 3 of the Schedule is the Insurer's maximum aggregate liability for all Loss under this Policy irrespective of the number of claims under this Policy or the number of Insureds who claim and irrespective of the amounts of any such claims or when they are made.
- (ii) The Insurer's maximum aggregate liability for all Loss in respect of which a sub-limit is specified in the Policy, Schedule or any endorsement attaching to this Policy shall be that specified sub-limit (such limit shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Schedule), irrespective of the number of claims under this Policy for such Loss or the number of Insureds who may so claim and irrespective of the amounts of any such claims or when they are made.
- (iii) Two or more Claims or Investigations arising out of a single Wrongful Act or act or a series of related Wrongful Acts or acts shall be treated as a single Claim or Investigation. All such Claims or Investigations shall be treated as though first made when the earliest such Claim or Investigation was first made or commenced.

(b) Retention

- (i) The retention shown in Item 4 (a) of the Schedule shall apply to any Loss for a Claim against the Sponsoring Employer Company or for which advancement or indemnification by the Sponsoring Employer Company is required or permissible under applicable trusts, indemnity laws or agreements or otherwise regardless of whether or not the Sponsoring Employer Company actually advance or indemnify the Trustees or Employees for such

Loss. The retention shall be paid by the Sponsoring Employer Company.

- (ii) The retention shown in Item 4 (b) of the Schedule shall apply to any Loss for a Claim for which advancement or indemnification by the Pension Scheme is required or permissible under applicable trusts, indemnity laws or agreements or otherwise regardless of whether or not the Pension Scheme actually advance or indemnify the Trustees or Employees for such Loss. The retention shall be paid by the Pension Scheme. Where exoneration has been granted, the retention shall not apply.
- (iii) The Insurer shall have no obligation to pay any Loss for a Claim within the amount of such retention if applicable, provided that, if the Sponsoring Employer Company or Pension Scheme fails or is unable to pay the amount of retention then subject to all other terms and conditions of this Policy the Insurer shall pay such Loss and be subrogated to the Insured's rights of indemnity.
- (iv) The retention(s) shown in Item 4 of the Schedule shall not apply to Investigation Expenses.

(c) Claims and Investigations

- (i) It is a condition precedent to the Insurer's liability to pay Loss under this policy in respect of a Claim or Investigation that an Insured shall give written notice to the Insurer of such Claim or Investigation as soon as practicable.

In the event of expiry of the Policy Period, notification must be given in any event no later than 45 days after the expiration of the Policy Period, or, in relation to a Claim first made against the Insured during the Discovery Period if applicable no later than expiry of the Discovery Period.

- (ii) The Insureds shall give the Insurer such information and cooperation as it may reasonably require. Notice and all information can be sent in writing to OPDU, 90 Fenchurch Street, London, EC3M 4ST. Alternatively, notice can be sent in writing direct to the Insurer at 200 Broomielaw, Glasgow G1 4RU (E-mail: claims@ace-ina.com).
- (iii) The Insured shall not do anything to prejudice any of the Insurer's rights nor shall they admit liability for or settle any Claim or, except as provided by Extension 7(d) Emergency Costs (when covered), incur Defence Costs, Investigation Expenses, Mitigation Expenses, Prosecution Costs or Public Relations Expenses without the Insurer's prior written consent, which consent shall not be unreasonably withheld or delayed. The Insurer shall at all times have the right, but not the duty, to effectively associate in the defence or settlement of any Claim, the incurring of Investigation Expenses, or the taking of measures to prevent, limit or mitigate exposure to direct financial loss to an actual or potential Claim to which this Policy may apply and to be given the opportunity to consult with the Insured in relation to any proposed action that the Insured may wish to take in relation to such Claim or Investigation.
- (iv) If there is a dispute between the Insured and the Insurer about whether to agree a proposed settlement or about whether a Claim should continue to be defended (taking into account whether the Claim is likely on the balance of probabilities to be defended and such possibilities as may exist for settling the Claim), the Insurer may obtain an opinion from a Queen's Counsel or equivalent in a different jurisdiction to decide the issue. That decision shall be binding upon the Insurer and the Insured, who shall act accordingly in relation to the proposed settlement or in continuing or not continuing to defend the action as the case may be.
- (v) If during the Policy Period or Discovery Period, if applicable, an Insured becomes aware of any circumstances that may give rise to a Claim and during such period gives notice of the same as soon as practicable to the Insurer then any Claim later made against any Insured shall for the purposes of this Policy be treated as a Claim made during the Policy Period or Discovery Period if applicable. A notice of such a circumstance must describe as precisely as possible all facts and details including the reasons for anticipating a Claim, with full particulars as to dates and persons involved and an estimate of quantum as precisely as possible.
- (vi) If during the Policy Period, an Insured becomes aware of any circumstances that may give rise to an Investigation and during such period gives notice of the same as soon as practicable to the Insurer, then any Investigation later commenced against any Insured shall for the purposes of this Policy be treated as an Investigation during the Policy Period. A

notice of such a circumstance must describe as precisely as possible all facts and details including the reasons for anticipating an Investigation. A notice of such a circumstance must describe as precisely as possible all facts and details including the reasons for anticipating an Investigation, with full particulars as to dates and persons involved and an estimate of quantum as precisely as possible.

(d) Advancement of Defence Costs and Prosecution Costs and Payment of Investigation Expenses, Mitigation Expenses and Public Relation Expenses

- (i) The Insurer shall advance Defence Costs or Prosecution Costs on an ongoing basis prior to the final payment or settlement of any Claim; provided that:
 - (a) such costs are incurred with the written consent of the Insurer, such consent not to be unreasonably withheld or delayed; and
 - (b) such advance payments by the Insurer shall be repaid to the Insurer in the event that the Insured is not entitled to payment of such Loss or part of such Loss under the Policy (the Limit of Liability shown in Item 3 of the Schedule shall be reduced by such amount until repaid to the Insurer).
- (ii) The Insurer shall advance Defence Costs or Prosecution Costs which the Sponsoring Employer Company or Pension Scheme fails to advance or indemnify where such failure is due solely to the insolvency of the Sponsoring Employer Company.
- (iii) In the event of an Investigation, the Insurer shall pay Investigation Expenses incurred from the time the Investigation is instigated on an ongoing basis provided that such Investigation Expenses are incurred with the written consent of the Insurer, such consent not to be unreasonably withheld or delayed.
- (iv) The Insurer will pay Mitigation Expenses or Public Relations Expenses on an ongoing basis provided that such Mitigation Expenses or Public Relations Expenses are incurred with the written consent of the Insurer, such consent not to be unreasonably withheld or delayed.

(e) Determination of Exonerated Loss

In the event of:

- (i) Exonerated Loss being determined by a court, tribunal or arbitrator of competent jurisdiction or the Pensions Ombudsman, such determination shall be binding for the purposes of this Policy;
- (ii) Exonerated Loss not being determined in line with (i) above, the amount shall be assessed by two OPDU Advisory Panel Experts, one to be appointed by the Insured and the other by OPDU;
- (iii) the OPDU Advisory Panel Experts being unable to agree the Exonerated Loss, the dispute shall be submitted to a member of the OPDU Advisory Council to be appointed by the Chairman of the OPDU Advisory Council whose decision shall be final and binding on the parties.

Only Exonerated Loss as quantified by a court, tribunal or arbitrator of competent jurisdiction or the Pensions Ombudsman or the OPDU Advisory Panel Experts or the member of the OPDU Advisory Council, as appropriate, shall be recoverable from the Insurer.

(f) Allocation of Loss

- (i) In the event of:
 - (a) a Claim or Investigation against an Insured which is not wholly covered by this Policy; and/or
 - (b) a Claim or Investigation against an Insured being also made against one or more persons or entities who are not Insureds;

the Insurer and the Insureds shall then use their best endeavours to determine a reasonable allocation of Loss that is covered under this Policy and loss that is not covered.

- (ii) In the event of a dispute as to allocation under sub-paragraph (i) above, the Insurer at its option or if requested by the Insured shall submit the dispute to binding arbitration before a panel consisting of one arbitrator selected by the Insured, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two. Such arbitration shall be conducted under the Rules of the London Court of International Arbitration, the Rules of which are hereby deemed incorporated.

(g) Created or Acquired Pension Schemes

If during the Policy Period the Sponsoring Employer Company becomes a principal or participating employer in relation to any additional or newly created pension schemes, automatic inclusion of such additional pension scheme under this Policy will be granted from the effective date of assumption of responsibility by the Sponsoring Employer Company, but only with respect to Wrongful Acts committed after the date such responsibility for the pension scheme was assumed or created.

However, if any such scheme has total gross assets in excess of 10% of the combined total gross assets of all Pension Schemes covered under this Policy at its inception date then cover is granted for a period of 60 days from the date of acquisition or creation. With the written agreement of the Insurer and subject to any additional premium and/or amended terms and conditions, this policy may be extended to include such created or acquired pension scheme beyond 60 days.

Cover shall only apply if such additional or newly created pension scheme(s) are listed by endorsement to the Policy and only in respect of Wrongful Acts committed after the date such responsibility for the pension scheme was assumed or created.

(h) Existing Pension Schemes

The cover under this Policy shall only apply to a Claim based on, arising from or attributable to a Wrongful Act which occurred after the Sponsoring Employer Company first became principal or participating employer in relation to the Pension Scheme.

(i) Cessation of Pension Schemes

If the Sponsoring Employer Company completes the wind up of any Pension Scheme before or after the inception of the Policy, cover with respect of such wound-up Pension Scheme shall continue until termination of this Policy for an Insured:

- (i) who was an Insured during the time of such winding up; or
- (ii) who would have been an Insured during the time of such winding up had this Policy been in effect

but only for Wrongful Acts by an Insured solely in relation to the Pension Scheme and prior to the date of such completion of winding up. The Insured shall give written notice to the Insurer of such winding up as soon as practicable together with such information as the Insurer may require.

Cover shall only apply if such wound-up pension scheme is either stated in Item 5 of the Schedule or listed by endorsement to the Policy.

(j) Other Insurance

If an Insured is or would (but for the existence of this Policy) be entitled to cover under any other policy (save for insurance specifically arranged to apply in excess of this Policy) in respect of any Claim or Investigation, the Insurer shall not be liable for Loss other than in excess of any amount that is or would (but for the existence of this Policy) have been payable under any other such policy.

(k) Subrogation

In the event the Insured notifies any Claim or Investigation or any circumstance that may give rise to a Claim or Investigation, the Insurer shall become subrogated to any Insured's rights of recovery. The Insured shall cooperate with the Insurer in securing such rights and shall not do anything to prejudice the Insurer's ability to assert such rights.

The Insurer shall not exercise any rights of subrogation against an Insured unless it is established that such Insured has committed a deliberate criminal act or obtained profit or advantage to which such Insured was not legally entitled.

(l) Sponsoring Employer Company Authorisation

The Sponsoring Employer Company hereby agrees to act as the Authorised Insured and each Insured agrees that the Sponsoring Employer Company shall so act on his or her behalf other than in the event of cancellation or termination of this Policy where the prior written agreement of all Trustees and/or the Corporate Trustee Company shall be required in order to effect such cancellation or termination.

(m) Non-assignment

No change in, modification of, or assignment of interest under this Policy shall be effective unless made by written endorsement to this Policy duly executed on behalf of the Insurer.

(n) Policy Interpretation

This Policy shall be governed by English Law. The Insurer and the Insured agree to submit to the exclusive jurisdiction of the English courts in relation to all disputes arising out of, relating to or connected with this Policy and/or its negotiation, validation or enforceability.

(o) Cancellation

This Policy shall be cancelled in respect of all Insureds at the earliest of the following times:-

- (i) immediately upon the Authorised Insured mailing to the Insurer written notice of cancellation; or
- (ii) seven days after the receipt by the Authorised Insured of a written notice of cancellation from the Insurer for non-payment of premium; or
- (iii) upon expiration of the Policy Period; or
- (iv) at such other times that may be agreed upon by the Authorised Insured and the Insurer.

The Insurer shall refund the unearned premium calculated using short period rates if this Policy is cancelled by the Authorised Insured

(p) Contracts (Rights of Third Parties) Act 1999

A person or company who is not a party to this Policy has no rights under the Contracts (Rights of Third Parties) Act 1999 in respect of this Policy.

5. Discovery Period

- (i) If the Authorised Insured refuses to renew the Policy, any Insured may upon payment of the sum referred to in Item 9 (a) of the Schedule extend the cover under this Policy for a period of 12 months from the date on which the Policy Period expires, for any Claim first made against the Insured during the Discovery Period, but only in respect of Wrongful Acts committed or alleged to have been committed prior to expiry of the Policy Period.
- (ii) If the Insurer refuses to renew this Policy the Insured may upon payment of the sum referred to in Item 9 (b) of the Schedule extend the cover under this Policy for a period of 12 months from the date on which the Policy Period expires, for any Claim first made against the Insured during the Discovery Period, but only in respect of Wrongful Acts committed or alleged to have been committed prior to expiry of the Policy Period.
- (iii) The Insured's right to purchase the Discovery Period as set out above must be exercised by notice to the Insurer in writing within 30 days of expiration of the Policy Period and is only effective upon payment of the above sum.
- (iv) 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.
- (v) The Insurer shall not be liable to make any payment in respect of any Claim first made against the Insured during the Discovery Period if at any time any Insured obtains any other Pension Trustee Liability insurance policy covering the whole or any part of the Discovery Period.

6. Proposal Form Disclosure and Severability

The Insurer has relied upon the Proposal in granting cover under this Policy. Such Proposal shall form the basis of this contract of insurance.

However, the Proposal shall be construed as a separate proposal by each Insured, and with respect to statements and particulars in the Proposal, no statements made or information possessed by any Insured shall be imputed to any other Insured to determine whether cover is available for that other Insured. With respect to member nominated trustees, the burden of proof shall be on the Insurer to establish that such member-nominated Trustee was involved in or aware of any such non-disclosure or misrepresentation

7. Extensions

Cover only exists under the following extensions if identified in Item 10 of the Schedule to this Policy. These extensions will be subject to the terms and conditions of this Policy.

(a) Public Relations Expenses

The Insurer will pay Public Relation Expenses arising from a Claim or Investigation first made during the Policy Period, provided such costs are incurred with the prior written consent of the Insurer, which consent shall not be unreasonably withheld or delayed, up to a maximum amount of GBP 100,000 which shall apply in the aggregate for the Policy Period (such limit shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Schedule).

(b) Civil Fines and Penalties

The Insurer will pay civil fines and penalties (to the extent that such civil fines and penalties are insurable under the proper law of this Policy) made against an Insured, either by the Pensions Ombudsman, the Pensions Regulator, the Pensions Regulator Tribunal, the Pension Protection Fund or an officially recognised independent regulatory authority, arising from any Claim first made or Investigation instigated in respect of an Insured during the Policy Period, provided that:

- (1) the premium for this extension is paid by the Trustees or Sponsoring Employer Company without recourse or reimbursement from the Pension Scheme or any of its assets; and
- (2) the Insurer shall not make any payment for fines, penalties or punitive damages imposed in connection with any criminal act for which an Insured has been or is to be prosecuted

Any payment under this extension shall be part of and not in addition to the aggregate limit of liability shown in Item 3 of the Schedule.

(c) Court Application Costs

The Insurer will pay to the Pension Scheme or a Trustee any Court Application Costs in or by reason of any actual or proposed legal or arbitral proceedings or any complaint made or dispute referred to the Pensions Ombudsman up to the maximum amount of GBP 1,000,000 (such limit shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Schedule) which they incur on their own account or which they are ordered to pay to any other person, or which are ordered to be paid to any person out of the Pension Scheme:

- (1) in such proceedings to which a Trustee is made a party and (i) in which a Sponsoring Employer Company or beneficiary of the Pension Scheme or a person who claims to be, or entitled to be, a beneficiary is party and (ii) which concerns or involves the Trustee in relation to the Pension Scheme, provided that within the Policy Period, or Discovery Period if applicable, the Trustee first receives written or verbal notice that another party proposes to join them or has joined them as a party to such proceedings; or
- (2) in such proceedings which a Trustee commences or applies to join and (i) in which a Sponsoring Employer Company or beneficiary of the Pension Scheme or a person who claims to be, or entitled to be, a beneficiary is party and (ii) which concerns or involves the Trustee in relation to a Pension Scheme, provided that the Trustee is first aware of the circumstances requiring the proceedings during the Policy Period, or Discovery Period if applicable, and as soon as practicable thereafter gives written notice to the Insurer and before commencing or applying to join the proceedings obtains OPDU Approval.

For the purposes of this extension, OPDU Approval means the unanimous decision of two OPDU Advisory Panel Experts, one to be appointed by the Trustee and the other by OPDU, taking account

of all relevant factors, but assuming for this purpose that the Trustee does not have the benefit of this Policy, that, in order to act as a proper Trustee, the Trustee should commence or apply to be joined to legal or arbitral proceedings or a dispute referred to the Pensions Ombudsman, or an appeal therefrom, in circumstances where some or all of the costs of those proceedings would or might fall to be paid out of the Pension Scheme. In the event that the OPDU Advisory Panel Experts are unable to reach a unanimous decision, the dispute shall be referred to a Queen's Counsel agreed by the Trustee and OPDU or in default of agreement appointed by the Chairman of the OPDU Advisory Council whose decision shall be final and binding.

(d) Emergency Costs

If the Insurer's written consent cannot reasonably be obtained before Defence Costs, Investigation Expenses, Prosecution Costs, Mitigation Expenses, Public Relation Expenses or Bail Bond Costs are incurred with respect to any claim, the Insurer will give retrospective approval for such costs of up to a maximum amount of GBP 100,000 which shall apply in the aggregate for the Policy Period (such limit shall be part of and not in addition to any sub-limits specified or the aggregate Limit of Liability shown in Item 3 of the Schedule). The Insured shall give written notice of any emergency costs incurred within 14 days.

(e) Employee Benefit Programmes

The Insurer will pay the Loss of any Insured for which they are legally obligated to pay for a Claim arising out of the administration of the employee benefit programme(s) listed in the Schedule or in an endorsement to this Policy established or maintained by the Sponsoring Employer Company to the extent that such employee 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.

(f) Employee Share Ownership Programmes

The Insurer will pay the Loss of any Insured for which they are legally obligated to pay for a Claim arising out of the administration of the share ownership programme(s) listed in the Schedule or in an endorsement to this Policy.

However, the Insurer shall not be liable to make any payments for Loss arising from a Claim based on, arising from or attributable to the depreciation or loss of investments as a result of investment advice given or decisions taken by the Insured.

(g) Extradition Proceedings

The Insurer will pay for Defence Costs, Bail Bond Costs and Public Relation Expenses in relation to Extradition Proceedings, provided such costs are incurred with the prior written consent of the Insurer, which consent shall not be unreasonably withheld or delayed.

(h) Loss of Documents

The Insurer will pay for all costs reasonably incurred in replacing or restoring Documents, which are during the Policy Period or Discovery Period if applicable discovered to have been lost, damaged or destroyed, provided that:

- (1) such loss, damage or destruction is sustained while the Documents are either in transit or in the custody of the Insured or of any person to whom the Insured has entrusted them;
- (2) such costs are incurred with the consent of the Insurer, which consent shall not be unreasonably withheld or delayed, up to a maximum amount of GBP 100,000 which shall apply in the aggregate for the Policy Period (such limit shall be part of and not in addition to the aggregate Limit of Liability shown in Item 3 of the Schedule); and
- (3) such costs are not available from any other source of insurance or indemnification other than as advancement or indemnity under applicable trusts, indemnity laws or agreements.

The cover provided under this extension excludes any loss, damage or destruction arising out of wear or tear, gradual deterioration, moth or vermin, and in respect of Documents comprising computer records excludes any loss, damage or destruction unless there is physical loss, damage or destruction of the media on which the records were stored.

(i) Prosecution Costs

The Insurer will pay Prosecution Costs arising from a Claim or Investigation first made during the Policy Period, provided such costs are incurred with the prior written consent of the Insurer, which consent shall not be unreasonably withheld or delayed, up to a maximum amount of GBP 100,000 which shall apply in the aggregate for the Policy Period (such limit shall be part of and not in addition to the aggregate Limit of Liability shown in Item 3 of the Schedule).

(j) Retired Trustees

In the event that this Policy is not renewed and a Discovery Period is not invoked, the Insurer will indemnify Retired Trustees in respect of Claims made against such persons during the period of 12 years immediately following the date of such non-renewal, provided that:

- (1) this extension shall apply only in respect of Wrongful Acts committed prior to or during the Policy Period;
- (2) there is no other insurance that covers or would (but for the existence of this Policy) cover such liability; and
- (3) no cover shall apply to a Trustee disqualified by the Pensions Regulator or equivalent body in respect of any matter arising from the reason for such disqualification.

(k) Third Party Service Provider Pursuit

The Insurer will pay fees, costs and expenses incurred by the Trustees in the pursuit of legal proceedings against a Third Party Service Provider for the purpose of establishing a breach of professional duty of care, provided that:

- (1) the Trustee is first aware of the circumstances requiring the proceedings during the Policy Period, or Discovery Period if applicable, and as soon as practicable thereafter gives written notice to the Insurer and demonstrates to the Insurer that they have reasonable grounds to pursue the proceedings;
- (2) such costs are incurred with the consent of the Insurer, which consent shall not be unreasonably withheld or delayed, up to a maximum amount of GBP 100,000 which shall apply in the aggregate for the Policy Period (such limit shall be part of and not in addition to the aggregate Limit of Liability shown in Item 3 of the Schedule); and
- (3) such costs are not available from any other source of insurance or indemnification other than as advancement or indemnity under applicable trusts, indemnity laws or agreements.

In the event of any dispute as to whether the Trustee has reasonable grounds to pursue proceedings or whether the Insurer has unreasonably withheld consent to incur costs, the dispute shall be referred to a Queen's Counsel agreed by the Trustee and OPDU or in default of agreement appointed by the Chairman of the OPDU Advisory Council whose decision shall be final and binding.

Data Protection

ACE European Group Limited and its group companies ('ACE') will use the information supplied during the formation and performance of this Policy for policy administration, customer services, the payment of claims and the production of management information for business analysis. We will keep this information for a reasonable period.

Where sensitive personal data has been disclosed, including any medical or criminal record information, ACE will also use this information for these purposes. ACE are entitled to ask about criminal convictions in relation to insurance risks. There is no obligation to provide ACE with details of any convictions which are spent under the terms of the Rehabilitation of Offenders Act 1974. ACE may also transfer certain information to countries that do not provide the same level of data protection as the UK for the above purposes. A contract will be in place to ensure the information transferred is protected.

ACE may record telephone calls for quality control, fraud prevention and staff training purposes.

When personal or sensitive data is supplied to ACE about third parties other than the Insured, both during the formation and performance of this policy, ACE assumes that those third parties consent to the supply of this information to ACE, to ACE processing this data, including sensitive personal data, and to the transfer of their information abroad. ACE will also assume that the supplier of the information is authorised to receive, on their behalf, any data protection notices.

ACE may share personal and sensitive personal information with the following organisations for the purposes described above:

- our connected companies, service providers, agents and subcontractors including loss adjusters and claims investigators;
- our reinsurers who use this information to assess the terms of specific policies and to administer our insurance policies generally;
- other insurance companies about other insurance policies you may have;
- the police, other insurance companies, fraud reference agencies and other representative bodies in relation to the prevention and detection of fraudulent claims or as part of our money laundering checks.

We work with the police, other insurance companies, fraud reference and detection agencies and other representative bodies to prevent and detect fraudulent or exaggerated claims. As part of this we will share information about your claims with providers of software designed to assist in the detection of fraudulent claims. We may also use commercially available databases to prevent money laundering.

Other companies may contact these bodies for information to help them make decisions about insurance or similar services they provide to you.

Individuals whose information has been supplied to ACE are entitled to a copy of that information on payment of a fee and to have any inaccuracies corrected. Such information is available by contacting the Data Protection Officer at 100, Leadenhall Street, London EC3A 3BP.

We do not use personal information for marketing purposes, nor do we share it with any other company for marketing purposes, unless consent to do so has been received in writing from you.

Complaints Procedure

We are dedicated to providing you with a high quality service, and want to maintain this at all times. If you feel that we have not offered you a first class service or you wish to make an enquiry regarding this insurance, please contact the intermediary who arranged this insurance for you or the manager of the branch of the company which issued your policy.

If you are still not satisfied, you may write to our Chief Executive of the company at ACE's head office – the address is shown on your policy.

ACE European Group Limited is subject to the compulsory jurisdiction of the Financial Ombudsman Service (FOS) and in certain circumstances, you can approach them for assistance if you remain dissatisfied with our response. Those circumstances are where the complainant is:

- a) A private individual
- b) A business with an group annual turnover of less than GBP1,000,000
- c) A charity with an annual income of less than GBP1,000,000 or
- d) A trustee of a trust that has a net asset value of less than GBP1,000,000

The FOS's contact details are FOS, South Quay, 183 Marsh Wall, London, E14 9SR, Phone: 0845 080 1800
e-mail: enquiries@financial-ombudsman.org.uk

Financial Services Authority

ACE European Group Limited, UK Head Office, 100 Leadenhall Street, London EC3A 3BP, authorised and regulated by the Financial Services Authority, registration number FRN202803. Full details can be found on the FSA's Register by visiting www.fsa.gov.uk/register or by contacting the FSA on 0845 606 1234