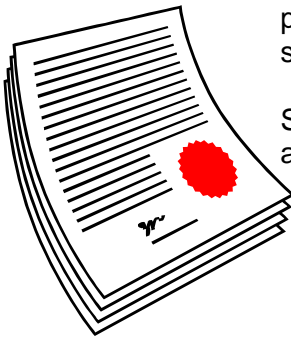


GROUP LIFE PLAN (Isle of Man)

Draft Trust Deed



The purpose of this draft trust deed is to establish a group life assurance plan providing lump sum benefits on the death of an employee which satisfies the Assessor of Income Tax.

See our Quick Guide for details about applying to the Assessor for approval.

- Suitable where the principal employer is an Isle of Man registered Limited company or PLC or LP.
Not suitable for a general partnership.
- It assumes the principal employer is to be corporate trustee and administrator.
- The life assurance plan relies on the policy provisions for the eligibility and benefits provided.

Note that a Deed of Participation is needed for any other Isle of Man employers participating in the plan, with the approval of the Assessor of Income Tax.

Important notice

This document is provided by Unum Limited as an example of the type of trust wording generally thought suitable for the above purpose. It is designed for execution in the Isle of Man in accordance with Isle of Man law.

Unum Limited wishes to make clear that it does not provide specialist documentation services relating to this type of deed. Neither Unum Limited nor its officers or employees warrant that the deed will be suitable for the individual circumstances of any client, nor that the wording of the deed will be legally effective.

Provision of this deed shall not constitute advice of any sort, whether legal or otherwise. We strongly recommend that this wording be referred to your legal advisers for vetting, tailoring to your circumstances and engrossment. You are responsible for any legal fees you incur.

Neither Unum Limited nor any of its affiliates or their respective directors, officers and employees shall be liable for any loss or damage arising out of or in any way connected with the use of the deed whether in its original form or as amended under any law or on any basis whatsoever whether contractual or otherwise, including, without limitation, any direct, indirect, incidental, special or consequential damages (such as loss of business or profits or any other financial loss). Unum Limited do not make any attempt to restrict their liability for death or personal injury caused by Unum Limited's negligence or for fraud or fraudulent misrepresentation.

The law and tax rules in relation to trust deeds are subject to change and as a result the deed may become outdated. However, Unum Limited is under no obligation to notify you of any such changes.

IoMTD/CD/LTD/U022018

These model wordings have been approved by the Assessor with effect from 28 February 2018 under the 1978 Act.

SAMPLE letter to Assessor of Income Tax (from trustees/company)

Engage as soon as possible - it must be before the plan start date if you are using your own trust wordings or using an amended version of the Unum trust, agreed as appropriate with the Assessor of Income Tax.

Mr N Brown
Pensions Officer
Income Tax Division, Treasury
Isle of Man Government
Government Office
Douglas, Isle of Man
IM1 3TX

Or email to: nigel.brown@itd.treasury.gov.im

TheGroup Life Plan

We present details of this group life scheme to gain approval under the Income Tax (Retirement Benefit Schemes) Act 1978 (of Tynwald).

- The scheme commencing date is (date)
- The nominated Isle of Man Administrator of the scheme is
and their address is
The Administrator's position within the business/company is
The contact details for the Administrator are/.....
- The sole purpose of the scheme is to provide a lump sum on the death of an employee or director
- As a wholly insured death benefit only scheme – the scheme is excluded from the need to register with the Financial Services Authority to be treated as an authorised retirement benefits scheme (under the Retirement Benefits Schemes Act 2000)
- The initial policy for the scheme is insured with Unum Limited
- A copy of the insurance policy is provided as part of this review
(If the terms of the insurance policy are amended, these will be presented to the Assessor for review and appraisal.)
- Copy attached of the scheme's discretionary trust – scheme assets are limited to insurance policies
This is the agreed *Trust Unum 022018* un-amended
This is the agreed *Trust Unum 022018* – amended in
- Deed of Participation is attached for *XYZ Company Limited* which is a participating employer based in the Isle of Man
We wish to confirm your approval to their participation.
The relationship with the principal employer is
- We also want agreement to include some employees who are on Secondment in the Isle of Man – cover for up to 3 years (or as agreed by the Assessor)
The details of the employees, the seconding employer and the relationship and their date of starting secondment are
- We also want agreement to include some employees who are on Overseas Secondment
The details of the employees, the seconding employer and the relationship are
- We also want agreement to include some employees who have ceased to be resident for tax in the Isle of Man
The details of the employees, their roles, their country of residence and their date of cessation of Isle of Man residence are

Deed of Declaration of Trust

THIS TRUST DEED is made on the day set out below (the **execution date**) by the **principal employer**. Execution of this deed confirms the establishment of a group life assurance plan under discretionary trust.

Plan	The <div style="text-align: right;">Group Life Plan</div>
Commencing Date	
Principal employer (and administrator)	
Company Registration Number of the Principal employer (and administrator)	
Registered Address of the Principal employer (and administrator)	

IN WITNESS whereof this Deed has been duly executed.

Execution Date
This execution applies to the entire document.	

<i>Signed as a deed on behalf of the principal employer and administrator by the following authorised signatories</i>	
..... Signature of Director/ Authorised Signatory Full name in block capitals Signature of Director/ Company Secretary/ Authorised Signatory Full name in block capitals

Contents	
Clause	Heading
1.	General Interpretation and Definitions
2.	Trustee
3.	Administrator
4.	Contributions, Plan Assets and Expenses
5.	Membership
6.	Benefits
7.	Lump Sum Benefit Trust
8.	Participation of Employers
9.	Substitution of Principal Employer
10.	Amendment
11.	Termination
12.	Assessor Limits and Requirements

BACKGROUND:

- (A) The **principal employer** has decided to establish the **plan** to provide lump sums on death for such **employees** [and directors] of the **principal employer** or of any **participating employers** as are admitted to membership.
- (B) The **principal employer** shall be the first **trustee** of the **plan**.
- (C) The **principal employer** shall be the first **administrator** of the **plan**.
- (D) The **benefits** under the **plan** shall be secured by a **policy** or **policies**. The terms in the **policies** will override any contrary provisions in this deed.
- (E) The **plan** is designed for **approval** in the Isle of Man and will be maintained so that **approval** is not prejudiced.

NOW THIS DEED PROVIDES as follows:

1. GENERAL INTERPRETATION AND DEFINITIONS

1.1 Interpretation

- 1.1.1 In this deed where the context so allows, words in the singular shall include the plural and vice versa, and any term of a masculine gender may be read to include the feminine gender.
- 1.1.2 References in this deed to any statute or regulation made under it shall include a reference to any statutory amendment or re-enactment or as changed by law. Any reference to United Kingdom legislation means that legislation only to the extent it has been applied in the Isle of Man.
- 1.1.3 The Contracts (Rights of Third Parties) Act 2001 (of Tynwald) does not apply to this deed.
- 1.1.4 The **plan** and the trusts established by this deed shall in all respects be governed by and interpreted according to the laws of the Isle of Man and the parties hereto submit to the exclusive jurisdiction of the Isle of Man Court.
- 1.1.5 The **principal employer** shall have full power to determine conclusively all questions and matters of doubt arising under or in connection with the plan and whether relating to the construction of this deed or otherwise and any such determination shall bind all interested parties.

1.2 Definitions

In this deed and any subsequent amendment the following expressions shall have the meaning given to them below:

1978 Act shall mean the Income Tax (Retirement Benefit Schemes) Act 1978 (of Tynwald).

administrator means the person or persons, resident in the Isle of Man resident, having the management of the **plan** for the time being.

approval means approval of the **plan** by the **Assessor** under the **1978 Act**.

Assessor means the Assessor of Income Tax in the Isle of Man.

beneficiary means such persons named below as are living at the date of the death of the **member**:

- (a) the **spouse** or **civil partner** of the **member**;
- (b) the children and remoter descendants of the **member**;
- (c) any other children and remoter descendants of the parents of the **member**, and of the parents of the **spouse** or **civil partner** of the **member**;
- (d) any **spouse**, **civil partner**, widow or widower of any of the persons described in paragraphs (b) and (c) above;
- (e) the parents of the **member**, the parents of the **spouse** or **civil partner** of the **member**;

- (f) any person to whose advancement, maintenance, education or support the **member** shall, in the opinion of the **trustee**, have contributed;
- (g) any person or charity (including an unincorporated body or association) notified by the **member** to the **trustee** as a person or body who the **member** wishes to be considered as a recipient of **lump sum benefit** in the event of their death;
- (h) any person or charity (including an unincorporated body or association) who or which are entitled to an interest in the **member's** estate in accordance with their will;
- (i) the trustees of a trust independent of the **plan** for the benefit of one or more of the above **beneficiaries**;
- (j) any legal personal representative(s) of the **member** whether such **member** dies testate or intestate;

the relationships described above shall include adoptive and step-relationships and relationships of the half-blood, and any former spouse or former **civil partner** of the **member** and children conceived but yet to be born at the **member's** death.

benefit means the lump sum amount payable on the death of a **member**. The **policy** specifies the amount of **benefit** in respect of each **member**.

civil partner means a person in a registered civil partnership under the Civil Partnership Act 2011 (of Tynwald) or the Civil Partnership Act 2004 (of the UK Parliament), or treated as being in a registered civil partnership under either Act.

commencing date means the date the **plan** is to commence and operate from as shown on the first page of this **trust deed**.

employee means an individual (including a working director) who is in the **service** of a **participating employer**.

execution date means the date on which this **trust deed** was executed on behalf of the **principal employer**.

insurance company means an **insurer** approved by the **Assessor** for the purposes of the **1978 Act** and whose provision of insurance in respect of the **plan** will not prejudice **approval**.

insurer means the **insurance company** providing the **policy** by which a **member's benefits** are secured.

member means an **employee** in respect of whom **benefit** is payable under a **policy**.

participating employer means the **principal employer** and any other Isle of Man company, firm or person accepted by the **principal employer** to participate in the **plan** under clause 8, with the approval of the **Assessor**. In respect of any **member** 'the **participating employer**' means that one or more of the **participating employers** by which they are for the time being employed.

plan means the group life assurance plan established by this discretionary trust as may be amended.

policy means a policy for the time being in force issued by any **insurance company** which secures death benefits to be held on the trusts of the **plan**.

professional adviser means any qualified advocate, solicitor, barrister, accountant, actuary, broker, medical practitioner or any other professional person.

service means service with any of the **participating employers** and **service** shall be deemed continuous although performed with more than one of the **participating employers**, on such terms as are set out in the **policy**.

principal employer means the company, firm or person for the time being which has assumed the responsibilities of the **principal employer** of the **plan**.

spouse means a legal husband or wife, including a same sex spouse in accordance with the Marriage and Civil Partnership (Amendment) Act 2016.

trust deed means this deed and any other formal documents governing the operation of the **plan** at any time.

trustee means the trustee or trustees for the time being of the **plan**.

2. **TRUSTEE**

2.1 **General provisions**

2.1.1 The **trustee** shall ensure the sole purpose of the **plan** remains at all times the payment of lump sums on death in respect of any **member**, while ensuring that **approval** is maintained and not prejudiced.

2.1.2 The **trustee** shall at all times observe the terms and conditions of the **trust deed** and any amendments made from time to time to the **plan** or as required by overriding legislation.

2.1.3 Subject to the powers given to the **principal employer** by the **trust deed**, the decision of the **trustee** shall be final on all matters of doubt arising under the **plan**, all questions which are left to their determination or decision in relation to the **plan**, and on all matters relating to the management and administration of the **plan** on which the **trust deed** is silent. The **trustee** need not give reasons for any decision.

2.1.4 The **trustee** shall have the power to make or revoke any regulation or other provision (not being inconsistent with the **trust deed**) as they think fit relating to any matter or thing not provided for under the **trust deed**, or for the administration of the **plan**. The **trustee** shall have the power generally to do all such acts and things as they may consider necessary or expedient for the maintenance and preservation of the **plan** and of the rights of the **members** and/or any **beneficiary**.

2.1.5 The **trustee** shall ensure that such accounts and records are kept as necessary or desirable for the proper management and administration of the **plan**.

2.2 **Appointment and removal of trustee**

2.2.1 The **principal employer** may by deed remove a **trustee** or appoint a new or additional **trustee** without any limit on numbers provided that one month's written notice shall be given to any **trustee** before that **trustee's** removal.

Unless a body corporate (whether or not a trust corporation) is the sole **trustee** there must always be at least two **trustees**.

2.2.2 A **trustee** may resign as a **trustee** by serving at least one month's written notice or at least three months' notice if the **trustee** is a corporate body (unless the **principal employer** permits a shorter notice period) on the **principal employer**. A **trustee** will not cease to be a **trustee** if there would be less than the minimum number of **trustees** specified in clause 2.2.1 until a replacement **trustee** is appointed by the **principal employer**, unless the **principal employer** is a company in which case it will automatically become a **trustee** to act jointly with any remaining **trustee**.

2.2.3 The resigning **trustee** shall execute such documents and do all such things as may be necessary to give effect to their resignation.

2.3 Payment of trustee

2.3.1 Any **trustee** may be paid such fees as may be agreed with the **principal employer**. **Trustee** fees agreed by the **principal employer** shall be paid by the **principal employer**.

2.4 How trustee may act

2.4.1 If a corporate body is sole **trustee** its procedures and the conduct of its internal affairs shall be governed by its constitution.

2.4.2 Where there is more than one **trustee**, the **trustees** shall decide, in consultation with the **principal employer**, how to conduct their meetings.

2.4.3 The **trustee** shall keep written records of their proceedings and decisions, and of all receipts and payments of **plan** assets.

2.5 Governance

2.5.1 The **trustee** shall ensure the **plan** complies with all applicable legislative requirements concerning the governance and administration of the **plan**.

2.6 Delegation and professional advice

2.6.1 The **trustee** may with the consent of the **principal employer** delegate (and if the **trustee** so decides permit a delegate to sub-delegate) any business relating to the **plan** for such periods and on such terms (including protection in favour of the delegate) and at such remuneration (if any) as the **trustee** thinks fit excepting the exercise of any discretion under the trusts of the **plan**. Any such delegation (or sub-delegation) shall be authorised in writing before the exercise of any such delegated authority and shall not prejudice **approval**.

2.6.2 The **trustee** may, upon such terms as they think fit, obtain the advice of any **professional adviser**. The **trustee** shall not be liable for any loss or error that results from having acted on any such advice.

2.7 Trustee protection

2.7.1 The **trustee** (and any director or officer of a corporate **trustee**) shall not incur any personal responsibility or be liable for anything whatsoever except for breach of trust knowingly and intentionally committed or condoned by them or caused by his fraudulent or dishonest conduct or in the case of a professional **trustee** out of their own negligence.

- 2.7.2 Without prejudice to the right of indemnity given to trustees by law the **trustee** or any director of a body corporate acting as a **trustee** (excluding a professional trustee) shall be jointly and severally indemnified by the **principal employer** in respect of all liabilities and expenses properly incurred by the **trustee** (including fines and penalties under statute) provided that this indemnity shall not extend to anything caused by the matters referred to in clauses 2.7.1 above or to the extent that it is covered by insurance effected under clause 2.7.4 below.
- 2.7.3 The **trustee** shall not be liable in respect of any payment or payments to any person or persons erroneously made by them in good faith in the belief that such person or persons were entitled to the said payment or payments and a receipt issued to the **trustee** by any such person or persons shall be a good and sufficient discharge to the **trustee**.
- 2.7.4 The **trustee** with the consent of the **principal employer** may make suitable arrangements by insurance policies or otherwise to protect the **plan** from any costs, claims, actions and expenses which result from the indemnity and exoneration provided for the **trustee** by the provisions of this clause. The cost of such insurance shall represent an expense of the **plan**.

2.8 **Personal interest**

No decision of or exercise of a duty, power or discretion by:

- (a) the **trustee**;
- (b) the directors or officers of a corporate trustee; or
- (c) any delegate of the **trustee**

shall be invalidated or questioned on the ground that any of the persons as listed above had a direct or other personal interest in the manner or result of such decision or of exercising such duty, power or discretion.

2.9 **Member trustees**

A **member** who is or who has been a **trustee** or a delegate or a director or officer of the **trustee** shall be entitled to retain beneficially any interest or entitlement to **benefits** which they may have under the **plan**.

3. **ADMINISTRATOR**

- 3.1 The **principal employer** may in writing appoint and remove from time to time a person or persons to act as the **administrator**. The **principal employer** will notify details of the **administrator** to the **Assessor**.
- 3.2 The **principal employer** will be responsible for the discharge of all duties imposed on the **administrator** if there is no **administrator** able to act.
- 3.3 The **administrator** shall ensure that they carry out all duties and responsibilities conferred or imposed on the **administrator** of the **plan** by the **1978 Act**.
- 3.4 The **administrator** may be paid such fees as may be agreed with the **principal employer**. **Administrator** fees agreed by the **principal employer** shall be paid by the **principal employer**.

3.5 The **administrator** may, as they think fit, obtain the advice of any **professional adviser**. The **administrator** shall not be liable for any loss or error that results from having acted on any such advice.

4. CONTRIBUTIONS, PLAN ASSETS AND EXPENSES

4.1 Contributions

4.1.1 The contributions necessary to purchase or maintain the **benefits** in respect of **members** shall be paid by their **participating employer**.

4.2 Plan assets

4.2.1 **Plan** assets shall consist of:

(a) monies held by the **trustee** representing the payment of **benefits** under any **policy** or **policies**;

(b) interest paid on the sums referred to in (a) above.

4.2.2 The **trustee** will hold all the assets that it receives and the property representing them and all the income on irrevocable trust to pay the **benefits** under the **plan** in accordance with this trust deed.

4.3 Expenses

4.3.1 Any costs, charges and expenses (including interest thereon) of operating the **plan** shall be paid by the **principal employer** or alternatively by the **participating employers** in such proportions as the **principal employer** shall determine.

5. MEMBERSHIP

5.1 Membership

5.1.1 An **employee** is eligible to be a **member** of the **plan** if they are eligible for **benefit** under the **policy**. An eligible **employee's** membership of the **plan** shall be on such terms (including as to termination of eligibility) as are set out in the **policy**.

5.1.2 The decision of the **insurer** as to the eligibility of any **employee** under the **policy** is final.

5.1.3 Details of the **plan** shall be given to all persons who are eligible for membership.

5.1.4 Nothing contained in this deed shall in any way restrict the right of an employer to terminate the employment of any **employee** and no claim shall be made against an employer or the **principal employer** for damages or for any increase in damages on the grounds of loss of any **benefits** under the **plan**.

5.2 Termination of membership

5.2.1 An **employee** ceases to be a **member** on the earliest date they cease to be an **employee** or on which cover under the **policy** ceases in respect of them.

6. **BENEFITS**

6.1 **Benefits**

6.1.1 **Benefit** payable in respect of a **member's** death will be paid to the **member's beneficiaries** in accordance with clause 7. The amount of the **benefit** will be the amount paid in respect of the **member** from the **policy**.

6.1.2 No **benefit** shall be capable of being assigned or applied for the benefit of any person other than the person entitled or contingently entitled to that **benefit**.

6.2 **Incapacity and minority**

6.2.1 If in the opinion of the **trustee**, the individual due to receive a **benefit** is incapable of acting by reason of illness, mental disorder, minority or otherwise the **trustee** may retain any money due to that individual for any period and then pay it to that individual or to their estate or to any other person who is or appears to the **trustee** to be responsible for their care.

6.2.2 The **trustee** shall not be obliged to attempt to determine whether any person has a legal right to be responsible for the care of the individual due to receive the **benefit** and the receipt of any **benefit** by such person will be a complete discharge to the **trustee**.

6.3 **Taxation**

6.3.1 The **trustee** may deduct from any **benefit** any tax for which they or the **administrator** may be liable or jointly liable in respect of such **benefit**. Where the **trustee** or the **administrator** is liable or jointly liable to tax or any other fiscal imposition in respect of any **benefit** under the **plan**, the **trustee** may apply the **benefit** in whole or in part in the payment of such liability (including any interest due) and deduct the amount so paid from the **benefit**, or postpone payment of the **benefit** until the liability has been met or provision satisfactory to the **trustee** made for its discharge.

7. **LUMP SUM BENEFIT TRUST**

7.1 **Benefit** payable under the **plan** shall be held by the **trustee** on the trusts of the **plan** with power to pay it in such shares (and by one payment or a series of two or more payments) as the **trustee** in its sole discretion shall decide to any or all of the **member's beneficiaries**.

7.2 The **trustee** shall ensure such money held on trust is held in cash in such account the **trustee** maintains to hold money belonging to the **plan**. Interest accrued on the **benefit** may be paid to the **member's beneficiary** or **beneficiaries** if the **trustee** so decides or otherwise retained for the general purposes of the **plan**.

7.3 To the extent (if any) the **benefit** has not been paid in accordance with clause 7.1 above within 23 months of the date that the **trustee** is notified of the **member's** death (or any earlier date they could reasonably have been expected to know of the **member's** death) the **trustee** shall pay any balance to the **member's** personal representatives unless there is no will of the **member** under which it will pass and the successor on the **member's** intestacy will be the Isle of Man Treasury in which case it will instead be paid to such charity or charities as the **trustee** chooses.

- 7.4 The **trustee** shall take reasonable steps to establish the identity of, but is not obliged to identify all, potential **beneficiaries** of a **benefit** or the legal right of the **beneficiary** to receive the **benefit** and shall be entitled to rely upon information provided by the appropriate **participating employer** if it so decides.
- 7.5 The **trustee** may exercise its power under this clause by transferring or paying the **benefit** (or any part of it) to trustees to hold on revocable or irrevocable trust (including discretionary trust) for any one or more of the **member's beneficiaries** as it shall decide. The **trustee** shall have the power to appoint or remove a trustee or trustees to such trust as it shall decide and may provide for the payment of the appointee.
- 7.6 Any expenses or costs incurred in the establishment of a separate trust in connection with any payment under clause 7.5, may be deducted from the **benefit** if the **trustee** so decides.

8. PARTICIPATION OF EMPLOYERS

8.1 Participation of employers

- 8.1.1 The **principal employer** may admit to participation in the **plan** as a **participating employer** any Isle of Man company, firm or person which they control or are associated with (provided participation has been approved by the **Assessor**). The **principal employer** will obtain the approval of the Assessor to any proposed **participating employer**.
- 8.1.2 The **participating employer** must be covered by a **policy** and all other companies, firms or persons covered by that **policy** must also participate in the **plan**.
- 8.1.3 The **participating employer** must enter into a deed of participation agreeing to be bound by the **trust deed**. Participation will take effect on the date agreed by the **principal employer**.

8.2 Employer ceasing to participate

- 8.2.1 A **participating employer** shall cease to participate in the **plan** on the date their cover under a **policy** is terminated.
- 8.2.2 The **principal employer** shall at any time have the right to terminate a **participating employer's** participation in the **plan** provided that:
- (a) termination shall not have retrospective effect;
 - (b) one months' prior written notice must be given to the **participating employer**; and
 - (c) notification is given to the **Assessor**.

8.3 Obligations of participating employers

- 8.3.1 Each of the **participating employers** agrees to be bound by the provisions of the **trust deed** and the provisions of the **policy** and to comply with all the conditions of the **policy** that apply to the **participating employer**.
- 8.3.2 Nothing in the **trust deed** or the **policy** restricts the right of a **participating employer** to terminate the employment of any of its **employees** who is a **member**.

9. SUBSTITUTION OF PRINCIPAL EMPLOYER

- 9.1 Subject to the consent of the **principal employer** at the time (unless it has been dissolved) any company, firm or person may become the **plan's principal employer** (the new **principal employer**) provided that they execute a deed of substitution in favour of the **trustee** (whose agreement shall not be required) under which they assume the responsibilities of the **principal employer** under the **plan** and agree to observe and perform the provisions of the **plan** applicable to them as the **principal employer**.
- 9.2 From a date that the **principal employer** and the new **principal employer** agree, the **principal employer** shall be released from all obligations in relation to the **plan** and all other provisions of the **plan** shall take effect as if the new **principal employer** had originally been and is the **principal employer**.
- 9.3 The new **principal employer** is responsible for giving written notice of the substitution to the **Assessor**.

10. AMENDMENT

- 10.1 The **principal employer** may without prior notice to the **members** add to, delete or alter the terms of the **trust deed** (and any subsequent deed) provided the alteration has been approved by the **Assessor** and does not affect any benefits which have already vested. Any alteration shall be effected in writing by the **principal employer** and may have retrospective or prospective effect (including after the date on which the **plan** shall have commenced winding-up) and shall be notified in writing to the **trustee** and **administrator**.
- 10.2 The **principal employer** shall notify the other **participating employers** in writing where, in the reasonable opinion of the **principal employer**, such alteration materially affects the other **participating employers'** participation in the **plan**.
- 10.3 The alteration shall not alter the purpose of the **plan** or prejudice the **approval** of the **plan**.

11. TERMINATION

11.1 Termination of the plan by notice

- 11.1.1 The **principal employer** shall at any time have the right by deed to terminate the **plan** provided that:
- (a) termination shall not have retrospective effect;
 - (b) written notice must be given to the **participating employers**;
 - (c) written notice must be given to the **trustee** and **administrator**, where the **principal employer** does not fulfil that role; and
 - (d) written notice must be given to the **Assessor**.

11.2 Insolvency of the principal employer

- 11.2.1 The **plan** shall be terminated if the **principal employer** enters into liquidation or its undertaking is acquired by or vested in another person or it is dissolved, provided a new **principal employer** has not been substituted and the **trustee** is

of the opinion there is no reasonable expectation of a new **principal employer** being substituted.

11.3 Winding up the plan following termination

11.3.1 Where **benefit** is being held by the **trustee** upon trust or where any claims in respect of **benefit** have been notified to an **insurer**, the provisions of the **plan** shall continue to apply and termination under clauses 11.1 and 11.2 shall not have effect until the last remaining **benefit** is paid or applied.

11.3.2 Other than the payment of **benefit** due under clause 7 on termination of the **plan** the **trustee** shall not be responsible for the payment of any outstanding liabilities of the **plan** at the date of its termination except to the extent there are **plan** assets available to it that are not **benefit** being held on trust. Such liabilities may include fees and expenses payable to the **trustee** under clauses 2.3 and 3.3.

11.3.3 Upon completion of the matters detailed above the **plan** trusts shall be dissolved.

12. ASSESSOR LIMITS AND REQUIREMENTS

The **plan** is designed for **approval** and the **benefits** will be subject to all limits imposed by the **Assessor** as to nature and amount either generally or specifically to ensure that **approval** is not prejudiced. The **administrator** will inform any **member** whom they consider is likely to be affected by these Assessor Limits and Requirements. The **trustee** and **administrator** shall comply with the requirements for **approval**.

12.1 Maximum benefits

12.1.1 The lump sum benefit payable on the death of a **member** shall not exceed the greater of:

- (a) £5,000; and
- (b) 4 times **final remuneration**,

or such higher amount as will not prejudice **approval** or is otherwise permitted by the **Assessor**.

12.2 Maximum age

12.2.1 Membership of the **plan** will cease by the **member's** 75th birthday unless the **Assessor** agrees to a later age.

12.3 Membership continuation

12.3.1 A **member** who is temporarily absent from work or is seconded to another Isle of Man based employer and remains resident for tax purposes in the Isle of Man may remain a **member** of the **plan** for up to 3 years (or such further period as the **Assessor** may allow).

12.3.2 A **member** who is seconded to an overseas employer or does not remain resident for tax purposes in the Isle of Man may remain a **member** of the **plan**, if agreed by the **Assessor** and subject to such conditions as the **Assessor** may require.

A **member** who is seconded to an overseas employer must have a definite expectation (also on the part of their **participating employer**) that at the end of the secondment they will resume working for their **participating employer** or will be retiring (if the period of secondment is expected to extend to their retirement date). The overseas employer is expected to reimburse the contributions in respect of the **member** to their Isle of Man **participating employer**.

12.4 Definitions – final remuneration – fluctuating emoluments – index

In this clause 12, **final remuneration** and **fluctuating emoluments** and **index** shall have the meanings given to them below:

final remuneration shall mean the greater of:

- (a) where there are no **fluctuating emoluments**, the annual rate of basic salary or wages being received immediately before death;
- (b) basic salary or wages as in (a) above plus the average of **fluctuating emoluments** during the 3 years (or the whole period of the employment if less) up to the date of death;
- (c) the total earnings (fixed plus fluctuating) paid during any selected period of 12 months ending not earlier than 36 months before the date of death;
- (d) the highest remuneration assessable as income from employment and upon which tax liability has been determined for any one of the 5 years before the date of death, being the aggregate of:
 - (i) the basic pay for the year in question; and
 - (ii) the yearly average over 3 or more consecutive years ending with the expiry of the corresponding basic pay year, of any **fluctuating emoluments** provided that **fluctuating emoluments** of a year other than the basic pay year may be increased in proportion to the increase in the **index** from the last day of that year up to the last day of the basic pay year. Remuneration that is received after the date of death and upon which tax liability has been determined will be treated as **fluctuating emoluments** (providing it was earned or qualified for prior to the date of death). In these circumstances it may be included provided the yearly average of 3 or more consecutive years begins no later than the commencement of the basic pay year; or
- (e) the yearly average of the total emoluments from the **participating employer** which are assessable to income tax as income from employment and upon which tax liability has been determined for any 3 or more consecutive years ending not earlier than 10 years before the date of death. Where such emoluments are received after the date of death but are earned or qualified for prior to that date, they may be included provided that in these circumstances the yearly average of 3 or more consecutive years begins no later than the commencement of the year ending with the date of death.

Provided that:

- (i) remuneration and total emoluments do not include any amounts which arise from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares, or anything in respect of which tax is chargeable by virtue of section 48A of the Income Tax Act 1970 (of Tynwald) (payments on termination of employment, etc);
- (ii) where **final remuneration** is computed by reference to any year other than the last complete year ending on the date of death, the **member's** remuneration or total emoluments of any year may be increased in proportion to any increase in the **index** from the last day of that year up to the date of death;
- (iii) a **member** who remains, or is treated as remaining, in **service** but is in receipt of a much reduced remuneration as at the date of death, may calculate **final remuneration** under (a) or (b) above with the **final remuneration** calculated at the cessation of normal pay and increased in proportion to any increase in the **index**;
- (iv) the total amount of any profit related pay (whether relieved from income tax or not) will be treated as **fluctuating emoluments**;
- (v) benefits in kind may be taken into account when they are assessed to income tax as income from employment, and will normally be regarded as **fluctuating emoluments**;
- (vi) any pension from the **participating employer** may not be included in **final remuneration**; and
- (vii) any amount sacrificed in exchange for a benefit or contribution by the **member's participating employer** under a 'salary sacrifice arrangement' may not be included in **final remuneration**.

fluctuating emoluments are any part of a **member's** earnings which are not paid on a fixed basis and are additional to the basic wage or salary; and

- (a) they include overtime, commission, bonuses or benefits in kind as long as they are assessable to tax as income from employment and profit related pay (see proviso (iv) to the definition of **final remuneration**).
- (b) director's fees may rank as **fluctuating emoluments** according to the basis on which they are voted.
- (c) they do not include any amounts which arise from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares, or anything in respect of which tax is chargeable by virtue of section 48A of the Income Tax Act 1970 (of Tynwald) (payments on termination of employment, etc).

index shall mean the Government's Index of Retail Prices, as applied in the Isle of Man.

END OF TRUST DEED
