

# TRUST

## BACKGROUND:

- A. The Principal Employer has determined to establish under irrevocable trust a retirement benefits scheme (hereinafter called "the Scheme") to provide relevant benefits as defined in section 770(1) of the Taxes Consolidation Act, 1997 for the Member as is or shall be included therein in accordance with the provisions of the Scheme.
- B. The Principal Employer has requested ITC (hereinafter called the "Trustee") to act as Trustee and ITC has consented to so act.
- C. "The Employer" means the Principal Employer and "the Employer" in relation to the Member means the Employer in whose service the Member is or was at the relevant time or the Employer in whose employment he has been during the relevant period.

## NOW THIS TRUST WITNESSES AND IT IS HEREBY DECLARED AND AGREED AS FOLLOWS:

### 1. Establishment

- (a) The Scheme is hereby established by the Principal Employer under irrevocable trust and shall commence on the Commencing Date for the main purpose of providing relevant benefits as defined in Section 770(1) of the Taxes Consolidation Act, 1997.
- (b) The full provisions of the Scheme are set forth in the Rules of the Scheme scheduled hereto (hereinafter called "the Rules") and the Scheme shall have effect as provided in the Rules. The definitions contained in the Rules shall apply for the purpose of this Trust also.

### 2. Taxes Consolidation Act, 1997

The Scheme is a retirement benefits scheme, as defined in Section 771 of the Taxes Consolidation Act 1997, capable of being approved by the Revenue Commissioners pursuant to Section 772 of the said Taxes Consolidation Act and of being treated by the Revenue Commissioners as an exempt approved scheme pursuant to Section 774 of the Taxes Consolidation Act, 1997. Notwithstanding anything in this Trust or the Rules, no benefit shall be provided under the Scheme which would exceed the maximum benefit permitted, or otherwise conflict with the requirements imposed, by the Revenue Commissioners from time to time as a condition of approval under the Taxes Consolidation Act, 1997. Any benefit otherwise provided shall be reduced or varied as may be necessary to ensure that the maximum is not exceeded and that there is no conflict with these requirements. The Trustee shall comply at all times with any undertaking given to the Revenue Commissioners in order to obtain or retain approval.

### 3. Pensions Act 1990 (as amended)

- (a) This Trust and the Rules are subject to the Pensions Act 1990 (as amended) (the "Pensions Act") and shall take effect subject to any modification necessary to comply with it. The duties of the Principal Employer and the Trustee shall be regulated by, and carried out in accordance with, the Pensions Act.
- (b) The Scheme created by this Trust is a defined contribution scheme as defined in the Pensions Act
- (c) The Scheme is a one member arrangement within the meaning attributed to that term by the European Union (Occupational Pension Schemes) Regulations 2021, S.I. No. 128 of 2021 (the "Regulations").

### 4. The Trustee

- (a) The Trustee is hereby appointed Trustee of the Scheme

and shall hold all benefits payable under the Scheme in trust for the respective persons for whose benefit the said benefits are payable in accordance with

- (b) The Trustee cannot be removed during the term of the Trust.
- (c) The Trustee may retire or resign upon giving 28 days' notice in writing to the Principal Employer and other trustees (if any). Any retirement of a trustee shall in order to be valid be in writing between the retiring trustee(s), the remaining trustee(s) and the new trustee(s).
- (d) Any trustee who retires shall forthwith do all acts and things necessary to vest the assets of the Scheme in the continuing and/or new trustees.

### 5. The Fund

The assets of the Scheme shall be held under the legal control of the Trustee or of a nominee for the Trustee and shall constitute a fund ("the Fund") to be held in accordance with the provisions of the Trust and the Rules such assets to include all moneys contributed by the Principal Employer and by the Member and by any other person or corporation and the investments and income thereof.

### 6. Investments

- (a) The Trustee may, as it may from time to time consider proper, retain the Fund or any part thereof which is required immediately for the purposes of the Scheme in any bank account.
- (b) Subject always to the written approval of the Member, sub-clause 6(a) and any investment restrictions imposed by the Revenue Commissioners on small self-administered schemes, the Trustee will have power to make investments or apply the Fund or any part thereof which is not required immediately for the purposes of the Scheme on the security of any investments or applications whatsoever and wheresoever situate, whether income-producing or not, whether involving liability or not and whether or not authorised by law for the investment of trust moneys, which the Trustee could make if it were absolutely and beneficially entitled to do so (while adhering to the prudent person rule as defined in IORP II Directive 2016/2341 and subject always to any investment restrictions imposed on small self-administered schemes by the Regulations and all applicable laws) and more particularly:
  - (i) by placing the same on deposit or current account with any local authority, bank, insurance company, building society, finance company or other party authorised by law to operate such accounts at such rate of interest (if any) and upon such terms as the Trustee shall think fit;
  - (ii) in any contracts or policies affected with any insurance company as the Trustee shall think fit on terms that all sums payable under such contracts or policies shall, as and when received by the Trustee, be held by them upon trust for the purposes of the Scheme;
  - (iii) by participating in any unit-linked arrangement, scheme of deposit administration or any managed funds administered by any Life Office;
  - (iv) in units in unit trusts, investment trusts, mutual funds, variable capital companies, fixed capital companies or other forms of collective investment undertakings;
  - (v) by participating in any investment or in the acquisition or acquisition and development of any interest in land or property, whether jointly with any other party or otherwise, and whether as partners or as trustees, to hold the same upon trust for sale or otherwise notwithstanding that the interest so acquired in any such investment or venture may be a minority interest, provided that all transactions have regard to legislation, rules and guidelines for Small Self-Administered Schemes and the exit strategies that apply to all pension schemes;
  - (vi) by purchasing, taking leases of, selling, conveying,

granting or assigning any interest in immovable property;

- (vii) in the purchase of or subscription for any stocks, shares, debenture stocks or other investments;
- (viii) in the purchase of loan stock or the making of loans (whether or not secured) to such persons or bodies corporate upon such terms as the Trustee considers expedient.
- (ix) in or about traded options provided that the writing or placing of options are covered by then existing investments (and the Trustee may provide any pledges of collateral security required in connection with traded options);
- (x) in transactions and financial futures;
- (xi) in the purchase or retention of gold bullion or any other commodity of any kind whatsoever with permissible limits as prescribed by the Revenue Commissioners from time to time
- (xii) in accordance with Part 4, Chapter 1 of the Regulations the Trustee may take into account the potential long-term impact of investment decisions on environmental, social and governance factors.

with power to vary any such investment or application for any other or others of a nature hereby authorised to the intent that the Trustee shall have the same full and unrestricted powers of investment and application and of varying and transposing investments and applications as if they were absolutely and beneficially entitled to the Fund.

- (c) Without prejudice to the generality of sub-clause (b), the Trustee may purchase from a Life Office a non-assignable immediate annuity contract providing benefits which are payable under the same conditions as benefits receivable under the Scheme and may effect such insurance (including life assurance or critical illness assurance) as they consider prudent.
- (d) For the purposes of this Clause, "financial futures" and "traded options" mean, respectively, financial futures and traded options which are for the time being dealt in or quoted on any futures exchange or any stock exchange whether or not that exchange is situate in the State. Investments made by the Trustee in any such "financial futures" and "traded options" shall be made only so far as such options contribute to a reduction in investment risks or to facilitate efficient portfolio management.
- (e) Notwithstanding the provisions of this Clause 6 or any of its sub-clauses, the Trustee may in its absolute discretion and without obtaining the consent of the Member, written or otherwise, sell, assign, novate, surrender or otherwise dispose of in any manner permitted by law any stocks, shares, debentures, bearer securities, units in unit trusts or mutual funds, interest in land or property, or any other investment or asset held by the Scheme where to do otherwise would offend against the Pensions Act or the Regulations or prejudice the exempt approved status of the Scheme.
- (f) Nothing in Clause 6 or in any other Clause of this Trust shall hinder the Trustee in exercising its absolute discretion in refusing to make or purchase an investment from the proceeds available in the Fund where to proceed with the making or purchasing of such an investment would in the opinion of the Trustees contravene a provision or provisions of the Pensions Act

## **7. Trustee Remuneration**

- (a) A trustee engaged in the business of providing a trusteeship service for payment shall be entitled to charge and to be paid such remuneration (and VAT thereon if applicable) for its services as may be agreed from time to

time by the Trustee unless the Principal Employer agrees that such remuneration shall be paid by the Principal Employer. In the event that trustee remuneration is not being paid, the trustee shall be entitled to receive such remuneration out of the assets for the time being of the Fund.

Any trustee being a solicitor, accountant, insurance broker, financial consultant or other person engaged in any profession or business shall be entitled to charge and to be paid all usual professional and other charges (and VAT thereon if applicable) for business done by him or his firm or company in connection with the Scheme whether in the ordinary course of his profession or business or not and including acts which a trustee not being in any profession or business could have done personally. In addition to such charges any such person, firm or company as aforesaid shall be entitled to any brokerage payable to it by any Life Office upon any assurances effected by it in connection with the Scheme or any commission payable in connection with any investment in a unit trust or similar investment or any commission payable in connection with any demand deposit scheme, and shall be entitled to retain such brokerage or commission for its own use beneficially.

- (b) Where the Trustee is a corporate entity paragraph (b) shall apply as if the reference to a trustee included also any individual or person who is an officer or an associated company or an officer of such associated company of the trustee and for this purpose associated company shall include any company which has one or more shareholders in common with the trustee.

## **8. Trustee Powers**

- (a) The Trustee shall have power to make such arrangements and regulations generally for the administration of the Scheme as it thinks fit and in particular to employ such agents and staff including a secretary to transact any business of the Scheme.
- (b) The Trustee may pay such reasonable remuneration, fees, costs or expenses as it thinks fit to any person or persons employed by the Trustee ("the Supplier") for providing services or goods to the Trustee in accordance with this Trust which remuneration, fees, costs and expenses shall be deemed to be part of the expenses incurred in connection with the Scheme. For the purposes of this provision any brokerage payable by any Life Office upon any Assurance effected in connection with the Scheme shall unless the Supplier objects and the Trustee otherwise agrees be regarded as reasonable remuneration in respect of services provided in connection with the effecting of such assurance and the Trustee shall not be obliged to enquire into the amount of such commission. Similarly, any commission payable in connection with any investment in a unit trust or similar investment or any commission payable in connection with any demand deposit scheme shall be regarded as reasonable unless the Supplier objects and the Trustee otherwise agrees.
- (c) Where there is more than one trustee to the Scheme, the following provisions shall apply:
  - (i) subject to the subsequent provisions of this clause and to the requirements of Clause 14 the trustees may make such regulations as to their meetings (including provisions as to the venue and conduct thereof and as to the chairman thereof) as they think fit;
  - (ii) two trustees present at a meeting of which not less than fourteen days' notice has been given to all the trustees shall form a quorum;
  - (iii) at any meeting of the trustees the trustees shall act on the vote of a majority and in the case of equality of votes the chairman of the meeting shall have a second or casting vote. A decision or resolution passed at such a meeting shall be binding on all the trustees and all the trustees shall be bound to join in any action (including the signing of authorities and the execution of deeds) necessary or expedient to carry such a decision or Resolution into effect. Provided that no resolution to wind-up the Scheme, to effect any investment or to withdraw or encash any money from any investment of the Scheme

- may take effect without the consent in writing of ITC in accordance with Clause 13 (e);
- (iv) a resolution signed by each of the trustees (whether such signatures are contained in one or more than one copy of such resolution) shall be binding and effective as if the same were a resolution of the trustees passed at a meeting of the trustees duly convened;
  - (v) any acts or things that should or may be done by the trustees shall be performed by the trustees as a body in accordance with the previous subparagraphs of this paragraph;
  - (vi) any of the trustees may participate in a meeting by means of a conference telephone or similar communicating equipment whereby all trustees participating in the meeting can hear or communicate with each other and participation in a meeting in this manner will be deemed to constitute presence in person at such meeting.
- (d) The Trustee may delegate and authorise the sub-delegation of any of their trusts, duties, powers and discretions under this Trust or the Rules in any manner as to it seems proper to any person or persons, including any trustee, and shall not be liable for any loss arising thereby.
  - (e) The Trustee may execute a Power of Attorney or Deed of Appointment authorising any person to give, execute and/or do all and every deed, matter and thing whatsoever as if the same had been signed, sealed and delivered, given or made or done by the Trustee (or, where appropriate, their duly authorized officers) together in person.
  - (f) The Trustee may obtain the advice of any solicitor, accountant, broker, medical practitioner, actuary, insurance intermediary, pension consultant or any other professional person as the Trustee thinks fit and the Trustee shall not be liable in respect of any calculation, determination, payment or other matter or thing done or omitted to be done by the Trustee in the administration of the Scheme while acting upon the advice of any such person or upon the advice of the Actuary or the Auditor.
  - (g) The Trustee shall have and be entitled to exercise all powers, rights and privileges and to give undertakings in connection with the Scheme requisite or proper to enable them to carry out all or any transaction, act, deed or thing arising under or in connection with this Trust or the Rules.
  - (h) any director of a corporate trustee who is a Member or who is otherwise entitled to receive any benefits under the Scheme may retain any benefits payable to him from the Scheme for his own benefit absolutely and may participate in any discussion in respect of and vote on any resolution which affects or may affect any benefit payable to him from the Scheme in any way whatsoever.
  - (i) The Trustee shall make all necessary arrangements for dealing with receipts, payments and discharges under the Scheme. The Trustee may:
    - (i) authorise that cheques may be drawn by such other person, if any, as it may appoint for the purpose; and
    - (ii) give, vary and revoke instructions as to the custody and disposal of any part of the Fund and as to the signature of proposal forms and certificates of membership.
  - (j) The Trustee shall be entitled to deduct from any payment being made under the Rules the amount of any tax for which they or the Administrator are liable or accountable and to pay such amount to the Revenue Commissioners. Subject to the requirements of the Revenue Commissioners, the Trustee shall be entitled to withhold all or any part of any sums payable out of the Scheme in connection with which they or the Administrator may have any liability and to apply those sums for the payment of that liability. In the case of a secondary liability, the Trustee shall be entitled to withhold all or any part of such sums until such time as they receive satisfactory evidence that such liability has been discharged. In particular, the Trustee shall have power to deduct from the Fund any tax payable under Section 787R of the Principal Acts in respect of a chargeable excess.
  - (k) The Trustee shall have power to insure any or all assets of the Scheme in the same manner and to the same extent as if the Trustee were the absolute and beneficial owners thereof.
- Each of the powers contained in this Clause above constitute entirely separate and severable covenants and the duration, extent and application of the respective covenants in this Clause are no greater than is reasonable and necessary for the purposes of the trusts BUT if any such power shall be adjudged by any court or regulatory authority or agency of competent jurisdiction to be void or unenforceable but would be valid if part of the wording is amended or deleted, then such power shall apply within the jurisdiction of that court or regulatory authority or agency with such modifications as may be necessary to make it valid, effective and enforceable to the greatest extent permissible within the jurisdiction of such court or regulatory authority or agency.
- 9. Trustee Duties**
1. Without prejudice to the duties of trustees generally and in addition to all other requirements of law the Trustee shall:
- (a) hold the Fund until the Winding-Up Date (as defined in Clause 20) to be applied by them in accordance with this Trust and the Rules;
  - (b) ensure, insofar as is reasonable, that the contributions payable in accordance with this Trust and Rules are received by them for the purposes of the Scheme;
  - (c) unless an investment manager has been appointed pursuant to Clause 12 provide for the investment of the Fund in accordance with this Trust and the Rules;
  - (d) make arrangements for the payment of benefits payable under the Rules as they become due;
  - (e) ensure that proper membership and financial records are kept;
  - (f) ensure that the Scheme is registered with the Pensions Authority in accordance with the Pensions Act and provide the Pensions Authority with any information required for registration;
  - (g) ensure registration of ITC as Registered Administrator with the Pensions Authority, pursuant to Part VIA of the Pensions Act;
  - (h) comply with all requirements imposed on trustees in respect of the Scheme as set out in Part V of the Pensions Act; and
  - (i) comply with any requirements necessary for maintaining approval of the Scheme by the Revenue Commissioners

pursuant to the Chapter 1, Part 30, Taxes Consolidation Act, 1997.

- (j) comply with all requirements imposed on trustees in respect of the Scheme as set out in Part VIB of the Pensions Act.

2. The Trustee shall ensure that the Registered Administrator prepares a Pension Benefit Statement as well as complying with all requirements imposed on trustees in respect of the scheme as set out in Part 6, Chapter 1 of the Regulations.

#### 10. Trustee Covenant

The Trustee hereby covenants with the Principal Employer:

- (a) to manage and administer the Scheme at the Principal Employer's expense unless otherwise agreed;
- (b) to comply with the provisions of this Trust and the Rules; and
- (c) that when a trustee resigns from office it shall forthwith do all acts necessary to vest the property and investments of the Fund in the name or joint names of the continuing trustees and the new trustees (if any).

#### 11. Trustee's Liability and Indemnity

- (a) The Trustee (and where the Trustee comprises or includes a corporate body, the directors, officers and employees of any such body) shall not be responsible, chargeable or liable in any manner whatsoever for or in respect of:

- (i) any loss of, any depreciation in or default upon any of the investments, shares, debentures, securities, stocks or policies or other property in or upon which the moneys and assets of the Fund or any part thereof may at any time be invested pursuant to the provisions hereof;
- (ii) any delay which may occur from whatever cause in the investment of any moneys belonging to the Fund;
- (iii) the safety of any securities, documents of title or other investments relating to the Fund deposited by the Trustee for safe custody;
- (iv) any payment or payments to any person or persons erroneously made or caused to be made by the Trustee;
- (v) the exercise of any discretionary power vested in the Trustee by this Trust and Rules or otherwise including any act or omission by any committee, agent, employee or delegate appointed by the Trustee; or
- (vi) by reason of any other matter or thing;

provided always that any such trustee, officer or person shall be liable (but only he shall be liable) for wilful default on his part.

- (b) Without prejudice to any right to any indemnity by law given to trustees, ITC shall be indemnified out of the Fund:

- (i) in respect of all liabilities lawfully incurred in the execution or purported execution of the trusts of the Scheme or of the trust duties, powers or discretions vested in the Trustee under the Scheme and in the management and administration of the Scheme and of the Fund; and
- (ii) against all actions, proceedings, costs, claims and demands in respect of any matter or thing lawfully made, done or omitted in any way relating to the Scheme;

PROVIDED THAT the Trustee shall not be indemnified against any liability arising out of wilful default on their part.

- (c) Where the Scheme has more than one trustee and a trustee incurs a liability arising out of the wilful default on the part of another trustee, the aforementioned indemnity nevertheless shall continue in full force and effect in favour of the other trustees who have not been party to such wilful default.

- (d) The Trustee shall not be obliged to bring or defend any legal proceedings in relation to the Scheme and shall not be chargeable with any breach of trust in any way in connection with any such omission.

- (e) The Trustee and its successors in title or office (as the case may be) shall at all times hereafter shall be kept as trustees and their estates and effects fully indemnified and saved harmless against all claims, losses, demands, actions, proceedings, charges, expenses, costs, damages, taxes, duties and other liabilities that may be suffered or incurred by it or them in connection with any act, omission or default on the part of a beneficiary as a result of which a liability arises on the part of the Trustee or their successors in title or office (as the case may be).

#### 12. Investment Managers

Where the Member Trustee so requests, the Trustee shall appoint and/or dismiss any person as investment manager ("the Manager") of the Scheme and shall arrange such appointment on such terms as to remuneration and otherwise as shall from time to time be agreed between the Trustee and the Manager. Once such appointment has occurred the Trustee shall not be liable for any act or omission by the Manager in relation to the Scheme and shall not have any responsibility to enquire into the actions, decisions or omissions of the Manager in relation to the management of the Fund. The Trustee shall be kept indemnified in respect of any liabilities that may arise in relation to the appointment or removal of the Manager. The Manager may be empowered to exercise, to carry out, or to delegate to any other person in accordance with the terms of the Manager's appointment the powers of investment set out in this Trust and such of the other powers and duties of the Trustee as may be agreed.

#### 13. Administrator and Pensioner Trustee

- (a) Subject to sub-clause (b) hereof, ITC shall be the Registered Administrator, as defined in Part VIA of the Pensions Act

- (b) The Trustee shall have the power to appoint as additional administrator any pension consultant, insurance intermediary or other professional or consultant of good repute or any other suitable person or persons.

- (c) ITC shall be the pensioner trustee and for this purpose "Pensioner Trustee" means the trustee who at a time when the Revenue Commissioners require that a trustee act as pensioner trustee is approved by the Revenue Commissioners for this purpose and who has given such undertakings as they require.

- (d) ITC must approve in writing all financial transactions involving the investment or disposal of money or assets of the Scheme as required by the Revenue Commissioners. In particular, and without prejudice to the generality of the foregoing:

- a. The operation of any Scheme bank account shall require that ITC is sole signatory or a co-signatory; and
- b. Investments should be vested in ITC solely or jointly with the other trustees.

- (e) Notwithstanding the provisions of the previous sub-Clause (e) it will not be necessary for ITC to be signatory or co-signatory to transfers between Scheme bank accounts or to any routine, incidental or ancillary transactions carried out by the appropriate manager in respect of a share or property investment as part of the ongoing management of that investment.

#### 14. Actuary, Auditor & Risk Management

- (1) The Trustee shall have the power to appoint any person or firm being a member or members of a recognised body of actuaries as actuary to the Scheme (the "Actuary").
- (2) The Trustee shall appoint a person or firm as auditor to the Scheme (the "Auditor") provided such person or firm is or are qualified to be appointed as auditors of a company in accordance with the Companies Acts 2014.
- (3) The Trustee shall establish and maintain an effective risk management function and shall appoint a risk manager (the "Risk Manager") to the Scheme.
- (4) The Trustee shall appoint an internal auditor (the "Internal Auditor") to the Scheme. The internal audit function shall not be carried out by the same person or persons appointed by the Trustee to carry out the risk management or actuarial function for the Scheme.
- (5) The Trustee may in its absolute discretion decide not to appoint either an Actuary or an Auditor where they are not required by law to do so.
- (6) The Trustee may at its discretion terminate the appointment of any person or firm as Actuary or Auditor by giving one month's notice in writing.
- (7) Where appointing the Internal Auditor, the Risk Manager and the Actuary the Trustee will comply with all requirements imposed on trustees in respect of the Scheme as set out in Part VIB of the Pensions Act.

#### 15. Contributions

- (a) The Employer shall pay to the Trustee such contributions as are (from time to time) agreed by the Employer and Member and communicated to the Trustee.
- (b) The Member may make additional voluntary contributions to the Scheme subject to Revenue limits.
- (c) The Employer shall pay to the Trustee all contributions received from the Member.
- (d) The Employers may at any time immediately cease to contribute to the Scheme in respect of the Member on the giving of due notice in writing to the Trustee.

#### 16. Transfers

- (a) If the Member is entitled to a benefit under any other retirement benefit scheme or arrangement or if the Member becomes a member of any other retirement benefit scheme or arrangement the Trustee shall have the power or the obligation as the case may be to accept or make a transfer payment in accordance with Rule 9 of the Rules.
- (b) Any individual who has a right to elect under Section 772 (3A), Taxes Consolidation Act, 1997 (as amended) shall have the right to opt for a transfer in accordance with Rule 9(2) and the Trustee shall effect such a transfer.
- (c) Where the Member has a right of transfer to or from a PRSA pursuant to the terms of the Pensions Act and any regulations made thereunder may require the Trustees to accept or to make such a transfer as the case may be.

#### 17. Expenses

The Principal Employer shall pay from time to time at the request of the Trustee all necessary expenses incurred by the Trustee in connection with the Scheme, unless it is agreed that such expenses shall be paid by the Fund. If the Principal Employer at any time fails to pay any necessary expenses within such period as the Trustee considers reasonable the

#### 18. Substitution of Principal Employer

- (a) In any of the following events that is to say:
  - (i) if the Principal Employer shall go or be put into liquidation whether voluntary or otherwise, and another employer shall, whether in contemplation of or after such liquidation, enter into an agreement with the Trustee and with the Principal Employer or its liquidator to perform the obligations of the Principal Employer under this Trust and the Rules; or
  - (ii) if the undertaking of the Principal Employer is acquired by or vested in any other employer, and such other employer shall either enter into an agreement with the Trustee and with the Principal Employer or its liquidator, or shall be bound by virtue of or pursuant to any statutory provision or any order of the Court made thereunder or otherwise to perform all or part of the said obligations; or
  - (iii) if the Principal Employer shall be dissolved by virtue of or pursuant to any statutory provision or any order of the Court made thereunder or otherwise and another employer shall be bound by virtue of or pursuant to any statutory provision or any order of the Court made thereunder or otherwise to perform the said obligations; or
  - (iv) If any other employer shall enter into an agreement with the Trustee and the Principal Employer to perform the said obligations;

the Principal Employer shall be thereby released from all its obligation under the Scheme and such other employer as aforesaid shall be deemed to be substituted for the Principal Employer as the person liable to perform the said obligations and this Trust and the Rules shall thenceforth have effect as if such other employer had been a party to and had executed this Trust in place of the Principal Employer and as if references to the Principal Employer contained in this Trust and the Rules were references to such employer.

- (b) In any of the following events that is to say:
  - (i) if the Principal Employer shall go or be put into liquidation whether voluntary or otherwise and if at the time of such liquidation or at any time thereafter there shall not be any such agreement as is referred to in paragraph (i) of sub-clause (a) of this Clause and the Trustee shall be of the opinion that there is no reasonable expectation of such agreement; or
  - (ii) if the undertaking of the Principal Employer is acquired by or vested in any employer and if at the time of such acquisition or at any time thereafter there shall not be any such agreement as is referred to in paragraph (ii) of the said sub-clause (a) and such other employer shall not be bound as mentioned in the said paragraph (ii) and the Trustee shall be of the opinion that there is no reasonable expectation of such agreement or of any other employer becoming so bound; or
  - (iii) if the Principal Employer shall be dissolved in the manner referred to in paragraph (iii) of the said sub-clause (a) and if at the time of dissolution or at any time thereafter no other employer shall be bound as mentioned in the said paragraph (iii) and the Trustee shall be of the opinion that there is no reasonable expectation of any such employer becoming so bound;

the Trustee may either wind up the scheme or may by instrument in writing exercise the power to alter or modify any of the trusts, powers and provisions of this Trust and

the Rules and may make such arrangements or enter into such agreements as they shall in their absolute discretion think fit for the continuance of the Scheme subject, however, to Clause 23 hereof subsequently becoming applicable.

under a contract approved by the Revenue Commissioners for the purpose of receiving transfer payments from retirement benefits schemes, or

(iii) a personal retirement savings account.

## 19. Employment Law

Nothing in this Trust or in the Rules shall in any way restrict the right of any of the Employers to terminate the service of the Member or be used in aggravation of damages in any action, counterclaim or suit brought by the Member against any of the Employers in respect of the termination of his service.

## 20. Winding-Up

The Scheme shall be wound up:

- (a) on the making of an Order or an effective resolution being passed for the winding up of the Principal Employer unless a new employer of the Member is willing to enter into an agreement as provided in Clause 18 for the purpose of continuing the Scheme;
  - (b) on the passing of an effective resolution by the Trustee expressing the intention to wind-up the Scheme;
  - (c) on the termination by the Principal Employer of its liability and where applicable that of the Member to contribute to the fund unless the Trustee shall decide that the wind-up of the Scheme shall be deferred;
  - (d) on the failure by the Principal Employer or Member, as the case may be, at any time to pay to the Trustee any sum or sums due under this Trust or the Rules on or within 28 days after the date on which the Trustee may have required same to be paid, unless the Trustee shall decide that the wind-up of the Scheme shall be deferred;
  - (e) on the exercise by the Trustee of the power to wind-up the scheme conferred on them in certain events by Clause 18;
- or
- (f) on the Trustee deciding to wind-up the Scheme at any time after it would have been wound-up under sub-paragraph (d) or (e) hereof or under Clause 18 but for a decision by the Trustee that such winding-up be deferred.

NOTWITHSTANDING any provision to the contrary in this Trust the exercise of any Trustee power relating to the winding-up of the Scheme shall, in such circumstances as may be required by the Revenue Commissioners, be only exercised with the approval of ITC.

## 21. Dissolution

As soon as may be after the day upon which the first of the events specified in Clause 22 occurs (in this Clause called the "Winding-Up Date") the Fund shall be realised. The Trustee shall, out of the realised Fund and the other moneys in hand (if any), reserve the amounts which they consider necessary to meet any costs, fees, charges and expenses of or incidental to the administration, management and determination of the Scheme and discharge the liabilities of the Scheme, other than liabilities to or in respect of the Member and the Employers. The amount of the Member's Account shall be:

- (a) applied to provide benefits for the Member in accordance with the Rules, or
- (b) if the Trustee think fit, transferred to:
  - (i) the trustees and upon the trusts of any other retirement benefit scheme or arrangement approved by the Revenue Commissioners in which the Member participates, or
  - (ii) Life Office for application in respect of the Member

If by reason of the application of Clause 2 or otherwise any sum remains unapplied it shall be paid to the Employers in such proportions as the Trustee on the advice of the Actuary and with the consent of the Revenue Commissioners determine to be equitable.

## 22. Amendments

ITC may by supplementary Trust at any time amend any of the provisions of this Trust and the Rules provided that no amendment shall be made which

- (a) varies the main purpose of the Scheme namely the provision of relevant benefits as described in Section 770(1) of the Taxes Consolidation Act, 1997 or results in loss of the approval of the Revenue Commissioners so long as the same shall be necessary for exemption or relief from taxation or shall otherwise be necessary or desirable,
- (b) authorises the accrual or enjoyment of any benefits under the Scheme by the Principal Employer except in respect of any surplus remaining after termination of the Scheme or as otherwise approved by the Revenue Commissioners.
- (c) adversely prejudices the Principal Employer, the Member or the Trustee.

Provided that such amendments at all times are communicated either in writing to the Principal Employer, the Member and the Trustee, or by posting on the ITC website @ [www.independent-trustee.com](http://www.independent-trustee.com).

## 23. Arbitration

Any dispute or difference of any kind whatsoever which arises or occurs between the parties in relation to any thing or matter arising under out of or in connection with this Trust shall be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators-Irish Branch. The Trustee may settle, compromise or refer to arbitration under the Arbitration Acts 1954 to 1998.

## 24. Miscellaneous

- (a) A word or phrase appearing in parenthesis has the meaning of words immediately preceding it.
- (b) Words importing the male gender shall be construed as including the female gender and vice versa and words importing neuter gender shall be construed as including male and female genders except where the context otherwise requires.
- (c) Words importing the singular number shall, except where the context otherwise requires, be deemed to include the plural and vice versa.
- (d) References to any Statute or to any particular Chapter, Part or Section thereof or to any regulations made thereunder shall mean and include any statutory modification or re-enactment thereof for the time being in force and any regulations made thereunder.
- (e) Save as otherwise provided herein any reference to a Section, Clause, paragraph or sub-paragraph (as the case may be) shall be a reference to a Section, Clause, paragraph or sub-paragraph of this Trust and Rules and any reference in a Clause to a paragraph and sub-paragraph shall be a reference to a paragraph or sub-paragraph of the clause or paragraph in which the reference is contained unless it appears from the context

that a reference to some other provision is intended.

- (f) The headings appearing in this Trust and the Rules are for ease of reference only and do not form part of the documents for the purpose of interpretation.

## RULES OF THE SCHEME

Established by the Trust to which these Rules are scheduled and constituted for the main purpose of the provision of relevant benefits as defined in Section 770(1) of the Taxes Consolidation Act, 1997 in respect of service as an employee, being benefits payable to, or to the Dependants or personal representatives of, the Member.

### 1. Definitions

In these Rules where the context so admits the following words and expressions shall have the following meanings:

**"Account"** of the Member means the proportion of the Fund held by the Trustee which is applicable to the Member.

**"Administrator"** means ITC or other person appointed as such under Clause 13 of the Trust.

**"Commencing Date"** means the date on and from which the Scheme came into operation and effect which date is identified in the Essential Details by reference to the designation "the Commencing Date."

**"the Trust"** means the instrument to which these Rules are scheduled.

**"Dependant"** means, either

A. a spouse, save where the Member has separated from his spouse either by Agreement or Judicial Separation and the Trustee are notified of such separation, or

B. a child of the Member, or

C. any of following individuals where the Member has notified the Trustee in writing that they are Dependants and such notification has not been altered, withdrawn or superseded by any subsequent or further notification in writing:

- (1) Any person in relation to whom the Member or the Member's spouse is in loco parentis.
- (2) Any person who is in loco parentis in relation to a child of the Member or of the Member's spouse.
- (3) Any parent or other antecedent of the Member or of the Member's spouse who at the time of the Member's death was residing with the Member or in accommodation provided by the Member and/or his spouse or was otherwise in receipt of financial support from the Member and/or his spouse.
- (4) Any other person who is wholly or substantially dependant upon the Member or the Member's spouse for the ordinary necessities of life.

Unless the Member shall otherwise notify the Trustee in writing as to the manner in which benefits to the Dependants are to be allocated (in which case the Trustee shall, subject to any limits imposed by the Revenue Commissioners, allocate the benefits as so notified) the Trustee shall pay the maximum benefit permissible to the spouse of the Member and shall apportion the remaining dependants' benefits (or where the Member has no spouse living at the time of his death the full dependants' benefits) among the remaining Dependants equally. Where the benefit to be apportioned consists of a lump sum payment such apportionment should be made on the basis of the capital value of the benefits at the time of such apportionment. Apportionment of annuities shall be on the basis of the amount payable in the year of commencement.

**"20% Director"** means any director who either alone or together with his spouse and minor children is or becomes or at any time within

three years of the specified Normal Retirement Age, or earlier cessation of service was the beneficial owner of shares which, when added to any shares held by the Trustee of any settlement to which the director or his spouse has transferred assets, carry or carried more than 20% of the voting rights in the Employers or in a company which controls the Employers.

**"Employer"** shall have the meaning ascribed to "the Employer" in the Trust.

**"Final Remuneration"** means

- (a) if the Member is not a 20% Director whichever is greater of (1), (2) and (3) below
- or
- (b) if the Member is a 20% Director (2) below.
- (1) basic pay of the Member for any one of the five years preceding retirement date plus the average over a period of three years or such other period as the Revenue Commissioners will permit of any fluctuating emoluments which averaging must end on the last day of the year for which basic pay is taken for the purposes of this calculation
- or
- (2) the average of the Member's total emoluments for any three or more consecutive years ending not earlier than 10 years before retirement date
- or
- (3) save only in a case which the Revenue Commissioners will permit, basic pay at the date of retirement or at any date within the previous year plus the average of any fluctuating emoluments calculated over a period of three years ending on the relevant date or over such other period as the Revenue Commissioners shall permit.

Provided that:

- (i) for the purposes of calculating Final Remuneration where remuneration under (1) and (2) above is calculated by reference to a year or years other than the twelve months ending with Normal Retirement Age, each such year's remuneration may be increased in proportion to the increase in the Consumer Price Index or such other suitable index as may be agreed by the Revenue Commissioners for the period from the end of the year up to Normal Retirement Age.
- (ii) No remuneration as a director for which the employee is accountable to any other person by virtue of any directorship or employment or which is treated for tax purposes as a receipt of a trade or profession carried on by him shall be included in his remuneration for the purposes of this definition.

Provided always that proviso (i) may not be applied if the Member is a 20% Director unless it can be shown to the satisfaction of the Revenue Commissioners that the amount of the non-commutable pension payable or remaining payable or payable before the application of rules permitting commutation of the whole of the benefits to the director is not less than two-thirds of the annuity equivalent of all retirement benefits payable to the director (or to which he is entitled) under all schemes of the Employers at the time any lump sum benefits are to be paid to him under the Rules.

**"Life Office"** means a person authorised to carry on business in Ireland including a person authorised to effect contracts of life assurance with Irish residents pursuant to the relevant European Community Directives

**"Member"** means a person who is currently included in the Scheme in accordance with Rule 2.

**"Member's Explanatory Booklet"** means the booklet from time to time issued by the Trustee with the approval of the Principal

Employer by which the Member is notified of details of the Scheme and includes any subsequent notifications issued by the Trustee with the approval of the Principal Employer of any variations in such details.

**"Normal Retirement Age"** means the date identified in the Member's Statement of Benefit or the Member's Explanatory Booklet by reference to the designation "Normal Retirement Age". Where the Member so requests and the Trustee consents Normal Retirement Age may be changed to any date between the Member's 60th and 70th birthdays or such other date as may be permitted by the Revenue Commissioners. Where benefits have been transferred under the QROPS arrangement operated by HM Revenue & Customs, Normal Retirement Age shall in no circumstances be any date before the Member's 55th birthday.

**"Principal Employer"** means the person, persons or body corporate referred to in the Trust as being the Principal Employer and identified therein by reference to the designation "the Principal Employer."

**"PRSA"** means a Personal Retirement Savings Account as defined in Section 91 of the Pensions Act.

**"PRSA Provider"** means a credit institution, insurer or investment firm as defined in Section 91 of the Pensions Act.

**"Retained Lump Sum Benefits"** means lump sums the Member has earned with previous employers and includes:

- (a) lump sums received or receivable from any scheme including sums received or receivable in commutation of pension.
- (b) sums received or receivable in commutation of retirement annuities under contracts approved under Chapter 2, Part 30, Taxes Consolidation Act, 1997.
- (c) amounts received by way of refund of contributions and any interest thereon, if they were received after the age of 45 and exceeded €2,540.

Provided that benefits at (a) and (b) may be ignored if they do not exceed €1,270 in total.

**"Retained Pension Benefits"** means benefits the Member has earned with previous employers and includes:

- (a) pensions, whether deferred or already in payment, including any part of a deferred pension which is commutable.
- (b) the annuity equivalent of lump sums received or receivable, including any already received in commutation of pension.
- (c) where so required by the Revenue Commissioners, retirement annuities effected pursuant to Chapter 2, Part 30, Taxes Consolidation Act, 1997 in respect of previous self-employment or non-pensionable service.
- (d) the annuity equivalent of any amount received by way of refund of contributions and any interest thereon if they were received after the age of 45 and exceed €2,540.

Provided that benefits at (a), (b) and (c) may be ignored if their annuity equivalent does not exceed €330 in all.

**"Rules"** means this set of Rules.

**"Scheme"** means the Scheme established by the Trust and identified in the Trust by reference to the designation "the Scheme."

## 2. Membership

- (1) A person shall be eligible for inclusion in the Scheme if
  - (a) he is an employee of the Employer. For this purpose "employee" includes any officer, director or manager of the Employer and also any former employees of the Employers and
  - (b) the Employer in their absolute discretion shall so decide.

- (2) A person eligible under (1) of this Rule shall be included in the Scheme when he shall have agreed with the Employer to such inclusion. A person shall continue to be a Member whilst they are entitled to benefit under the Scheme.
- (3) The Member will be given written particulars of all essential features of the Scheme which concern him.
- (4) Where appropriate, anyone entitled to receive a benefit by virtue of the provisions of the Scheme and by operation of law shall be a Member for the purposes of the Trust and these Rules.

## 3. Contributions

- (1) The Member shall pay such contributions as are specified in respect of him in the Members' Explanatory Booklet.
- (2) The Member shall not in any year pay contributions to the Scheme which when aggregated with total contributions by him to all other retirement benefits schemes in respect of an employment would exceed the Appropriate Percentage of his Relevant Remuneration in respect of that year except where the Member with the consent of the Trustee pays a special contribution to the Scheme. For the purposes of this rule "Relevant Remuneration" means the lower of:
  - a. The remuneration of the Member from the employment (exclusive of such remuneration as is described in proviso (ii) of the definition of Final Remuneration), or
  - b. the earnings limit as defined by Section 790A of the Taxes Consolidation Act, 1997, as amended, or such other limit as may be prescribed.
- (3) The Appropriate Percentage for the purposes of (2) shall be:

Age attained in that year	% of Remuneration
Up to age 29	15%
Age 30 to 39 inclusive	20%
Age 40 to 49 inclusive	25%
Age 50 to 54 inclusive	30%
Age 55 to 59 inclusive	35%
Age 60 and over	40%

- (4) The Employer shall pay in respect of the Member the contributions specified in respect of him in the Member Explanatory Booklet, provided that the Employer shall have borne not less than 10% (or such other amount as may be prescribed by the Revenue Commissioners) of the total cost of the benefits being provided, or paid the total costs of managing the Scheme.

## 4. Forfeiture

- (1) The assignment by the Member or any other person entitled thereto of any benefit under the Scheme is prohibited.
- (2) If the Member or other person wholly or partially attempts or purports to assign or charge any present or future benefit arising under the Scheme, or if any other act occurs or event happens whereby the same if belonging absolutely to the Member or other person would be vested in or payable to or charged in favour of any other individual firm or company, the Member or other person shall forfeit all rights whatsoever to such benefit.
- (3) In the event of any benefit being so forfeited the Trustee shall as from the date on which it receives notice of the act or event causing such forfeiture hold the forfeited benefit upon trust for the general purpose of the Scheme but with power to pay or apply the same or any part thereof at their sole and absolute discretion to or for the benefit of all or any one or more of the Dependants.

## 5. Benefits at Normal Retirement Age

- (1) If a Member ceases to be in service at Normal Retirement Age



otherwise than by his death the Trustee shall apply his Account in the provision of any or all of the following benefits as the Trustee shall decide:

- (a) an annuity on the life of the Member and/or
  - (b) all or any of the following benefits:
    - (i) a lump sum payable to the Member being a surrender of the whole or a part of his annuity under the Scheme
    - (ii) an annuity on the life of one or more Dependants of the Member beginning on or after the Member's death
    - (iii) such other benefit as will not prejudice exempt approval of the Scheme under Chapter 1, Part 30, the Taxes Consolidation Act, 1997.
- (2) An annuity on the life of the Member may be expressed to be guaranteed for any period not exceeding ten years to the effect that if the Member dies before his annuity has been paid to him for the guaranteed period the annuity shall for the remainder of that period be payable to the Member's legal personal representatives or shall be paid to any one or more of the Member's Dependants in accordance with the definition of Dependants in Rule 1.
- (3) Where an annuity on the life of the Member is expressed to be guaranteed as described in (2) of this Rule for a period not exceeding five years the annuity may be further expressed to be with a lump sum payment on the Member's death within the guaranteed period in lieu of and not exceeding the further instalments of the annuity which would have been payable if he had lived to the end of the guaranteed period.
- (4) Subject to (1)(b)(i), and (2) and (3) of this Rule an annuity on the life of the Member or of a Dependant will be non-commutable and non-assignable.
- (5) Any annuity payable to a minor child or other person who is legally incapacitated will be paid as the Trustee determines to the child or person in respect of whom it is provided (the "Beneficiary") or to such other person as is in the opinion of the Trustee best fitted for the purpose to be held or used by such person for the maintenance, support and benefit of any such beneficiaries and the receipt of such person shall be a full discharge to the person paying the annuity.
- (6) A Dependant's annuity will cease on the date of the earlier of the following events:
- (a) the happening of any contingency agreed between the Trustee and the Life Office underwriting the benefit, or
  - (b)
    - (i) in the case of an annuity payable to a person who is the spouse or former spouse of the Member, the death of that person;
    - (ii) in the case of an annuity payable to a child of the member, or to a child in respect of which the member was or his spouse is in loco parentis or to a person who is in loco parentis to a child of the Member or of his spouse the attainment by the child of the age of 18 or cessation of his full-time education or vocational training, if later;
    - (iii) in any other case, the death of the person in respect of which the annuity is payable.
- (7) An annuity on the life of the Member or of a Dependant may be such that it shall be increased by way of increment on each anniversary of the date on which it commenced to be payable for so long as it continues to be payable. The rate of increase shall be such percentage as the Trustee and the Life Office underwriting the Benefit (if any) shall agree subject to the limitation that the increase on an annuity shall not exceed an index as measured by the Consumer Price Index or any other

suitable index agreed by the Revenue Commissioners.

- (8) The amount of the annuity on the life of the Member on retirement at Normal Retirement Age (after taking into account all corresponding benefits to which he is entitled under other retirement benefits schemes of the Employers and any Retained Pension Benefits) must not exceed the amounts set out below:
  - (a) two-thirds of the Member's Final Remuneration or
  - (b) where the Member's number of completed years of service with the Employers at Normal Retirement Age is less than forty, one-sixtieth (or such higher fraction as the Revenue Commissioners will approve) of the Member's Final Remuneration for each year of service with the Employers.
- (9) The amount of the lump sum (after taking into account all other lump sum benefits to which the Member is entitled under other retirement benefits schemes of the Employers and any Retained Lump Sum Benefits) must not exceed three-eighths of the Member's Final Remuneration for each year of service with the Employers subject to a maximum of forty years (or such higher amount as the Revenue Commissioners will approve) or the lump sum limit as defined by Section 790AA of the Taxes Consolidation Act, 1997.
- (10) The amount of any Dependant's annuity (after taking into account all corresponding benefits (i) payable in respect of the Member under other retirement benefits schemes or PRSAs of the Employers or (ii) where the Revenue Commissioners so require derived from retirement benefits schemes or PRSAs or from contracts approved under Chapter 2, Part 30, Taxes Consolidation Act, 1997 relating to earlier employments and exceeding €330 per annum) must not exceed the maximum pension which could be provided for the Member under these Rules plus any post-retirement increases.
- (11) The aggregate amount of all Dependants' annuities (after taking into account all corresponding benefits (i) payable in respect of the Member under other retirement benefits schemes or PRSAs of the Employers or (ii) where the Revenue Commissioners so require derived from retirement benefits schemes or from contracts approved under Chapter 2, Part 30, Taxes Consolidation Act, 1997 relating to earlier employments and exceeding €330 per annum) must not exceed the maximum pension which could be provided for the Member under these Rules plus any post-retirement increases.
- (12) The maximum amount of the Member's annuity shall be reduced by the annuity equivalent of any lump sums paid or payable to the Member under these Rules or under any other retirement benefits scheme of the Employers and where the Revenue Commissioners so require by any Retained Pension Benefits.
- (13) Subject to the Revenue Commissioners' restrictions on the maximum permissible annuity as described in (8) above the lump sum payable under the Scheme is not restricted to any maximum if:
  - (a) the amount of the annuity which would be provided by the application to the purchase thereof of the whole of the proceeds of the relevant assurance or assurances relating to the Member would (together with all corresponding benefits including the annuity equivalent of lump sums received or receivable under other retirement benefits schemes of the Employers) be less than €330 per annumor
  - (b) subject to the consent of the Revenue Commissioners, the Member is in an exceptional state of serious ill-health.

PROVIDED the lump sum payable under the Scheme does not exceed the lump sum limit as defined by Section 790AA of the Taxes Consolidation Act, 1997.

Pensions for widows/widowers and dependants may also be commuted in full if they are regarded by the Revenue Commissioners as trivial.

- (14) (a) The Trustee shall provide any lump sum benefit to be secured under this Rule by payment out of the Member's Account.
- (b) Subject to (c) and (d) below the Trustee shall provide any annuity to be secured under this Rule by the purchase in the name of the Member or other beneficiary of immediate or deferred non-assignable annuity contracts or other suitable policies.
- (c) Where the annuity payable to the Member is expressed as described in (3) of this Rule, the Trustee may defer purchasing such annuity until such later date occurring within the guaranteed period referred to in (3) as the Trustee in their absolute discretion shall decide. The amount of the annuity payable prior to the purchase of the annuity contract (including any increases in pension) may be discharged by the Trustee from the Member's Account.
- (d) Where a prospective Dependant's annuity is to be provided on the death of the Member after retirement, the Trustee may defer the purchase of the annuity until the date of the Member's death. Sufficient funds may be retained in the Member's Account to provide for this eventuality. In the event that some or all of the retained funds are surplus to requirements, the Trustee may repay same to the Employer such payment to be regarded as a taxable receipt of the Employer's business. Where the purchase of an annuity is deferred as described herein, the entitlement of a Dependant to an annuity shall be decided at the date of the Member's death. Where more than one Dependant's annuity is to be provided the Trustee may at their discretion secure one or more immediately and defer the other or others.

#### **6. Benefits after Normal Retirement Age**

- (1) If the Member remains in the service of the Employers after Normal Retirement Age and ceases to be in service at a later date otherwise than by his death the Trustee shall apply his Account in the provision of benefits as described in Rule 5(1) except that these benefits shall be provided at his later date of retirement instead of at his Normal Retirement Age.
- (2) If the Member continues to serve after Normal Retirement Age he may elect, in lieu of waiting to receive his benefits at his later date of retirement as described in (1) of this Rule, to receive at Normal Retirement Age either his lump sum, or his annuity and lump sum benefits to which he would have been entitled under the Scheme if he had retired rather than defer all benefits until actual retirement. In such circumstances the Trustee shall apply his Account accordingly.
- (3) Rule 5(2), 5(3), 5(4), 5(5), 5(6), 5(7) will apply also in respect of benefits payable under (1) and (2) of this Rule.
- (4) The amount of the annuity on the life of the Member on retirement after Normal Retirement Age (after taking into account all corresponding benefits to which he is entitled under other retirement benefits schemes of the Employers and any Retained Pension Benefits) must not exceed the amount set out below:
- (a) if the Member is not a 20% Director the maximum amount which could have been paid to him had he retired at Normal Retirement Age actuarially increased to have regard to the period of deferment
- or
- (b) if the Member is a 20% Director the maximum amount which could have been paid to him had he retired at Normal Retirement Age actuarially increased to have regard to the period of deferment by an amount which is not so great that the annuity

payable would exceed the maximum annuity approvable by the Revenue Commissioners if the date of actual retirement (or age 70 if earlier) was deemed to be the Normal Retirement Age of the Member except that this limitation does not apply to increases after attainment of age 70.

Provided that if the Member is a 20% Director and elects to take his lump sum benefit at Normal Retirement Age or at any date between Normal Retirement Age and his later date of retirement and to defer his annuity until his actual retirement, his annuity may not be increased as described in 4(b) of this Rule and may only be increased by reference to increases in the Consumer Price Index or any other suitable index agreed by the Revenue Commissioners.

- (5) Rule 5(9), 5(10), 5(11), 5(12), 5(13) and 5(14) apply also to benefits payable under this Rule.

#### **7. Benefits on Retirement before Normal Retirement Age**

- (1) If the Member ceases otherwise than by his death to be in service before Normal Retirement Age with the consent of the Employers and not earlier than his 50th birthday (unless cessation of service is on account of ill-health or disablement), no further contribution shall be paid by or in respect of him and the Trustee will if the Member so requires elect in lieu of the benefits payable under Rule 8 and subject always to (2) and (3) of this Rule to apply his Account in accordance with Rule 5 except that such application shall be at his earlier date of cessation of service instead of at his Normal Retirement Age.
- (2) The amount of the annuity on the life of the Member in the event of cessation of service under (1) of this Rule (after taking into account all corresponding benefits and the annuity equivalent of lump sums received or receivable to which he is entitled under other retirement benefits schemes or PRSAs of the Employers and any Retained Pension Benefits) must not exceed the greater of:
- (a) one-sixtieth of the Member's Final Remuneration for each year of service with the Employers subject to a maximum of forty years.
- or
- (b) such proportion of the amount which would be applicable under Rule 5(8) if the Member had remained in the service of the Employers until Normal Retirement Age (or age 60 if earlier) as the number of years of service completed with the Employers bears to the number of years between the date of entry into service with the Employers and Normal Retirement Age any years in excess of forty being disregarded.
- PROVIDED THAT where the Member's actual service is less than ten years such proportion shall not, without the consent of the Revenue Commissioners, exceed the maximum approvable at Normal Retirement Age for the same service under Rule 4(8).
- or
- (c) such greater amount as the Revenue Commissioners may permit from time to time.

Provided that if the Member is retiring on account of ill-health or disablement before Normal Retirement Age the maximum applicable shall be calculated as if he had remained in the service of the Employers until Normal Retirement Age.

- (3) The amount of the lump sum in the event of cessation of service under (1) of this Rule (after taking into account all other lump sum benefits to which the Member is entitled under other retirement benefits schemes of the Employers and any Retained Lump Sum Benefits) must not exceed the greater of:
- (a) three-eighths of the Member's Final Remuneration

for each year of service with the Employers subject to a maximum of forty years

or

- (b) such proportion of the amount which would be applicable under Rule 5(9) if the Member had remained in the service of the Employers until Normal Retirement Age as the number of years of service with the Employers completed bears to the number of years between the date of entry into service with the Employers and Normal Retirement Age any years in excess of forty being disregarded, PROVIDED THAT where the Member's actual service is less than twenty years such proportion shall not, without the consent of the Revenue Commissioners, exceed the maximum allowable lump sum at Normal Retirement Age for the same service under Rule 5(9).

or

- (c) the current lump sum limit as defined by section 790AA of the Taxes Consolidation Act, 1997 as amended.

Provided that if the Member is retiring on account of ill-health or disablement before Normal Retirement Age the maximum applicable shall be calculated as if he had remained in the service of the Employers until Normal Retirement Age.

#### **8. Withdrawal from Service before Normal Retirement Age**

- (1) If the Member ceases otherwise than by his death to be in service before Normal Retirement Age no further contribution shall be paid by or in respect of him AND he may elect to receive either (a) or (b) following:

- (a) an immediate payment of that part of the Member's Account which the Trustee considers represents a repayment of the current value of that Member's contributions under the Scheme. Provided that:

- (i) if the Member is a 20% Director and his pensionable remuneration from the Employers for any year whilst a Member has exceeded €6,350 he may not elect this option and,
- (ii) no such repayment shall be made which would offend against the Pensions Act and where a repayment is prohibited or restricted in order to comply with the Pensions Act, the Member shall be entitled to benefits under Rule 8(1)(b) to the extent of the prohibition or restriction and may elect this option in relation to the remaining amount.

or

- (b) the application by the Trustees on the Member's retirement date of his Account (or such part of his Account to which Rule 8(1)(a)(ii) applies) in accordance with the Rules but subject always to any limitations of the Revenue Commissioners applying to benefits of a Member who retires prior to Normal Retirement Age. For this purpose "retirement date" shall mean whichever of the following dates the Member shall decide:

- (i) Normal Retirement Age

or

- (ii) a date earlier than Normal Retirement Age on which that Member could have received a benefit under Rule 7

or

- (iii) that Member's normal retirement age under his last employer's retirement benefits scheme

or

- (iv) a date later than (i) and (iii) provided that Member is still in employment but not later than his 70th birthday

- (2) If the Member who is entitled to a benefit as described in (1)(b) above dies before the application of his Account as described in (1)(b) then the Trustee will apply his Account in accordance with Rule 8 as if that Member had died in service.

- (3) Subrules 7(2) and 7(3) will apply also in respect of benefits payable under (1) (b) of this rule.

#### **9. Benefits on Death in Service**

- (1) If a Member dies in service the Trustee will apply his Account in the provision as they think fit of all or any of the following benefits:

- (a) a lump sum which (after taking into account all other lump sums provided on death (i) under other retirement benefits schemes or PRSAs of the Employers or (ii) derived from retirement benefits schemes or PRSAs or from contracts approved under Chapter 2, Part 30, Taxes Consolidation Act, 1997 relating to earlier employments, except only such amount as the Revenue Commissioners will permit to be ignored) does not exceed four times the Member's final remuneration plus a repayment of the total of the then current value of the member's own contributions to the Scheme.

For the purposes of this Rule "Final Remuneration" shall be as defined in Rule 1 with references therein to retirement date being construed as date of death provided that the definition shall also include as an additional option the rate of remuneration payable to the member at the date of the Member's death.

- (b) an annuity on the life of one or more Dependants of the Member.

and any such annuity shall be provided by purchasing in the name of the beneficiary from a Life Office a non-assignable annuity contract or other suitable policy.

- (2) The lump sum will be held or paid and applied within two years after the Member's death at the Trustee's discretion. The Trustee shall pay the moneys to the Member's legal personal representatives or pay or apply all or any part of the moneys to or for the benefit of any one or more of the Member's Dependants in accordance with the definition of "Dependants" in Rule 1.

- (3) Rule 5(4), 5(5), 5(6), 5(7) shall apply to any Dependants' annuity payable under this Rule.

- (4) Rules 5(10) and 5(11) shall apply to any Dependants' annuity or annuities payable under this Rule and references in those Rules to maximum pension shall be construed as referring to the maximum the Member could have received if he had retired on the grounds of ill-health at the date of death.

#### **10. Transfers**

- (1) If the Member is entitled to benefit under another retirement benefits scheme or PRSA (in this sub-Rule called "the Other Scheme") the Trustee may (and shall if so required under the Pensions Act or regulations made thereunder) accept a transfer from the trustees of the Other Scheme or

from other persons having the necessary power under the Other Scheme of all or part of the assets of the Other Scheme relating to the Member upon the footing that the Member shall subject to any limitations necessary to secure the continued approval of the Scheme by the Revenue Commissioners be entitled or contingently entitled to such rights and benefits under the Scheme as the Trustee may in its discretion determine.

PROVIDED ALWAYS that the Trustee shall obtain confirmation of the extent (if any) to which such transfer arises from contributions made by the Member and such transfer to the extent so specified and subject to any restrictions on refunds of such contributions shall be deemed to be made by the Member for the purposes of these Rules.

- (2) The Trustee subject to the approval of the Member may (and shall if so required under the Pensions Act or regulations made thereunder) transfer to the trustees or other persons having the necessary powers thereunder of another retirement benefits scheme or PRSA (in this sub-Rule called "the Other Scheme") which is treated by the Revenue Commissioners as an exempt approved scheme pursuant to Section 774, Taxes Consolidation Act, 1997 or is a retirement benefits scheme or PRSA approved for the purposes of this sub-Rule by the said Commissioners, all or part of that Member's Account upon the footing that that Member shall, subject to any requirements of the Revenue Commissioners, be entitled or contingently entitled under the Other Scheme to such benefits in respect of such transfer as the trustees of the Other Scheme or other persons as aforesaid may in their discretion determine.

PROVIDED ALWAYS that

- (i) the Member shall not thereafter be entitled to any benefits under the Scheme

and

- (ii) the Trustee shall not have any further responsibility in respect of such benefits or arising from the assets transferred after such transfer shall be made

and

- (iii) the Trustee shall endeavour to ensure that any prohibition on a refund of contributions to the Member herein shall be maintained in the Other Scheme.

- (3) Where an individual has a right to exercise the option contained in Section 772 (3A) Taxes Consolidation Act, 1997 (subject to the Taxes Consolidation Act, 1997 and regulations made thereunder) to have his Account (or a portion thereof) transferred to some or all of the following:

- (i) himself, or  
(ii) an Approved Retirement Fund, or  
(iii) an Approved Minimum Retirement Fund

and so exercises that option the Trustee shall transfer his Account (or the relevant portion thereof) as requested

PROVIDED ALWAYS that

- (i) the Trustee shall not be obliged to treat an option as exercised unless it receives advance written notice of same but the Trustee may in its absolute discretion accept notification of the exercise of an option in any form as is permitted by law.

and

- (ii) the Member shall not thereafter be entitled to any

benefits under the Scheme in respect of that Account (or the relevant portion thereof)

and

- (iii) the Trustee shall not have any further responsibility in respect of the provision of benefits by or from that Account (or the relevant portion thereof).

#### 11. Tax

The Trustee may deduct from any payment under the Scheme the amount of any tax payable by it or by the Administrator in respect of such payment.

#### 12. Discontinuance

The Employer may in accordance with the Trust discontinue payment of contributions. If the Employers discontinue payment of contributions to the Account of the Member, the Account will continue to be held for application in accordance with these Rules, unless the Scheme is continued by a new employer of the Member as described in the Trust. If the Scheme would be adversely affected by the continued participation of an Associated Employer that Associated Employer shall discontinue payment of contributions relating to the Member in its employment.

#### 13. Winding Up

If and whenever the Scheme is wound up the Account of the Member shall be applied in the provision by purchase or otherwise from a Life Office or PRSA Provider of a suitable investment or investments providing benefits for or in respect of the Member payable under the same conditions as payments receivable hereunder and subject always to the approval of the Revenue Commissioners, any sum which cannot be so applied shall be returned to the Employers in such proportions as the Trustee shall determine

