

Dated

2007

ACCURATE PRECISION INTERNATIONAL CO. LIMITED

KEITH RICHARD MCMAHON

JLT TRUSTEES LIMITED

DEED OF AMENDMENT
relating to The Triumph Pension Fund

Note: This draft is issued by JLT Trustees Limited to the parties outlined in the document. Whilst it is believed that the draft is suitable for the purpose for which it is intended, before a document is executed in this form the parties concerned and their legal advisers should satisfy themselves that the provisions of the draft do indeed satisfy their requirements.

ADDLESIAW GODDARD

Between

- (1) **Accurate Precision International Co. Limited** (Company Number 03201295), whose registered office is at 27 Springfield Lane, Hemel Hempstead, Hertfordshire HP2 5EJ;
- (2) **Keith Richard McMahon** of 1400 Lemon Bay Drive, Venice, FL34293, USA;
- (3) **JLT Trustees Limited** (Company Number 01668457) whose registered office is at 6 Crutched Friars, London EC3N 2PH

Whereas

- (A) This deed is supplemental to the Scheme Documents which currently govern the Scheme.
- (B) Prior to A-day the Scheme was a small self administered scheme within the meaning of the SSAS Regulations.
- (C) The Principal Company is the current principal employer of the Scheme and the Trustees are the present trustees of the Scheme.
- (D) Under the Scheme's amendment power in the Trust Deed, the trustees of the Scheme have the power from time to time or at any time with the consent of the principal company by deed executed by the trustees and the principal company to add to, alter or modify all or any of the trusts powers or provisions of the Trust Deed.
- (E) Under clause 2 of the schedule headed "Membership" in the Trust Deed, Members' Rules may be superseded in whole or in part by subsequent letters signed and accepted in the manner set out in that clause 2.
- (F) Under section 68 of the 1995 Act the Trustees may by resolution modify the Scheme with a view to achieving any of the purposes specified in that section 68.
- (G) In accordance with the Scheme's amendment power and clause 2 of the schedule headed "Membership" in the Trust Deed and (in relation to the Trustees only) section 68 of the 1995 Act, the Principal Company and the Trustees wish to modify the Scheme as set out below in order to:
 - (a) achieve the same effect as all of the modifications in regulations 3 to 8 of the Modification Regulations but without limitation in time by reference to the Transitional Period or otherwise;
 - (b) then amend the Scheme so that the Modification Regulations no longer apply in relation to the Scheme in their entirety, and
 - (c) then modify the Scheme as set out below to:

- (i) ensure that it complies with the requirements for "registered pension schemes" after A-day; and
 - (ii) delete from the provisions of the Scheme the modifications in regulations 4 to 7 of the Modification Regulations (but not regulations 3 and 8 of the Modification Regulations).
- (H) In accordance with clause 2 of the Definitive Deed, the Professional Trustee wishes to delegate the Day to Day Administration of the Scheme to JLT Benefit Solutions.

It is agreed

1 Definitions

1.1 In the recitals and clauses 1 to 9 of this deed the following expressions have the following meanings:

- (a) **1995 Act** means the Pensions Act 1995
- (b) **A-day** means 6 April 2006
- (c) **Administrator** has the same meaning as in the Definitive Deed
- (d) **Amendment Regulations** means the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 / 759
- (e) **Day to Day Administration** means the day to day administration of the Scheme, including (but not limited to) dealing with HM Revenue & Customs requirements and benefit payments and dealing with members and third parties in relation to the Scheme and any other matters determined by the Professional Trustee to fall within the scope of day to day administration of the Scheme (but not the role of Scheme Administrator)
- (f) **Definitive Deed** means the Definitive Deed attached to this deed
- (g) **Effective Date** means the date on which this deed takes effect pursuant to clause 2 below
- (h) **JLT Benefit Solutions** means JLT Benefit Solutions Limited (No. 2240496) whose registered office is at 6 Crutched Friars, London EC3N 2PH
- (i) **Members' Rules** has the meaning in clause 2 of the schedule in the Trust Deed headed "Membership" of this deed
- (j) **Member Trustees** means the persons whose names and addresses are set out in clause 2 of the parties clause at the beginning of this deed
- (k) **Modification Regulations** means the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 / 364
- (l) **person** means any individual, company, firm or organisation

- (m) **Principal Company** means the person whose name and address are set out in clause 1 of the parties clause at the beginning of this deed
 - (n) **Professional Trustee** means the person whose name and address is set out in clause 3 of the parties clause at the beginning of this deed
 - (o) **schedule** means a schedule of the Trust Deed or this deed, as appropriate
 - (p) **Scheme** means The Triumph Pension Fund
 - (q) **Scheme Documents** means the Trust Deed and Members' Rules as amended from time to time
 - (r) **SSAS Regulations** means the Retirement Benefit Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991/1614
 - (s) **Transitional Period** has the same meaning as in regulation 1(2) of the Modification Regulations
 - (t) **Trust Deed** means the trust deed dated 30 May 2000 that currently governs the Scheme
 - (u) **Trustees** means the Member Trustees and the Professional Trustee.
- 2 The provisions in this deed take effect on the date on which this deed is executed, in the order in which they are set out below (save that any definitions of terms contained in the deed shall apply throughout the deed unless otherwise specified).
- 3 The Trustees in exercise of the power conferred on them by regulation 6 of the Amendment Regulations hereby resolve that the Scheme shall be modified with effect from A-day as set out in the following provisions of this clause 3:
- 1 the provisions of the Scheme shall be modified so as to incorporate all of the modifications in regulations 3 to 8 of the Modification Regulations directly into the Scheme's provisions but omitting any references (however framed) in those regulations limiting their effect by reference to the Transitional Period; and
 - 0 the provisions of the Scheme shall be amended so that the Modification Regulations no longer apply in relation to the Scheme with effect from the date on which the modifications effected by clause 3(a) above take effect.
- 4 To the extent that the modifications effected by clause 3 of this deed conflict with any other provision of the Scheme, the modifications effected by clause 3 shall prevail, save that nothing in this clause 3 shall prejudice any power (whether statutory, contained in the Scheme's provisions or otherwise) to modify the modifications effected by clause 3 in future (including by means of subsequent clauses of this deed).
- 5 In exercise of their powers under the Trust Deed the Trustees (in their capacity as trustees of the Scheme) hereby modify the Scheme so that the Scheme shall stand amended as set out below and the Principal Company hereby consents to such:

- (a) the provisions of the Scheme shall be amended so as to delete the modifications in regulations 4 to 7 of the Modification Regulations that were incorporated into the Scheme pursuant to clause 3(a) above (but not, for the avoidance of doubt, regulations 3 and 8 of the Modification Regulations);
- (b) subject to paragraphs (c) to (j) below, the Trust Deed is deleted in its entirety and replaced with the provisions set out in the attached Definitive Deed;
- (c) this deed shall not operate to render invalid any act done in relation to the Scheme prior to the Effective Date where such act was valid prior to the Effective Date;
- (d) this deed shall not operate to render any act or failure to act on the part of the Trustees prior to the Effective Date a breach of trust where such act or failure to act did not constitute a breach of trust immediately prior to the Effective Date;
- (e) except where expressly stated, nothing contained in this deed shall be interpreted as affecting any period of Scheme membership in respect of which a transfer payment or a refund of contributions was made before the Effective Date;
- (f) save to the extent (if any) expressly provided in the Definitive Deed the amendments effected by this deed shall not have the effect of requiring the Trustees to review or alter any decisions which they have made before the Effective Date regarding allocation of the Scheme assets;
- (g) any benefits which had immediately prior to the Effective Date fallen due for payment but not yet been paid shall be dealt with in accordance with the Scheme's governing provisions as in force immediately prior to the Effective Date;
- (h) where a member or other beneficiary of the Scheme died before the Effective Date but a benefit payable in respect of such death has not been paid prior to the Effective Date, such death benefit shall be dealt with in accordance with the Scheme's governing provisions as in force immediately prior to the Effective Date;
- (i) the indemnity from the founder in the Trust Deed shall not be deleted and replaced with the rest of the Trust Deed but shall instead remain unaltered; and
- (j) nothing in this deed or the Definitive Deed shall be construed as deleting or restricting the powers conferred on the Trustees or the Administrator through the incorporation of regulations 3 and/or 8 of the Modification Regulations under clause 3(a) above.

1 If any aspect of the modification or amendment of the Scheme as aforesaid would constitute a voidable modification within the meaning of section 67(2) of the 1995 Act or be invalid for any other reason, then the amendments made by this deed shall be construed as being restricted so far as may be necessary so that no voidable modification is made / it is not

invalid, but not further or otherwise and shall in all other respects operate as set out in this deed.

- 2 By signature of this deed the Member Trustees, in their capacity as members / former members (as appropriate) of the Scheme, hereby accept the changes made to their Members' Rules as provided aforesaid. The Principal Company by signature of this deed agrees to the changes to the Members' Rules as aforesaid.
- 3 The Professional Trustee in exercise of the power conferred on it by clause 1.3 of schedule 2 of the Definitive Deed hereby delegates the Day to Day Administration of the Scheme to JLT Benefit Solutions on such terms and conditions as it may agree with JLT Benefit Solutions from time to time.
- 4 The parties to this deed do not intend that any term of this deed should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this deed, except any future trustee of the Scheme enforcing a term of this deed in his position as a trustee of the Scheme. This does not affect any rights apart from that Act.
- 5 This deed may be executed in any number of counterparts each of which when executed and delivered shall be an original one and all the counterparts together shall constitute one and the same deed.

Executed as a deed by the parties or their duly authorised representatives but not delivered until the date of this deed.

Executed as a deed by)
Accurate Precision International Co.) Director
Limited)
acting by two directors or by a director and)
its secretary)
) Director/Secretary



Executed as a deed by **Keith Richard**)
McMahon)

in the presence of)
)

.....

Signature of witness

Name

Address

.....

The common seal of)

JLT Trustees Limited)

was affixed to this deed in the presence of)

.....

Authorised Sealing Officer

.....

Authorised Sealing Officer

DEFINITIVE DEED

Introduction

1. The Principal Company has established the Scheme whose purpose is to provide:
 - (a) in respect of the period prior to A-day, Relevant Benefits; and
 - (b) in respect of the period from and including A-day, benefits consistent with the Scheme's Registration.

In respect of the period from and including A-day the Scheme shall be operated as a Registered Pension Scheme within the meaning of section 150(2) of the FA 2004 for as long as HMRC allows.

2. The moneys necessary for constituting and building up the fund of the Scheme (**Fund**) required for the purposes aforesaid will be furnished by contributions made by Employers and, if required, the Members. Contributions may also be accepted at the discretion of the Trustees by persons who are not Employers.
3. The Fund shall continue to be held by the Trustees upon irrevocable trust (subject to the payment of all expenses properly incurred in connection with the Scheme) to apply the income and if and so far as necessary the capital of the Fund in or towards providing retirement benefits for the Members of the Scheme in accordance with the provisions of the Scheme. Upon the advice of an actuary the Trustees may from time to time in their discretion in special circumstances appearing to them to warrant such action augment the benefits to which any person or class of persons may be entitled under the Scheme. Provided that any deviation under this clause from the benefits as defined in the provisions of the Scheme shall not operate so as to increase the benefits payable to or in respect of a Member in excess of the limits contained herein or such as to be inconsistent with the Scheme's Registration or result in the Scheme making an Unauthorised Payment.
4. The Employers may at any time pay contributions to the Scheme in order to augment the benefits of Members or their widows and dependants either generally or in any particular case subject to the proviso in the preceding clause.
5. Any company which desires to participate in the Scheme at any time may with the consent of the Principal Company and the Trustees enter into agreement with the Principal Company and the Trustees by deed supplemental hereto covenanting inter alia to observe and perform the provisions of the Scheme as from time to time lawfully amended insofar as they are or ought to be performed or observed by that company and that company shall thereby participate in the Scheme as from the date specified in such agreement provided that this would not prejudice Registration.
6. The Employers or any one or more of them at any time may terminate liability on their or its part to contribute to the Scheme by giving written notice in that behalf to the Trustees not less than one month before the date on which the contributions shall cease.

7. The schedules below shall be deemed to be incorporated into and form part of this Definitive Deed.

Schedule 1

Interpretation

In the construction of the Scheme:

- 1 the expressions defined in this schedule 1 shall bear the respective meanings attributed to them in this schedule unless there is something inconsistent in the subject matter or the context
- 2 each Member's Rules shall complement the Definitive Deed and both shall be construed together. However in the event of any inconsistency between any Member's Rules and the Definitive Deed, the Definitive Deed shall prevail and be overriding
- 3 this Definitive Deed will be read and construed in accordance with the laws of England and Wales.

In this Definitive Deed except insofar as the context otherwise requires:

- (a) pronouns and adjectival pronouns denoting the masculine gender shall be construed as including the feminine;
- (b) words in the singular shall be constructed as including the plural and words in the plural as including the singular;
- (c) references to a "clause" mean a clause in the relevant schedule except where expressly stated otherwise;
- (d) any reference to a statute, statutory instrument or other legislative provision includes any amendment or re-enactment of it for the time being in force and any regulations made under it. This includes sections of the 1988 Act which have been re-enacted or amended by the Income Tax (Earnings and Pensions) Act 2003 or any Finance Act. Any reference to a particular section or part of a statute or statutory instrument will be read to include reference to any other relevant section or part of the statute or statutory instrument; and
- (e) the following expressions have the meanings hereby respectively assigned to them:

1998 Act means the Income and Corporation Taxes Act 1988

1993 Act means the Pension Schemes Act 1993

1995 Act means the Pensions Act 1995

3 Month Condition has the same meaning as in section 101AA of the 1993 Act, as inserted by section 264 of the Pensions Act 2004

Actuary means a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries in Scotland or a firm of such fellows who shall for the time being and from

time to time be appointed in accordance with clause 6 of schedule 2 for the purposes of the Scheme

A-day means 6 April 2006

Administrator means:

- (a) in respect of the period before A-day, any person appointed to meet the requirements of HMRC under the terms of section 612(1) of the 1988 Act; and
- (b) in respect of the period from and including A-day means the scheme administrator within the meaning of section 270 of the FA 2004 being the person who controls the management of the Scheme

Alternatively Secured Pension Fund has the same meaning as in paragraph 11 of schedule 28 of the FA 2004

Annuity Protection Lump Sum Death Benefit has the same meaning as in paragraph 16 of schedule 29 of the FA 2004

Arrangement means an arrangement within the meaning of section 152 of the FA 2004

Auditor means a member of the Institute of Chartered Accountants in England and Wales or the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland or the Association of Certified Accountants or a firm whose partners are members of one of the aforesaid bodies but excluding any person who is precluded from acting as Auditor by section 389 of the Companies Act 1985

Beneficiary means a person entitled or prospectively entitled to a benefit under the Scheme

Cash Equivalent means the cash equivalent as defined in the 1993 Act of a Member's Capital Sum as determined in accordance with the 1993 Act and the 1995 Act

Charity Lump Sum Death Benefit has the same meaning as in paragraph 18 of schedule 29 of the FA 2004

Child means in relation to any person a child under age eighteen or over that age and currently in receipt of full-time education or vocational training. This expression includes:

- (a) a step-child
- (b) a legally adopted child
- (c) a child to whom the person in question stood in loco parentis immediately prior to his death

(d) a child conceived but not yet born

(e) an illegitimate child.

company means any body corporate or unincorporated associated but does not include a partnership

Day to Day Administrator means the person with responsibility for the day to day administration of the Scheme, including (but not limited to) HMRC requirements and benefit payments and dealing with members and third parties in relation to the Scheme and any other matters determined by the Professional Trustee to fall within the scope of day to day administration of the Scheme (but not the role of Scheme Administrator)

Death Benefit Beneficiary means in respect of a Member or Beneficiary:

- (a) his Spouse or dependant ("dependant" for the purposes of this definition meaning any person, who at the time of the Member's or Beneficiary's death was in the Trustees' opinion dependent or financially interdependent on him);
- (b) his Children;
- (c) his brothers or sisters (whether of the whole or half blood);
- (d) his other ascendants or descendants;
- (e) his personal representatives;
- (f) any person named in any written expression of wish form made by the Member or Beneficiary; or
- (g) anyone who is themselves a beneficiary under the Member or Beneficiary's will.

Deferred Pensioner means a former Member who is entitled to deferred benefits under or derived from the Scheme but who has not yet become a Pensioner

Definitive Deed means this Definitive Deed (including the schedules), as amended from time to time

Dependant has the same meaning as in paragraph 15 of schedule 28 of the FA 2004 and shall include a person who was married to the member when the member first became entitled to a pension under the Scheme

Dependants' Alternatively Secured Pension has the same meaning as in paragraph 19 of schedule 28 of the FA 2004

Dependants' Annuity has the same meaning as in paragraph 17 of schedule 28 of the FA 2004

Dependants' Scheme Pension has the same meaning as in paragraph 16 of schedule 28 of the FA 2004

Dependants' Unsecured Pension has the same meaning as in paragraph 18 of schedule 28 of the FA 2004

Dependants' Unsecured Pension Fund has the same meaning as in paragraph 22 of schedule 28 of the FA 2004

Discretionary Trusts means that in regard to any sum directed to be held thereon in respect of a deceased Member Deferred Pensioner or Pensioner:

- (a) the Trustees shall have power to pay or apply the whole or any part of that sum to or for the benefit of all or any of the deceased's Death Benefit Beneficiaries and for that purpose the Trustees shall have power to declare trusts and constitute separate trustees thereof and provide for their remuneration;
- (b) if or to the extent that the Trustees shall not exercise such power within twenty-four months of the death of the individual the Trustees shall hold such sum on trust for the personal representatives of the deceased absolutely provided that if there are no Death Benefit Beneficiaries the amount held on the Discretionary Trusts will revert to the general capital of the Fund and be used for the purposes of the Scheme
- (c) the twenty-four month time period specified in (b) above may be extended by the Trustees to such longer time period as may in any specific case be possible without prejudicing the Scheme's Registration or resulting in the Scheme being treated as having made an Unauthorised Payment

Employee means a person in the service of an Employer and includes a director

Employer means the Principal Company and any other company which participates in the Scheme in accordance with clause 5 of the Introduction

Employer-Related Investment has the meaning given in section 40 of the 1995 Act

Enhanced Protection has the meaning in part 2 of schedule 36 of the FA 2004

FA 2004 means the Finance Act 2004

HMRC means Her Majesty's Revenue and Customs

Ill-health Condition in the context of determining whether the Ill-health Condition is met has the same meaning as in paragraph 1 of schedule 28 of the FA 2004

Income Withdrawal has the same meaning as in paragraph 7 of schedule 28 of the FA 2004

Insurance Company has the meaning given to an insurance company under section 275 of the FA 2004 or alternatively such other insurance company as the Administrator may select provided this is consistent with the requirements for Registered Pension Schemes

Lifetime Allowance Excess Lump Sum means a lifetime allowance excess lump sum within the meaning of paragraph 11 of schedule 29 of the FA 2004

Lifetime Annuity has the same meaning as in paragraph 3 of schedule 28 of the FA 2004

Linked Qualifying Service means periods of employment in respect of which accrued rights in another scheme have been transferred to this Scheme

Lump Sum Death Benefit and **Lump Sum Death Benefit Rule** have the same meaning as in section 168 of the FA 2004

Lump Sum Rule has the same meaning as in section 166 of the FA 2004

Member means each eligible person who, having agreed the terms and conditions with an Employer under which he is to become a Member of the Scheme and having agreed the Rules, has been accepted by the Trustees as a Member, but who has not become a Deferred Pensioner or a Pensioner or otherwise ceased to participate in the Scheme and **Membership** shall have a corresponding meaning.

Member's Capital Sum means, in relation to any Member, Deferred Pensioner or, if applicable, Pensioner (**Person**) that part of the Fund which is determined by the Trustees subject to the following provisions of this definition as relating to the relevant Person at that time, having regard to:

- (a) the contributions paid into the Scheme on behalf of the Person by the Employers and (if relevant) by the Person (including any additional contributions);
- (b) any transfer amounts paid into the Scheme on behalf of the Person;
- (c) the income and capital position of the Fund (after allowing for expenses and other deductions); and
- (d) any other matters which the Trustees consider appropriate.

Nothing in this definition or the Definitive Deed or Members' Rules shall confer on any person any right to any specific assets of the Fund which may be allotted to him on a notional basis for the sole purpose of determining the value of his Member's Capital Sum from time to time. The Trustees may, in determining the Member's Capital Sum in respect of a Person, have regard to the advice of an Actuary, but nothing in this definition shall oblige the Trustees to take the advice of an Actuary when determining any Member's Capital Sum.

The Trustees shall in exercising their powers to determine the Member's Capital Sum in respect of a Person exercise them in such manner that they are satisfied that their determination will not result in an Unauthorised Payment, or in an Unauthorised Payment being treated as having been made. Without prejudice to the generality of the foregoing, the Trustees shall exercise their powers in a manner which they are satisfied will not give rise to an Unauthorised Payment, or to an Unauthorised Payment being treated as having been made, pursuant to.

- (a) section 172 of the FA 2004 (Assignment);
- (b) section 172A of the FA 2004 (Surrender);
- (c) section 172B of the FA 2004 (Increase in rights of connected person on death);
- (d) section 172C of the FA 2004 (Alteration of unallocated employer contributions); or
- (e) section 174 of the FA 2004 (Value Shifting)

Member's Credit means that part of a Transfer Credit attributable to the Member's own contributions to a previous scheme of which he was a member

Member Trustees means the trustees of the Scheme other than the Professional Trustee

Normal Minimum Pension Age means:

- (a) before 6 April 2010, 50, and
- (b) on and after that date, 55

save that if paragraph 21 of schedule 36 of the FA 2004 would operate to modify the meaning of the term "normal minimum pension age" for the purposes of Part 4 of the FA 2004 (except for section 218(6) and paragraph 19 of schedule 36) in relation to a Member (which for this purpose shall have the same meaning as in clause 2 of schedule 7) the meaning of Normal Minimum Pension Age for the purposes of the Scheme shall also be so modified in relation to that Member

Normal Retirement Date means the date so stated in each Member's Rules and shall not be in any individual case outside of the age range of 60 to 75 except with the prior approval of HMRC

Pension means a pension payable in respect of the Scheme. Unless the context otherwise requires, it includes a Scheme Pension, Lifetime Annuity, Unsecured Pension or Alternatively Secured Pension

Pensionable Service shall have the meaning ascribed to it by paragraph 3 of schedule 16 to the Social Security Act 1973

Pension Commencement Lump Sum means a pension commencement lump sum within the meaning of paragraph 1 of schedule 29 of the FA 2004

Pension Conditions in the context of any matter being required to comply with the Pension Conditions means:

- (a) that the action will not prejudice the Scheme's Registration;
- (b) that the Trustees are satisfied that the action will not result in the Scheme making or being treated as making an Unauthorised Payment; and

(c) that the action is consistent with compliance with the Pension Rules

Pension Death Benefit has the same meaning as in section 167 of the FA 2004

Pension Death Benefit Rules means the pension death benefit rules set out in section 167 of the FA 2004

Pensioner (except in the expression "Deferred Pensioner") means a former Member in respect of whom all or part of his Member's Capital Sum has been used to secure him benefits in accordance with the Definitive Deed

Pension Rules means the pension rules set out in section 165 of the FA 2004

Preservation Requirements means the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 as amended and the provisions of Chapters I, II and IV of the 1993 Act relating to the rights of a former Member on termination of his Scheme membership

Principal Company means the principal employer of the Scheme

Professional Trustee means JLT Trustees Limited or any person substituted for it

Qualifying Service (except in the expression "Linked Qualifying Service") means those periods of employment with which the Scheme is or will be concerned terminating before the Normal Retirement Date which after expunging periods which do not count total two or more complete years

Recognised Transfer has the same meaning as in section 169 of the FA 2004

Refund of Excess Contributions Lump Sum means a refund of excess contributions lump sum within the meaning of paragraph 6 of schedule 29 of the FA 2004

Registration means the status of being a registered pension scheme in accordance with section 150(2) of FA 2004 and Registered Pension Scheme has a corresponding meaning

relevant benefit accrual has the meaning in part 2 of schedule 36 of FA 2004

Relevant Benefits has the meaning given in section 612 of the 1988 Act

Relevant Date means the date of retirement leaving Pensionable Service or death as the case may be

Relevant Employment means the employment in respect of which an individual is a Member of this Scheme

Relevant Uncrystallised Funds has the same meaning as in paragraph 15 of schedule 29 of the FA 2004

Rule has the meaning given in clause 2 of schedule 5 of this Definitive Deed

Scheme means The Triumph Pension Fund

Scheme Pension has the same meaning as in paragraph 2 of schedule 28 of the FA 2004

Secretary means the Secretary of the Scheme for the time being appointed under the Definitive Deed and includes any person so appointed to act as secretary in the absence of the Secretary

Serious Ill-health Lump Sum means a serious ill-health lump sum within the meaning of paragraph 4 of schedule 29 of the FA 2004

Service means service as an Employee

Short Service Refund Lump Sum means a short service refund lump sum within the meaning of paragraph 5 of schedule 29 of the FA 2004

Short-term Annuity has the same meaning as in paragraph 6 of schedule 28 of the FA 2004

Spouse means the wife, husband or Civil Partner of a relevant individual. In the case of polygamous marriages and/or Civil Partnerships the spouse will be such wife, husband or Civil Partner as the Member Trustees may decide. Where the context requires wife, husband or Civil Partner will mean widow, widower or surviving Civil Partner

Taxable Property means taxable property held by investment regulated pension schemes within the meaning of the FA 2004

Transfer Credit means benefits and rights accorded to a Member by reference to a transfer payment received from another scheme

Transfer Lump Sum Death Benefit has the same meaning as in paragraph 19 of schedule 29 of the FA 2004

Trivial Commutation Lump Sum Death Benefit has the same meaning as in paragraph 20 of schedule 29 of the FA 2004

Trustees means the Member Trustees and the Professional Trustee collectively for the time being appointed

Unauthorised Payment means an unauthorised payment within the meaning of section 160(5) of the FA 2004

Unsecured Pension Fund has the same meaning as in paragraph 8 of schedule 28 of the FA 2004

Unsecured Pension Fund Lump Sum Death Benefit has the same meaning as in paragraph 17 of schedule 29 of the FA 2004

Winding-up Lump Sum means a winding-up lump sum within the meaning of paragraph 10 of schedule 29 of the FA 2004

Winding-up Lump Sum Death Benefit means a winding up lump sum death benefit within the meaning of paragraph 21 of schedule 29 of the FA 2004

Schedule 2

Trustees

1 Scheme Administration and appointment of Administrator

- 1.1 Subject to clauses 1.2 to 1.4 the administration and management of the Scheme shall be vested in the Trustees in accordance with the powers expressed in this Definitive Deed.
- 1.2 The Trustees shall be the Administrator and the Day to Day Administrator of the Scheme in the period prior to A-day. In the period commencing with A-day, the Professional Trustee shall be the Administrator and the Day to Day Administrator.
- 1.3 The Professional Trustee may at any time and from time to time in writing delegate all or any aspects of the role of Day to Day Administrator of the Scheme, including (to the extent permitted by law) all powers, duties and discretions of the Professional Trustee relevant to the role of Day to Day Administrator, to any person on such terms and conditions (including as to remuneration) as the Professional Trustee in its absolute discretion considers appropriate. The fees charged by the delegate shall be an expense of the Scheme for the purposes of clause 15. For the avoidance of doubt, the power to delegate under this clause 1.3 includes the power to appoint new or replacement delegates.
- 1.4 The Administrator may at any time resign as the Administrator and/or Day to Day Administrator by giving 30 days' written notice to this effect to the Trustees. The Member Trustees (or, where applicable, such of them as have not resigned as Administrator and/or Day to Day Administrator) shall then act as the Administrator and/or Day to Day Administrator (as applicable) unless and until a new person is appointed by the Member Trustees as a replacement Administrator and/or Day to Day Administrator (as applicable). Where the resignation of a Member Trustee as Administrator and/or Day to Day Administrator would result in the Scheme having no Administrator and/or Day to Day Administrator, the Principal Company shall appoint a replacement Administrator and/or Day to Day Administrator (as applicable) as soon as practicable, but the resignation of the Member Trustee as Administrator and/or Day to Day Administrator shall be of no effect until such time as a replacement Administrator and/or Day to Day Administrator (as applicable) has been appointed.
- 1.5 The Member Trustees may at any time remove the current Administrator and/or Day to Day Administrator by giving 30 days' written notice to him to this effect. The Member Trustees (or, where applicable, such of them as have not resigned or been removed as Administrator and/or Day to Day Administrator) shall then act as the Administrator and/or Day to Day Administrator (as applicable) unless and until a new person is appointed by the Member Trustees as a replacement Administrator and/or Day to Day Administrator (as applicable). Where the removal of a Member Trustee as Administrator and/or Day to Day Administrator would result in the Scheme having no Administrator and/or Day to Day Administrator, the Principal Company shall appoint a replacement Administrator and/or Day to Day Administrator (as applicable) as soon as practicable, but the resignation of the Member Trustee as Administrator

and/or Day to Day Administrator shall be of no effect until such time as a replacement Administrator and/or Day to Day Administrator (as applicable) has been appointed.

- 1.6 The appointment of the Administrator shall be on such terms and conditions (including as to remuneration) as may be agreed between the Principal Company (or the Member Trustees if there is no Principal Company) and the Administrator from time to time in writing. The fees charged by the Administrator shall be an expense of the Scheme for the purposes of clause 15.
- 1.7 Where by virtue of this clause 1 the Member Trustees (or, where applicable, such of them as have not resigned or been removed) are required to act as Administrator they shall take such action as may be necessary in order to become the Administrator, including (without prejudice to the generality of the foregoing) making the "required declaration" in accordance with section 270 of the FA 2004.
- 1.8 Where a person has resigned or been removed as Administrator in accordance with this clause 1 but continues to have a liability pursuant to section 271(4) of the FA 2004, he shall, subject to clause 1.6 be entitled to recover from the Scheme the amount for which he is liable by virtue of section 271(4) of the FA 2004 together with any fees, costs and expenses which he incurs in connection with the Scheme (including without prejudice to the generality of this clause 1.8 any actuarial, legal or other professional fees, costs and expenses) by reason of his continuing liability under section 271(4) of the FA 2004.

2 Power to Determine Entitlement

Subject to the powers to be exercised by the Employers as herein expressed the Trustees shall have full power to determine in consultation with the Principal Company whether or not any person is entitled from time to time to any benefit or payment in accordance with the Scheme and in deciding any question of fact they shall be at liberty to act upon such evidence or presumption as they shall in their discretion think sufficient although the same be not legal evidence or legal presumption. Subject as aforesaid the Trustees shall also have power conclusively to determine all questions and matters of doubt arising on or in connection with the Scheme and whether relating to the construction thereof or the benefits thereunder or otherwise.

3 Power to act on advice

- 3.1 The Trustees shall have the power:
 - (a) to act on the advice or opinion (whether or not obtained by them) of the Actuary and any lawyer broker accountant investment adviser medical practitioner surveyor or other suitably qualified person and (subject to the provisions of clause 9 of this schedule) shall not be responsible for any loss occasioned by so acting;
 - (b) to settle compromise or submit to arbitration any claim or matter relating to the Scheme or the trusts thereof.

3.2 Power to amend

The Trustees shall have the power from time to time or at any time with the consent of the Principal Company by deed or deeds executed by the Principal Company and the Trustees to add to alter or modify all or any of the trust powers or provisions of the Definitive Deed and without prejudice to the generality of the above such addition alteration or modification may be made to be effective from a date earlier than the instrument so adding altering or modifying.

4 General power to give undertakings

In order to:

- (a) maintain the Scheme's Registration; or
- (b) comply with the Preservation Requirements:
 - (i) the Trustees with the consent of the Principal Company are empowered to make any changes necessary to this Definitive Deed by deed;
 - (ii) the Trustees may give such undertakings to HMRC and The Pensions Regulator in respect of the provisions of pensions and benefits under this Definitive Deed and the Rules as shall from time to time be required and the Trustees shall have power to adjust the benefits under the Scheme as necessary to comply with the requirements of HMRC and The Pensions Regulator in relation to any such undertakings.

The provisions of any such undertakings shall be deemed to be incorporated in this Definitive Deed.

5 Power to employ agents and to delegate

- 5.1 The Trustees shall have power to employ such agents as they think fit in the transaction of any business of the Scheme or the Fund including the payment of pensions and other benefits and any valid receipt therefore given to such agents shall be a good and sufficient discharge to the Trustees.
- 5.2 The Trustees shall have the power to delegate (and/or authorise the sub-delegation of) any of their duties discretions or powers (other than the duties imposed on the Trustees regarding the termination of the Scheme and the distribution of assets thereunder) to any of their number or to any person whom they reasonably believe by qualification or training or experience is capable of carrying out such duties discretions or powers. Such delegation shall be on such terms and conditions and for such periods and at such remuneration (if any) as the Trustees see fit. The Trustees may at any time revoke any delegation (and/or sub-delegation).

6 Power to extend time limits

Except for any sum directed to be held on Discretionary Trusts where any period or date is specified in the Definitive Deed as the period within which or the date by which anything is to be done by or to or in respect of an Employee who is eligible for membership a Member or a Deferred Pensioner the Trustees may on written application being made in that behalf notwithstanding that the period has expired or that date has passed extend that period or fix a later date on such terms and conditions as they may prescribe.

7 Appointment and removal of Trustees

- (a) The power of appointing new or additional trustees of the Scheme and the trusts and purposes hereby declared and the power of removing one or more trustees shall be vested in the Principal Company and shall be exercised by deed. In the case of the Professional Trustee, the Principal Company must give the Professional Trustee 3 months written notice of its removal (or such lesser period as the parties may agree);
- (b) A corporate body may act as a Trustee and, if so appointed, its powers, duties, authorities and discretions are to be exercisable either by its board of directors or by any one or more of its duly authorised officers.
- (c) Any Trustee upon giving three months' notice to each of the other Trustees and each of the Employers may retire as a Trustee of the Scheme. Upon the expiry of the said three months the Trustee giving such notice shall be deemed to have been discharged from the trusts of the Scheme whether or not the Principal Company has appointed a replacement Trustee;
- (d) It is confirmed that a person is not precluded from being appointed or acting as a trustee of the Scheme by reason of his being neither resident nor domiciled in any part of the United Kingdom nor of British nationality;
- (e) In the event that all Trustees are resident outside the United Kingdom they shall appoint a person resident in the United Kingdom to act on their behalf as Administrator and to discharge all duties imposed upon the Administrator and such appointment shall be such as will satisfy the requirements of HMRC under the FA 2004.
- (f) A departing Trustee shall execute such documents and take such further action as may reasonably be required by the Principal Employer and the other Trustees to implement his retirement or removal and to vest the Fund in the continuing Trustees with effect from the date he ceases to be a Trustee. Should he fail to do so the remaining Trustees may execute such documents and act on his behalf as his attorney. Each of the Trustees irrevocably authorises and appoints their co-Trustees as such for this purpose.

8 **Appointments**

The Principal Company or the Trustees with the approval of the Principal Company shall from time to time appoint and may from time to time remove:

- (a) a Secretary or temporary substitute for a Secretary;
- (b) an Actuary;
- (c) an Auditor;

upon such terms and conditions as to their tenures of office duties and remuneration as the Trustees may think fit subject in the matter of remuneration to the consent of the Principal Company.

9 **Trustees' indemnities**

9.1 The Trustees shall be entitled to all the indemnities conferred on trustees by law. No Trustee, Administrator or director employee or member of a body corporate comprising a Trustee for the time being shall be liable for any acts or omissions not due to its or his own wilful neglect or default and the Principal Company shall keep the Trustees and the Administrator indemnified against the exercise of all the Trustees' powers and the application of the Trustees' discretion.

9.2 Subject to sections 33 and 34 of the 1995 Act and save in the case of fraud the liability of the Professional Trustee shall not, to the extent permissible by law, exceed the available assets of the Scheme.

10 **Trustees' entitlement to benefits**

Any Member will be entitled absolutely to any benefit accruing to him as a Member of the Scheme notwithstanding that he may from time to time be a Trustee or a director employee or member of a body corporate which is a trustee of the Scheme for the time being.

11 **Trustees' remuneration**

The Trustees shall be entitled to charge and be paid such remuneration for their services hereunder as may be agreed between them and the Principal Company.

12 **Accounts**

The Trustees shall cause true and full accounts to be kept of all moneys passing through their hands and also a record of all persons receiving benefits and of all other matters proper to be recorded so as to show the full facts relating to the Scheme.

13 **Audit and inspection of accounts**

The Trustees may from time to time cause the accounts of the Scheme to be audited by the Auditor appointed as hereinbefore mentioned.

14 Operation of a bank account

Subject to section 49(1) of the 1995 Act the Trustees may from time to time in writing authorise such persons or person as they shall think fit to draw cheques on any banking account or to endorse cheques or to give receipts and discharges for any monies or other property payable transferable or deliverable to the Trustees and every such receipt or discharge shall be as valid and effectual as if it were given by the Trustees. The production of a written authority of the Trustees as aforesaid shall be a sufficient protection to any debtor or other person taking any such receipt or discharge as aforesaid and unless such debtor or other person shall have received express notice in writing of the revocation of such authority he shall be entitled to assume and act on the assumption that the authority remains unrevoked.

15 Expenses

All expenses in connection with the establishment administration and management of the Scheme shall be paid by the Employers in such proportions as the Actuary advises or if the Trustees decide out of the Fund.

16 Perpetuity period

On the 80th anniversary of the date of the establishment of the Trust (the period of 80 years from such date being the perpetuity period applicable to the trusts hereof and to the Scheme) if there shall have been no legislation making it lawful for the trusts of the Fund to continue for an indefinite time or in perpetuity or if before such perpetuity contingency occurs the Principal Company by resolution of its board of directors decides that the Scheme shall be wound up then in either such case the Scheme shall be wound up and the Fund dissolved and the trusts of the Scheme shall cease and be determined in the manner prescribed in schedule 10 hereof.

17 Power to insure

The Trustees shall have power.

- (a) to insure any asset comprised in the Fund on such terms as they shall think fit;
- (b) to pay premiums out of income or capital;
- (c) to use any insurance money received to restore the asset or if this is not possible to apply it as if it were the proceeds of sale of the asset.

18 Trustees' resolutions

A resolution in writing signed by all the Trustees shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held and any such resolution may consist of one or more documents in similar form each signed by one or more of the Trustees.

19 Trustees' interests

No decision of or exercise of a power by the Trustees shall be invalidated or questioned on the ground that the Trustees or any of them had a direct or other personal interest in the mode or result of such decision or of exercising such power.

20 Manner of exercise of Trustees' powers

20.1 Subject to clause 22 and without prejudice to clause 23 the Trustees shall exercise their powers in a manner which they are satisfied will not give rise to an Unauthorised Payment, or to an Unauthorised Payment being treated as having been made. Without prejudice to the generality of the foregoing, the Trustees shall exercise their powers in a manner which they are satisfied will not give rise to an Unauthorised Payment or to an Unauthorised Payment being treated as having been made, pursuant to:

- (a) section 172 of the FA 2004 (Assignment);
- (b) section 172A of the FA 2004 (Surrender);
- (c) section 172B of the FA 2004 (Increase in rights of connected person on death);
- (d) section 172C of the FA 2004 (Allocation of unallocated employer contributions);
- (e) section 174 of the FA 2004 (Value shifting); or
- (f) section 181 of the FA 2004 (Value shifting).

21 Terms and conditions of payment

To the extent that any terms and conditions of payment are agreed pursuant to any power or discretion under the Definitive Deed and such terms and conditions of payment involve payments being made from the Scheme or the Fund, the following shall apply:

- (a) no payment shall be made to or in respect of a member (as that term is used in section 164 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration member payment within the meaning of section 171 of the FA 2004 or will otherwise be an authorised member payment pursuant to section 164 of the FA 2004; and
- (b) no payment shall be made to or in respect of a sponsoring employer (as that term is used in section 175 of the FA 2004) unless the Trustees are satisfied that the whole of such payment will be a scheme administration employer payment within the meaning of section 180 of the FA 2004 or will otherwise be an authorised employer payment within the meaning of section 175 of the FA 2004.

22 Overriding discretion to make Unauthorised Payments

Notwithstanding anything to the contrary in this Definitive Deed or any express prohibition on making any form of Unauthorised Payment, the Professional Trustee shall have an absolute overriding discretion to allow the Trustees to make any form of Unauthorised Payment at any time. However for the avoidance of doubt, under no circumstances shall this entitle any person to any form of Unauthorised Payment from the Scheme.

23 Scheme rules not to require the making of Unauthorised Payments

Any provision of the Scheme which would require the Trustees to make an Unauthorised Payment (with or without the consent of any other person) shall be construed as conferring a discretion upon the Trustees to make the payment (save that where the consent of another person would have been required to make the Unauthorised Payment, the Trustees cannot exercise the aforesaid discretion without the consent of that other person).

Schedule 3

Investments

1 Investment powers

Subject to the rest of this schedule 3 and section 36 of the 1995 Act and regulations made thereunder:

- (a) All investments and moneys for the time being constituting the Fund shall be held under the legal control of and by or in the names of the Trustees provided that:
 - (i) such investments and moneys may be placed by the Trustees in the name of or under the control of such body corporate as nominee for them as they shall from time to time select; and
 - (ii) the Professional Trustee must always be the registered co-owner of any assets of the Fund / Scheme unless it agrees otherwise in writing;
- (b) The Trustees may retain in any bank account or any account with a banking house in the United Kingdom such moneys as are considered proper and subject thereto shall invest all moneys received on account of the Fund in any investments which they could make if they were absolutely and beneficially entitled to those moneys and which is consistent with the requirements for Registered Pension Schemes;
- (c) Without prejudice to the generality of the foregoing provisions trust monies may be invested or applied:
 - (i) in the purchase from any Insurance Company of any annuity or annuities for the life or lives of any person or persons or for any period or periods whether depending upon or calculated by reference to life or not;
 - (ii) in effecting and paying premiums in respect of any policy or policies of life insurance; and
 - (iii) in the underwriting or sub-underwriting or guaranteeing the subscription of any funds securities bonds debenture stocks or shares which may from time to time be investments authorised by or pursuant to the foregoing provisions of this clause;
 - (iv) in the purchase of assets of a non-income producing nature with the particular power of entering into any transaction calculated in the opinion of the Trustees to offset or reduce a risk of loss to the Fund. By virtue of this power the Trustees may deal in foreign currencies (either at the official rate of exchange or any other rates) options traded options and traded futures whether for present or future settlement;