

DATED *4 April* 2013

BRUSH ELECTRICAL MACHINES LIMITED
AS PRINCIPAL EMPLOYER

AND

FKI SCHEME TRUSTEES LIMITED
AS TRUSTEE

DEFINITIVE DEED
RELATING TO THE BRUSH GROUP (2013) PENSION
SCHEME

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THIS DEFINITIVE DEED IS DATED *4th* of *April* 2013

PARTIES

- (1) **BRUSH ELECTRICAL MACHINES LIMITED** (Company Number 00111849) whose registered office is at Precision House, Arden Road, Alcester, Warwickshire B49 6HN (the "**Principal Employer**"); and
- (2) **FKI SCHEME TRUSTEES LIMITED** (Company Number 07556000) whose registered office is at Precision House, as aforesaid (the "**Trustee**").

INTRODUCTION

- (A) With effect on and from the date of this deed (the "**Effective Date**"), the Principal Employer wishes to establish a retirement benefits scheme under irrevocable trusts to be known as the "Brush Group (2013) Pension Scheme" to provide benefits for and in respect of specified individuals.
- (B) The Principal Employer has requested the Trustee to act as the first trustee of the Scheme and the Trustee has consented so to act.
- (C) This document constitutes the definitive trust deed for the Scheme. It incorporates (among other things) the Rules which are set out in Schedule 1.

THIS DEED WITNESSES THAT:

1. DEFINITIONS AND INTERPRETATION

- 1.1 The various attached Schedules and Appendices all form part of the Deed.
- 1.2 For the avoidance of doubt benefits payable from the Scheme in accordance with the Rules will be inclusive of any benefits in respect of GMPs.
- 1.3 Unless the context requires otherwise, words and expressions used in this Deed have the meaning assigned to them in Schedule 2 or elsewhere in this Deed.
- 1.4 Unless the context otherwise requires any reference to a clause, rule or schedule is to the relevant provision of this Deed.
- 1.5 The headings to this Deed have been inserted for ease of reference only. They are not to affect its construction or interpretation.
- 1.6 Words in the singular include the plural and vice versa.
- 1.7 Words in the masculine gender include the feminine and vice versa unless the context requires otherwise.
- 1.8 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.

1.9 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 instruments.

2. ESTABLISHMENT

2.1 The Principal Employer hereby establishes the Scheme with effect on and from the Effective Date.

2.2 The Scheme is intended to be a Registered Pension Scheme and the Trustee must register the Scheme in accordance with section 153 of the Finance Act 2004.

2.3 The Scheme shall be administered in accordance with the provisions of this Deed and of the Rules for the time being in force.

3. APPOINTMENT AND REMOVAL OF ADVISERS

3.1 The Trustee will (if so required by Section 47 of the 1995 Act) appoint the following:

- (a) an Actuary;
- (b) an Auditor;
- (c) one or more Fund Managers;
- (d) one or more Custodians;
- (e) their legal adviser.

3.2 Any person or firm appointed under Clause 3.1 will carry out any functions prescribed for them by the 1995 Act and/or the 2004 Act as applicable. In addition the Trustee may instruct them to carry out such further work in connection with the Scheme as they consider appropriate.

3.3 In addition to any appointments they are required to make under Clause 3.1, the Trustee may appoint such persons or firms to assist them (including actuaries, auditors, solicitors, administrators, brokers, medical practitioners and investment managers) as they think appropriate.

3.4 Provided the Trustee complies with any relevant requirements of Section 47 of the 1995 Act any appointment made pursuant to this Clause will be on such terms (including remuneration) as the Trustee sees fit.

3.5 The power to remove, replace and/or vary the terms of any appointment made under this Clause will lie with the Trustee.

4. APPOINTMENT AND REMOVAL OF TRUSTEES

4.1 The operation of this Clause 4 is subject to Clause 5 if Member Nominated Trustees are to be or have been appointed.

- 4.2 There are to be no fewer than three trustees unless one of them is a corporate body. In such circumstances the minimum number of trustees will be one.
- 4.3 A corporate body may act as a trustee whether or not it is a Trust Corporation or has been preceded in office by more than one trustee.
- 4.4 Where a corporate body acts as a trustee 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.
- 4.5 The Principal Employer may (at its discretion and for any reason) by deed appoint new trustees (whether as replacement or in addition).
- 4.6 The Principal Employer (at its discretion and for any reason) may remove by deed any trustee. It will be under no obligation to appoint a replacement unless a failure to do so would give rise to a breach of Clause 4.2.
- 4.7 A trustee may retire by giving one month's written notice to the Principal Employer and the other trustees. On expiry of the notice the trustee will cease to hold office and will be discharged even if this would result in the number of remaining trustees being less than the minimum stated in Clause 4.2.
- 4.8 If for any reason the requirements of Clause 4.2 are not met then the Principal Employer is to act as sole or co-trustee until such time as a fresh appointment is made.
- 4.9 A departing trustee will 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.
- 4.10 Should the departing trustee fail to comply with Clause 4.9 the Principal Employer may execute such documents and act on his behalf as his attorney. Each of the Trustees irrevocably authorises and appoints the Principal Employer as such for this purpose.

5. **MEMBER NOMINATED TRUSTEES**

- 5.1 This Clause will apply where Members and/or former Members are able to select trustees pursuant to Section 241 or 242 (as the case may be) of the 2004 Act.
- 5.2 In these circumstances the Trustee will have such powers as are necessary to ensure it can comply with Section 241 or 242 (as the case may be) of the 2004 Act. These powers will include the power to:
- (a) make such arrangements and Rules as are required by Section 241 or 242 (as the case may be) of the 2004 Act;
 - (b) appoint Member Nominated Trustees;
 - (c) remove Member Nominated Trustees if the provisions of Clause 5.3 are satisfied;

(d) take such advice in relation to the Trustee's responsibilities as it deems necessary.

5.3 The Trustee's power to appoint and remove Member Nominated Trustees will be exercisable by written resolution. A resolution to remove a Member Nominated Trustee will only be effective if it is passed unanimously (except by the Trustee whose removal is sought). The Trustee will execute such documents and take such further action as it decides is necessary to implement the retirement or removal.

5.4 Any Member Nominated Trustee who was a Member of the Scheme when appointed will if he ceases to be a Member of the Scheme cease to hold office and will be discharged. For the purposes of this Clause, Member will have the meaning given the term by Section 124 of the 1995 Act.

6. TRUSTEE MEETINGS

6.1 Reasonable notice is to be given of any forthcoming meeting. In this respect due regard is to be given to the urgency or otherwise of any business to be discussed.

6.2 Whenever practicable:

(a) the notice should specify, unless the Trustee agrees otherwise, the date, the time and place of the meeting and the matters to be discussed;

(b) the meetings should be held at a time and venue reasonably convenient to each Trustee;

(c) unless the Trustee agrees otherwise the notice should be sent to the last known address of each officer of the Trustee (in respect of corporate trustees) or Trustee (in respect of individual trustees) no later than 10 business days before the meeting.

6.3 The Trustee will meet at least once a year. It will review at least once a year its responsibilities under the 1995 Act and the 2004 Act. This review may include the following:

(a) any statement of investment principles prepared pursuant to Section 35 of the 1995 Act;

(b) any Schedule of Contributions required by Section 227 of the 2004 Act;

(c) the need to appoint Member Nominated Trustees pursuant to Section 241 or 242 (as the case may be) of the 2004 Act;

(d) any request to provide documents pursuant to Section 41 of the 1995 Act;

(e) the Trustee's obligation to keep receipts and records pursuant to Section 49 of the 1995 Act.

The Trustee may also review any other requirements of the 1995 Act and/or the 2004 Act as applicable which apply to the Scheme as it or they so decide.

- 6.4 As soon as reasonably possible after a meeting minutes of the matters discussed and decisions made are to be circulated to all the officers of each Trustee (in respect of corporate trustees) and to each Trustee (in respect of individual trustees) (including those who were unable to attend). The minutes are to comply with the requirements of Section 49 of the 1995 Act as to their form and content.
- 6.5 The Trustee may appoint a Secretary who is to have primary responsibility for coordinating the matters referred to in Clauses 6.1 to 6.4.
- 6.6 The Trustees may also appoint from among their number a Chairman (who for the avoidance of doubt may also be the Secretary). If the Trustees are equally divided on the appointment of a Chairman he will be chosen by lot. If for any reason the Chairman is unable to attend a validly convened meeting then the Trustees may appoint another of their number to act in his place at that meeting only.
- 6.7 Subject to Clause 6.6 the Chairman and the Secretary will each hold office until the earlier of the date upon which:
- (a) he resigns such office;
 - (b) if he is also a Trustee or an officer of the Trustee he resigns, is removed or otherwise ceases to act as such;
 - (c) the Trustee resolves otherwise.
- 6.8 The quorum for a meeting is to be three.
- 6.9 The Trustee may act on a majority vote at its meetings. If it is divided equally on any issue the Chairman will have a casting vote.
- 6.10 Any resolution signed by each of the officers of the Trustee (in respect of corporate trustees) and by each Trustee (in respect of individual trustees) will be binding and effective as if it had been passed at a Trustee meeting. The resolution may be passed by the signature of copies whether or not on the same date.
- 6.11 Provided all other procedural requirements prescribed by this Clause are satisfied the Trustee may hold meetings by telephone or such other means of communication as they deem appropriate.
- 6.12 A Trustee (or an officer or employee of a corporate Trustee) may retain for his own account any benefits relating to his Membership of the Scheme. He may if he wishes participate in the discussion and vote on any resolution which may affect any such benefits or in which he otherwise has a personal interest.

7. **TRUSTEE'S DUTIES**

- 7.1 In addition to any duties which may exist at law the Trustee will:
- (a) manage the Scheme;
 - (b) pay out of the Fund the relevant benefits;

- (c) keep proper records and accounts for the Scheme and submit these (together with a supporting balance sheet) to the Auditor following the end of each Scheme Year;
 - (d) prepare and sign a report on the Scheme accounts which together with the Auditor's report is to be open for inspection by the Beneficiaries and any officer of the Principal Employer;
 - (e) provide any advisers with such information as the Trustee is required to provide under the 1995 Act and/or the 2004 Act and take all reasonable steps to enable the Actuary and the Auditor to comply with their respective duties under the 1995 Act and/or the 2004 Act as applicable.
- 7.2 The Principal Employer, with the consent of the Trustee, may appoint an individual or corporate body to act as Administrator. Unless and until any appointment is made the Principal Employer shall act as Administrator.
- 8. TRUSTEE'S POWERS**
- 8.1 Subject to Section 34 of the 1995 Act the Trustee may delegate (and authorise the sub-delegation of) any of its duties, powers and discretions as it sees fit. It may at any time revoke any delegations (and/or sub-delegations).
- 8.2 Such delegation (and/or sub-delegation) may be made to:
- (a) a committee consisting of any one or more of the Trustees (or officers thereof);
 - (b) such other person or corporate body (including any one or more of the Participating Employers) as the Trustee determines;
 - (c) a Fund Manager in relation to the Trustee's powers of investment.
- 8.3 The Trustee may appoint any one or more agents to transact any business of the Scheme in which event the provisions of Clause 3 will apply.
- 8.4 Agents may include any employees or officers of the Trustee and/or of the Participating Employers.
- 8.5 Anyone dealing in good faith with the Trustee will be under no duty to enquire into the application of any money or asset paid or transferred by him to the Trustee. Any receipt given to an agent or delegate of the Trustee will be a valid discharge to the Trustee.
- 8.6 The Trustee will have the power to insure any or all of the assets of the Fund against such risks and for such amounts as they determine appropriate. It may also subject to Section 256 of the 2004 Act effect insurance against any personal liability relating to their office (whether as a body or as individuals) or any liability of the Scheme for such amounts as they determine appropriate.
- 8.7 The Trustee will hold any proceeds of insurance on trust with power to apply part or all, to repair, replace or maintain the asset in question or (subject to the provision of

Section 256 of the 2004 Act) to indemnify the Trustee against any claims. The Trustee may exercise this power as if they were the absolute owner of the Fund.

- 8.8 Subject to Section 256 of the 2004 Act the cost of effecting insurance is to be paid in accordance with Clause 14.
- 8.9 The Trustee may open any one or more accounts with a bank, building society, finance company or other financial institution. It may make such arrangements as it sees fit from time to time regarding the operation of any such account.

9. PROTECTION OF THE TRUSTEE

9.1 Liability of Trustees

- (a) No Trustee shall be responsible, chargeable or liable in relation to the Scheme except in respect of:
- (i) the exclusions and limitations set out in Clause 10; or
 - (ii) (if the Trustee is engaged in the business of providing a professional trustee service for payment) his own negligence.
- (b) No director, officer or other employee of a corporate trustee shall be responsible, chargeable or liable in relation to the Scheme except in respect of:
- (i) the exclusions and limitations set out in Clause 10; or
 - (ii) (if the director, officer or employee of the corporate trustee is engaged in the business of providing a professional trustee service for payment) his own negligence;

Provided that in either case, to the extent that it is prohibited by Section 232 of the Companies Act 2006 (provisions protecting directors from liability), no director of a corporate trustee shall be exempted from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust by him in relation to the corporate trustee.

- (c) For the avoidance of doubt, each of the sub-clauses 9.1(a) and (b) is to be regarded as a separate provision for the purpose of Sections 232 to 235 of the Companies Act 2006, and if all or any part of sub-clauses 9.1(a) and (b) shall be found to be void or otherwise invalid or unenforceable, this shall not affect the legality, validity or enforceability of the remainder of the sub-clause, provision or other elements of the provision (as the case may be).
- (d) In the event that all of this Clause 9.1 is found to be of no effect, this Deed shall be read as including the previous version of Clause 9.1 as it applied in relation to the FKI Scheme immediately before the deed of amendment dated 13 February 2009 and the provisions of such clause shall be available to each Trustee, director or other employee of a corporate trustee of this Scheme. For the avoidance of doubt, nothing in this Clause 9.1(d) will give rise to a claim against the FKI Scheme.

- (e) Sub-clauses 9.1(a) and (b) apply to current and former Trustees and current and former directors, officers or other employees of a current or former corporate trustee.

9.2 Indemnities

- (a) Without prejudice to the right to indemnity given to trustees by law, each Trustee shall hereby be indemnified (except to the extent prohibited by Section 256 of the 2004 Act (no indemnification for fines or civil penalties) and will have a lien on the Fund against all and any of the liabilities incurred in the execution, or professed execution, of the trusts of the Scheme and in the administration, management, and winding-up of the Scheme except in respect of:
 - (i) the exclusions set out under Clause 10; or
 - (ii) (if the Trustee is engaged in the business of providing a professional trustee service for payment) his own negligence.
- (b) Without prejudice to the right to indemnity given to trustees by law, each director, officer or other employee of a corporate trustee shall hereby be indemnified (except to the extent prohibited by Section 256 of the 2004 Act (no indemnification for fines or civil penalties)) and have a lien on the Fund against all and any liabilities incurred in the execution or professed execution of the trusts of the Scheme and in the administration, management and winding-up of the Scheme except in respect of:
 - (i) the exclusions set out under Clause 10;
 - (ii) (if the director, officer or other employee of a corporate trustee is engaged in the business of providing a professional trustee service for payment) his own negligence; and
 - (iii) any liability set out in Sections 235(3) to (6) inclusive of the Companies Act 2006.
- (c) Sub-clauses 9.2(a) to 9.2(b) apply to current and former Trustees and current former directors, officers or other employees of a current or former corporate trustee.
- (d) The indemnities set out above will not extend to any liability if that liability is covered by a policy of insurance effected under clause 8.
- (e) For the avoidance of doubt, each of sub-clauses 9.2(a) to 9.2(b) is to be regarded as a separate provision for the purposes of Sections 232 to 235 of the Companies Act 2006, and if all or any part of sub-clauses 9.2(a) to 9.2(b) shall be found to be void or otherwise invalid or unenforceable, this shall not affect the legality, validity or enforceability of the remainder of the sub-clause, provision or other elements of the provision (as the case may be).
- (f) In the event that all of this Clause 9.2 is found to be of no effect, this Deed shall be read as including the previous version of Clause 9.2 as it applied

immediately before the deed of amendment dated 13 February 2009 in relation to the FKI Scheme and the provisions of such clause shall be available to each Trustee, director, officer or other employee of a corporate trustee of this Scheme. For the avoidance of doubt, nothing in this Clause 9.2(f) will give rise to a claim against the FKI Scheme.

- 9.3 The Trustee will not be obliged to bring, pursue or defend any legal proceedings in relation to the Scheme.
- 9.4 The Trustee may enter into such agreements and give such undertakings, indemnities or guarantees which are binding on the Fund as it shall in its absolute discretion decide are necessary and proper for the efficient administration of the Scheme.
- 9.5 The provisions of this Clause apply in addition to any further protection afforded to the Trustee by statute, common law or otherwise but are subject to the limitations set out in Clause 10.1.

10. **LIMITATION AND EXTENSION OF PROTECTION**

- 10.1 The provisions of Clause 9:
- (a) will not protect the Trustee in relation to a breach of trust knowingly and wilfully committed; and
 - (b) are subject to Section 33 of the 1995 Act which may restrict or prevent the exclusion of personal liability on the part of the Trustee.
- 10.2 If the inclusion of any words in Clause 9 and this Clause 10 would at law render ineffective the protection of the Trustee then the clause is to be read with such words omitted.
- 10.3 If the protection of the Trustee under Clauses 9 and 10 is to be held at law to be ineffective, this Deed shall be read as including any protection in force pursuant to the provisions of the FKI Scheme's Preceding Documents (as defined in the FKI Scheme's governing documentation) upon which the Trustee of this Scheme will be entitled to rely. For the avoidance of doubt, nothing in this Clause 10.3 will give rise to a claim against the FKI Scheme.
- 10.4 The provisions of this Clause 10 and Clause 9 will apply to all officers and employees (and former officers and employees) of the Trustee.

11. **TRUSTEE'S REMUNERATION**

- 11.1 Any officer or employee of the Trustee engaged in a profession or business will be entitled to be paid all proper expenses, charges and commissions for work carried out in connection with the Scheme by him or any firm/company to which he belongs or by which he is employed.
- 11.2 Any officer or employee of the Trustee not engaged in a profession or business may be paid such remuneration (if any) as may be agreed between the Trustee and the Principal Employer.

11.3 All sums due pursuant to this Clause are to be paid in accordance with the provisions of Clause 14.

12. PARTICIPATING EMPLOYERS

12.1 An employer which:

- (a) is a subsidiary company of or associated with the Principal Employer; and
- (b) has employees eligible for membership; and
- (c) is approved for participation in the Scheme by the Principal Employer and the Trustee,

will be entitled to become a Participating Employer in the Scheme upon entering into a deed with the Principal Employer and the Trustee agreeing to comply with the Rules.

12.2 The Participating Employers are to supply to the Trustee and the Trustee's advisers such information as they are required to provide pursuant to the 1995 Act and/or the 2004 Act as applicable. In addition, the Participating Employers are to supply to the Trustee such further information as the Trustee may reasonably require for the administration of the Scheme.

12.3 In addition the Trustee will have the right on request:

- (a) to have reasonable access to any records relevant to such administration which are in the custody or control of the Participating Employers;
- (b) to take copies of those records free of charge.

12.4 The Principal Employer, with the consent of the Trustee and the appropriate Participating Employer if it is still associated with the Principal Employer, may by deed declare that any Participating Employer shall immediately cease to participate and if such Participating Employer still has employees who are members of the Scheme the provisions of rule 20 shall come into operation.

12.5 If a Participating Employer is processing Personal Data as a Data Processor in relation to the Trustee, such Participating Employer will:

- (a) comply at all times with the provisions of the Seventh Principle;
- (b) inform the Trustee on request what measures it has taken to comply with the Seventh Principle, and take any further steps necessary to comply with the Seventh Principle;
- (c) permit the Trustee on reasonable notice to inspect its premises, systems, equipment and facilities to enable the Trustee to monitor compliance with the Seventh Principle;
- (d) only process Personal Data on the Trustee's behalf on instructions from the Trustee; and

- (e) not sub-contract or otherwise pass to any third party any of its obligations to process Personal Data on the Trustee's behalf unless:
 - (i) it has provided the Trustee with all the information they require to ascertain that any such third party can comply with the Seventh Principle;
 - (ii) it has obtained the Trustee's prior written consent; and
 - (iii) the proposed third party has entered into a direct contract with the Trustee reflecting the terms of this Clause 12.5.
- (f) The Trustee will keep confidential any confidential information of any such Participating Employer of which they become aware when carrying out inspections under this Clause 12.5 unless they are required by law to disclose it.

12A The Trustee may put in place any arrangement contemplated by the Occupational Pension Schemes (Employer Debt) Regulations 2005 (as amended from time to time) provided that the Principal Employer consents in writing in advance to the putting in place of such an arrangement.

13. SUBSTITUTION OF PRINCIPAL EMPLOYER

13.1 Any employer or holding company may agree with the Trustee to become the Principal Employer unless this would prejudice the Scheme's status as a Registered Pension Scheme.

13.2 The consent of the existing Principal Employer to its replacement by a new Principal Employer shall be necessary unless the existing Principal Employer has been dissolved.

13.3 The new Principal Employer is to enter into a deed of novation with the Trustee. This will contain a covenant on the new Principal Employer's part to observe and perform the relevant provisions of this Deed and is to be in such form as the Trustee may prescribe.

14. COSTS AND EXPENSES

14.1 The Trustee will be repaid out of the Fund all liabilities, costs and expenses incurred by it in the execution of the trusts and the management and administration of the Scheme (except for any incurred as the result of a knowing and intentional breach of trust).

14.2 The Trustee may from time to time agree with the Principal Employer that the Participating Employers will bear such of the liabilities, costs and expenses of managing and administering the Scheme as the Principal Employer shall in its absolute discretion decide.

14.3 For the avoidance of doubt the costs and expenses will include any incurred by the Trustee pursuant to Clauses 3, 7, 8, 11, 15 and 16 or otherwise in performance of their duties or the exercise of its powers and discretions.

15. CONTROL OF THE FUND

- 15.1 The Fund will be vested in the Trustee and held by it upon irrevocable trusts in accordance with the terms of this Deed. The Trustee will, subject to the terms of this Deed, have sole and absolute control of the Fund and its administration.
- 15.2 All monies and assets received by the Trustee for the purposes of the Scheme will be paid or transferred into the Fund. They may be retained in the Fund or sold if and when the Trustee decides appropriate.
- 15.3 All benefits due under the provisions of the Scheme will be paid out of the Fund or secured in any way the Trustee sees fit. The Trustee will have power to sell or realise any Fund assets for this purpose.

16. INVESTMENT OF THE FUND

- 16.1 The Trustee will decide (within the limits laid down by this Deed) the investments in which the Fund is to be invested. All investments shall be taken in the name of the Trustee or in the sole name of a nominee appointed by the Trustee to act as its nominee.
- 16.2 The Trustee may retain in any bank account such money as it considers proper and have power to invest the Fund in any form of investment of whatever nature and wherever it may be situated whether involving liability or not and whether producing income or not or upon such personal credit with or without security, as the Trustee in its absolute discretion thinks fit, to the intent that the Trustee will have the same full and unrestricted powers of investing and transposing investments in all respects as if it were absolutely entitled beneficially to the Fund; and without prejudice to the generality of the foregoing:
- (a) trust money may be placed on deposit or in any account with any local authority, bank, company, building society, or finance company or Insurance Company at such rate of interest (if any) and upon such terms as the Trustee shall think fit;
 - (b) trust money may be invested in unit trusts (whether authorised or unauthorised) exempt funds or mutual funds or other common investment funds or securitised issues;
 - (c) the Trustee may effect with one or more Insurance Companies managed fund contracts, deferred annuity policies, annuity policies or contracts for the purpose of providing pensions or benefits, whether immediate or future and whether contingent or otherwise, for the purpose of the Scheme, and the Trustee shall have full power to deal with and dispose of any policy effected by it whether by sale, surrender or otherwise in such manner in all respects as it shall in its absolute discretion think fit;
 - (d) trust money may be invested in stocks, shares, debenture stocks, bearer securities or other investments;

- (e) the Trustee may enter into underwriting or sub-underwriting contracts of all kinds and whether resulting in the actual investment of trust money or not and may use trust money for meeting liabilities;
- (f) the Trustee may not make a loan out of the Fund to any member or any individual who is a contingent beneficiary under the Scheme;
- (g) the Trustee may enter into contracts for the purchase of derivatives and other financial instruments.

16.3 The Trustee shall have power to raise any money required for the purposes of the Scheme by the sale, conversion, calling in or mortgage or charge of all or any part of the Fund for the time being in their possession, in the same manner and to the same extent as if the Trustee were the absolute and beneficial owners of that part of the Fund, and the Trustee shall have power at any time and from time to time in its absolute discretion to borrow money and mortgage or charge the Fund or any part of the Fund.

16.4 The Trustee will if so required by Section 35 of the 1995 Act prepare and maintain a statement of principles governing the investment of the Fund. The statement will comply with Section 35 of the 1995 Act.

16.5 The various powers set out in this Clause are all subject to the restrictions set out in Clause 17.

17. RESTRICTIONS ON INVESTMENT

17.1 In no circumstances is the Trustee to engage in any trading activity which could prejudice the Scheme's status as a Registered Pension Scheme.

17.2 Any exercise of the powers set out in Clause 16 is subject to the provisions of the 1995 Act.

17.3 No investment is to be made directly in any of the Participating Employers unless it complies with Section 40 of the 1995 Act (as amended) and any regulations made thereunder. For this purpose, investment includes any dealings in shares, securities, assets or land or the granting by the Trustee of any loan, guarantee or indemnity.

18. VALUATIONS

18.1 The Trustee must obtain an actuarial valuation of the Scheme from the Actuary in such manner and at such intervals as may be required under Section 224 of the 2004 Act. Such valuation will comply with the 2004 Act.

18.2 The Trustee will also obtain from the same Actuary an actuarial report where so required by the 2004 Act.

18.3 In addition, the Trustee may obtain an actuarial valuation for such purposes and at such other times as it decides.

- 18.4 Subject to Clause 18.7 and Section 37 of the 1995 Act, if a Fund surplus exists calculated on the basis set out in Section 37 of the 1995 Act the following provisions will apply.
- 18.5 The surplus is to be utilised in compliance with Section 37 of the 1995 Act in any one or more of the following ways decided and agreed by the Trustee and the Principal Employer:
- (a) suspending or reducing the payment of contributions by the Participating Employers (or any of them) for such period as the Actuary may recommend (for the avoidance of doubt, this shall not restrict the Principal Employer's absolute freedom to suspend or reduce contributions under rule 2.4);
 - (b) suspending or reducing the payment of contributions by the Members (or any of them) for such period as the Actuary may recommend;
 - (c) improving existing benefits or providing new benefits under the Scheme;
 - (d) subject to complying with Section 37 of the 1995 Act making payments to any of the Participating Employers;
 - (e) such other ways as may be prescribed by regulations.
- 18.6 No surplus is to be utilised in a way which would prejudice the Scheme's status as a Registered Pension Scheme.
- 18.7 A payment of surplus may only be made if it is an authorised payment under the Finance Act 2004 and is subject to the deduction of any tax for which the Trustee or Scheme is liable to account to HMRC on the payment being made.
- 18.8 Notwithstanding the provisions of Clauses 18.4, 18.5 and 18.7, if the actuarial valuation discloses that an alteration in or addition to the Scheme is desirable then the Principal Employer and the Trustee will take such steps as they shall jointly consider appropriate for the purpose.
19. **AMENDMENT**
- 19.1 The Trustee may with the consent of the Principal Employer at any time amend, extend, revoke or replace all or any of the provisions of this Deed and Rules.
- 19.2 Any such changes are to be made by deed executed by both the Principal Employer and the Trustee. They will take effect from the date specified in that deed and may be introduced:
- (a) on a retrospective basis;
 - (b) at any time in the future;
 - (c) subject to the prior satisfaction of any conditions specified in such deed.

- 19.3 The powers contained in this Clause will survive notwithstanding a partial or full wind up of the Scheme. They may be exercised at any time up to the date upon which the trusts of the Scheme are discharged in full.
- 19.4 If however the Principal Employer should go into voluntary or compulsory liquidation or has an administrator or administrative receiver appointed over any of its property assets or undertaking then the powers contained in this Clause will vest solely in the Trustee. Such powers will remain with them unless and until a new Principal Employer is appointed at which time the provisions of Clause 19.1 will be re-instated.
- 19.5 Notwithstanding the above no changes are to be made which:
- (a) alter the purpose of the Scheme;
 - (b) prejudice the Scheme's status as a Registered Pension Scheme;
 - (c) reduce or affect prejudicially any pension or annuity then payable under the Scheme or deprive any Member of any part of the benefit (to which, but for the alteration, he would have been entitled) of any contributions already paid in respect of him;
 - (d) in relation only to Members who first became Members of the FKI Scheme on or after 20 December 1996, adversely affect any such Member (without his consent) in respect of his accrued rights acquired before such alteration is effected (and in relation to all those Members, proviso (c) of this Clause 19.5 shall not apply);
 - (e) do not comply with Section 67 of the 1995 Act.

19A LIMITS ON BENEFITS

- 19A.1 Subject to Clauses 19A.2 to 19A.3 below, the benefits which are payable from the Scheme shall be limited to those which could have been paid had the benefits been accrued in this Scheme instead of the FKI Scheme and had the limits as at 6 April 2006 and set out in Schedule 3 applied to this Scheme when the benefits would have been accrued. For the avoidance of doubt, where there is any inconsistency between the provisions of Schedule 3 and this Clause 19A, the provisions of this Clause 19A will prevail.
- 19A.2 Except insofar as is necessary to comply with any requirements which apply to the Scheme in respect of it being contracted-out and any other statutory or regulatory requirement which from time to time applies to the Scheme, if any of the provisions of this Deed and Rules are inconsistent with this Clause 19A, this Clause 19A shall override such provisions and the provisions of this Clause 19A shall prevail.
- 19A.3 (a) The "Permitted Maximum" howsoever expressed in this Deed (including, for the avoidance of doubt, Schedule 3) to mean the maximum salary that may be used in respect of calculating benefits for a Class A Member, as defined in Section 590C(2) of the Income and Corporation Taxes Act 1988 (earnings cap), shall mean the permitted maximum under Section 590C(2) of the Income and Corporation Taxes Act 1988 in force immediately prior to 6 April 2006 as adjusted from time to time in accordance with sub-clause (b).

(b) The Trustees shall review the Permitted Maximum on each subsequent 6 April following the Effective Date. Adjustments to the Permitted Maximum in force immediately before the date of the review (including all increases previously made under this sub-clause (b) in relation to the FKI Scheme) shall be made with effect from the 6 April in respect of which the review is being undertaken whereby the retail prices index (within the meaning of Section 833 of the Income and Corporation Taxes Act 1988) for the first month of September preceding the 6 April upon which the review is being undertaken shall be compared with the retail prices index for the previous September and the following provisions shall apply:

- (A) If the index for the later September exceeds the index for the earlier September, the Permitted Maximum shall be increased by the same percentage as the percentage increase in the retail prices index. If the resulting Permitted Maximum is not a multiple of £600 it shall be rounded up to the nearest amount that is such a multiple.
- (B) If the index for the later September is not higher than the index for the earlier September, the Permitted Maximum shall not be adjusted.

At the request of the Principal Employer the Trustee may increase the Permitted Maximum to a higher amount than it would otherwise be if calculated in accordance with the foregoing provisions of this Clause 19A.3(b) either generally or for a specific Member or Members as notified to the Trustee by the Principal Employer. The Trustee shall implement any such request if the Principal Employer (and/or any other Employers) pays such further contributions (if any) as the Trustee may require after taking the advice of the Actuary.

19A.4 (a) A Member who is entitled to a retirement pension may, subject to Trustee consent, surrender all or any part of his pension benefits to provide a lump sum provided that the lump sum shall not exceed the maximum amount that would be a pension commencement lump sum as defined in Schedule 29 of the Finance Act 2004 (including any modification to such pension commencement lump sum which applies under Paragraph 31 of Schedule 36 of the Finance Act 2004 (Entitlement to lump sums exceeding 25% of uncrystallised rights)).

(b) Members may determine whether their lump sum payment shall be derived from their AVCs or the surrender of other Scheme pensions or partly from two or more such benefits in such proportions as they determine. Members wishing to make any such determination must notify the Trustee in writing prior to their retirement (or any later date that the Trustee may determine and notify to the Member). If a Member fails to so notify the Trustee, the Trustee shall determine such proportions.

20. **NOTICES**

20.1 Any notice required under this Deed may be served by delivering or sending it, in the case of:

- (a) any of the Participating Employers, the Principal Employer or a corporate Trustee to its registered office;
- (b) a Member or Beneficiary to his normal place of work or last known private address.

20.2 Notices may be sent by post or delivered personally. The former will be deemed served two days after the date of posting and the latter upon delivery.

20.3 Notices served by post are to be sent by first class post.

20.4 Every Member, Pensioner and annuitant shall give notice in writing to the Trustee of his place of residence at the time he becomes a Member or entitled to an annuity out of the Fund and thereafter shall give immediate notice of any change of residence.

21. **DETERMINATION OF QUESTIONS AND RESOLUTION OF DISPUTES**

21.1 The Trustee will put in place and operate a procedure for the resolution of disputes if so required by Section 50 of the 1995 Act.

22. **PROTECTION RULE**

22.1 If the Scheme ceases to be a contracted-out salary related scheme, the Trustee must seek the approval of the relevant statutory authority to any proposed arrangement for securing Section 9(2B) Rights. Insofar as, and to the extent that, this concerns the preservation of Section 9(2B) Rights within the Scheme, the Rules of the Scheme will be deemed to include a "protection rule" for the purposes of Regulation 45 of the Occupational Pension Schemes (Contracting-out) Regulations 1996.

23. **GOVERNING LAW**

23.1 This Deed will be governed in all respects by and construed in accordance with the laws of England.

23.2 The parties agree to submit to the jurisdiction of the English courts.

IN WITNESS of which this document was executed as a Deed on the date set out above.

EXECUTED and delivered as a deed by **BRUSH ELECTRICAL MACHINES LIMITED** acting by two directors or by one director and the secretary:

Director

Signature :

Name :

Director/Secretary

Signature :

Name :

EXECUTED and delivered as a deed by **FKI SCHEME TRUSTEES LIMITED** acting by two directors or by one director and the secretary:

Director

Signature :

Name :

Director/Secretary

Signature :

Name :

**SCHEDULE 1
THE RULES**

1. ELIGIBILITY

- 1.1 The Principal Employer shall determine which (if any) individuals shall be admitted to membership of the Scheme. Individuals so admitted will be entitled to such benefits and on such terms as the Principal Employer may determine and notify in writing to the Trustee and the Principal Employer may terminate the accrual of such benefits at any time.
- 1.2 Subject to Rule 1.1, benefits shall be provided for and in respect of the Pensionable Service of the Initial Member which are equal to the minimum level of benefits required to ensure that the Initial Member receives Reference Scheme Test Rights and that the Scheme satisfies the Reference Scheme Test.

2. PARTICIPATING EMPLOYERS' CONTRIBUTIONS

- 2.1 Each of the Participating Employers will contribute such amounts to the Scheme as may be determined by the Trustee acting on the advice of the Actuary after agreement with the Principal Employer to be necessary (when added to the assets of the Scheme) to meet the requirements of Section 222 of the 2004 Act. For this purpose AVCs and AVC Accounts are to be ignored.
- 2.2 In addition to any contributions due under rule 2.1 the Participating Employers will contribute such further amounts as the Trustee acting on the advice of the Actuary after agreement with the Principal Employer may from time to time determine to be necessary (when added to the Participating Employers' contributions under rule 2.1 and the assets of the Scheme) to provide the benefits due under the Scheme; and such contributions may have regard to the expenses properly incurred by any Participating Employer in connection with the Scheme.
- 2.3 The contributions due from the Participating Employers are to be paid to the Trustee or as they may otherwise direct. Payment is to be made at such intervals as the Trustee may from time to time determine.
- 2.4 The Principal Employer has the power to suspend or reduce all or any of the further contributions due by giving notice to the Trustee. Upon such notice being given, the Participating Employers concerned shall not be bound to pay any contributions or more than the reduced contribution as the case may be nor shall the Trustee be required to seek such payments as may be required in order to maintain benefits but the Trustee shall acting on the advice of the Actuary be under a duty to notify the Members concerned of such suspension or reduction if it could cause the benefits currently and prospectively payable under the Scheme to be reduced, suspended or otherwise adversely affected. The Trustee will however following such a suspension or reduction of benefits have the power to wind up the Scheme in accordance with rule 17 if it considers it is inadequately funded and there is no reasonable prospect of this being remedied in the foreseeable future.

- 2.5 A Participating Employer may at any time pay any single or periodic sum or sums by way of additional special contributions to the Trustee provided this does not prejudice the Scheme's status as a Registered Pension Scheme.
- 2.6 On paying such additional special contributions the Participating Employer shall state the purpose for which such payment is being made. This purpose may either be in augmentation of the Fund for the general purpose of the Scheme or otherwise. Without prejudice to the generality of the forgoing any such payment may include:
- (a) the provision of benefits in exceptional circumstances for an employee or former employee not qualified by age and service to receive a benefit under the Scheme;
 - (b) to increase the amount of any benefit payable pursuant to the Scheme (including the addition of added years of Pensionable Service in respect of any Member or Members),

and in any such case the Trustee acting on the advice of the Actuary shall determine the amount of benefit or increased benefit provided by such additional special contributions which shall not exceed the appropriate limits specified in Schedule 3.

- 2.7 If required by Section 227 of the 2004 Act, the Trustee will ensure that a schedule of contributions to the Scheme is put in place. The schedule of contributions will be prepared, maintained and reviewed as necessary to comply with Section 227 of the 2004 Act.
- 2.8 Where any former employee or the Surviving Spouse or Dependant of an employee or former employee is for the time being receiving a pension for life or for a shorter period payable by the Employer out of revenue (hereinafter called a "**Revenue Pensioner**"), the Employer may certify to the Trustee the amount which was paid to such Revenue Pensioner by way of pension and supply to the Trustee a certificate of the cost of funding the pension out of the Fund. The Trustee, acting on the advice of the Actuary, may then agree to undertake to pay the pension or pensions out of the Fund in which case the Employer shall become bound to pay the agreed cost either by way of lump sum or additional periodic contributions or partly in one way and partly in the other, as may be agreed between the Employer and the Trustee, but so that any additional periodic contributions will not be reduced or suspended under rule 2.4. The pension payable to the Revenue Pensioner will then become payable out of the Fund.
- 2.9 In the event of the Employer failing to make a contribution for which it is liable under this Rule and the Trustee failing to recover it, the Trustee will, acting on the advice of the Actuary, suspend or adjust the benefits payable to the Revenue Pensioner for which it has assumed responsibility.

3. **PAYMENT OF BENEFITS**

- 3.1 All pensions and annuities shall be payable at such periods as the Trustee shall decide and any pension or annuity may be paid in advance if the Trustee thinks fit.

- 3.2 Pensions and annuities are payable only to a bank account maintained by the Pensioner or annuitant or in such other manner as the Trustee thinks fit, and any agreement for a payment through the post or otherwise shall be at the risk of the Member or annuitant concerned.
- 3.3 Before making or sanctioning any payment out of the Fund the Trustee may require the production of a certificate, or such other evidence as it thinks fit, of the birth, marriage, continued existence or death of the person claiming benefit or of a Member, his widow or Dependants or the identity of any person named in a certificate or any other material fact.
- 3.4 If the Trustee believes that any person entitled to benefit is incapable of managing his affairs due to physical or mental infirmity, it will be entitled at its discretion to pay any such benefit to any person approved by it who undertakes to apply such benefit to or for the maintenance or benefit of the person concerned, and the Trustee shall not be under any obligation to see to the application of any benefits so payable and actually paid to such a person and the receipt of that person shall be a complete discharge to the Trustee.

4. **INDIVIDUAL TRANSFERS OUT**

- 4.1 A Member who has accrued rights to Short Service Benefits under the Rules may request that his entitlements under the Scheme be transferred if he:
- (a) sets up a Personal Pension Scheme;
 - (b) becomes a member of another Registered Pension Scheme.
- 4.2 If such a request is made the Trustee will (subject to rule 4.4) pay to the Receiving Scheme the Cash Equivalent for the Member. The transfer is to be made in accordance with any relevant requirements of the 1993 Act. The Cash Equivalent is to be determined by the Trustee after consulting with the Actuary.
- 4.3 With the consent of the Trustee the Principal Employer may direct that a higher transfer value be paid than that prescribed in rule 4.2.
- 4.4 No transfer may be made of any Accrued Rights unless it can be made in accordance with the provisions of Section 20 of the 1993 Act
- 4.5 Whilst a Deferred Pensioner remains a director or employee of any Participating Employer the Trustee may decide that no transfer will be made (other than in respect of benefits relating to Pensionable Service under the FKI Scheme after 5 April 1988).
- 4.6 Provided this does not prejudice the Scheme's status as a Registered Pension Scheme a Member may request the Trustee to purchase for him an annuity policy or contract with an Insurance Company. The purchase price of the policy or contract is to be equal to the Cash Equivalent referred to in rule 4.2 or such higher sum as the Trustee and the Principal Employer may agree.
- 4.7 Once a transfer has been effected or an annuity policy or contract has been purchased all rights under the Scheme relating to or derived from the Member will be extinguished and the Member and all others claiming under him will have no further

interest in the Scheme. This rule 4.7 will not apply in respect of any Accrued Rights which pursuant to rule 4.4 have not been transferred or secured outside the Scheme.

4.8 To the extent permitted by the 1993 Act the Trustee (at its discretion) may secure any Accrued Rights and Reference Scheme Test Rights not transferred or secured outside the Scheme by a transaction to which:

- (a) Sections 19 and 96(2) of the 1993 Act apply in respect of Accrued Rights; or
- (b) Section 12(C) of the 1993 Act applies in respect of Reference Scheme Test Rights.
- (c) In securing such benefits the Trustee is to act in accordance with any relevant requirements of the 1993 Act and regulations issued under it. Once secured in accordance with this rule 4.8 the Member and all others claiming under him will have no further interest in the Scheme in respect of such benefits.

4.9 If a Member with accrued rights to benefit under the early leavers rule set out in the Rules left before 1986 or is too close to Normal Retirement Date to qualify automatically as above, the Trustee has a discretion to allow him to make a choice as described in this Rule and may impose such conditions concerning the transfer value as it considers appropriate.

5. **BULK TRANSFERS OUT**

5.1 At the request or with the consent of the Principal Employer the Trustee may arrange for any or all of the Beneficiaries (whether immediate, deferred or contingent) to participate in a Receiving Scheme.

5.2 Subject to rule 5.5 such arrangements may be made without obtaining the consent of any of the persons concerned.

5.3 Participation may be effected by transferring to the Receiving Scheme all or any part of the Scheme assets and monies upon terms agreed between the Trustee and the trustees or administrator of the Receiving Scheme and approved by the Principal Employer.

5.4 For the avoidance of doubt the transfer may include all or any part of an unallocated surplus within the Scheme.

5.5 No such transfer is to be made if it would:

- (a) offend against the law of perpetuities;
- (b) prejudice the Scheme's status as a Registered Pension Scheme;
- (c) breach the provisions of the Preservation Regulations;
- (d) contravene the provisions of Section 20 of the 1993 Act.

5.6 Once a transfer has been made all rights under the Scheme relating to or derived from the relevant Beneficiaries will be extinguished and they and all others claiming under

them will have no further interest in the Scheme. This Rule 5.6 will not apply in respect of any Accrued Rights which pursuant to Rule 5.5(d) have not been transferred or secured outside the Scheme.

6. TRANSFERS IN

- 6.1 If a Member previously participated in another Registered Pension Scheme or Personal Pension Scheme the Trustee may at its absolute discretion accept a transfer payment in respect of such participation.
- 6.2 Upon receipt of the transfer payment the Member will be credited with such additional benefits as the Trustee considers appropriate, acting on the advice of the Actuary provided this does not prejudice the Scheme's status as a Registered Pension Scheme.
- 6.3 Where a transfer payment is accepted the Member's Contributions will be deemed to be those which would be payable on withdrawal from the transferring scheme. For this purpose any deduction which would have been made in respect of the Certified Amount and/or tax is to be ignored.
- 6.4 If this transferring scheme has no provision for withdrawal payments the Member Contributions will be those which it actually credited to the Member.
- 6.5 The Trustee may place the transfer payment on deposit with any investment institution of their choice or may invest it in an investment specifically appropriated to the provision of additional benefits for the Member.
- 6.6 Where the Trustee has entered into reciprocal transfer arrangements, it will give effect to those arrangements despite the provision of this Rule.

7. BULK TRANSFERS IN

- 7.1 Subject to rule 7.3, the Trustee may with the consent of the Principal Employer accept a transfer of all or part of the assets of a Transfer Scheme on the basis that the Trustee will discharge all or part of the liabilities of the Transfer Scheme.
- 7.2 Such a transfer will be on such terms as may be agreed between the Trustee (after taking the advice of the Actuary) and the trustees or administrator of the Transfer Scheme.
- 7.3 The Trustee shall if so directed by the Principal Employer accept the transfer or payment of any monies, investments or other assets (including the assignment of a policy or contract) from the FKI Scheme (a Transfer Scheme) in relation to specified individuals.
- 7.4 The Trustee shall be empowered to execute a deed or deeds recording the terms of the agreement entered into with the trustees or administrator of the Transfer Scheme regarding the benefits that are to be granted under the Scheme in lieu of benefits under the Transfer Scheme and indemnifying such trustees or administrator against such claims against them under the trusts of the Transfer Scheme on such terms as the Trustee sees fit in order to effect and facilitate the transfer of assets of the Transfer Scheme to the Scheme.

7.5 For the avoidance of doubt the transfer may include all or any part of an unallocated surplus from the Transfer Scheme.

8. ALTERNATIVE TO SHORT SERVICE BENEFIT

8.1 Where an alternative to short service benefit (as defined in Section 71 of the 1993 Act) is payable under the Scheme the Trustee must be reasonably satisfied it is at least of equal value.

8.2 For this purpose the Trustee is to consult with the Actuary.

9. DISCLOSURE OF INFORMATION

9.1 The Trustee may ask any Beneficiary to supply such evidence of age, identity, status or other information as they may from time to time require.

9.2 If such information is not supplied or is incorrect the Trustee may make such adjustments to the benefit payable to the Beneficiary as they think fit. These adjustments may be made on a retrospective basis and the Trustee may reclaim any benefit which has been over-paid previously.

10. BAR ON ASSIGNMENT

10.1 Except to the extent allowed by Section 95 of the 1995 Act and as provided for in the Rules, no benefit under the Scheme may be assigned or applied for the benefit of anyone other than the person entitled, or prospectively or contingently entitled, to the benefit.

10.2 Any attempts by such a person to assign or charge or to agree to assign or charge, his benefit will be void, and on the bankruptcy of a person entitled to benefit, his benefit shall not pass to any trustee in bankruptcy or other person acting on behalf of his creditors.

10.3 The Trustee is entitled to forfeit any benefits (other than GMP) which have become the subject of any attempted assignment, and shall apply the same to or for the benefit of all or any one or more of the Member or other annuitant entitled or any Eligible Child or other Dependants in such proportions as the Trustee in its absolute discretion thinks fit.

11. TAX LIABILITY AND OVER-PAYMENTS

11.1 Where liability to any tax or duty arises in respect of any benefit or refund the Trustee may deduct the same before payment.

11.2 If the liability is uncertain or its extent unknown the Trustee may postpone payment until it is satisfied that the liability does not exist or has been adequately provided for.

11.3 Any rule or other provision of the Scheme which would require the Trustee to make an Unauthorised Payment (or to make an Unauthorised Payment if the consent of a specified person is given) shall be construed as conferring a discretion on the Trustee to make that payment.

- 11.4 If for any reason a payment is made in full where a deduction should have been applied or if the liability arises after payment then the Trustee may (but will not be obliged to) recover the same from the recipient.
- 11.5 If for any reason there is any over-payment of benefit it will be at the Trustee's discretion as to whether any steps are taken to recover the same
- 11.6 Notwithstanding the provisions of rule 11.1, where a Member gives a valid notice to the Trustee in accordance with Section 237B of the Finance Act 2004, the Trustee shall, unless they are discharged from their liability, satisfy the amount of the liability to which the notice relates and adjust the entitlement of the Member to benefits under the Scheme on a basis that is just and reasonable having regard to normal actuarial practice.

12. DETERMINATION OF EMPLOYMENT

- 12.1 No provision of the Scheme will in any way restrict the right of any of the Participating Employers or its appropriate officials to end the employment of a Member.
- 12.2 No damages will be recoverable by a former Member from the Scheme or the Trustee as a consequence of his employment coming to an end.
- 12.3 The benefits to which a Member might claim to be entitled under the provisions of the Scheme in respect of a period after his contract of service has or could have been lawfully terminated shall not be used as a ground for increasing damages in any action brought by such Member against the Employer.

13. FAILURE TO CLAIM BENEFITS

- 13.1 No Beneficiary will be entitled to any benefit more than six years after it has fallen due if the reason for non-payment was:
- (a) his failure to claim it;
 - (b) the Trustee's lack of knowledge of his existence or whereabouts or of any fact giving him the right to it.
- 13.2 Subject to rule 13.3 any such sums are to be forfeited and used for the general purposes of the Scheme.
- 13.3 Notwithstanding the above the Trustee may (with the consent of the Principal Employer) elect to pay to or in respect of the Beneficiary part or all of the relevant benefit.

14. FORFEITURE

- 14.1 This rule applies where a Beneficiary:
- (a) owes a monetary debt to a Participating Employer arising out of a fraudulent, negligent or criminal act or omission;

- (b) is an employee or officer of the Trustee and owes a monetary debt to the Scheme arising out of a breach of trust by him;
- (c) has caused a monetary loss to the Scheme as a result of a criminal, negligent or fraudulent act or omission;
- (d) is bankrupt.

14.2 Where the debt is due to a Participating Employer:

- (a) the relevant Participating Employer may deliver to the Trustee a certificate stating the loss suffered as a consequence of the fraudulent, negligent or criminal act or omission;
- (b) upon receipt of the certificate the Trustee is to consult with the Actuary and determine an appropriate reduction in benefits to reflect the certified loss;
- (c) the Trustee is then to deliver a copy of the certificate to the Beneficiary and notify him of the proposed reduction. It may in its discretion modify the reduction in light of any representations made by the Beneficiary but its ultimate decision will be binding upon him.

14.3 Where the debt is due to a Participating Employer without prejudice to any other remedy it may have, the Participating Employer will be entitled to reimbursement of the loss from the Scheme (less any tax which may be chargeable).

14.4 Where the debt or loss is due to the Scheme:

- (a) the Trustee may consult with the Actuary and may determine an appropriate reduction in benefits to reflect the debt or loss;
- (b) the Trustee will then deliver a certificate to the Beneficiary notifying him of the debt or loss and the appropriate reduction in benefit to reflect the debt or loss. They may at their discretion modify the reduction in light of any representations made by the Beneficiary but their ultimate decision will be binding upon him.

14.5 Notwithstanding the above the Trustee may not make any reduction or reimbursement:

- (a) unless the claim set out in the certificate delivered to the Beneficiary is either not disputed or the obligation has become enforceable by an order of a competent court;
- (b) in respect of any benefits transferred into the Scheme under rule 6 (except to the extent permitted by Sections 91, 92 or 93 of the 1995 Act);
- (c) which is more than the amount of the monetary debt or loss, or (if less) the value of the Beneficiary's entitlement or accrued rights under the Scheme;
- (d) if it contravenes the preservation requirements of the 1993 Act;

- (e) to the extent that the Pension (after the reduction has been made) is less than the GMP at State Retirement Age.
- 14.6 In rules 14.7 and 14.8 below:
- (a) "**pension**" includes any benefit under the Scheme and any part of a pension and any payment by way of pension; and
 - (b) "**dependant**" and "**member**" have the same meanings as they have in Section 92(3) of the 1995 Act.
- 14.7 The rights to a pension under the Scheme shall not be absolute but shall be forfeited upon the bankruptcy of the person entitled to the pension or whose right to it has accrued.
- 14.8 On and from the bankruptcy of such person any pension which was, or would but for the forfeiture have become, payable may, if the Trustee so determines, be paid to all or any of the following:
- (a) the member to or in respect of whom the pension was or would have become payable;
 - (b) the spouse, widow or widower of the member;
 - (c) any dependant of the member; and
 - (d) any other person to whom, under the Rules of the Scheme, the pension was or could have been paid.
- 14.9 Any part of the benefit not paid pursuant to rule 14.8 is to be used for the general purposes of the Scheme.

15. **AMALGAMATION**

- 15.1 The Principal Employer may, with the consent of the Trustee, amalgamate the Scheme with any other pension scheme or arrangement in such manner and on such terms as they consider appropriate (whether or not such amalgamation results in the Scheme continuing to exist) and may execute such documentation and make or receive such transfers of assets and liabilities as they consider are needed to achieve such amalgamation.

16. **PARTIAL WIND-UP**

- 16.1 An Employer, other than the Principal Employer, may cease to participate in the Scheme by written notice to the Trustee and will cease to participate if its continued participation would prejudice the Scheme's status as a Registered Pension Scheme. The Scheme will cease to apply to the employees of the Employer either immediately or after such interval as the Principal Employer and the Trustee shall agree.

16.2 On the date when an Employer ceases to participate in the Scheme ("**Transfer Date**"):

- (a) Members then in the employment of the retiring Employer will be treated as if their Service had then terminated and any who have not attained Normal Retirement Date shall be treated as Members to whom the early leavers rule set out in the Rules applies and the provisions of that Rule shall be applied accordingly although no Member shall become entitled to a refund of contributions;
- (b) the Trustee will set aside the Appropriate Part of the Fund (as defined in rule 16.3 below) for the benefit of the Relevant Beneficiaries (as defined in rule 16.4 below);
- (c) the Appropriate Part of the Fund will be applied in accordance with rules 18 and 19 below so far as relevant as if:
 - (i) references to the winding up of the Scheme were references to the retiring Employer ceasing to participate;
 - (ii) references to the Employer were references to the retiring Employer;
 - (iii) references to the Fund were to the Appropriate Part of the Fund;
 - (iv) the only persons eligible to benefit under rule 19 were the Relevant Beneficiaries;
 - (v) except to the extent any transfer payment is made in accordance with rules 19.4 or 19.5 the Appropriate Part of the Fund should be retained in the Fund and benefits for the Relevant Beneficiaries concerned provided out of the Fund as if under the early leavers rule set out in the Rules in lieu of securing such benefits under rule 19.

16.3 For the purposes of this Rule the "**Appropriate Part of the Fund**" means such part of the Fund as the Trustee determines but will not, without the consent of the Principal Employer, exceed an amount which is (determined by the Trustee acting on the advice of the Actuary) equal in value to the accrued benefits under the Scheme of the Relevant Beneficiaries, and for this purpose any Members in Service on the date when the Employer retires from the Scheme shall be treated as if their Service had been terminated and any who have not attained Normal Retirement Date shall be treated as Members to whom the early leavers rule set out in the Rules applies.

16.4 For the purposes of this Rule the "**Relevant Beneficiaries**" means:

- (a) the Members who at the Transfer Date are employees of the retiring Employer and other persons who under the Rules are or may become contingently entitled to benefit under the Scheme through such Members; and
- (b) former employees of the retiring Employer who are at the Transfer Date entitled under the Rules to deferred pensions as the Principal Employer with the consent of the Trustee nominates and any other persons who under the Rules are at the Transfer Date or may become contingently entitled to benefit

under the Scheme through such former employees nominated by the Principal Employer with the consent of the Trustee; and

- (c) such Pensioners who at the Transfer Date are former employees of the retiring Employer as the Principal Employer nominates and any other persons who under the Rules are at the Transfer Date or may become contingently entitled to benefit under the Scheme through such Pensioners as nominated by the Principal Employer; and
- (d) any persons who are nominated by the Principal Employer with the consent of the Trustee, who are not capable of falling within (b) or (c) above, and who are at the Transfer Date in receipt of pensions or other benefits under the Rules and who derive their entitlement from employees or former employees of the retiring Employer.

17. TERMINATION AND FULL WIND UP

- 17.1 The Principal Employer may at any time terminate the Scheme by written notice to the Trustee. From the expiration of such notice the Employers will not be liable for any further payments to the Fund but without prejudice to any liability for payments due on or before the date of such expiration or other determination. Upon determination, the Trustee will give notice to Members that the Scheme is to be terminated. The Scheme shall then be wound up, unless the Principal Employer decides to continue it as a closed scheme under rule 20.1.
- 17.2 If the Scheme is terminated in accordance with rule 17.1 and not continued as a closed fund, or if the Trustee is of the opinion that the objects for which the Scheme was established no longer exist or that the administration of the Scheme cannot conveniently be carried out, the Scheme will be wound up and the trusts upon which the Fund was formerly held shall cease.

18. DISSOLUTION

- 18.1 If the Scheme is wound up in full, the Trustee is to realise the Fund at such time and upon such terms as they think fit. No further benefits will accrue in respect of the Beneficiaries once the wind up has commenced.
- 18.2 All costs, charges and expenses which may then be owing or which may arise as a result of winding up will be met from the Fund. The net proceeds of realisation are then to be used to secure benefits as set out in the remainder of this Rule.
- 18.3 Subject to Section 73 of the 1995 Act when the Scheme is wound-up the assets of the Fund will be applied by the Trustee in satisfying the following obligations in the order in which they are set out below and so that any benefit secured in one category will be automatically excluded from any subsequent category:
 - (a) Any AVCs payable;
 - (b) in securing the continuance as if under the Scheme of any pensions and annuities which have then actually commenced (including pensions in course of payment to persons in receipt of Short Service Benefits), pensions prospectively payable to Members who are in the Service after Normal

Retirement Date and benefits payable on the death of any Pensioner or Member covered by this paragraph but no account will be taken of further pensions increases which might have become payable by a future exercise of the Trustee's discretion under the Rules;

- (c) in securing the future payment of Equivalent Pension Benefits payable;
- (d) in securing future payment of Short Service Benefits in respect of Members who have left the service prior to 6 April 1978 **provided that** no account shall be taken of possible pensions increases which might have become payable by a future exercise of the Trustee's discretion under the Rules;
- (e) securing the future payment of GMPs not then in payment, and accrued rights to GMPs or, as an alternative, or partial alternative, in paying state scheme premiums;
- (f) the provision under the advice of the Actuary of benefits for Members and other beneficiaries entitled to deferred or contingent benefits, including Short Service Benefits not then in payment;
- (g) in augmenting or increasing, at their discretion, all or any of the benefits or in providing additional benefits provided it does not prejudice the Scheme's status as a Registered Pension Scheme. It will be a requirement of the exercise of the discretion given to them under this Rule that the Trustee shall have regard to the advice of the Actuary and any guidelines previously agreed with the Principal Employer but not so as to be bound by them;
- (h) in securing any Revenue Pensions payable under rule 2.8, insofar as the same may have been suspended or reduced owing to the failure of the Employer to fund such pensions and in securing increases in such pensions;
- (i) in paying any balance remaining, after satisfying their obligations under the preceding paragraphs, to the Employers in such shares and proportions as the Trustee, acting on the advice of the Actuary, shall decide.

18.4 For the avoidance of doubt the liability for benefits:

- (a) are to be categorised under rule 18.3 by reference to their status on the date the wind up commences, unless the 1995 Act requires they are categorised by reference to an earlier date;
- (b) include any which may subsequently become payable on the death of the relevant Beneficiary.

Unless the context requires otherwise, any former Member who is not a Pensioner on the date the wind up commences is categorised as a Deferred Pensioner.

18.5 Until all the assets of the Fund have been fully disposed of the trusts of the Scheme will remain in force. In particular the provisions of clause 19 will continue.

19. SECURING BENEFITS

- 19.1 Except as provided for below benefits are to be secured by the purchase of an appropriate annuity in respect of each Beneficiary.
- 19.2 In accordance with the Rules, a "winding up lump sum", a "winding up lump sum death benefit" or a "serious ill-health lump sum" (each as defined in the Finance Act 2004) may be paid instead to the Beneficiary.
- 19.3 The Trustee may pay a refund of Member Contributions due under the Rules.
- 19.4 Subject to rule 19.10 at the request of a Beneficiary the Trustee may effect a transfer out under rule 4.
- 19.5 Subject to rule 19.10 if any Beneficiary becomes entitled to participate in a Receiving Scheme the Principal Employer may, in its absolute discretion, direct that a transfer payment or payments shall be made to such Receiving Scheme in respect of each Beneficiary or group of them subject to the provisions of rules 5.4, 5.5 and 5.6. A transfer payment shall only be made without the consent of the Beneficiary if the Trustee is satisfied that the entitlement to be granted in respect of the transfer payment in the Receiving Scheme will be at least equal in value to the entitlement to benefits in the Scheme represented by the transfer.
- 19.6 Benefits may be secured by the purchase of such a policy, contract or investment as may be permitted by law.
- 19.7 If, pursuant to Section 141 of the 1995 Act, a former Member is to be treated, partly or fully as if he had not been in contracted-out employment for any period, the Trustee will adjust or extinguish the benefit for and in respect of him in such manner as they may think appropriate having regard to the advice of the Actuary. The Trustee may pay any debt due pursuant to Section 141 of the 1995 Act from the Fund.
- 19.8 The Trustee may at their discretion secure benefits for the various categories referred to in rule 18.3 by different means. They may also secure benefits by different means for individuals who are in the same category.
- 19.9 The Trustee may (to the extent permitted by HMRC and any relevant legislation) pay sums on account of benefits or effect partial transfers-out. These may be adjusted subsequently at the discretion of the Trustee in such manner as they may determine.
- 19.10 The Principal Employer will retain any powers and/or discretions vested in it pursuant to rules 4 and 5 unless an insolvency practitioner or official receiver (as defined in the Insolvency Act 1986) acts in relation to the Principal Employer when such powers and/or discretions will vest in the Trustee.
- 19.11 For the avoidance of doubt, the powers contained in rules 19.1 to 19.10 will only apply in the event of a partial or full wind up of the Scheme as set out in rules 16 to 18 (inclusive) of this Deed.

20. **SPECIAL POWERS**

- 20.1 If any of the circumstances referred to in rule 17 occurs the Principal Employer may at its discretion elect to continue the Scheme as a closed arrangement.
- 20.2 If an election is made under rule 20.1 no further benefits will be deemed to accrue and no future contributions will be payable after the date of the relevant event. Any benefits accrued prior to that date will be calculated in accordance with the Rules. For the avoidance of doubt if such an election is made the trusts of the Scheme will remain in force and in particular the provisions of clause 19 will continue.
- 20.3 The election will continue in force until the Principal Employer determines otherwise. The Scheme is then to be wound up in accordance with rules 18 and 19.
- 20.4 Upon the happening of an "insolvency event" (as defined in Section 121 of the 2004 Act) in relation to the Principal Employer where there is no substitution of Principal Employer under Clause 13, the power vested in the Principal Employer under rule 20.3 to determine that the Scheme will no longer continue as a closed arrangement and will instead be wound up in accordance with rules 18 and 19, will instead vest in the Trustee with immediate effect.

SCHEDULE 2 DEFINITIONS

"Accounting Date" means 31 December in each year (or such other date as the Trustee with the consent of the Administrator may from time to time decide).

"Accrued Rights" means accrued rights to a GMP for the Member and his Spouse.

"Actuary" means a Fellow of the Institute of Actuaries or the Faculty of Actuaries who is permitted to act as the Actuary by the 1995 Act and who is appointed pursuant to Clause 3 and who is in business as a consulting actuary or who is employed by a corporate or non-corporate body or by an insurance company with which any of the benefits secured under the Scheme may from time to time be insured.

"Administrator" has the meaning given in Schedule 3.

"Auditor" means a person or firm permitted to act as the auditor by the 1995 Act and who is appointed pursuant to Clause 3.

"AVCs" means any transfer value paid to the Trustee in respect of a Closure Deferred Member which is certified by the FKI Scheme to represent AVCs.

"AVC Account" means the total value of the Member's AVC arrangement which was transferred from the FKI Scheme to the Scheme.

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

"Cash Equivalent" means the cash equivalent (as determined in accordance with the 1993 Act) of the benefits payable to and in respect of a Member or Deferred Pensioner under the Scheme scaled down if necessary to comply with the requirements of the Occupational Pension Schemes (Transfer Values) Regulations 1996.

"Certified Amount" means the amount deductible from a Member's Contributions in respect of a State Scheme Premium.

"Chairman" means the person appointed from time to time to act as chairman pursuant to Clause 6.6.

"Child" means the lawful, adopted or legitimate child of a Member and can include a stepchild and illegitimate child who was wholly or mainly dependant on the Member, or a child conceived at the time of the Member's death (or at the date of retirement, if death occurs after retirement) and who would have been so dependent when born if the Member had been alive.

"Class A Member" **"Class B Member"** and **"Class C Member"** each have the meaning set out in Schedule 3.

"Closure Deferred Member" means any Members who i) were active members of the FKI Scheme immediately prior to 28 February 2011; ii) were deemed to have left Service in the FKI Scheme on 28 February 2011; iii) prior to the Effective Date remained continuously employed by an employer in the FKI Scheme; and (iv) following the Effective Date remain continuously employed by an Employer in this Scheme.

"Current Principal Employer" means Brush Electrical Machines Limited (Company Number 00111849) whose registered office is at Precision House, Arden Road, Alcester, Warwickshire B49 6HN.

"Current Trustee" means FKI Scheme Trustees Limited (Company Number 07556000) whose registered office is at Precision House, Arden Road, Alcester, Warwickshire B49 6HN.

"Custodian" means a person or firm who has the custody of cash, securities and any other document of title to Scheme assets.

"Data Protection Act" means the Data Protection Act 1998 and any secondary legislation made under it; and the terms **"Data Controller"**, **"Data Processor"** and **"Processing"** have the same respective meanings as in the Data Protection Act.

"Deed" means this deed and the attached schedules and appendices.

"Deferred Pensioner" means a former Member who is entitled to a deferred Pension under the Scheme but who has not yet become a Pensioner or otherwise retired with benefits becoming payable and includes where the context requires a Closure Deferred Member.

"Dependant" means in relation to any Member (other than an Ex BTR Group Pension Scheme Member) any individual (whether or not a Relative) who, in the opinion of the Trustee, is or was wholly or in part financially dependent upon that Member or to whose maintenance, support or welfare that Member had, in the opinion of the Trustee, been contributing before that person's death.

"Eligible Child" means a Child who is under 18 years of age or, in the case of members in categories 1 to 5 inclusive is under the age of 25 and receiving full time education.

"Employer" means the Principal Employer or Participating Employer which in relation to a Member is his employer for the time being, including (where the context requires) any employer who was the Member's employer under the FKI Scheme.

"Equivalent Pension Benefit" means the benefit to be provided for a Member who was contracted out of the graduated pension scheme as set out in the (now revoked) National Insurance Act 1965.

"FKI Scheme" means the FKI Group Pension Scheme.

"Former Scheme" means any one of:

FKI Babcock Group Pension Scheme
FKI Babcock Pension and Life Assurance Fund
The BTR Group Pension Scheme

"Fund" means the monies, assets, property and investments which from time to time constitute the fund of the Scheme. This expression includes where appropriate any part of the Fund.

"Fund Manager" means an individual or firm who fulfils the requirements of the 1995 Act and of the Financial Services and Markets Act 2000 and who is appointed pursuant to Clause 3 to manage all or part of the investments of the Scheme.

"GMP" means a guaranteed minimum pension as defined in Section 8(2) of the 1993 Act to which a Member or his spouse is entitled under the Scheme by virtue of the 1995 Act.

"HMRC" means Her Majesty's Revenue and Customs.

"Incapacity" means physical or mental incapacity which prevents the Member or an Ex-Spouse from following his normal employment or seriously impairs his earning capacity. The opinion of the Trustee and the relevant Participating Employer as to whether a Member or an Ex-Spouse is incapacitated will be final.

"Index" means the index of retail prices published by the Office for National Statistics or such similar index as may replace it.

"Initial Member" means the Member admitted by the Principal Employer under Rule 1.1 as the sole active Member of the Scheme.

"Insurance Company" means an insurance company as defined by Section 275 of the Finance Act 2004.

"Member" means the individuals admitted to membership of the Scheme from time to time in accordance with Rule 1.

"Member Contributions" means the transfer value paid to the Trustee in respect of a Member which is certified by the Transferring Scheme (including, for the avoidance of doubt, the FKI Scheme) to represent member contributions (whether ordinary contributions or AVCs) paid by a Member to the Transferring Scheme.

"Member Nominated Trustee" means any person selected by the Members (and former Members if appropriate) to be a Trustee in accordance with Section 241 or 242 (as the case may be) of the 2004 Act.

"Membership" means participation in the Scheme and (where the context requires) the FKI Scheme as a Member.

"Nominee" means the Member's or former Member's Spouse, or

- a person who in the opinion of the Trustee was wholly or partially financially dependent on the relevant Member or former Member;
- a child of the Member or former Member (including an adopted child) who is under age 18 or over 18 but receiving full-time education or vocational training;
- any child who in the opinion of the Trustee was dependent on the Member or former Member due to disability.

"Nominee's Pension" means the pension payable after the death of a Pensioner to a Nominee selected by the Pensioner and approved by the Trustee.

"Normal Retirement Date" means the date of the Member's or former Member's sixty-fifth birthday or such other date agreed by the Trustee and the Principal Employer.

"Participating Employers" means the Principal Employer together with any companies, firms or persons which participate from time to time in accordance with Clause 12.

"Pension" means a pension payable from the Scheme.

"Pensionable Service" means the period of Service under the FKI Scheme immediately prior to the Effective Date which is credited to the Member under the Rules for the purpose of calculating his benefits. For the avoidance of doubt but subject to rule 1.2 it does not include any period during which a Member is employed by an Employer under this Scheme.

"Pensioner" means a person who is for the time being receiving a Pension out of the Fund.

"Personal Data" means personal data as defined in the Data Protection Act in relation to which the Trustee is a Data Controller.

"Personal Pension Scheme" means as defined in Section 1 of the 1993 Act.

"Preservation Regulations" means the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 as amended by the Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1993 and the Personal and Occupational Pension Schemes (Preservation of Benefit and Perpetuities) (Amendments) Regulations 1996.

"Principal Employer" means the Current Principal Employer or any company, firm or person substituted for it pursuant to Clause 13.

"Receiving Scheme" means a Registered Pension Scheme or a Personal Pension Scheme to which a transfer is to be made pursuant to Rule 4 or Rule 5.

"Registered Pension Scheme" means a pension scheme which is a registered pension scheme for the purposes of the Finance Act 2004.

"Reference Scheme Test" means the conditions which the Scheme must satisfy set out in Section 9(2B) of the 1993 Act.

"Reference Scheme Test Rights" has the meaning given to pensions under a relevant Scheme in the Occupational Pension Schemes (Discharge of Liabilities) Regulations 1997. Without limitation to the meaning given in these regulations, the expression includes the benefits attributable to Membership while the Member's employment is contracted out on the Reference Scheme Test basis.

"Relative" includes in relation to any deceased Member:

1. Such of the following persons as are living (or any unborn child) at the Member's death:
 - (a) the Surviving Spouse of the Member;
 - (b) the children and remoter descendants of the Member;

- (c) any other children and remoter descendants of the parents of the Member or of the parents of the Surviving Spouse of the Member;
- (d) any spouse widow or widower (whether or not remarried) of any of the persons described in (b) and (c) of this definition;
- (e) the parents of the Member and the Surviving Spouse of the Member;
- (f) any person to whose advancement, maintenance or support the Member shall in the opinion of the Trustee has contributed;
- (g) any person, society, club, charity or other body (whether or not charitable).of which the Member has notified the Trustee or the Principal Employer or any of the Employers or the trustees of any predecessor scheme as being a person or body the Member wished to be considered as a recipient of benefit in the event of the Member's death; and
- (h) any person beneficially interested under any testamentary disposition of the Member or any other person as the Trustee in its discretion may select; and

2. The Member's legal personal representatives.

"**Rules**" means the Rules of the Scheme set out in Schedule 1 as amended from time to time.

"**Scheme**" means the Brush Group (2013) Pension Scheme.

"**Scheme Year**" means the period commencing on the day next following an Accounting Date and ending on the next succeeding Accounting Date.

"**Secretary**" means the person appointed by the Trustee to act as its secretary pursuant to Clause 6.5.

"**Service**" means employment with any of the Employers under the FKI Scheme. Unless otherwise stated in the Rules, all Closure Deferred Members were deemed to have left Service on 28 February 2011.

"**Seventh Principle**" means the seventh principle set out in Part 1 of Schedule 1 to the Data Protection Act.

"**Short Service Benefits**" means the deferred Pension that all Members who were deferred Members under the FKI Scheme are entitled to subject to Rules 4 and 5.

"**Spouse**" means the wife or husband of a Member. In the case of polygamous marriages, the spouse will be such wife or husband as the Trustees may decide. Where the context so requires, wife or husband shall mean widow or widower respectively. The term "Spouse" shall include a civil partner in a registered civil partnership under the Civil Partnership Act 2004.

"**State Retirement Age**" currently means as given by the rules in Paragraph 1 of Schedule 4 to the 1995 Act.

"State Scheme Premium" means one or more of the premiums payable to the State Scheme prescribed in Chapter III of Part III of the 1993 Act.

"Surviving Spouse" means the person married to or in a registered civil partnership with a Member or Pensioner at the date of his death.

"Transfer Scheme" means another Registered Pension Scheme or arrangement approved (where necessary) by HMRC to take a transfer.

"Trust Corporation" means a trust corporation as defined in the Trustee Act 1925.

"Trustee" means the Current Trustee and its successor or successors in title and includes any employee or officer of the Trustee or of any successor trustee.

"Unauthorised Payment" means an "unauthorised member payment" or an "unauthorised employer payment" as appropriate and as defined in Section 160 of Part 4 of the Finance Act 2004.

"1993 Act" means the Pension Schemes Act 1993.

"1995 Act" means the Pensions Act 1995.

"2004 Act" means the Pensions Act 2004.

SCHEDULE 3 SCHEME LIMITS

For the avoidance of doubt, where there is any inconsistency between the provisions of this Schedule 3 and Clause 19A, the provisions of Clause 19A will prevail.

1. DEFINITIONS

In these Rules the following expressions will have the meanings ascribed to them:

- 1.1 "Act" will mean the Income and Corporation Taxes Act 1988 and any statutory amendment modification or re-enactment thereof.
- 1.2 "Administrator" means the Trustee or such other individual or corporate body as the Trustee may appoint to act as administrator for the purposes of the Act.
- 1.3 "Aggregate Retirement Benefit" will mean the aggregate of:
 - (a) the Member's or former Member's pension under this Scheme and any Associated Scheme; and
 - (b) the pension equivalent of the Member's or former Member's Lump Sum Retirement Benefit.
- 1.4 "Approval" will mean approval of the Scheme by the Board of Inland Revenue under Chapter I of Part XIV of the Act.
- 1.5 "Associated Employer". An employer is associated with another employer if one is controlled by the other, or both are controlled by a third party. Control has the meaning in Section 840 of the Act or, in the case of a close company, Section 416 of the Act.
- 1.6 "Associated Scheme" will mean any Relevant Scheme providing benefits in respect of Service.
- 1.7 "Class A Member" will mean any Member or former Member who is not a Class B or Class C Member.
- 1.8 "Class B Member" will mean any Member or former Member:
 - (a) who, on or after 17 March 1987 and before 1 June 1989, joined the Scheme being a Scheme which commenced before 14 March 1989; or
 - (b) who the Board of Inland Revenue have agreed in writing to be a Class B Member by virtue of previous membership of a Relevant Scheme;and, in either case, has not opted to become a Class A Member.
- 1.9 "Class C Member" will mean any Member or former Member who joined the FKI Scheme before 17 March 1987 or who joined subsequently and who the Board of Inland Revenue have agreed in writing to be a Class C Member by virtue of previous membership of a Relevant Scheme and, in either case, has not opted to become a Class A Member.

- 1.10 **"Connected Scheme"** will mean any Relevant Scheme which is connected with the Scheme in relation to the Member or former Member i.e. if:
- (a) there is a period during which the Member or former Member has been the employee of two Associated Employers;
 - (b) that period counts under both Schemes as a period in respect of which benefits are payable; and
 - (c) the period counts under one Scheme for service with one employer and under the other for service with the other employer.
- 1.11 **"Controlling Director"** means a Member or former Member who, at any time on or after 17 March 1987 and in the last 10 years before the Relevant Date has, in relation to the Participating Employer, been both within the definition of a director in Section 612(1) and within paragraph (b) of Section 417(5) of the Act.
- 1.12 **"Dependant"** in these Rules will have the meaning given to Nominee in Schedule 2.
- 1.13 **"Final Remuneration"** will mean the greater of:
- (a) the highest remuneration upon which tax liability has been determined for any one of the 5 years preceding the Relevant Date being the aggregate of:
 - (i) the basic pay for the year in question; and
 - (ii) the yearly average over 3 or more consecutive years ending with the expiry of the corresponding basic pay year, of any Fluctuating Emoluments **provided that** Fluctuating Emoluments of a year other than the basic pay year may be increased in proportion to the Index from the last day of that year up to the last day of the basic pay year. Remuneration that is received after the Relevant Date and upon which tax liability has been determined will be treated as a Fluctuating Emolument (providing it was earned or qualified for prior to the Relevant Date). In these circumstances it may be included provided the yearly average of 3 or more consecutive years begins no later than the commencement of the basic pay year; or
 - (b) the yearly average of the total emoluments from the Participating Employer which are assessable to income tax under Case I or II of Schedule E and upon which tax liability has been determined for any 3 or more consecutive years ending not earlier than 10 years before the Relevant Date. Where such emoluments are received after the Relevant Date but are earned or qualified for prior to that date, they may be included **provided that** in these circumstances the yearly average of 3 or more consecutive years begins no later than the commencement of the year ending with the Relevant Date.

Provided that:

- (i) remuneration and total emoluments do not include any amounts which arise from the acquisition or disposal of shares or any interest in shares or from a right to acquire shares (except where the shares or rights etc

which give rise to such an amount liable to tax under Schedule E had been acquired before 17 March 1987) or anything in respect of which tax is chargeable by virtue of Section 148;

- (ii) in relation to a Controlling Director, final remuneration will be the amount ascertained in accordance with (b) and (a) above will not apply;
- (iii) in relation to any other employee whose remuneration in any year subsequent to 5 April 1987 used for the purpose of calculating benefits has exceeded £100,000.00 (or such other figure as may be prescribed by the Treasury), final remuneration will not exceed the amount ascertained in accordance with (b) and (a) above will not apply, unless the individual chooses to adopt £100,000.00 (or such other figure as may be prescribed by the Treasury);
- (iv) where final remuneration is computed by reference to any year other than the last complete year ending on the Relevant Date the Member's remuneration or total emoluments of any year may be increased in proportion to any increase in the Index from the last day of that year up to the Relevant Date. For a Class C Member this proviso will not apply to the calculation of the maximum Lump Sum Retirement Benefit unless the Member's aggregate total benefits are similarly increased beyond the maximum amount which could be paid but for this proviso and/or the first sentence of (a) above and then only to the same proportionate extent;
- (v) for Class A Members final remuneration will not exceed the Permitted Maximum;
- (vi) for the purpose of calculating the maximum Lump Sum Retirement Benefit of a Class B Member's final remuneration will not in any event exceed £100,000.00 (or such other figure as may be prescribed by the Treasury);
- (vii) an employee who remains, or is treated as remaining, in service but by reason of Incapacity is in receipt of a much reduced remuneration i.e. under a sick pay or permanent health insurance scheme, for more than 10 years up to the Relevant Date, may calculate final remuneration under (a) and (b) above with the final remuneration calculated at the cessation of normal pay and increased in accordance with the Index;
- (viii) the total amount of any profit related pay (whether relieved from income tax or not) may be classed as pensionable remuneration and treated as a Fluctuating Emolument;
- (ix) an early retirement pension in payment from the Participating Employer may not be included in final remuneration.

1.14 **"Fluctuating Emoluments"** are any part of an employee's earnings which are not paid on a fixed basis and are additional to the basic wage or salary. They include overtime, commission, bonuses or benefits in kind as long as they are assessable to

tax under Case I or II Schedule E and profit related pay (see proviso 1.12(b)(vii) to definition of Final Remuneration). Directors' fees may rank as Fluctuating Emoluments according to the basis on which they are voted.

- 1.15 "**Lump Sum Retirement Benefit**" will mean the total value of all retirement benefits payable in any form other than non-commutable pension under this and any Associated Scheme.
- 1.16 "**Pensionable Service**" will have the meaning ascribed to it by Section 3 of the 1993 Act.
- 1.17 "**Permitted Maximum**" is to be construed in accordance with Clause 19A.
- 1.18 "**Relevant Date**" will mean the date of retirement, leaving Pensionable Service or death as the case may be.
- 1.19 "**Relevant Scheme**" will mean any other Scheme approved or seeking approval under Chapter I Part XIV of the Act and in respect of a Class A Member who is a Controlling Director also any retirement annuity contract or trust Scheme approved under Chapter III Part XIV of any personal pension Scheme as approved under Chapter IV Part XIV of the Act insofar as it provides benefits secured by contributions in respect of Service.
- 1.20 "**Remuneration**" in relation to any year will mean the aggregate of the total emoluments for the year in question from the Participating Employer and which are assessable to Income Tax under Schedule E but excluding any amounts which arise from the acquisition or disposal of shares or any interest in shares or a right to acquire shares or anything in respect of which tax is chargeable by virtue of Section 148 of the Act **provided that** for a Class A Member there will be disregarded any emoluments in excess of the Permitted Maximum.
- 1.21 "**Retained Death Benefits**" will mean any lump sum benefits payable on the Member's or former Member's death from:
- (a) retirement benefits schemes approved or seeking approval under Chapter 1 Part XIV of the Act or relevant statutory schemes as defined in Section 611A thereof;
 - (b) Funds to which Section 608 of the Act applies;
 - (c) retirement benefits Schemes which have been accepted by the Inland Revenue as "corresponding" in respect of a claim made on behalf of the Member or former Member for the purposes of Section 596(2)(b) of the Act;
 - (d) retirement annuity contracts approved under Chapter III Part XIV of the Act;
or
 - (e) term life provisions under personal pension schemes approved under Chapter IV Part XIV of the Act;
 - (f) transfer payments from overseas schemes held in a type of arrangement defined in (a), (c) or (d) above;

in respect of previous employments or periods of self-employment (whether alone or in partnership). If the Retained Death Benefits do not exceed £2,500.00 in total they may be ignored.

If the Member or former Member is not a Controlling Director and his or her earnings in the 12 months after entry to the Scheme (in this context including any other Relevant Scheme providing benefits in respect of service with the current Participating Employer) do not exceed one quarter of the Permitted Maximum, benefits from these sources, other than those transferred into the Scheme, shall not be classed as Retained Death Benefits.

- 1.22 "**Service**" will mean service with the Participating Employer or an Associated Employer under the FKI Scheme or, except in relation to a Class A Member who is a Controlling Director of either employer, an employer who is associated with the Participating Employer under the FKI Scheme only by virtue of a permanent community of interest.

PART 1
INLAND REVENUE LIMITS RULE

Class A Members

Notwithstanding anything to the contrary in the Scheme provisions other than Clause 19A, the benefits payable to a Class A Member or his Dependants or other beneficiaries in respect of him will not when aggregated with all benefits of a like nature provided under all Associated Schemes exceed the limits set out below:

1. The Member's or former Member's Aggregate Retirement Benefit will not exceed:
 - (a) on retirement at any time between attaining age 50 and attaining age 75, except before Normal Retirement Date on grounds of Incapacity, a pension of $1/60^{\text{th}}$ of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Approval;
 - (b) on retirement at any time before Normal Retirement Date on grounds of Incapacity a pension of the amount which could have been provided at Normal Retirement Date in accordance with paragraph (a) above, Final Remuneration being computed as at the actual date of retirement;
 - (c) on leaving Pensionable Service before attaining age 75, a pension of $1/60^{\text{th}}$ of Final Remuneration for each year of that Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed may be increased by 5 per cent. for each complete year or if greater in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the pension begins to be payable. Any further increase necessary to comply with Social Security legislation is also allowable;
 - (d) benefits for a Class A Member are further restricted to ensure that this total retirement benefit from this Scheme and from any Associated Scheme or Connected Scheme does not exceed a pension of $1/30^{\text{th}}$ of the Permitted Maximum for each year of service, subject to a maximum of $20/30^{\text{ths}}$. For the purpose of this limit, service is the aggregate of Service and any period of service which gives rise to benefits under a Connected Scheme **provided that** no period is to be counted more than once;
 - (e) for the purpose of calculating the Aggregate Retirement Benefit or the total retirement benefit in (a) to (d) above, the pension equivalent of any Lump Sum Retirement Benefit is one twelfth of its total cash value.
2. The Member's or former Member's Lump Sum Retirement Benefit will not exceed:
 - (a) on retirement at any time between attaining age 50 and attaining age 75, except before Normal Retirement Date on grounds of Incapacity, $3/80^{\text{ths}}$ of Final Remuneration for each year of Service (not exceeding 20 years) or such greater amount as will not prejudice Approval;

- (b) on retirement at any time before Normal Retirement Date on grounds of Incapacity the amount which could have been provided at Normal Retirement Date in accordance with paragraph (a) above; Final Remuneration being computed as at the actual date of retirement;
- (c) on leaving Pensionable Service before attaining age 75, a lump sum of $\frac{3}{80}$ th of Final Remuneration for each year of that Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed may be increased in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the benefit is first paid.

3. **Earnings cap**

If the operation of these Rules restricts the annual remuneration by reference to which the benefits of any Class A Members are calculated, the Trustee may (with the consent of the Principal Employer, and subject to payment of any special contribution(s) which, on the advice of the Actuary, they may require) augment such benefits to whichever is the lower of the amounts which would have been payable but for such restriction and the limits applicable under this Schedule 3.

Class B or C Members

Notwithstanding anything to the contrary in the Scheme provisions other than Clause 19A, the benefits payable to a Class B or C Member or to his Dependants or other beneficiaries in respect of him will not when aggregated with all benefits of a like nature provided under all Associated Schemes exceed the limits set out below:

1. The Member's or former Member's Aggregate Retirement Benefit will not exceed:
 - (a) on retirement at or before Normal Retirement Date, a pension of $\frac{1}{60}$ th of Final Remuneration for each year, of Service (not exceeding 40 years) or such greater amount as will not prejudice Approval;
 - (b) on retirement at any time before Normal Retirement Date on grounds of Incapacity a pension of the amount calculated in accordance with paragraph (a) above as if the Member or former Member had remained in Service until the Normal Retirement Date, Final Remuneration being computed as at the actual date of retirement;
 - (c) on retirement after Normal Retirement Date, a pension of the greatest of:
 - (i) the amount calculated in accordance with paragraph (a) above on the basis that the actual date of retirement was the Member's or former Member's Normal Retirement Date;
 - (ii) the amount which could have been provided at Normal Retirement Date in accordance with paragraph (a) above increased either actuarially in respect of the period of deferment or in proportion to any increase in the Index during that period; and

- (iii) where the Member's or former Member's total Service has exceeded 40 years, the aggregate of $1/60^{\text{th}}$ of Final Remuneration for each year of Service before Normal Retirement Date (not exceeding 40 such years) and of a further $1/60^{\text{th}}$ of Final Remuneration for each year of Service after Normal Retirement Date, with an overall maximum of 45 reckonable years.

Final Remuneration being, computed in respect of 1(c)(i) or 1(c)(iii) above as the actual date of retirement, but subject always to paragraph 4(a) below:

- (d) on leaving Pensionable Service before Normal Retirement Date, a pension of $1/60^{\text{th}}$ of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed may be increased by 5 per cent. for each complete year or if greater, in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the pension begins to be payable. Any further increase necessary to comply with Social Security legislation is also allowable.

2. The Member's or former Member's Lump Sum Retirement Benefit will not exceed:

- (a) on retirement at or before Normal Retirement Date, $3/80^{\text{ths}}$ of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Approval;
- (b) on retirement at any time before Normal Retirement Date on grounds of Incapacity the amount calculated in accordance with paragraph (a) above as if the Member or former Member had remained in Service until the Normal Retirement Date, Final Remuneration being computed as at the actual date of retirement;
- (c) on retirement after Normal Retirement Date, the greatest of:
 - (i) the amount calculated in accordance with paragraph (a) above on the basis that the actual date of retirement was the Member's or former Member's Normal Retirement Date;
 - (ii) the amount which could have been provided at Normal Retirement Date in accordance with paragraph (a) above together with an amount representing interest thereon; and
 - (iii) where the Member's or former Member's total Service has exceeded 40 years, the aggregate of $3/80^{\text{ths}}$ of Final Remuneration for each year of Service before Normal Retirement Date (not exceeding 40 such years) and of a further $3/80^{\text{ths}}$ of Final Remuneration for each year of Service after Normal Retirement Date with an overall maximum of 45 reckonable years.

Final Remuneration being computed in respect of (i) or (iii) or above as at the actual date of retirement, but subject always to paragraph 4(a) below:

- (d) on leaving Pensionable Service before Normal Retirement Date, a lump sum of $3/80^{\text{ths}}$ of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed as aforesaid may be increased in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the benefit is first paid.
3. If a Member or former Member elects under the Rules to take any part of his benefits under this Scheme in advance of actual retirement the limits set out in paragraphs 1 and 2 above will apply as if he had retired at the date of the election as aforesaid, no account being taken of subsequent Service, save that the maximum amount of any uncommuted pension not commencing immediately may be increased either actuarially in respect of the period of deferment or in proportion to any increase in the Index during that period.
4. The preceding provisions of this Rule will be modified in their application to a Member or former Member who is a Controlling Director as follows:
 - (a) the amount of the maximum Aggregate Retirement Benefit in paragraph 1 and of the maximum Lump Sum Retirement Benefit in paragraph 2 will be reduced, where necessary for Approval, to take account of any corresponding benefits under retirement annuity contracts or trust Schemes approved under Chapter III Part XIV of the Act or under personal pension Schemes approved under Chapter IV Part XIV of the Act;
 - (b) where retirement takes place after Normal Retirement Date but not later than the Member's or former Member's 70th birthday, paragraph 1(c)(i) and 1(c)(ii) and paragraph 2(c)(ii) and 2(c)(iii) will not apply, and if retirement is later than the attainment of that age, the said paragraphs will apply as if the Member's or former Member's 70th birthday had been specified in the Rules as his Normal Retirement Date, so as not to treat as Service after Normal Retirement Date any Service before the Member or former Member reaches the age of 70;
 - (c) where paragraph 3 applies to him, the rate of the actuarial increase referred to therein in relation to any period of deferment prior to his attaining the age of 70, will not exceed the percentage increase in the Index during that period.

PART 2 OTHER CONDITIONS RELATING TO CLASS A MEMBERS

1. Continued Life Cover

- 1.1 Any provision in the Rules to provide a lump sum benefit on the death of a Member or former Member occurring after retirement on pension (other than a payment under a guarantee of pension provision) will be restricted in respect of a Member or former Member who joined the FKI Scheme on or after 1 October 1991 to exclude any provision other than on death occurring before the Normal Retirement Date and after retirement on grounds of Incapacity. The amount of the benefit will not exceed the amount payable had the Member or former Member died immediately before retirement increased in proportion to any increase in the Index between the date of the Member's or former Member's retirement and the date of death.

2. Payment of Retirement Benefits

- 2.1 The payment of a Member's or former Member's retirement benefits will not commence earlier than the Member or former Member attaining age 50, except on retirement on grounds of Incapacity, nor later than attaining age 75.
- 2.2 No part of the Member's or former Member's retirement benefits is to be paid in advance of actual retirement except as necessary to comply with paragraph 2.1 above or to the extent necessary to comply with the requirements of the 1993 Act.

PART 3 OTHER CONDITIONS RELATING TO CLASS B OR C MEMBERS

1. Transfers

- 1.1 Any retirement benefits arising by virtue of the receipt by the Scheme of a transfer value (other than from another Scheme providing benefits in respect of Service), will not be capable of commutation unless and then only to the extent that a certificate has been obtained from the administrator of the transferring Scheme showing the maximum lump sum payable from the transfer value. The amount so certified may be increased in proportion to any increase in the Index since the date the transfer payment was received.
- 1.2 When, on or after a transfer having been made to another occupational pension Scheme, the administrator of that Scheme requests such a certificate as is referred to in paragraph 1.1 above, the Administrator will calculate as at the date of the transfer the maximum lump sum payable on retirement from the transfer value and certify that amount to the receiving Scheme.

PART 4 OTHER CONDITIONS RELATING TO ALL MEMBERS OR FORMER MEMBERS

1. Lump Sum Death Benefit

1.1 The lump sum benefit payable on the death of a Member or a Deferred Pensioner, shall not, when aggregated with all benefits of a like nature under all Associated Schemes, exceed the greater of:

(a) £5,000.00; and

(b) 4 times the greater of:

(i) the annual rate (subject, for a Class A Member, to the Permitted Maximum) of the Member or former Member's basic salary or wages at the date of death or leaving Pensionable Service together with the yearly average of Fluctuating Emoluments received in the 3 years (or the whole period of Service if less) up to the date of death or leaving Pensionable Service; and

(ii) the Member's or former Member's total emoluments (subject, for a Class A Member, to the Permitted Maximum) of any selected period of 12 months ending not earlier than 36 months before the date of death;

(iii) Final Remuneration disregarding provisos (i), (ii) and (iii) of that definition;

less Retained Death Benefits.

2. Dependants' Pensions

2.1 Any pension for a Dependant, when aggregated with the pensions, other than those provided by surrender or allocation of the Member's or former Member's own pension, payable to that Dependant under all Associated Schemes, will not exceed an amount equal to $\frac{2}{3}$ rds of the maximum Aggregate Retirement Benefit payable to the Member or former Member immediately before death under Part 1 above. Where the death of the Member or former Member occurs whilst in Service before the Normal Retirement Date the maximum is that appropriate had the Member or former Member retired on grounds of Incapacity on the date of death entitled to no retained benefits from previous employments.

2.2 If pensions are payable to more than one Dependant of a Member or former Member, the aggregate of all Dependants' pensions payable in respect of him under this and all Associated Schemes will not exceed the full amount of the maximum Aggregate Retirement Benefit described in the previous paragraph of this Rule.

3. Increases of Pensions in Payment

3.1 The maximum amount of a pension ascertained in accordance with Part 1 or Part 4 of this Rule less any pension which has been commuted for a lump sum or the pension equivalent of any benefits in lump sum form and any pension surrendered to provide a

Dependant's pension may be increased by 3 per cent. for each complete year or if greater, in proportion to any increase in the Index since the pension commenced.

4. Surplus AVCs

- 4.1 Where the application of the limits in this Rule requires the quantum of the Aggregate Retirement Benefit to be restricted and the Member or former Member has paid additional voluntary contributions to supplement Scheme benefits, that restriction will first be effected on those supplementary benefits so as to permit the repayment of the surplus additional voluntary contributions subject to Section 599A of the Act.
- 4.2 The administrator of the Scheme will comply with the requirements of Regulation 5 of The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 (SI 1993 No 3016) and where the Scheme is the "leading Scheme" in relation to a member, with the requirements of Regulation 6 of those Regulations so far as they concern main Schemes. If these Regulations are amended or replaced by any other Regulations then this Rule will have effect as if it had been amended or replaced accordingly.

5. Transfers

- 5.1 The benefits arising on retirement from a transfer value will not be capable of commutation nor will they be paid in lump sum form if the transfer is accompanied by a certificate from the administrator of the transferring Scheme to the effect that the transfer value is not to be used to provide benefits in lump sum form.
- 5.2 When making a transfer to an approved personal pension scheme on or after 6 April 2001 the Administrator will provide a certificate of the maximum lump sum payable on retirement from the transfer value if the transferring member:
- (a) was aged 45 or more at the time that the transfer payment was made and he was in receipt of annual Remuneration in excess of the allowable maximum (i.e. the equivalent for personal pension schemes of the Permitted Maximum) for the year of assessment in which the date of transfer falls for any year of assessment falling (wholly or partly) during the six years prior to the transfer date; or
 - (b) has at any time within the 10 years preceding the date on which the right to the cash equivalent being transferred arose, been, in respect of any employment to which the transfer payment or any part of it relates, a Controlling Director.

6. General

- 6.1 If in respect of any Member or former Member the Board of Inland Revenue consents (either generally or in any particular case) to greater or different benefits being provided than are permitted under the preceding provisions of this Schedule or the Rules the Trustee may with the consent of the Member or former Member and the relevant Participating Employer provide such greater or different benefits and the preceding provisions of this Schedule or the Rules will be adjusted accordingly in respect of such Member or former Member.

SCHEDULE 4 PENSION SHARING ON DIVORCE

PART 1

1. DEFINITIONS AND INTERPRETATION

1.1 In these Rules the following expressions will have the meanings ascribed to them:

"Ex-Spouse" means an individual to whom a Pension Credit has been or will be allocated following a Pension Sharing Order, agreement or equivalent provision.

"Ex-Spouse Participant" means an Ex-Spouse who participates in the Scheme, either:

- (a) solely for the provision of a Pension Credit Benefit; or
- (b) for the wholly separate provision of a Pension Credit Benefit, where benefits accrue or have accrued to that individual under the Scheme for any other reason.

"Implementation and Discharge Regulations" means the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000.

"Negative Deferred Pension" means the amount by which the Member's or former Member's Pension or deferred Pension under the Scheme which arises from service with the Participating Employers, is reduced at the date Membership ends by Section 31 of the Welfare Reform Act following a Pension Sharing Order, agreement or equivalent provision. For this purpose, service with the Participating Employers includes all periods of service with other employers which have been treated as if they were service with the Participating Employer(s) where a transfer payment has been made to the Scheme in respect of that other service.

"Part 1" means Part 1 of this schedule entitled "Pensions Sharing on Divorce".

"Pension Credit" means a credit under Section 29(1)(b) of the Welfare Reform Act.

"Pension Credit Benefit" means the benefits payable under the Scheme to or in respect of a person by virtue of rights under the Scheme attributable (directly or indirectly) to a Pension Credit.

"Pension Credit Rights" means rights to future benefits under the Scheme which are attributable (directly or indirectly) to a Pension Credit.

"Pension Debit" means a debit under Section 29(1)(a) of the Welfare Reform Act.

"Pension Debit Member" means a Member or former Member whose benefits have been permanently reduced by a Pension Debit excluding a moderate earner as defined in Regulation 5 of the Retirement Benefits Schemes (Sharing of Pensions on Divorce or Annulment) Regulations 2000.

"Pension Sharing Order" means any order or provision as is mentioned in Section 28(1) of the Welfare Reform Act

"Qualifying Arrangement" means a qualifying arrangement as defined in Paragraph 6 of Schedule 4 of the Welfare Reform Act and not disqualified pursuant to paragraph 7 of that schedule.

"Serious Ill Health" means for the purposes of Schedule 4 only ill health which is such as to give rise to a life expectancy of less than one year from the date on which commutation of the Pension Credit Benefit is applied for.

"Trivial" means for the purposes of Schedule 4 only any Pension Credit Rights the aggregate of which do not exceed the value of a Pension of £260 a year or such other amount as would not prejudice the Scheme's status as a Registered Pension Scheme.

"Valuation Day" has the meaning given by Section 29(7) of the Welfare Reform Act.

"Welfare Reform Act" means the Welfare Reform and Pensions Act 1999.

- 1.2 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. 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 referred to in it. Any reference to legislation applicable to only part of the United Kingdom includes a reference to the corresponding legislation (if any) applicable to any other part of the United Kingdom.
- 1.3 Words in the singular include the plural and vice versa.
- 1.4 Words in the masculine gender include the feminine and vice versa unless the context otherwise requires.
- 1.5 Where the terms Dependant, Child or Nominee are used in the Deed in relation to an Ex-Spouse the reference to a Member in that term will be construed as a reference to the Ex-Spouse.
- 1.6 Unless the context requires otherwise any reference within a part of this schedule to a paragraph is to a paragraph within that part.

2. **PENSIONS SHARING ON DIVORCE**

This schedule applies in respect of Pension Sharing Orders. When a Pension Sharing Order takes effect in relation to the Scheme the Trustee will give effect to it in accordance with this schedule and the Welfare Reform Act and any regulations made under it.

3. **SUPPLY OF INFORMATION**

The Trustee will comply with any requirement to supply information it is required to provide pursuant to Section 45 of the Welfare Reform Act and the regulations made under it.

4. **CHARGING**

The Trustee may subject to complying with the Welfare Reform Act and with any relevant regulations pursuant to the Welfare Reform Act impose such charges as it thinks fit in relation to pension sharing and may require any such charges to be paid before implementing a Pension Sharing Order.

5. **VALUATION AND CALCULATION OF PENSION CREDIT**

5.1 The Trustee will issue a notice of implementation under the Welfare Reform Act and will notify the Member or former Member and the Ex-Spouse of the Valuation Day.

5.2 The Trustee will then:

- (a) carry out a valuation of the benefits for the Member or former Member that are subject to a Pension Sharing Order; and
- (b) calculate the Pension Credit in accordance with the Welfare Reform Act and the Pension Sharing (Valuation) Regulations 2000;

as at the Valuation Day.

6. **OPTION FOR EX-SPOUSE**

The Trustee will give the Ex-Spouse details of the option to require the Trustee to discharge the Pension Credit by making a payment to a Qualifying Arrangement in accordance with the Welfare Reform Act.

7. **METHOD OF DISCHARGING LIABILITY FOR PENSION CREDIT**

7.1 The Trustee will discharge its liability for a Pension Credit for and in respect of an Ex-Spouse:

- (a) by paying the Pension Credit to a Qualifying Arrangement with the consent of the Ex-Spouse (the "**External Transfer**"); or
- (b) where such consent is not obtained subject to paragraph 8 by paying the Pension Credit to a Qualifying Arrangement without the consent of the Ex-Spouse (the "**Default Option**").

For this purpose the payment will be made in accordance with the relevant provisions of the Welfare Reform Act that apply.

7.2 Once a payment has been made pursuant to paragraph 7.1 above the Trustee will be discharged from any further liability to and in respect of the Ex-Spouse in relation to his Pension Credit.

8. **ALTERNATIVE METHOD OF DISCHARGING LIABILITY**

8.1 If an External Transfer is not made pursuant to paragraph 7.1(a) the Trustee may from time to time determine that liability for a Pension Credit will be discharged by conferring rights or benefits on the Ex-Spouse under the Scheme (the "**Internal**

Transfer Option") instead of by means of the Default Option. In such circumstances the Trustee may make such arrangements as it considers fit to give effect to the Internal Transfer Option in accordance with the Welfare Reform Act and any relevant regulations. For this purpose:

- (a) the Trustee will have any powers and discretions; and
- (b) this Deed will be deemed to be amended to include any rules;

that the Trustee considers appropriate in relation to the Internal Transfer Option in accordance with the Welfare Reform Act.

8.2 In making any arrangements for an Internal Transfer Option the Trustee will comply with:

- (a) the requirements of the Welfare Reform Act and any regulations made under it and Part IVA of the 1993 Act (requirements relating to Pension Credit Benefit);
- (b) any requirements of the 1993 Act with regard to rights arising from contracting-out of the state earnings related pensions scheme.

8.3 If an Internal Transfer Option is exercised safeguarded rights will have the meaning given in Section 68A(2) of the 1993 Act and no other Pension Credit Rights will be treated as safeguarded rights unless the Trustee specifically resolve otherwise. The Trustee will keep such records as will enable the safeguarded rights determined in accordance with this paragraph to be identified at any time.

9. **LIMITATION OF RIGHTS**

9.1 No person with a Pension Credit or Pension Credit Rights will have any right or interest under the Scheme except under and to the extent specified in this schedule or as required by law or as determined by the Principal Employer. For the avoidance of doubt such person is excluded from the ambit of any Rule which provides for:

- (a) the augmentation of benefits or improvement of the terms on which benefits are payable;
- (b) discretionary pension increases; or
- (c) the grant of new or additional benefits;

whether the Scheme is continuing or winding up.

9.2 The provisions of paragraph 9.1 above will not operate in respect of any other capacity in which the person may have rights or interests under the Scheme whether as a Member, or former Member, Dependant or Nominee.

10. **DEATH BEFORE DISCHARGE**

10.1 If the Ex-Spouse dies after a Pension Sharing Order has been made but before the Trustee has discharged its liability in respect of the Pension Credit subject to

regulation 6 of the Implementation and Discharge Regulations the Trustee will discharge its liability in respect of the Pension Credit by applying the Pension Credit in such one or more of the following ways as the Trustee determines:

- (a) by paying one or more lump sum death benefits at the discretion of the Trustee in accordance with the Rules;
- (b) by paying one or more Pensions to one or more of the Dependants as decided by the Trustee; and
- (c) by purchasing an annuity contract or insurance policy for the benefit of any one or more Dependants as decided by the Trustee which satisfies the requirements of Regulation 6(3) of the Implementation and Discharge Regulations.

10.2 The amount of the Pension Credit applied under each of paragraphs 10.1(a), 10.1(b) and 10.1(c) will be determined by the Trustee.

10.3 Any payments or purchases pursuant to paragraph 10.1 will be made in accordance with HMRC's requirements and the 1993 Act and any applicable regulations, made under it. The Trustee may pay a lump sum in lieu of a Nominee's Pension which is Trivial at the time the Pension becomes payable, or at such other time as will not prejudice the Scheme's status as a Registered Pension Scheme.

10.4 Any balance of the Pension Credit not applied in accordance with paragraph 10.1 will be retained by the Trustee for the general purposes of the Scheme.

10.5 Once the Trustee has applied the Pension Credit pursuant to paragraphs 10.1 or 10.4 the Trustee will be discharged from its liability in respect of the Pension Credit (except their liability to a Dependant in respect of a Pension pursuant to paragraph 10.1 (b)).

11. **ASSIGNMENT**

Rule 10 of this Deed which places a bar on the assignment of benefits will not apply when a Pension Sharing Order comes into effect against them. In such a case benefits may be assigned in whole or in part to the extent necessary to comply with the Pension Sharing Order.

12. **PENSION DEBIT MEMBERS**

The benefits for a Pension Debit Member are also subject to compliance with social security legislation.

13. **STATUTORY COMPLIANCE**

13.1 For the avoidance of doubt the Trustee will have all such powers and discretions as it considers appropriate to give effect to a Pension Sharing Order.

13.2 To the extent this schedule does not reflect any statutory requirements and any of HMRC's requirements in relation to Pension Debits, Pension Credits and Pension Credits Rights it will stand amended accordingly.