

**STANDARD CONDITIONS FOR  
COMPANY VOLUNTARY ARRANGEMENTS**

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## PART I: INTERPRETATION

### 1 Miscellaneous definitions

- 1(1)** In the Arrangement, except where the context otherwise demands:
- (a) **"the Arrangement"** means the Proposal and the Conditions read together;
  - (b) **"Associate"** shall have the meaning given to it in Article 4 of the Order;
  - (c) **"the Conditions"** are these Conditions;
  - (d) **"the Court"** means any court having jurisdiction in respect of the Arrangement;
  - (e) **"Creditor"** is a person bound by the Arrangement to whom a Debt is owed;
  - (f) **"Debt"** has the meaning given to it in Article 5 of the Order with the modifications necessary to refer to a voluntary arrangement;
  - (g) **"the Company"** means the Company that is the subject of the Proposal;
  - (h) **"Directors"** means all the directors of the Company at the time that the Proposal was made or at the time of the event described, where relevant in context;
  - (i) **"Dividend"** means a distribution to Creditors;
  - (j) **"Excluded Assets"** are those assets identified in the Proposal as being excluded from the Arrangement;
  - (k) **"Hire Purchase Agreement"** has the same meaning as found in paragraph 1 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989;
  - (l) **"HMRC Debt"** means the HMRC claim in the Arrangement including corporation tax, PAYE/NIC, VAT and any other assessed tax, levy or duty due (with the exception of corporation tax) to the day before the approval of the Arrangement and in respect of corporation tax in respect of any accounting period ended on or before the day before the approval of the Arrangement;
  - (m) **"the Order"** means the Insolvency (Northern Ireland) Order 1989 as amended;
  - (n) **"Paragraphs"** are Paragraphs of these Conditions; and Sub-paragraph shall be construed accordingly;
  - (o) **"Preferential Creditor"** is a Creditor with a Debt falling within Articles 346 and 347 of the Order and **"Preferential Debt"** shall be construed accordingly;
  - (p) **"Proof"** means a proof of claim in accordance with Rules 4.079 to 4.081 of the Rules with modification necessary to refer to a voluntary arrangement;
  - (q) **"Property"** has the meaning given to it in Article 2 of the Order;
  - (r) **"the Proposal"** is the document annexed hereto together with modifications and documents incorporated thereto, being a proposal under Part II of the Order;
  - (s) **"the Rules"** means the Insolvency Rules (Northern Ireland) 1991 as amended;
  - (t) **"Secured Creditor"** and **"Security"** have the meaning given to them in Article 5 of the Order;
  - (u) **"the Supervisor"** is the person or persons for the time being appointed to supervise the implementation of the Arrangement;
  - (v) **"Shareholders"** are the holders of ordinary or preference shares in the Company;
  - (w) **"the Secretary of State"** means the Secretary of State for Business Innovation and Skills or any successor office;
  - (x) The **"Trust Realisation Period"** is the period of time from commencement of the Arrangement and continues, notwithstanding expiry, termination or full implementation of the Arrangement until the realisation and distribution of sums due to Creditors under the Arrangement terms.
- 1(2)** References in the Arrangement to any statutory provision shall include a reference to any modification or re-enactment thereof for the time being in force.

### 2 The Conditions

- 2(1)** The Conditions are an integral part of the Arrangement. In the event of any ambiguity or conflict between the Conditions and the Proposal and any modifications to it, the Proposal as modified shall prevail.

## PART II: COMMENCEMENT, EFFECT AND

### DURATION OF ARRANGEMENT

### **3 Commencement of Arrangement**

- 3(1)** The Arrangement shall come into effect upon the approval thereof by the Creditors pursuant to the provisions of the Order and the Rules.

### **4 Nature and effect of the Arrangement**

- 4(1) [Nature of Arrangement]** The Arrangement is a proposal under Part II of the Order for a scheme of arrangement of the Company's affairs or a composition in full and final satisfaction of the Company's Debts.
- 4(2) [Claims against third parties]** Unless the Proposal indicates to the contrary, nothing in the Arrangement shall be construed as effecting a composition or satisfaction of any Debt owed by a person other than the Company, whether that Debt is owed jointly by the Company or otherwise. Therefore, the release of the Company from its debts by the terms of the Arrangement shall not operate as a release of any co-debtor for the same debts.
- 4(3) [Restriction on Creditors' rights]** After the commencement of the Arrangement, no Creditor shall (save with the consent of the Supervisor), in respect of any Debt which is subject to the Arrangement:
- (a) have any remedy against the property or person of the Company; or
  - (b) commence or continue any action or other legal proceeding against the Company; and
  - (c) during that time, a Creditor shall look only to the Arrangement for remedies and for payment in respect of any debts.
- 4(4) [Saving for certain rights]** Nothing in this Paragraph or elsewhere in the Conditions shall be construed as affecting the following rights:
- (a) the right of any Secured Creditor to enforce its Security, except with the Secured Creditor's consent;
  - (b) the right of the Supervisor to present a winding-up petition under Article (6)(3)(b) of the Order for default in connection with the Arrangement; and
  - (c) the right of any Creditor to bring or continue legal proceedings against the Company and to obtain a judgment against the Company in the full amount of its Debt for the sole purpose of making a claim against an insurer of the Company by virtue of the Third Party (Rights Against Insurers) Act 1930.

### **5 Existing proceedings against Company**

- 5(1) [Discontinuance of existing proceedings]** Legal proceedings against the Company in existence at the commencement of the Arrangement in respect of Debts which are subject to the Arrangement shall, unless they are of a type contemplated by Paragraph 4(4) or the Supervisor otherwise directs, be discontinued by the Creditor with no order as to costs as soon after the commencement of the Arrangement as is practicable.
- 5(2) [Waiver of Company's costs entitlement on Discontinuance]** The Company confirms that no costs entitlement arising as a result of the discontinuance of any legal action in accordance with 5(1) will be enforced and the Company waives any such rights.
- 5(3) [Costs of existing proceedings]** Legal costs of a Creditor or Shareholder in proceedings other than winding-up referred to in Sub-paragraph 5(1) shall be a Debt falling within the Arrangement.
- 5(4) [Costs of winding-up proceedings]** Petition costs of a Creditor who presented a winding-up petition against the Company prior to the commencement of the Arrangement shall be treated as an expense of the Arrangement to rank after the costs of the Nominee but before those of the Supervisor.

### **6 Existing execution against Company's assets**

- 6(1) [Partly-completed execution]** A Creditor who, before the commencement of the Arrangement, has issued execution against the Property of the Company in respect of a Debt which is subject to the Arrangement, or has attached a Debt due to the Company from another person in respect of such a Debt shall, unless the execution or attachment was completed before the commencement of the Arrangement, discontinue the execution or attachment as soon after the commencement of the Arrangement as is practicable.
- 6(2) [Completion of execution or attachment]** For the purposes of Sub-paragraph 6(1):
- (a) an execution against chattels is completed by seizure and sale or by the making of a charging order absolute under section 1 of the Charging Orders Act 1979;

- (b) an execution against land is completed by seizure, by the appointment of a Receiver or by the making of a charging order absolute under section 1 of the Charging Orders Act 1979; and
- (c) an attachment of a Debt is completed by the receipt of the Debt.

## **7 Mutual credit and set-off**

- 7(1) **[Application]** This Paragraph applies where before the commencement of the Arrangement there have been mutual credits, mutual Debts or other mutual dealings between the Company and any Creditor other than in the circumstances to which Paragraph 79 of these Conditions apply.
- 7(2) **[Account to be taken]** An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set-off against the sums due from the other.
- 7(3) **[No account where Creditor has notice]** Sums due from the Company to another party shall not be included in the account taken under Sub-paragraph 7(2) if that other party had notice at the time they became due that a winding-up petition relating to the Company was pending, an application for an Administration Order was pending, a notice of intention to appoint an Administrator was pending or that a moratorium under Schedule A1 of the Order was in force.
- 7(4) **[Restriction on post-commencement set-off]** Other than as provided for in this Paragraph, set-off shall not be available in respect of any Debt or item of Property.
- 7(5) **[Balance provable or to be paid]** Only the balance (if any) of the account taken under Sub-paragraph 7(2) is provable in the Arrangement or, as the case may be, to be paid to the Company or, if the Proposal so provides, to the Supervisor.

## **8 Duration of Arrangement**

- 8(1) **[General rule]** Unless extended under the provisions of these Conditions, the Arrangement shall continue until the end of the period stated in the Proposal at which time it shall expire by effluxion of time.
- 8(2) **[Extension of duration by Supervisor (or Creditors Committee)]** The Supervisor, Creditors Committee or Creditors may extend the duration of the Arrangement in accordance with the terms of the Proposal and the Supervisor shall send a notice of any extension ("Extension Notice") to the Company and all Creditors and Shareholders.
- 8(3) **[Extension Notice]** An Extension Notice shall be sent not less than 7 days prior to the date upon which the Arrangement is otherwise due to complete and must state the reason or reasons for the extension.
- 8(4) **[Effect of extension]** In the event of an Extension Notice being sent, the Arrangement shall continue for the period specified therein, or for the maximum allowable period for that extension commencing on the date immediately after that on which the Arrangement would otherwise have been completed, whichever is sooner.
- 8(5) **[Supervening notice calling a meeting of Creditors]** In the event that a meeting of Creditors has been called by the Supervisor for a time after the Arrangement would otherwise have expired, the duration of the Arrangement shall be extended to the date of that meeting and of any adjournment thereof.
- 8(6) **[Further extension]** Any extension for a period longer than that provided for in the Proposal shall require approval as a variation of the Arrangement in accordance with Paragraph 75.

## **9 Completion of Arrangement**

- 9(1) **[The Completion Certificate]** Upon the expiration of the Arrangement, the Supervisor shall, if the Company has complied with its obligations under the Arrangement, issue a notice ("the Certificate of Full Implementation") stating that the Arrangement has been fully implemented.
- 9(2) **[Effect of Completion Certificate]** Save to the extent provided in these Conditions or the Proposal, upon the issue by the Supervisor of a Certificate of Full Implementation, the Company shall be released from all Debts which are subject to the Arrangement.
- 9(3) **[Notification of issue of Completion Certificate]** Copies of the Certificate of Full Implementation issued under this Paragraph shall be sent by the Supervisor to the

Company, the Creditors, the Shareholders, the Secretary of State and the Court together with the Supervisor's report under Rule 1.29 of the Rules (Completion of the Arrangement).

## **10 Substantial Compliance**

**10(1) [Issue of certificate where substantial compliance]** The Supervisor may, if deemed fit, issue a Certificate of Full Implementation notwithstanding the fact that the Company has not complied with all of its obligations under the Arrangement provided that the Company has:

- (a) made all payments required of it under the terms of the Arrangement;
- (b) provided a full explanation of any breach of the terms of the Arrangement required by the Supervisor; and
- (c) paid to the Supervisor such sum (if any) as the Supervisor shall reasonably have required to compensate the Creditors for any reduction in Dividend caused by the Company's breach of the terms of the Arrangement.

**10(2) [Notification to creditors]** Where the Supervisor proposes to issue a Certificate of Full Implementation under Sub-paragraph 10(1) the Supervisor shall notify the Creditors accordingly and invite them to submit any comments within 21 days from the date of notification.

**10(3) [Treatment as full implementation]** If the Supervisor issues a Certificate of Full Implementation under Sub-paragraph 10(1), the Arrangement shall be treated as fully implemented for the purposes of Rule 1.29 of the Rules.

## **11 Termination of Arrangement**

**11(1) [Termination in certain circumstances]** The Arrangement shall terminate upon the earlier of:

- (a) the Supervisor issuing a Notice of Termination under Paragraph 72;
- (b) the making of a winding-up order against the Company;
- (c) the passing of a resolution for the voluntary winding-up of the Company;
- (d) the dissolution of the Company; or
- (e) the Company entering administration;

none of which circumstances shall affect the trusts created under Paragraph 29.

**11(2) [Notice of termination]** The Supervisor shall, on discovering the occurrence of a terminating event, but in any event not more than 28 days after such discovery, give notice of such termination and the reason therefore to the Company, the Directors of the Company, Creditors, the Secretary of State and Shareholders together with the Supervisor's report under Rule 1.29 (Completion of the CVA).

## **PART III: SUPERVISOR'S FUNCTIONS, POWERS ETC**

### **12 Supervisor's functions**

**12(1) [Primary function]** The Supervisor's primary function is to supervise the Company's performance of its obligations under the Arrangement and to administer the Arrangement.

**12(2) [Other functions]** The Supervisor shall also undertake such functions as are provided for in the Proposal, Order and Rules. In addition, the Supervisor shall place money coming into the Supervisor's hands during the course of the Arrangement on deposit with any established United Kingdom clearing bank or building society.

### **13 Supervisor's powers**

**13(1)** Subject to those powers more particularly given to the Supervisor in the Arrangement, Order and Rules, the Supervisor shall have the following powers:

- (a) [*Getting in assets*] power to take possession of, collect, get in and hold any or all of the assets which, under the terms of the Arrangement, the Supervisor is to hold as trustee, including any instalment payments;
  - (b) [*Realisation of assets*] power to sell or otherwise dispose of any asset referred to in Sub-paragraph 13(1) in such manner as may seem to the Supervisor expedient;
  - (c) [*Putting funds on deposit*] power to place money coming into the Supervisor's hands during the course of the Arrangement on deposit with any established clearing bank or building society;
  - (d) [*Payment*] power to pay the costs and expenses of the Arrangement;
  - (e) [*Agreement of Creditor Claims*] power to determine Creditors' claims and enter into any compromise or arrangement with any creditor alleging that they have a claim;
  - (f) [*Distribution*] power to make payments to Creditors pursuant to the terms of the Arrangement;
  - (g) [*Appointing agents*] power to engage legal representatives, managers, agents and other persons to assist the Supervisor in the performance of the Supervisor's functions under the Arrangement;
  - (h) [*Delegation*] power to delegate to the Supervisor's firm and any appropriate partner, director, employee or agent thereof any or all of the Supervisor's duties and functions under the Arrangement save those which by law the Supervisor is required to perform personally;
  - (i) [*Insurance*] power to effect and maintain insurances in respect of any asset subject to the Arrangement;
  - (j) [*Power to claim*] power to prove, rank, claim and draw a dividend in respect of such debts owed to the Company as fall within the Arrangement;
  - (k) [*Power to direct Company*] power, in the event that the Supervisor is unable or it is impracticable to do any act or thing which the Supervisor is empowered to do, to direct the Company to do that act or thing;
  - (l) [*Winding up*] power to commence winding up proceedings in respect of the Company pursuant to the terms of the Arrangement; and
  - (m) [*Ancillary power*] power to make any necessary or incidental payments and to do any other act or thing which is necessary or expedient for the purposes of exercising the above powers or for carrying out the Supervisor's functions under the Arrangement.
- 13(2)** Where more than one person is appointed as Supervisor, any act required or authorised to be done under any enactment or otherwise may be done by all or any one or more of the persons for the time being holding office.

#### **14 Supervisor's powers upon completion/termination**

**14(1) [Exercise of powers after completion/termination]** Completion and/or termination of the Arrangement shall not affect the Supervisor's power to carry out such of the Supervisor's functions and to exercise such of the Supervisor's powers as are necessary to fully carry out all duties, obligations and responsibilities under the Arrangement, Order and Rules and to resolve such matters as may have arisen during the course of the Arrangement. This includes but is not limited to any duties, obligations and responsibilities in respect of assets held by the Supervisor on trust.

**14(2) [Retention of funds by Supervisor]** Upon completion and/or termination of the arrangement, the Supervisor shall be entitled to retain for such period as is reasonably deemed necessary from any funds under the Supervisor's control such moneys as the Supervisor reasonably thinks fit on account of fees, costs, charges, liabilities and expenses, and shall advise Creditors and the Company in writing of the quantum of the funds so retained and the reasons why.

#### **15 Exercise of Supervisor's functions and powers**

**15(1) [Application of winding-up provisions]** In the event that the Arrangement does not provide guidance to the Supervisor as to what action should be taken in any given situation, the Supervisor shall apply the provisions of the Order and Rules in so far as they relate to winding-up with necessary modifications to refer to a voluntary arrangement.

- 15(2) [Consultation of Creditors]** If the Supervisor is uncertain as to what action should be taken in any situation, or wishes to ascertain the wishes of Creditors on a matter concerning the Arrangement, the Supervisor may seek the advice and/or direction of the Creditors' Committee and/or the majority or most material of the Creditors and may act upon such advice and/or direction.
- 15(3) [Directions from the Court]** This Paragraph is without prejudice to the Supervisor's right to refer matters concerning the Arrangement to the Court for guidance and/or directions.
- 16 Restriction upon Supervisor's duty and liability**
- 16(1) [Supervisor's duty]** The Supervisor shall be under no obligation to perform any act or carry out any function nor take part in the management of the Company in any way and will have no duties or responsibilities except as expressly set out in the Arrangement, or imposed under the Order or Rules.
- 16(2) [Supervisor's liability]** Neither the Supervisor, the Supervisor's firm or any of that firm's or the Supervisor's agents or employees shall incur any personal liability in negligence or otherwise for any act or omission carried out in connection with the Arrangement, unless such act or omission constitutes one of dishonesty or a breach of the Supervisor's obligations under the Order, Rules or the Arrangement.
- 17 Supervisor's fees, costs and expenses**
- 17(1) [Amount of fees]** The Supervisor shall be entitled to charge fees for services in accordance with the time actually and reasonably expended by the Supervisor and the Supervisor's staff in carrying out the Supervisor's functions under the Arrangement by reference to the ordinary hourly rates of the Supervisor and the Supervisor's staff as shall apply from time to time.
- 17(2) [Payment of fees, costs and expenses]** The fees, costs, charges and expenses of the Supervisor shall be paid out of the assets of the Arrangement from time to time as the Supervisor thinks fit. The Supervisor shall provide such information to any Creditors' Committee appointed in relation to the Arrangement as is reasonably necessary to explain how the fees, costs, charges and expenses were determined or incurred, as the case may be.
- 17(3) [Supervisor's right of recourse to Court]** If the Supervisor is dissatisfied with a determination of the Creditors' Committee or a meeting of Creditors on a matter involving fees, costs, charges and/or expenses, the Supervisor shall have the right to refer the matter to the Court, whose decision on the matter shall bind all parties.
- 18 Supervisor's resignation**
- 18(1) [Methods of resignation]** A Supervisor may resign from office with the approval of a meeting of Creditors, with the leave of the Court or in accordance with sub paragraph 18(3) below.
- 18(2) [Grounds of Supervisor's resignation]** The Supervisor may only resign from office on one or more of the following grounds:
- (a) ill health;
  - (b) cessation of practice as an insolvency practitioner;
  - (c) change of circumstances rendering it impracticable to continue in office;
- 18(3) [More than one Supervisor]** Where there is more than one Supervisor in office, a Supervisor may resign without seeking the approval of the Creditors or permission of the Court where it is considered impractical or no longer necessary to have the present number of persons acting as Supervisor to the Arrangement and at least one Supervisor shall remain in office notwithstanding the resignation. In these circumstances, notice of the resignation of a Supervisor shall be given in the next report to Creditors when otherwise due.
- 18(4) [Report of Supervisor's administration]** The notice to Creditors convening a meeting for the purpose of receiving the resignation of a Supervisor shall specify the grounds upon which the Supervisor wishes to resign and shall be accompanied by a report of the Supervisor's administration of the Arrangement including an up to date summary of receipts and payments.

## **19 Removal of Supervisor from office**

- 19(1) [Methods of removal]** On cause being shown, the Supervisor may be removed from office by the Court or by a resolution of a meeting of Creditors requested specifically for that purpose.
- 19(2) [Notice of requisitioned meeting]** Any notice served by a Creditor upon the Supervisor under Paragraph 61(3) (notice requisitioning meeting) for the purpose of convening a meeting of Creditors to remove the Supervisor from office must set out the grounds upon which removal is sought.
- 19(3) [Report of Supervisor's administration]** The notice sent out by the Supervisor to Creditors convening such a requisitioned meeting shall specify the grounds upon which the Supervisor's removal is sought and shall be accompanied by a report of the Supervisor's administration of the Arrangement including an up to date summary of receipts and payments.

## **20 Vacation of Office by Supervisor**

- 20(1) [Resignation/removal of Supervisor where more than one acting]** If the Creditors resolve to remove a Supervisor from office, or a Joint Supervisor resigns, and there will be another person in the office of Supervisor for the time being, the Supervisor who is resigning or being removed shall vacate office immediately.
- 20(2) [Resignation/removal of Supervisor where no other acting]** If the Creditors resolve to accept a Supervisor's resignation or to remove a Supervisor from office, and there is no other person in the office of Supervisor for the time being, that resignation and/or removal shall not take effect and the Supervisor shall not vacate office unless and until a meeting of Creditors or the Court appoints a replacement Supervisor.
- 20(3) [Loss of qualification]** The Supervisor shall vacate office immediately if the Supervisor ceases to be a person who is for the time being qualified to act as Supervisor.
- 20(4) [Notice of vacation of office]** A Supervisor who, for any reason other than as set out in sub paragraph 18(3), vacates office shall forthwith give notice of that fact to the Court, the Company, the Creditors, the Shareholders, and the Secretary of State.
- 20(5) [Duties of Supervisor upon vacation of office]** A Supervisor who, for any reason, vacates office shall, as soon as practicable, deliver up to any successor Supervisor or Supervisors all books, records and papers relating to the Arrangement and the administration thereof together with all assets of which the Supervisor is a trustee under the terms of the Arrangement.
- 20(6) [Continuing duty of former Supervisor]** Former Supervisors shall be obliged to give such assistance to the Supervisor of the Arrangement from time to time as may be reasonably required for ascertaining what transpired during the tenure of office by the former Supervisor.

## **21 Vacancy in the office of Supervisor**

- 21(1) [Meeting of Creditors to fill vacancy]** If, for any reason, there is a vacancy in the office of Supervisor, that vacancy may be filled by a meeting of Creditors or by the Court.
- 21(2) [Convening a meeting where no Supervisor acting]** If no Supervisor is in office, such a meeting of Creditors may be convened by the Company, any Creditor, any person who was in practice / partnership with the Supervisor immediately before the vacancy occurred, the former Supervisor's authorising body or by any other interested party.
- 21(3) [Chairman where no Supervisor acting]** In the event that a meeting of Creditors is called when no Supervisor is in office, the person who convened the meeting shall act as chair of that meeting.

## **22 Release of Supervisor**

- 22(1) [Release of Supervisor]** Upon the termination of full implementation of the Arrangement and the Supervisor having dealt with the assets in the Supervisor's possession in accordance with the terms of the Arrangement, the Supervisor shall be released by each Creditor from any further obligations or liability in respect of the Arrangement or any trusts created thereby and in respect of acts and omissions of theirs or otherwise in relation to the Supervisor's conduct. Each creditor shall and hereby does waive all claims or rights which the Creditor may have against the Supervisor in respect of such matters.

## PART IV: COMPANY'S WARRANTY, DUTIES & OBLIGATIONS

### 23 Company's warranty

- 23(1) [Disclosure in Proposal]** The Directors of the Company warrant that the Proposal discloses full and complete particulars of all matters required of them under the Order and Rules including (without prejudice to the generality of the foregoing) particulars of all of the Company's assets, debts and liabilities, whether actual, contingent or prospective.
- 23(2) [Accuracy of Proposal]** The Directors of the Company warrant that the contents of the Proposal are true and accurate in all material respects as at the date of the commencement of the Arrangement, subject only to those qualifications that may be disclosed by the Directors of the Company at the meeting of Creditors held to approve the arrangement, which qualifications shall be recorded by the Supervisor when reporting to the Court under Rule 1.24 (report of meetings) of the Rules.
- 23(3) [Disclosure of third party information]** The Company authorises any Creditor to disclose to the Supervisor such information relating to the Company, its dealings or property as may reasonably be required to assist in the implementation of the Arrangement.

### 24 Company's duties in relation to Supervisor

- 24(1) [Duty to cooperate with Supervisor]** The Directors of the Company undertake and agree to:
- (a) give to the Supervisor such information as to the Company's assets, liabilities and other affairs;
  - (b) attend on the Supervisor and the Supervisor's agents, representatives or nominees at such times; and
  - (c) do all such other things as the Supervisor shall reasonably require for the purpose of carrying out all functions and duties under the Arrangement, including as trustee and/or following the expiry, full implementation or termination of the Arrangement.
- 24(2) [Duty to submit accounts]** The Directors of the Company undertake and agree to furnish the Supervisor with accounts relating to the Company's business of such nature, as at such date and for such period as the Supervisor may reasonably require.

### 25 Further Documents

- 25(1)** Without prejudice to the generality of the Company's other duties under the Arrangement, the Company or its Directors shall, at the request of the Supervisor, execute such Mortgages, Charges, Deeds, Transfers, Trusts, Powers of Attorney or other documents as may reasonably be required by the Supervisor for the protection and/or realisation of assets, to secure the Company's compliance with the Company's obligations under the Arrangement, or otherwise to facilitate the implementation of the Arrangement.

### 26 Directors' acknowledgement

- 26(1) [Agreement to be bound]** The Directors of the Company undertake to procure that the Company shall carry out the obligations imposed upon the Company under the Arrangement in full and at the times provided for.
- 26(2) [Consequences of breach]** The Directors of the Company acknowledge that a likely consequence of the Company's failure to comply with the Company's obligations hereunder in full and at the times provided for is that the Arrangement will fail and the Company will be wound-up on a petition presented by the Supervisor.
- 26(3) [Section 6A]** Each of the Directors of the Company acknowledge that they commit an offence if they make any false representation or commit any other fraud is committed for the purpose of obtaining the approval of Creditors to the Arrangement.

## PART V: ARRANGEMENT ASSETS

### 27 Trust of Arrangement assets

- 27(1) [Company Assets and Excluded Assets]** Property other than Excluded Assets belonging to or vested in the Company at the date of commencement of the Arrangement shall be subject to the Arrangement and be an asset thereof. Property constituting an asset of the Arrangement in the possession, custody or control of the Company shall be held by the Company upon trust for the purposes of the Arrangement until realisation thereof (if so provided) in accordance with the Arrangement.
- 27(2) [Assets in the possession of the Supervisor]** Property constituting an asset of the Arrangement in the possession, custody or control of the Supervisor shall be held by the Supervisor upon trust for the purposes of the Arrangement.
- 27(4) [Actions during the Trust Realisation Period]** The Supervisor will get in and realise assets which are subject to the trust and which are capable of being realised during the Trust Realisation Period.
- 27(5) [Trusts to survive termination of Arrangement]** The trusts referred to in Sub-paragraphs 27(1) and 27(2) shall not come to an end upon termination of the Arrangement but such assets as are contained within the trust shall be distributed to Creditors in accordance with the terms of the Arrangement. At the expiry of the Trust Realisation Period, the trust shall come to an end.
- 27(6) [Effect of Winding Up]** In the event that a Winding Up Order is made against the Company, any assets held by the Supervisor prior to the making of that Order shall be applied and distributed in accordance with the terms of the Arrangement and the trust shall terminate solely in respect of assets of the Company not yet held by the Supervisor.

## PART VI: PROOFS OF DEBT

### 28 Notice to submit Proofs

- 28(1)** As soon as practicable after the commencement of the Arrangement, and provided no application under Article 19 of the Order (challenge of decisions) or an appeal under Rule 1.17(7) (appeal of chairman's decision) is pending, the Supervisor shall send a notice ("a Notice to Submit Proofs") to every Creditor and other person to whom the Company may be indebted of whom he has notice requiring them to provide such details of their Debts as the Supervisor thinks fit.

### 29 Submission of Proofs

- 29(1)** Creditors shall submit their Proofs in writing to the Supervisor in the form, if any, required by the Supervisor, or one which is substantially similar.

### 30 Withdrawal and Variation of Proofs

- 30(1) [Withdrawal by Written Notice]** A Creditor may withdraw a Proof at any time by delivering a written notice to the Supervisor.
- 30(2) [Variation of amount by agreement]** The amount claimed by a Creditor's Proof may be varied at any time by agreement between the Creditor and the Supervisor.

### 31 Production of documents

- 31(1)** The Supervisor may call for any document or other evidence to be produced for the purpose of substantiating the whole or any part of the Proof.

### 32 Witness statement substantiating Proof

- 32(1)** The Supervisor may require a Proof to be verified by witness statement with a statement of truth.

### 33 Supervisor to allow inspection of Proofs

- 33(1)** The Supervisor shall, so long as Proofs are in the Supervisor's possession, allow them to be inspected, at all reasonable times on any business day, by:

- (a) any Creditor who has submitted a Proof for Dividend in whole or in part; and
- (b) any person acting on behalf of any such creditor; and
- (c) the Company.

#### **34 Admission and rejection of Proofs for Dividend**

**34(1) [Admission]** The Supervisor may admit or reject a Proof for Dividend in whole or in part.

**34(2) [Rejection]** If the Supervisor rejects a Proof in whole or in part, the Supervisor must deliver to the creditor a written statement of reasons for doing so, as soon as reasonably practical.

#### **35 Appeal against decision on Proof**

**35(1) [Application by Creditor]** If a Creditor is dissatisfied with the Supervisor's decision with respect to the Creditor's own Proof (including whether the Debt is preferential) the Creditor may apply to the Court, within 21 days (or such longer period as the Court shall allow) of receiving the statement sent under Paragraph 34(2) for the decision to be reversed or varied.

**35(2) [Application by other Parties]** The Company or any other Creditor may, if dissatisfied with the Supervisor's decision admitting or rejecting the whole or any part of a Proof or agreeing to revalue a Creditor's Security make such an application within 21 days (or such longer period as the Court shall allow) of becoming aware of the Supervisor's decision.

**35(3) [Costs of appeal]** The Supervisor is not personally liable for the costs incurred by any person in respect of an appeal under this Paragraph unless the Court so orders. Any costs incurred by the Supervisor in respect of an appeal can be paid for out of the assets of the Arrangement.

#### **36 Debts of uncertain and small value**

**36(1) [Estimation of Debt or liability]** The Supervisor shall estimate the value of any Debt which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value.

**36(2) [Notification to Creditor]** The Supervisor shall notify the Creditor in writing of any such estimate. If the Creditor is dissatisfied with the Supervisor's decision the Creditor may exercise the right of appeal under sub paragraph 35.

**36(3) [Claim of Debts of uncertain value]** Where the value of any Debt is estimated by the Supervisor under Sub-paragraph 36(1), the amount provable in the Arrangement shall be the amount of the estimate.

**36(4) [Small Debts]** Any Creditor whose Debt does not exceed £1,000 need not (unless so required by the Supervisor) submit a Proof to the Supervisor and the Supervisor may admit such Debt and pay a Dividend accordingly. Where the Supervisor intends to admit a Debt in that manner, the Supervisor shall send a notice to the Creditor (which may form part of any other notice) stating the amount the Supervisor believes is owed, that the Supervisor intends to treat it as proved for the purposes of the Arrangement, and require the Creditor to notify the Supervisor by the last date for proving if the amount of the Debt is incorrect or if not debt is owed.

#### **37 Secured Creditors**

**37(1) [Proving for balance of Debt]** A Secured Creditor may submit a Proof for the balance of Debt (if any), after deducting the value of that Creditor's Security.

**37(2) [Voluntary surrender of Security]** If a Secured Creditor voluntarily surrenders its Security for the general benefit of the Creditors, that Creditor may submit a Proof for the whole Debt, as if it were unsecured.

**37(3) [Altering value of Security]** A Secured Creditor may, with the agreement of the Supervisor or the permission of the Court, at any time alter the value put upon that Creditor's Security in a Proof.

**37(4) [Test of Security's value]** If the Supervisor is dissatisfied with the value which a Secured Creditor puts on a Security in a Creditor's Proof, the Supervisor may require the Security to be professionally valued by a person agreed as between the Creditor and the

Supervisor, or in default of such agreement by the Court. The costs of the valuer shall form part of the Secured Creditor's cost of proving.

**37(5) [Professional valuation treated as amended valuation]** Where a professional valuation has been carried out under the previous Sub-paragraph, that valuation shall be treated as an amended valuation of the Creditor.

**37(6) [Realisation of Security]** If a Creditor who has valued its Security subsequently realises it:

- (a) the Creditor shall forthwith notify the Supervisor and shall give the Supervisor such information relating thereto as the Supervisor may reasonably require;
- (b) the net amount realised shall be substituted for the value previously put by the Creditor on the Security, and
- (c) that amount shall be treated in all respects as the Creditor's amended valuation.

### **38 Foreign currency Debts**

**38(1) [Conversion into sterling]** For the purpose of proving for a Debt incurred or payable in a currency other than sterling, the amount of the Debt shall be converted into sterling at a single rate for each currency determined by the Supervisor by reference to the exchange rate prevailing at the date of commencement of the Arrangement.

### **39 Interest on Debts**

**39(1)** Where a Debt bears interest, that interest is provable as part of the Debt except in so far as it is payable in respect of any period after the commencement of the Arrangement.

### **40 Cost of submitting Proofs**

**40(1) [Creditor bears cost of submitting claim]** Every Creditor bears the cost of submitting that Creditor's own Proof, including costs incurred in obtaining valuations, providing documents, affidavits or other evidence to the Supervisor.

**40(2) [Supervisor's costs]** Costs incurred by the Supervisor in estimating the value of a Debt of uncertain value shall be an expense of the Arrangement.

## **PART VII: CREDITORS WHO DO NOT HAVE NOTICE**

### **41 Proofs arising where funds available**

**41(1)** If at the time the Proof is notified to the Supervisor, the Arrangement is continuing and the Supervisor is holding sufficient funds to pay a Dividend to such Creditor or Creditors, then the Supervisor will (subject to agreement of the Proof) forthwith pay to the Creditor a Dividend of an amount which is on the same basis as the Dividends already paid. Such payments will be made before any further payments to any other Creditors and will be paid so as to bring about an equalisation in Dividends between Creditors.

### **42 Claims arising where no funds available**

**42(1)** If the claims are notified to the Supervisor at a time when the Supervisor is holding no funds available for payment of a Dividend then as and when any funds are received the Supervisor will (subject to agreement of the Proof) out of such funds, first make such payment to such Creditors so as to bring about an equalisation as aforesaid.

### **43 Effect of Proof on Company**

**43(1) [Proof not to constitute default]** The notification to the Supervisor of any such Proof shall not constitute an act of default unless the failure to give notice to such Creditor was a deliberate act on the part of the Directors.

**43(2) [Obligation to provide further funds]** Unless the Proposal otherwise provides, there shall be no obligation upon the Company to pay to the Supervisor any further sums of money or make any further assets available (other than already provided for in the Proposal) so as to meet the Proof falling to be dealt with under Rule 1.3(2)(f) of the Rules unless the Proposal as agreed provides for a minimum Dividend to be paid to Creditors.

**44 Notification of claims to Creditors**

**44(1)** On receipt of any such claim the Supervisor will notify all Creditors bound of such receipt, the name of the Creditor, the amount claimed, and will provide such other information as may be relevant including particulars as to the Director's explanation why the Creditor was not given notice, and also the impact that such claim is likely to have on the outcome of the Arrangement. Such notification may, if the Supervisor considers it appropriate, be included in the progress report to Creditors provided that such report is due to be circulated within a period of 3 months from the date on which the claim is notified. Where, in the opinion of the Supervisor, the claim, whether taken alone or in conjunction with other such claims, will not materially reduce the amount of the estimated Dividend, the Supervisor may defer notification and include it in the next progress report.

**45 Proofs arising after Arrangement ceases to have effect**

**45(1)** If the Proof is notified to the Supervisor after the date on which the Arrangement ceases to have effect, then the Creditor shall be entitled to rely upon Article 18(2A) of the Order and shall be entitled to recover from the Company such sum as the Creditor would have received had the claim been notified to the Supervisor prior to the date on which the Arrangement ceased to have effect and the Supervisor had been able to include the claim in the Arrangement for the purpose of payment of Dividends or distributions. The Supervisor shall be under no obligation to agree any such Proof or take any action in respect thereof other than to furnish the Creditor who relies on Article 18(2A) with a certificate as to the Dividend or distribution the Creditor would have received had the claim been included in the Arrangement for Dividend or distribution purposes and on the assumption that the Proof would have been agreed in the sum claimed.

**PART VIII: PAYMENT OF DIVIDENDS**

**46 Distribution by Dividend**

**46(1) [Duty to declare and distribute Dividends]** At the time or times specified in the Proposal or, if none, whenever the Supervisor has sufficient funds in hand for the purpose, the Supervisor shall, subject to the retention of such sums as may be necessary for payment of the expenses of the Arrangement, declare and distribute Dividends among the Creditors in respect of the Debts which they have proved and have been admitted by the Supervisor.

**46(2) [Calculation and distribution of a Dividend]** In the calculation and distribution of a Dividend the Supervisor shall make provision:

- (a) for any Debts which are the subject of Proofs which have not yet been determined; and
- (b) for any disputed Debts.

**47 Notice of intended Dividend**

**47(1) [Notice to Creditors who have not proved]** No more than three months before declaring a Dividend to non-preferential Creditors, the Supervisor shall give notice of the intention to do so to all such Creditors whose addresses are known to the Supervisor and who have not proved.

**47(2) [Last date for submitting Proof]** Any notice sent out to Creditors under Sub-paragraph 47(1) shall specify a date ("the Last Date for Submitting Proofs") up to which a Proof may be delivered. The Last Date for Submitting Proofs shall be the same for all Creditors, and not less than 21 days from the date of the notice.

**48 Notice of declaration**

**48(1) [Notice to Creditors who have proved]** The Supervisor shall give notice of the Dividend to all Creditors who have proved for their Debts.

**48(2) [Particulars in notice]** The notice shall include the following particulars:

- (a) amounts realised from the sale of assets subject to the Arrangement indicating (so far as practicable) amounts realised by the sale of particular assets and/or amounts paid by the Company to the Supervisor under the Arrangement;
- (b) payments made by the Supervisor during the course of the Arrangement;
- (c) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
- (d) the total amount to be distributed, and the rate of the Dividend; and
- (e) whether, and if so when, any further Dividend is expected to be declared.

**48(3) [Simultaneous distribution]** The Dividend may be distributed simultaneously with the notice declaring it.

**48(4) [Method of payment]** Payment of a Dividend may be made by post, or arrangements may be made with any Creditor for it to be paid in another way, or held for collection. Neither the Supervisor nor the Company shall be responsible for any loss in transmission. The encashment of any cheque shall be a good discharge to the Company for the monies represented thereby.

**48(5) [Endorsement in negotiable instrument]** Where a Dividend is paid on a bill of exchange or other negotiable instrument, the amount of the Dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

#### **49 Proof altered after payment of a Dividend**

**49(1) [Amount claimed increased]** If, after payment of a Dividend, the amount claimed by a Creditor is increased, the Creditor is not entitled to disturb the distribution of the Dividend; but is entitled to be paid, out of any money for the time being available for the payment of any further Dividend, any Dividend or Dividends which the Creditor has failed to receive before that money is applied to the payment of any such further Dividend.

**49(2) [Claim withdrawn, disallowed, reduced]** If, after a Creditor's claim has been admitted, the claim is withdrawn or disallowed, or the amount of it is reduced, the Creditor shall repay as soon as practicable to the Supervisor any amount overpaid by way of Dividend.

#### **50 Secured Creditors**

**50(1) [Application of Paragraph]** The following applies where a Creditor re-values Security at a time when a Dividend has been declared.

**50(2) [Reduction in unsecured claim]** If the re-valuation results in a reduction of the Creditor's unsecured claim ranking for Dividend, the Creditor shall, as soon as practicable, repay to the Supervisor any amount received as Dividend in excess of that to which the Creditor would be entitled having regard to the re-valuation of the Security.

**50(3) [Increase of unsecured claim]** If the re-valuation results in an increase of the Creditor's unsecured claim, the Creditor is entitled to receive from the Supervisor, out of any money for the time being available for the payment of a further Dividend, before any such Dividend is paid, any Dividend or Dividends which the Creditor has failed to receive, having regard to the re-valuation of the Security. However, the Creditor is not entitled to disturb any Dividend declared (whether or not distributed) before the date of the revaluation.

#### **51 Assignment of Debts or rights to Dividend**

**51(1) [Notice of assignment]** If a person entitled to a Dividend gives notice to the Supervisor that the Creditor wishes the Dividend to be paid to another person, or that the Creditor has assigned its entitlement or Debt to another person, the Supervisor shall pay the Dividend to that other person accordingly.

**51(2) [Contents of notice]** A notice given under this Paragraph must specify the name and address of the person to whom payment is to be made.

#### **52 Debts payable at future time**

**52(1) [Debts payable at a future time]** A Creditor may prove for a Debt of which payment was not yet due at the date of commencement of the Arrangement.

**52(2) [Entitlement to Dividend]** Where a Creditor has claimed for a Debt of which payment is not due at the date of the declaration of a Dividend, the Creditor is entitled to the Dividend equally with other Creditors, but subject as follows.

**52(3) [Calculation of amount of reduction]** For the purpose of Dividend (and no other purpose), the amount of the Creditor's admitted Proof (or, if a distribution has previously been made to the Creditor, the amount remaining outstanding in respect of the Creditor's admitted claim) must be discounted by applying the following formula:

$$\frac{X}{1.05^n}$$

where X is the value of the admitted Proof; and

n is the period beginning with the date of the commencement of the Arrangement and ending with the date on which the payment of the Creditor's Debt would otherwise be due, expressed in years.

### **53 Debts of unpaid Creditors**

**53(1) [Creditors not entitled to Dividend]** Creditors who do not prove in the Arrangement (with the exception of any Debts admitted by the Supervisor under sub paragraph 36(4)) shall not be entitled to receive any Dividend.

**53(2) [Unclaimed Dividends paid to Company]** Dividends due to Creditors who have proved in the Arrangement but to whom the Supervisor has been unable to pay shall, at the end of the Arrangement, be paid to the Company or, if there is one, the Company's Liquidator or Administrator.

**53(3) [Company liable for unclaimed Dividends]** Once a Dividend has been paid to the Company or, if there is one, the Company's Liquidator or Administrator under the previous Sub-paragraph, the Creditor must claim it from the Company or, as the case may be, the Company's Liquidator or Administrator and no other person.

## **PART IX: PRIORITY OF PAYMENTS AND DISTRIBUTIONS**

### **54 Costs and Expenses of the Arrangement**

**54(1) [Expenses to be paid first]** Subject to Sub Paragraphs 5(3) and 68, the fees, costs, charges, expenses and liabilities properly charged or incurred by or on behalf of the Nominee or the Supervisor are expenses of the Arrangement and shall be paid in priority to all other charges, expenses, liabilities and Debts.

**54(2) [Charge in relation to expenses]** The Supervisor shall have a charge on the assets subject to the Arrangement in respect of the expenses of the Arrangement.

## **PART X: THE CREDITORS' COMMITTEE & MEETINGS OF CREDITORS**

### **55 The Creditors' Committee**

In the event that the Nominee has invited Creditors to form a Committee or the Creditors have so decided the following provisions will apply.

**55(1) [Establishment]** Any meeting of Creditors may establish a committee ("the Creditors' Committee"), consisting of not less than 3 and not more than 5 members to represent the interests of the Creditors and to provide such assistance and guidance to the Supervisor as may be reasonably required. The Nominee may invite Creditors to form a Committee at the same time the Creditors approval for the Proposal is sought.

**55(2) [Eligibility]** All the members of the Creditors' Committee must be Creditors of the Company; and any Creditor (other than one who is fully secured) may be a member, so long as:

- (a) the Creditor has delivered a Proof, and
- (b) the Creditor's Proof has neither been wholly disallowed for voting purposes, nor wholly rejected for the purposes of distribution or Dividend.

**55(3) [Application of Rules]** The provisions relating to a liquidation committee contained in Rules 4.159 to 4.181 shall apply to the Arrangement with the modifications necessary to apply those rules to a voluntary arrangement.

**55(4) [Expenses of members]** The reasonable travelling expenses directly incurred by any member of the Creditors' Committee or their representatives in respect of their attendance at the meetings of the Creditors' Committee, or otherwise on the Creditors' Committee's business, shall rank as an expense of the Arrangement.

**56 Use of websites**

**56(1) [Use of websites]** Where the Supervisor is required to give, deliver, furnish or send a notice or other document or information to any person, that requirement may be satisfied by making the notice, document or information available on a website.

**56(2) [Contents of notice re website]** A Supervisor who wishes to give, deliver, furnish or send a notice or other document to any person may satisfy that requirement by sending that person a notice:

- (a) stating that the document is available for viewing on a website;
- (b) specifying the address of that website together with any password necessary to view and download the document from that site; and
- (c) containing a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.

**57 Power to call/requisition meetings of Creditors**

**57(1) [Supervisor's power to call meetings]** The Supervisor may summon and conduct meetings of Creditors for any purpose connected with the Arrangement.

**57(2) [Power to requisition a meeting]** If requested in writing by the Company, or by Creditors with not less than one-quarter in value of the total amount of Debts subject to the Arrangement, the Supervisor shall, unless relieved by the Court from so doing, convene a meeting of Creditors within 21 days from the receipt of such request.

**57(3) [Content of notice requisitioning meeting]** A notice served upon the Supervisor under Sub-paragraphs 56(2) shall state the purpose for which the meeting is to be held.

**57(4) [Company Request]** If the Company requests in writing that the Supervisor should summon a meeting of Creditors, the Supervisor shall not unreasonably refuse such a request. If the Supervisor considers the request to be reasonable the Supervisor shall convene a meeting of Creditors as the Supervisor considers appropriate to consider the decision.

**58 Calling Creditors' meetings**

**58(1) [Notice of meeting]** Notice of a Creditors' meeting shall be given by the person convening the meeting to the Company and every Creditor whose address is known or identified in the Proposal at least 14 days before the date fixed for the meeting, or such shorter period as the Court may allow.

**58(2) [Contents of notice]** The notice to Creditors shall specify the purpose for which the meeting is convened and a time and date (not earlier than 4.00 p.m. on the business day before the meeting) by which Creditors must lodge proxies and those who have not already lodged claims must do so, in order to be entitled to vote at the meeting.

**58(3) [Forms of proxy]** With every notice convening a Creditors' meeting there shall be sent out forms of proxy.

**58(4) [Venue of meeting]** In fixing the venue for a meeting of Creditors, the person convening it shall have regard to the convenience of the parties who may wish to attend.

**58(5) [Time of meeting]** Meetings of Creditors shall be convened for commencement between the hours of 10.00 and 16.00 on a business day, unless the Court otherwise directs.

**58(6) [Chair of meeting]** Unless Paragraph 21(3) (chair where no Supervisor acting) applies, the Supervisor, or a person experienced in insolvency matters and nominated by the Supervisor, shall Chair the meeting.

**59 Cost of summoning meetings**

**59(1) [Security for payment of expenses]** Subject to Sub-paragraph 59(3) below, the cost of summoning and holding a meeting of Creditors at the instance of the Company or

Creditors under Sub-paragraph 57(2) shall be paid by that person or persons, who shall deposit security for their payment with the Supervisor.

- 59(2) [Appropriate security]** The sum to be deposited shall be such as the Supervisor determines to be appropriate; and the Supervisor shall be under no obligation to act without the deposit having been paid.
- 59(3) [Vote for cost to be an expense of arrangement]** Where a meeting is so summoned, it may vote that the expenses of convening and holding it shall rank as an expense of the Arrangement.
- 59(4) [Repayment of deposit]** To the extent that any deposit made under this Paragraph is not required for the payment of expenses of convening and holding the meeting, it shall be repaid to the person who made it.

## **60 Remote attendance at meetings**

- 60(1) [Attendance at meeting by persons not present together]** Where a person convening a meeting considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.
- 60(2) [Attendance at meeting by exercise of right to speak and vote]** Where a meeting is conducted and held in the manner referred to in Sub-paragraph 60(1), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

## **61 Entitlement to vote**

- 61(1) [Conditions for voting]** Subject as follows, at a meeting of Creditors a person is entitled to vote as a Creditor only if:
- (a) he/she has duly lodged a Proof by the time and date stated in the notice of the meeting; and
  - (b) the claim has been admitted for the purpose of entitlement to vote, and there has been lodged, by that time and date, any proxy requisite for that entitlement.
- 61(2) [Unliquidated and unascertained claims]** A Debt for an unliquidated or unascertained amount is to be valued at £1 for the purpose of voting unless the Chair of the meeting decides to put a higher value on it.
- 61(3) [Secured Creditors]** A Secured Creditor is entitled to vote only in respect of the balance (if any) of Debt after deducting the value of Security as estimated by the Secured Creditor.

## **62 Admission and rejection of claim**

- 62(1) [Chair's discretion]** The Chair of the meeting has power to admit or reject a Creditor's claim for the purpose of the Creditor's entitlement to vote. The power is exercisable with respect to the whole or any part of the Proof and whether the claim is secured or unsecured.
- 62(2) [Appeal from Chair's decision]** The Chair's decision on entitlement to vote is subject to appeal to the Court by any Creditor, or by the Company, within 21 days of the notice of result of meeting being given, or such longer period as the Court shall allow.
- 62(3) [Voting subject to objection]** If the Chair is in doubt whether a claim should be admitted or rejected, it shall be marked as objected to and the Creditor should be allowed to vote, subject to the vote being subsequently declared invalid if the objection to the claim is sustained.
- 62(4) [Where Chair's decision reversed]** If, on an appeal, the Chair's decision is reversed or varied, or a Creditor's vote is declared invalid, the Court may order another meeting to be summoned, or make such other order as it thinks fit, provided that the Court considers the matter is such as to give rise to unfair prejudice or a material irregularity.
- 62(5) [Costs of appeal]** The Chair is not personally liable for the costs incurred by any person in respect of an appeal under this Paragraph unless the Court so orders.

## **63 Majorities required to pass resolutions**

- 63(1) [Resolutions by majority in value]** Subject as follows, at a meeting of Creditors a resolution is passed when a majority in value of Creditors present and voting, in person or by proxy, have voted in favour of the resolution.

- 63(2) [Resolutions varying terms of Arrangement]** In the case of a resolution varying the terms of the Arrangement, a majority in excess of three-quarters in value of those present and voting, in person or by proxy, is required to pass the resolution.
- 63(3) [Votes rendering resolution invalid]** Any resolution is invalid if those voting against it include more than half in value of the Creditors who are not Associates of the Company.
- 63(4) [Resolution for the appointment of Supervisor]** In the case of a resolution for the appointment of a Supervisor:
- (a) if on any vote there are 2 nominees for appointment, the person who obtains the most support is appointed, provided that such support represents a majority in value of all those voting; and
  - (b) if there are 3 or more nominees, and one of them has a clear majority over both or all of the others together, that one is appointed; and
  - (c) in any other case, the Chair shall continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for any one nominee.
- 63(5) [Resolution for joint appointment]** The Chair may put to the meeting a resolution for the joint appointment of any 2 or more nominees if he thinks it appropriate.
- 64 Chair of meeting as proxy-holder**
- 64(1)** Where the Chair at a meeting holds a proxy for a Creditor which requires the Chair to vote for a particular resolution, and no other person proposes that resolution, the Chair shall propose it.
- 65 Suspension/adjournment of meeting**
- 65(1) [Suspension]** The Chair may, without an adjournment, declare the meeting suspended for one or more periods not exceeding one hour in total (or, in exceptional circumstances such longer period during the same day at the Chair's discretion).
- 65(2) [Adjournment]** The Chair at any meeting may (and must if the meeting so resolves) adjourn the meeting provided that if the Chair is the Supervisor and a resolution has been proposed for the Supervisors removal, the Chair shall not adjourn the meeting without the consent of at least one half in value of the Creditors present (in person or by proxy) and entitled to vote.
- 65(3) [Period of adjournment]** An adjournment under this Paragraph shall not be for a period of more than 14 days after the date on which the meeting was originally held, or such longer period as the Court may allow.
- 65(4) [Use of Proofs and Proxies at adjourned meeting]** Where a meeting is adjourned under this Paragraph, Proofs and Proxies may be used if lodged at any time up to or at the adjourned meeting.
- 66 Record of proceedings**
- 66(1) [Minutes of proceedings]** The Chair of any Creditors' meeting shall cause minutes of the proceedings at the meeting to be kept. The minute should be signed by the Chair and retained as part of the records of the Arrangement.
- 66(2) [List of Creditors attending]** The Chair shall also cause to be made and kept a list of all the Creditors who attended the meeting either in person or by proxy and the amount of their claims for voting purposes.
- 66(3) [Record of resolutions]** The minutes of the meeting shall include a record of the resolutions which were taken at the meeting and the decision on each one.
- 66(4) [List of creditors to be circulated]** The record of resolutions referred to in Sub-paragraph 66(3) shall be sent to the Creditors and the Company.
- 67 Postal resolutions**
- 67(1) [Application of procedure]** The following procedure may be utilised by the Supervisor for the purposes of ascertaining the wishes of Creditors on any matter concerning the Arrangement other than the removal of the Supervisor.
- 67(2) [Notice of proposed resolution]** The Supervisor may send to the Company and every Creditor whose address is known or identified in the Proposal a notice containing a copy

of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

- 67(3) [Contents of notice]** The notice must specify a date (“the Last Date for Voting”), not less than 21 days after the date of sending thereof, by which Creditors must lodge their votes with the Supervisor and those who have not already lodged claims must do so, in order to be entitled to vote.
- 67(4) [Creditors requiring meeting]** Creditors with one-quarter in value of the total amount of Debts subject to the Arrangement may, within 14 days from the date upon which the Supervisor sent out the resolution, request the Supervisor in writing to summon a meeting of Creditors to consider the matters raised by the resolution and, if they so request, the Supervisor shall call a meeting of Creditors for that purpose.
- 67(5) [Deemed passing of resolution]** In the absence of such a request, the resolution is deemed to have been carried at a duly convened meeting of Creditors, if, of the written votes received by the Supervisor by the end of the Last Date for Voting, a sufficient majority of Creditors as defined in Paragraph 63 entitled to vote on the resolution have indicated their consent to the resolution in writing.
- 67(6) [Application of voting rights and majorities]** The provisions of Paragraphs 61 (entitlement to vote), 62 (admission and rejection of claim) and 63 (majorities required to pass resolutions) shall apply to postal votes as they do to votes at meetings of Creditors.
- 67(7) [Copy of resolutions]** A copy of every resolution taken under this Paragraph, together with copies of the votes of Creditors received by the Supervisor endorsed by the Supervisor with the date upon which the vote was received shall be kept with the records of the Arrangement.

## **PART XI: PROVISIONS FOLLOWING BREACH OF THE ARRANGEMENT**

### **68 Breach by the Company of the terms of the Arrangement**

**68(1)** The Company shall be regarded as in breach of the Arrangement if:

- (a) the Company fails to comply with any obligation under the Arrangement;
- (b) information, which was false, misleading in any material particular, or contains material omissions:
  - (i) was contained in any statement of affairs or other document supplied by the Company or its Directors under Part II under the Order to any person, or
  - (ii) was otherwise made available by the Company or its Directors to the Creditors or Shareholders at or in connection with any meeting of Creditors or Shareholders held, or any decision taken in connection with the Arrangement; or
- (c) the Company or its Directors fail to do all such things as may for the purposes of the Arrangement have been reasonably required of the Company by the Supervisor.

### **69 Procedure following breach**

**69(1) [Notice of Breach]** If, at any time, it appears to the Supervisor that the Company is in breach of the Arrangement, then, unless such breach is remedied forthwith or the Supervisor has already presented a petition for the Company's winding up, the Supervisor shall as soon as practicable issue to the Company a notice (“Notice of Breach”) identifying the breach and requiring the Company within one month of sending the notice:

- (a) to remedy the breach if it is capable of being remedied, and,
- (b) if the Supervisor thinks fit, to give a full explanation of the breach.

**69(2) [Remedy of breach]** If, within the one-month period referred to in Sub-paragraph 69(1), or such longer period not exceeding a further one month as the Supervisor shall reasonably allow, the Company:

- (a) remedies the breach of the Arrangement;
- (b) if so required in the Notice of Breach, provides a full explanation of the breach, and
- (c) pays to the Supervisor such sum (if any) as the Supervisor may reasonably require to compensate the Creditors for any reduction in Dividend caused by the Company's

breach, no further action shall be taken against the Company save that the Supervisor shall report the breach to the Creditors when the next progress report is sent to Creditors under Rule 1.26 of the Rules (Supervisor's accounts and reports), or on the next convenient occasion, if earlier.

- 69(3) [Certificate of Termination/winding-up petition]** If the Company has not done those things specified in Sub-paragraph 69(2) by the time specified or allowed, the Supervisor shall as soon as practicable either:
- (a) issue a notice ("Notice of Termination") terminating the Arrangement by reason of the Company's breach and present a petition for the Company's winding up; or
  - (b) convene a meeting of Creditors to resolve whether or not to do the following things:
    - (i) present a petition for the winding-up of the Company;
    - (ii) vary the terms of the arrangement under Paragraph 75; and/or
    - (iii) take no action.
- 69(4) [HMRC specific]** If the Company' breach of the Arrangement is a failure to comply with paragraph 71 the Supervisor shall work with the Company to remedy this breach. If any such breach is not remedied within 30 days of its occurrence this shall constitute default of the CVA which cannot be remedied and the Supervisor shall petition for a winding up order unless HMRC agree otherwise in writing.
- 69(5) [Supervisor's duty]** If the Creditors resolve to issue a Notice of Termination and/or to present a winding-up petition against the Company, the Supervisor shall do so as soon as practicable. If the Creditors fail to pass a resolution at the meeting of Creditors, the Supervisor may take such actions as appear fit in the circumstances.
- 69(6) [Copies of Notice of Termination]** A copy of any Notice of Termination issued by the Supervisor shall be sent to the Company and Creditors as set out under Paragraph 11.

**70 Retention of funds by Supervisor**

- 70(1)** The Supervisor shall, at all times during the course of the Arrangement, retain sufficient of the funds coming into the Arrangement as represents the Supervisor's best estimate of the costs of petitioning for the Company's winding-up should the Creditors so direct under the previous Paragraph hereof. Such costs shall be provided for in priority to any other costs of the Arrangement.

**PART XII: CONDITIONS WHERE TAX AUTHORITIES ARE CREDITORS**

**71 HMRC statutory returns and payments**

- 71(1) [Post approval statutory returns and payments]** All statutory returns and payments due to HM Revenue & Customs post approval shall be provided on or before the date they fall due.
- 71(2) [Overdue accounts and returns]** All statutory accounts and returns overdue at the date of the approval of the Arrangement must be provided to HM Revenue & Customs within 2 months of the approval date together with any other information or explanations required.

**PART XIII: MISCELLANEOUS PROVISIONS**

**72 Third Party obligations**

- 72(1) [Application of Paragraph]** This Paragraph applies where the Proposal includes any obligation on the part of a person other than the Supervisor or Company to pay moneys, transfer assets or do any other thing.
- 72(2) [Evidence of agreement]** The third party shall sign the Proposal or such other document evidencing the agreement to be bound by the obligation as the Supervisor shall reasonably require.
- 72(3) [Enforcement of obligation]** The obligations of the third party shall be enforceable by the Supervisor, or by the Company at the direction of the Supervisor.
- 72(4) [Failure a default of arrangement]** The failure by the third party to carry out the obligation when due shall constitute a breach of the arrangement.

### **73 Variation of the Arrangement**

**73(1) [Variation with Creditors' approval]** The provisions of this Arrangement may be amended with the approval of a meeting of Creditors.

**73(2) [Consent of Company/third party to variation required]** No variation of the terms of the Arrangement shall be of any effect unless made with the consent of the Company (acting by its Directors) and any third party affected thereby.

**73(3) [Saving for certain rights]** No variation which restricts the following rights shall be of effect:

- (a) the right of any Secured Creditor to enforce its Security, except with the Secured Creditor's consent;
- (b) the right of a Preferential Creditor to be paid in priority to other Creditors, except with that Creditor's consent; or
- (c) the right of a Preferential Creditor to be paid pro rata with other Preferential Creditors, except with that Creditor's consent.

**73(4) [Unfair prejudice and material irregularity]** No variation shall be of effect if it unfairly prejudices the rights of any Creditor or if there has been any material irregularity in the operation of the provisions of this Paragraph.

**73(5) [Meeting of Creditors]** When convening a meeting of creditors, notice shall include details of the proposed variation. The meeting will be convened pursuant to Article 16 of the Order and Rules 1.13 and 1.21 of the Rules with the following amendments:

- (a) reference to "the proposal" to read "proposed variation";
- (b) reference to the "Nominee" to read "Supervisor";
- (c) creditors' claims for voting purposes will be calculated with reference to the date of the meeting held to consider the original proposals; and
- (d) no variation will be considered which proposes to change the Supervisor.

**73(6) [Restriction on variation]** No variation shall be of effect if it causes the Arrangement to cease to be a voluntary arrangement within Part II of the Order.

### **74 Tax liabilities arising on realisations**

**74(1) [Tax to be paid out of proceeds]** Taxation liabilities of the Company arising on the sale or other realisation of any asset subject to the Arrangement shall, in so far as those proceeds are sufficient, be discharged out of the sale proceeds of the asset in question.

### **75 Invalidity and/or illegality**

If any provision or part of the Arrangement is found to be contrary to the Order or Rules, illegal, invalid or contrary to public policy, that will not affect the validity of the remainder of the Arrangement and the provision or part of the Arrangement in question shall be construed accordingly.

### **76 Claims of the landlord**

**76(1) [Claims of Landlord]** A liability or debt arising in respect of any leasehold premises or licence to occupy will be dealt with as follows:

- (a) arrears of rent and any other debt or liability due as at the date of the Arrangement was approved will rank as an unsecured creditor; and
- (b) if the tenant vacates the premises during the course of the Arrangement, the landlord's claim for any debt or liability arising after approval of the Arrangement will be an unsecured claim by virtue that it was a contingent claim existing at the date the Arrangement was approved. The amount of the claim will be calculated as the lower of an amount equal to 2 years rent or, an amount equal to the rent due for the period beginning on the date the premises are vacated and ending on the date the premises are re-let.