



**Covid-19**

**Standard Conditions for Company  
Voluntary Arrangements  
(NORTHERN IRELAND)**

**Produced by**

**Association of Business Recovery Professionals**

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## Part 1: Interpretation

### 1. Miscellaneous definitions

1.1 In the Arrangement, except where the context otherwise demands:

"**Arrangement**" means the Proposal and the Conditions read together;

"**Associate**" shall have the meaning given to it in Article 4 of the Order;

"**Claim**" means a provable debt in accordance with Rule 12.03 of the Rules with the modifications necessary to refer to a voluntary arrangement.

"**Conditions**" are these Conditions;

"**Connected**" shall have the meaning given to it in Article 7 of the Order;

"**Court**" means any court having jurisdiction in respect of the Arrangement;

"**Creditor**" is a person bound by the Arrangement to whom a Debt is owed;

"**Debt**" has the meaning given to it in Rule 12.03 (provable debts) of the Rules and Article 9 of the Order with the modifications necessary to refer to a voluntary arrangement, and an HMRC Debt;

"**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 the context;

"**Dividend**" means a distribution to Creditors;

"**Excluded Assets**" are those assets identified in the Proposal as being excluded from the Arrangement;

"**Hire Purchase Agreement**" has the same meaning as found in paragraph 1(1) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989;

"**HMRC Debt**" means the HMRC Claims 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;

"**Order**" means the Insolvency (Northern Ireland) Order 1989 as amended;

"**Paragraphs**" are Paragraphs of these Conditions, and "**Sub-paragraph**" shall be construed accordingly;

"**Preferential Creditor**" is a Creditor with a Debt falling within Article 149 of the Order, and whose Debt falls within the definition of an preferential debt' as given to that term in Article 346 of the Order, and "**Preferential Debt**" shall be construed accordingly;

"**Property**" has the meaning given to it in Article 2(2) of the Order;

"**Rules**" means the Insolvency Rules (Northern Ireland) 1991 as amended;

"**Security**" has the meaning given to it in Articles 5 and 10 of the Order and "**Secured Creditor**" shall be construed accordingly;

"**Secretary of State**" means the Secretary of State for Business, Energy & Industrial Strategy or any successor office;

"**Shareholders**" are the holders of ordinary or preference shares in the Company;

"**Supervisor**" is the person or persons for the time being appointed to supervise the implementation of the Arrangement;

"**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

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 2: Commencement, effect, and duration of Arrangement

### 3. Commencement of Arrangement

The Arrangement shall come into effect upon the approval thereof by the Creditors pursuant to the provisions of the Order and 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 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 of the Company;
- (b) commence or continue any action or other legal proceeding against the Company.

4.4 **[Suspension of limitation period]** The Company agrees that any limitation period accruing in respect of a Debt which is subject to the Arrangement shall be suspended until expiry, termination or full implementation of the Arrangement, whichever is sooner.

4.5 **[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 20(4)(b) of the Order for default in connection with the Arrangement;
- (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 2010.

## 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 4.5 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 Sub-paragraph 5.1 will be enforced and the Company waives any such rights.
- 5.3 **[Costs of existing proceedings]** Legal costs of a Creditor 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 an order of seizure under Articles 31 and 40 of the Judgments Enforcement (Northern Ireland) 1981;
  - (b) an execution against land is completed by seizure, by the appointment of a receiver under Article 67 of the Judgments Enforcement (Northern Ireland) 1981 or by the making of a charging order under Article 46 of the Judgments Enforcement (Northern Ireland) 1981;
  - (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.
- 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 and expiry 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 and 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 be fully implemented 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 fully implemented, whichever is sooner.
- 8.5 **[Supervening notice calling a meeting of Creditors]** If a meeting of Creditors has been initiated 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.

## 9. Full Implementation of Arrangement

- 9.1 **[Certificate of completion]** Upon the full implementation of the Arrangement, the Supervisor shall, if the Company has complied with its obligations under the Arrangement, issue a notice ("**Certificate of Completion**") stating that the Arrangement has been fully implemented.

9.2 **[Effect of full implementation]** Save to the extent provided in these Conditions or the Proposal, upon the issue by the Supervisor of a Certificate of Completion, the Company shall be released from all Debts which are subject to the Arrangement.

9.3 **[Notification of full implementation]** Copies of the Certificate of Completion issued under this Paragraph shall be sent by the Supervisor to the Company, the Creditors and the Shareholders together with the Supervisor's report under 1.29 of the Rules (Completion or termination of the Arrangement).

## 10. Substantial Compliance

10.1 **[Issue of notice where substantial compliance]** The Supervisor may issue a Certificate of Completion notwithstanding that the Company has not complied with all of its obligations under the Arrangement provided the Company has:

- (a) made all the payments required under the terms of the Arrangement;
- (b) provided a full explanation of any breach of the terms of the Arrangement required by the Supervisor;
- (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 Completion under Sub-paragraph 10.1, the Supervisor shall notify the Creditors 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 Completion under Sub-paragraph 10.1, the Arrangement shall be treated as fully implemented for the purposes of Rule 1.29 of the Rules (Completion or termination of the arrangement).

## 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 67;
- (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.

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 its reason to the Company, the Directors of the Company, Shareholders, Creditors and the Secretary of State, together with the Supervisor's report under Rule 1.29 (completion or termination of the arrangement).

### Part 3: Supervisor's Functions, Powers etc.

#### 12. Supervisor's functions

12.1 **[Primary function]** The Supervisor's primary function is to supervise performance of the Company's 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 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(a) 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 United Kingdom 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 Claims;
- (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 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, Claims 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;
  - (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 after expiry, full implementation or termination**

- 14.1 **[Exercise of powers]** The expiry, full implementation or termination of the Arrangement shall not affect the Supervisor's power to carry out such functions and to exercise such powers as are necessary for the Supervisor to fully carry out the duties, obligations and responsibilities of the Supervisor 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 the expiry, full implementation or termination of the Arrangement, the Supervisor shall be entitled to retain, for such period as is reasonably necessary and from any funds under the Supervisor's control, such monies as the Supervisor reasonably thinks fit on account of fees, costs, charges, liabilities and expenses, and the Supervisor 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 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 resignation

17.1 **[Methods of resignation]** A Supervisor may resign from office with the approval of a meeting of Creditors, with the permission of the Court or in the circumstances set out in Paragraph 17.3 below.

17.2 **[Grounds of Supervisor's resignation]** The sole 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;

17.3 **[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 to be impracticable 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.

17.4 **[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 which includes an up to date summary of receipts and payments.

## 18. Removal of Supervisor from office

18.1 **[Methods of removal]** The Supervisor may be removed from office only by an order of the Court, or by a resolution of a meeting of Creditors.

18.2 **[Notice of requisitioned meeting]** Any notice served by a Creditor upon the Supervisor under Paragraph 56.3 (notice of requisitioning a 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.

18.3 **[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 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.

## 19. Vacation of Office by Supervisor

19.1 **[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.

19.2 **[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.

- 19.3 **[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.
- 19.4 **[Notice of vacation of office]** A Supervisor who, for any reason other than as set out in Paragraph 17.3, vacates office shall forthwith give notice of that fact to the Company, the Shareholders and the Creditors.
- 19.5 **[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 all books, records and papers relating to the Arrangement and the Supervisor's administration thereof together with all assets of which the Supervisor is a trustee under the terms of the Arrangement.
- 19.6 **[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.

## 20. Vacancy in the office of Supervisor

- 20.1 **[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.
- 20.2 **[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 partnership with the Supervisor immediately before the vacancy occurred, the former Supervisor's authorising body or by any other interested party.
- 20.3 **[Chair where no Supervisor acting]** In the event that a meeting of Creditors is called when no Supervisor is in office, the convenor shall act as chair of the meeting.

## 21. Release of Supervisor

Upon the termination or 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 his conduct as Supervisor. Each Creditor shall and hereby does waive all Claims or rights which the Creditor may have against the Supervisor in respect of such matters.

## 22. Supervisor's fees, costs and expenses

- 22.1 **[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.
- 22.2 **[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.
- 22.3 **[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.

## **Part 4: 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 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 and recorded by the Supervisor in their report to the Court under Rule 1.24 (report of Creditors' meeting).
- 23.3 **[Disclosure of third party information]** The Company authorises any Creditor to disclose to the Supervisor such information relating to the Company and the Company's dealings or property as may reasonably be required to assist in the implementation of the Arrangement.

### **24. Company's duties in relation to the Supervisor**

- 24.1 **[Duty to co-operate 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 the Supervisor's 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 affairs of such nature, as at such date and for such period as the Supervisor may reasonably require.

### **25. Further Documents**

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. Company's 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 **[Article 19A]** Each of the Directors of the Company acknowledge that they commit an offence if any false representation is made or any other fraud is committed for the purpose of obtaining the approval of Shareholders or Creditors to the Arrangement.

## Part 5: 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 during the Trust Realisation Period in accordance with this 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.
- 27.3 **[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.
- 27.4 **[Effect of expiry or termination]** The trusts referred to in Sub-paragraph 27.1 and 27.2 shall not come to an end upon expiry or 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 Proposal. At the expiry of the Trust Realisation Period, the trust shall come to an end.
- 27.5 **[Effect of full implementation]** Upon the issuing of a Certificate of Full Implementation under Paragraph 9, the trusts referred to in Sub-paragraphs 27.2 shall not come to an end but such assets as are contained within the trust shall be paid to the Company. At 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 Winding-up 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 6: Claims

### 28. Notice to submit Claims

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



**29. Submission of Claims**

Creditors shall submit their Claims 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 Claims**

30.1 **[Withdrawal by written notice]** A Creditor may withdraw a Claim at any time by delivering a written notice to the Supervisor.

30.2 **[Variation of amount by agreement]** The amount claimed by a Creditor may be varied at any time by agreement between the Creditor and the Supervisor.

**31. Production of documents**

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 Claim.

**32. Affidavit substantiating Claim**

The Supervisor may require a Claim to be verified by witness statement with an Affidavit on oath.

**33. Supervisor to allow inspection of Claims**

The Supervisor shall, so long as Claims 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 Claim (unless the Claim has been wholly rejected for the purposes of Dividend, or otherwise); and
- (b) a person acting on behalf of any such Creditor.

**34. Admission and rejection of Claims for Dividend**

34.1 **[Admission]** A claim may be admitted for Dividend either for the whole of the amount claimed by the Creditor, or for part of that amount.

34.2 **[Rejection]** If the Supervisor rejects a Claim in whole or in part, the Supervisor must deliver to the Creditor a written statement of reasons for so doing, as soon as reasonably practicable.

**35. Appeal against decision on Claim**

35.1 **[Application by Creditor]** If a Creditor is dissatisfied with the Supervisor's decision with respect to the Creditor's own Claim (including a decision 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 Paragraphs 34.2 or 36.2, 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 Claim 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.

### 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 Paragraph 35.
- 36.3 **[Claims 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 Claim 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 no debt is owed.

### 37. Secured Creditors

- 37.1 **[Proving for balance of Debt]** A Secured Creditor may submit a Claim 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 Claim 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 Claim.
- 37.4 **[Test of Security's value]** If the Supervisor is dissatisfied with the value which a Secured Creditor puts on a Security in the Creditor's Claim, the Supervisor may require the Secured Creditor to obtain a professional valuation of any property comprised in the Security 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 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

**[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

Where a Debt bears interest, that interest may be claimed 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 Claims

40.1 **[Creditor bears cost of submitting Claim]** Every Creditor bears the cost of submitting that Creditor's own Claim, including costs incurred in providing any document or 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 7: Creditors who do not have Notice

### 41. Claim arising where funds available

If, at the time the Claim 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 Claim) 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 who fall within Article 18(2)(b)(i) of the Order on the one hand and Article 18(2)(b)(ii) of the Order on the other hand.

### 42. Claim arising where no funds available

If a Claim is 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 Claim) out of such funds first make such payment to such Creditors so as to bring about an equalisation as aforesaid.

### 43. Effect of Claims on Company

43.1 **[Claim not to constitute default]** The notification to the Supervisor of any such claim 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 claim falling to be dealt with under Article 18(2)(b)(ii) of the Order unless the Proposal as agreed provides for a minimum Dividend to be paid to Creditors.

#### 44. Notification of Claims to Creditors

On receipt of any such Claim, the Supervisor will notify all Creditors bound of such receipt, the name of the Creditor, the amount of the Claim and will provide such other information as may be relevant, including particulars as to the Directors' explanation why the Creditor was not given notice and the impact which 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 three 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. Claim arising after Arrangement ceases to have effect

If the Claim 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 Claim, or take any action in respect thereof, other than to furnish the Creditor who relies on Article 18(2A) of the Order 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 Claim would have been agreed in the sum Claimed.

### Part 8: 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 those claims which have been admitted.

46.2 **[Calculation and distribution of Dividend]** In the calculation and distribution of a Dividend the Supervisor shall make provision:

- (a) for any Debts which are the subject of Claims 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 submitted their claims.

47.2 **[Last date for submitting Claims]** Any notice sent out to Creditors under Sub-paragraph 47.1 shall specify a date ("**Last Date for Submitting Claims**") up to which a Claim may be delivered. The Last Date for Submitting Claims 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 submitted their Claims.

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 Dividend;
- (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 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. Claim altered after payment of Dividend

49.1 **[Amount Claimed increased]** If, after payment of the Dividend, the amount proved for 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 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 Claims]** 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 Claims]** If the re-valuation results in an increase of the Creditor's unsecured Claims, 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 Creditor 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 submit a Claim 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 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 Claim (or, if a distribution has previously been made to the Creditor, the amount remaining outstanding in respect of the Creditor's admitted Claims) must be discounted by applying the following formula:

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

where X is the value of the admitted Claim; 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 Paragraph 36.4) shall not be entitled to receive any Dividend.

53.2 **[Unclaimed Dividends paid to the 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 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 9: Priority of Payments and Distributions

### 54. Costs and Expenses of the Arrangement

- 54.1 **[Expenses to be paid first]** Subject to Paragraphs 5.4 and 69 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 10: The Creditors' Committee and 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 ("**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 reasonably be 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 Claim, and
  - (b) the Creditor's Claim has neither been wholly disallowed for voting purposes, nor wholly rejected for the purposes of distribution or Dividend.
- 55.3 **[Application of the Rules]** The provisions relating to the Liquidation Committee in a Winding Up contained in Rules 4.159 to 4.181 of the Rules shall apply to the Arrangement with any necessary modifications.
- 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. Power to call/requisition meetings of Creditors
- 56.1 **[Supervisor's power to seek a decision]** The Supervisor may summon and conduct meetings of Creditors for any purpose connected with the Arrangement.
- 56.2 **[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.
- 56.3 **[Content of notice requisitioning a meeting of Creditors]** A notice served upon the Supervisor under Sub-paragraph **Error! Reference source not found.** shall state the purpose for which the meeting of Creditors is to be held.

56.4 **[Company request]** If the Company requests in writing that the Supervisor convene 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 to consider the decision.

## 57. Procedure for calling a Meeting of Creditors

57.1 **[Notice of meeting]** Notice of a Creditor's meeting shall be given by the convenor to every Creditor whose address is known to the convenor 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.

57.2 **[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 4:00pm 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.

57.3 **[Forms of Proxy]** With every notice convening a Creditor's meeting there shall be sent out forms of proxy.

57.4 **[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.

57.5 **[Time of meeting]** Meetings of Creditors shall be convened for commencement between the hours of 10.00 and 16.00 on a business day.

57.6 **[Chair of meeting]** Unless Paragraph 20.3 (chair where no Supervisor acting) applies, the Supervisor, or a person experienced in insolvency matters and nominated by the Supervisor, shall be chair of the meeting.

57.7 **[Non-receipt of notice]** Where a meeting of creditors is summoned/convened the meeting is presumed to have been duly convened and conducted, even if not everyone to whom the notice is to be delivered has received it.

## 58. Cost of summoning meetings

58.1 **[Security for payment of expenses]** Subject to Sub-paragraph 58.3 below, the cost of summoning and holding a meeting of Creditors at the instance of the Company or Creditors shall be paid by that person or persons, who shall deposit security for their payment with the Supervisor.

58.2 **[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.

58.3 **[Vote for cost to be an expense of arrangement]** Where a meeting of Creditors is so summoned, it may vote that the expenses of convening and holding it shall rank as an expense of the Arrangement.

58.4 **[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 of Creditors, it shall be repaid to the person who made it.

## 59. Entitlement to Vote

59.1 **[Conditions for voting]** Subject as follows, at a meeting of Creditors a person is entitled to vote as a Creditor only if:



- (a) They have duly lodged their claim by the time and date stated in the notice of the meeting of Creditors; and
- (b) The Claim has been admitted under Paragraph 59.2 for the purpose of entitlement to vote and there has been lodged, by that time and date, any proxy requisite for that entitlement.

59.2 **[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 convenor, or in the case of a meeting the chair, decides to put a higher value on it.

59.3 **[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.

## 60. Admission and rejection of Claims

60.1 **[Chairperson's discretion]** The chair has the power to admit or reject a Creditor's Claim for the purpose of entitlement to vote. The power is exercisable with respect to the whole or any part of the Claim, and whether the Claim is secured or unsecured.

60.2 **[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 meeting of Creditors at which the decision was made, or such longer period as the Court shall, in the special circumstances, allow.

60.3 **[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 shall be allowed to vote, subject to the vote being subsequently declared invalid if the objection to the Claims is sustained.

60.4 **[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 of Creditors 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.

60.5 **[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.

## 61. Majorities required to pass resolutions

61.1 **[Decisions 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.

61.2 **[Decisions varying terms of Arrangement]** In the case of a resolution varying the terms of the Arrangement, a majority of three-quarters or more in value of those Creditors present and voting, in person or by proxy, is required to pass the resolution.

61.3 **[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, to the best of the chair's belief, Associates of the Company.

61.4 **[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 present (in person or by proxy) at the meeting and entitled to vote; 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.

61.5 **[Resolution for joint appointment]** The chair may at any time put to the meeting a resolution for the joint appointment of any two or more nominees if the chair thinks it appropriate.

## 62. Chair of meeting as proxy-holder

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

## 63. Suspension/adjournment of meetings

63.1 **[Suspension]** The chair may, without an adjournment, declare the meeting suspended for one or more period not exceeding one hour in total (or, in exceptional circumstances, such longer total period during the same day at the chair's discretion).

63.2 **[Adjournment]** The chair 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 Supervisor's 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.

63.3 **[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.

63.4 **[Use of Claims and proxies at adjourned meeting]** Where a meeting is adjourned under this Paragraph, Claims and proxies may be used if lodged at any time up to 4:00p.m. on the business day immediately before the adjourned meeting.

## 64. Record of proceedings

64.1 **[Minutes of proceedings]** The chair of any Creditors' meeting shall cause minutes of the proceedings at the meeting, signed by the chair, to be retained as part of the records of the Arrangement.

64.2 **[List of Creditors participating]** 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.

64.3 **[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.

64.4 **[Record of decision to be circulated]** The list of Creditors referred to in Paragraph 64.2 shall be sent with the chair's report to Creditors, the Company and the Court.

## 65. Postal Resolutions

- 65.1 **[Application of procedure]** The following procedure may be utilised by the Supervisor, if they think fit, for the purposes of ascertaining the wishes of Creditors on any matter concerning the Arrangement, other than the removal of the Supervisor.
- 65.2 **[Notice of proposed resolution]** The Supervisor may send to the Debtor 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 a such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.
- 65.3 **[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.
- 65.4 **[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.
- 65.5 **[Deemed passing of resolution]** In the absence 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 66 entitled to vote on the resolution have indicated their consent to the resolution in writing.
- 65.6 **[Application of voting rights and majorities]** The provisions of Paragraphs 59 (*entitlement to vote*), 60 (*admission and rejection of claims*) and 61 (*majorities required to pass resolutions*) shall apply to postal votes as they do to votes at meetings of Creditors.

## Part 11: Provisions following Breach of the Arrangement

### 66. Breach by the Company of the terms of the Arrangement

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 or misleading in any material particular or contains any material omissions:
  - (i) was contained in any statement of affairs or other document supplied by the Company or its Directors under Part II of 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 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 by the Supervisor.

## 67. Procedure following breach

67.1 **[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.

67.2 **[Remedy of breach]** If, within the one month period referred to in Sub-paragraph 67.1, 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 he next sends his comments to Creditors on the progress and efficacy of the Arrangement under Rule 1.26 of the Rules (Supervisor's accounts and reports), or on the next convenient occasion, if earlier.

67.3 **[Notice of Termination/winding-up petition]** If the Company has not done those things specified in Sub-paragraph 67.2 by the time specified or allowed, the Supervisor shall as soon as practicable convene a meeting of Creditors to resolve whether or not to do the following things:

- (a) Issue a certificate ("**Certificate of Termination**") terminating the Arrangement by reason of the Company's breach;
- (b) Present a petition for the winding-up of the Company;
- (c) Vary the terms of the Arrangement under Paragraph 72;
- (d) Take no action.

68. **[Supervisor's duty]** If the Creditors resolve to issue a Certificate of Termination and/or to present a winding-up petition against the Company, the Supervisor shall do so as soon as practicable.

68.1 **[Copies of Certificate of Termination]** A copy of any Certificate of Termination issued by the Supervisor shall be sent to the Company, the Directors of the Company and Creditors and Shareholders together with the notice under Paragraph 11.

68.2 **[HMRC specific]** If the Company's breach of the Arrangement is a failure to comply with paragraph 70, 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 that cannot be remedied and the Supervisor shall petition for a winding-up order, unless HM Revenue and Customs agree otherwise in writing.

## 69. Retention of funds by Supervisor

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 decide under the previous Paragraph hereof. Such costs shall be provided for in priority to any other costs of the Arrangement.

## Part 12: Conditions where Tax Authorities are Creditors

### 70. Post approval statutory returns and payments

All statutory returns and payments due to HM Revenue and Customs post approval shall be provided on or before the date they fall due.

### 71. 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 and Customs within 2 months of the approval date together with any other information or explanations required.

## Part 13: 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 Security, except with the Secured Creditor's consent;
- (b) the right of an Ordinary Preferential Creditor to be paid in priority to other Creditors, except with that Creditor's consent;
- (c) the right of a Secondary Preferential Creditor to be paid in priority to other Creditors (save for Ordinary Preferential Creditors), except with that Creditor's consent;

- (d) the right of a Preferential Creditor to be paid pro rata with other Preferential Creditors in the same class, 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 17 of the Order and 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

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. Shareholders' meetings

76.1 **[Supervisor's power to convene Shareholders' meeting]** The Supervisor may convene a meeting of Shareholders for any purpose connected with the Arrangement.