

**STANDARD CONDITIONS FOR
INDIVIDUAL VOLUNTARY ARRANGEMENTS**

Produced by the

IVA FORUM

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PART I
INTERPRETATION

1. Miscellaneous definitions

In the Arrangement, except where the context otherwise demands:

- (a) “**the Act**” means the Insolvency Act 1986 as amended;
- (b) “**the Arrangement**” means the Proposal and the Conditions read together;
- (c) “**the Debtor**” means the person who makes the Proposal;
- (d) “**Dividend**” means a distribution to Creditors;
- (e) “**Excluded Assets**” are those items of equipment which are necessary for use in the Debtor’s business, together with the clothing, bedding, furniture, household equipment and provisions necessary for satisfying the domestic needs of the Debtor and his family which would be excluded in the event of the Debtor’s bankruptcy and those other assets identified in the Proposal as being excluded from the Arrangement ;
- (f) “**the Effective Date**” is the date that the Arrangement is approved by Creditors at a creditors meeting convened for the purposes of considering the Arrangement;
- (g) “**the Proposal**” is the document annexed hereto together with modifications and documents incorporated thereto, being a Proposal under Part VIII of the Act;
- (h) “**the Rules**” means the Insolvency Rules 1986 (as amended);
- (i) “**Unsecured Creditor**” is any creditor other than secured creditors who are creditors of the Debtor in consequence of any matter having its origin, or occurring, on or prior to the time and date of approval of the Arrangement;
- (i) Any term importing gender includes any gender.

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 II

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 Act and Rules and is the Effective Date.

4. Nature and effect of the Arrangement

- 4(1) The Arrangement is a Proposal under Part VIII of the Act for a scheme of arrangement of the Debtor's affairs or a composition in full and final satisfaction of the Debtor's Debts.
- 4(2) 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 Debtor, whether that Debt is owed jointly by the Debtor or otherwise.
- 4(3) After the commencement of the Arrangement, no Creditor shall, in respect of any Debt which is subject to the Arrangement:
- (a) have any remedy against the property or person of the Debtor;
 - (b) commence or continue any action or other legal proceeding against the Debtor.
- 4(4) 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 his Security, except with the Secured Creditor's consent;
 - (b) the right of the Supervisor or any Creditor to present a bankruptcy petition under section 264(1)(c) of the Act for default in connection with the Arrangement;

- (c) the right of any Creditor to bring or continue legal proceedings against the Debtor and to obtain a judgment against the Debtor in the full amount of it's Debt for the sole purpose of making a claim against an insurer of the Debtor by virtue of the Third Party (Rights Against Insurers) Act 1930.

5. Duration of Arrangement

- 5(1) Unless extended under the provisions of these Conditions, the Arrangement shall continue until the end of the period stated in the Proposal.
- 5(2) The Supervisor may, if he thinks fit for the purposes of finalising the implementation of the terms of the Arrangement, extend the duration of the Arrangement by sending a notice to this effect (“an Extension Notice”) to the Debtor and all Creditors. This may be done on up to 2 occasions: for a period of up to 6 months in the first instance and for a period of up to 3 months in the second instance.
- 5(3) 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.
- 5(4) 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 (being 6 months for a first extension and 3 months for a second extension) commencing on the date immediately after that on which the Arrangement would otherwise have been completed, whichever is sooner.
- 5(5) 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.
- 5(6) Any extension for a period longer than that provided for under Paragraph 5(2) shall require approval by way of a variation.

6. Completion of Arrangement

- 6(1) Upon the expiration of the Arrangement, the Supervisor shall, if the Debtor has complied with his obligations under the Arrangement, issue a certificate (“the Completion Certificate”) stating that the Proposal has been fully implemented.
- 6(2) Save to the extent provided in Paragraph 4(4), upon the issue by the Supervisor of a Completion Certificate, the Debtor shall be released from all Debts which are subject to the Arrangement.

7. Substantial Compliance

- 7(1) The Supervisor may, if he thinks fit, issue a Completion Certificate notwithstanding the fact that the Debtor has not complied with all of his obligations under the Arrangement provided that the Debtor has:
- (a) made all payments required of him 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 Debtor’s breach of the terms of the Arrangement.
- 7(2) Where the Supervisor proposes to issue a Completion Certificate under Sub-paragraph 1 he shall notify the Creditors accordingly and invite them to submit any comments within 21 days from the date of notification.
- 7(3) If the Supervisor issues a Completion Certificate under Sub-paragraph (1), the Arrangement shall be treated as fully implemented for the purposes of Rule 5.34.

PART III

SUPERVISOR'S FUNCTIONS, POWERS ETC

- 8(1) The Supervisor is to supervise the Debtor's performance of his obligations under the Arrangement and to administer the Arrangement.
- 8(2) The Supervisor shall lodge all funds held for the purpose of the Arrangement in a UK bank or building society account. Any funds held by the Supervisor, which in his opinion, are not required for the immediate purposes of the Arrangement, may be placed by him on deposit. The Supervisor will arrange for income tax to be deducted at source from any interest earned on the funds held by him.
- 8(3) Any funds held by the Supervisor representing unpaid dividend cheques six months after payment of the final dividend shall be paid to the Debtor by the Supervisor and the Debtor will thereafter be responsible for paying the dividends concerned if claimed by the relevant creditor(s).
- 8(4) The Supervisor shall have the power to do such things as are necessary or conducive to the implementation of this Proposal (without limitation of the powers available to him in law).
- 8(5) The Supervisor will not be personally liable for any liabilities incurred by the Debtor or otherwise.
- 8(6) Completion and/or termination of the Arrangement shall not affect the Supervisor's power to carry out such of his functions and to exercise such of his powers as are necessary for him to fully carry out his duties, obligations and responsibilities under the Arrangement, Act and Rules and to resolve such matters as may have arisen during the course of the Arrangement.

8(7) The Supervisor shall be under no obligation to perform any act or carry out any function save for those expressly provided for in the Arrangement, the Act or Rules.

9. Removal of Supervisor from office

9(1) On cause being shown, the Supervisor may be removed from office by the Court or by a resolution of a meeting of Creditors.

9(2) Any notice served by a Creditor upon the Supervisor under Paragraph 18.2 (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 his removal is sought.

9(3) The notice sent out by the Supervisor to Creditors convening such a requisitioned meeting shall specify the grounds upon which his 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 his receipts and payments.

10. Vacation of Office by Supervisor

10(1) If the Creditors resolve to accept the resignation of a Supervisor, or to remove a Supervisor from office, 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.

10(2) 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.

10(3) The Supervisor shall vacate office immediately if he ceases to be a person who is for the time being qualified to act as Supervisor.

10(4) A Supervisor who, for any reason, vacates office shall, as soon as practicable, deliver up to his successor Supervisor or Supervisors all books, records and papers relating to

the Arrangement and his administration thereof together with all assets of which he is a trustee under the terms of the Arrangement.

- 10(5) Former Supervisors shall be obliged to give such assistance to the Supervisor of the Arrangement from time to time as he may reasonably require for ascertaining what transpired during the tenure of office by the former Supervisor.

11. Vacancy in the office of Supervisor

- 11(1) 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.
- 11(2) If no Supervisor is in office, such a meeting of Creditors may be convened by the Debtor, any Creditor, any person who was in partnership with the Supervisor immediately before the vacancy occurred, or by the former Supervisor's authorising body.
- 11(3) 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 chairman of that meeting.

PART IV

DEBTOR'S DUTIES & OBLIGATIONS

12. Debtor's duties in relation to Supervisor

12(1) The Debtor undertakes and agrees that during the subsistence of the Arrangement he will:

- (a) give to the Supervisor such information as to his assets, liabilities and other affairs;
- (b) attend on the Supervisor, his agents, representatives or nominees at such times;
- (c) keep the Supervisor informed of his current residential address and employment details; and
- (d) do all such other things;

as the Supervisor shall reasonably require for the purpose of carrying out his functions and duties under the Arrangement.

12(2) The Debtor undertakes and agrees to furnish the Supervisor with accounts and/or details of his income and expenditure relating to his affairs of such nature, as at such date and for such period as the Supervisor may reasonably require.

12(3) Where at any time during the subsistence of the Arrangement After-Acquired Property of a description falling within Paragraph 13 is acquired by or devolves upon the Debtor, or there is an increase in the Debtor's income if the Debtor is under an obligation to make contributions out of income, the Debtor shall forthwith give the Supervisor notice of the property or, as the case may be, of the increase.

PART V

ARRANGEMENT ASSETS

13. After-acquired assets

- 13(1) Subject to the following sub-paragraphs, the Supervisor may claim as an asset of the Arrangement any Property acquired by the Debtor between the commencement date of the Arrangement and the date of its completion and/or termination which would have been capable of being an asset of the Arrangement if it belonged to or was vested in the Debtor at the date of commencement of the Arrangement (“After-Acquired Assets”). Any such asset shall be subject to the Arrangement and be an asset thereof.
- 13(2) After-Acquired Assets shall only be sold or realised to the extent necessary to repay the Creditors in full together with interest, if any, to which Creditors are entitled pursuant to the Arrangement.

14. Trust of Arrangement assets

- 14(1) Property constituting an asset of the Arrangement in the possession, custody or control of the Debtor shall be held by the Debtor upon trust for the purposes of the Arrangement until realisation thereof (if so provided) in accordance with the Arrangement.
- 14(2) 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.
- 14(3) The trusts referred to in Sub-paragraphs (1) and (2) shall not come to an end upon termination of the Arrangement. Instead those assets shall be got in and realised by the Supervisor, and any proceeds applied and distributed in accordance with the terms of the Arrangement.

15. **Restriction on dispositions**

The Debtor shall not sell, charge or otherwise dispose of any interest he may have in any asset subject to the Arrangement without the Supervisor's written consent.

PART VI

DIVIDENDS AND CLAIMS

- 16.1 The Supervisor will admit for dividend purposes all claims submitted by creditors as at the effective date and should any creditor not submit any claim within 3 months after the effective date in writing then that creditor will be excluded from participating in any dividend payment, subject to Paragraph 16.2 below.
- 16.2 Any creditor who submits a late claim will be excluded from any past dividends distributed but at the Supervisors discretion will be included in any future dividend distributions.
- 16.3 The Supervisor shall be entitled to ask for any further details or documentation he thinks necessary for the purpose of establishing the amount due to any person claiming to be a creditor.
- 16.4 The claims of Secured Creditors, Foreign Currency Debts, Debts payable at a future time, Interest on Debts will be dealt with in accordance with the Bankruptcy Rules.

PART VII

CREDITORS WHO DO NOT HAVE NOTICE

17. Any creditor whose claim has been omitted from this voluntary arrangement, but who would have been entitled to vote if he had been notified of the creditors meeting called to approve it, will be bound by its terms.

The Supervisor will, upon discovering the claim of such a creditor send notice to him requiring him to submit particulars of his debt as at the Effective Date.

The Supervisor's discretion to exclude such a creditor from dividend on the basis that the creditor has not submitted his claim in writing shall arise three months after the Supervisor's discovery of the claim.

PART VIII

MEETINGS OF CREDITORS

18. Power to call/requisition meetings of Creditors

- 18(1) The Supervisor may, if he thinks it desirable, summon and conduct meetings of Creditors for any purpose connected with the Arrangement in accordance with the Act and the Rules.
- 18(2) If requested in writing by the Debtor, 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.
- 18(3) Variations to the Proposal after it has been approved may be proposed by the Debtor and/or the Supervisor and may be considered at a meeting of creditors convened by the Supervisor for this purpose in accordance with Paragraph 18.5 below.
- 18(4) The Supervisor is entitled to make a charge in connection with any submitted variation.
- 18(5) The Supervisor shall give not less than 28 days notice of the meeting to the creditors. Rule 5.23 of the Rules shall apply to the meeting of creditors for the purpose of determining whether the requisite majority has been obtained. If the requisite majority is obtained at the meeting then the variation(s) or modification(s) shall bind every person who is bound by the arrangement. Rule 12.4A of Rules shall apply (quorum at meetings). In addition Rules 5.18 to 5.22 and 5.24 shall apply (conduct of meeting, voting rights and adjournment).

PART IX

PROVISIONS FOLLOWING DEBTORS BREACH OR NON-COMPLIANCE

Breach by the Debtor of the terms of the Arrangement

19(1) The Debtor shall be regarded as in breach of the Arrangement if:

- a. he/she has at any time arrears of contributions in a sum equivalent to three months or more of the contributions proposed in the Proposal. If he/she is in breach with this requirement but subsequently repays all or some of the arrears, he/she will be in breach again if arrears aforesaid arise again
- b. he/she debts and liabilities exceed by 10% or more the estimated figure put on such debts and liabilities by him/her for the purposes of the Proposal (and in the event of such breach the Supervisor will - without prejudice to any other alternative available to the Supervisor - seek to ascertain the Creditors' wishes in the context of the Arrangement overall)
- c. information which was false or misleading in any material particular or contains any material omissions:
 - (a) was contained in any statement of affairs or other document supplied by him/her under Part VIII of the Act to any person, or
 - (b) was otherwise made available by him/her to Creditors at or in connection with any meeting of Creditors held, or any postal resolution taken, in connection with the Arrangement,
- d. he/she fail to do all such things as may for the purposes of the Arrangement have been reasonably required of him/her by the Supervisor, or
- e. he/she fails to comply with any other of his/her obligations under the Arrangement

Provisions following the debtor's non-compliance

19(2) Non-Compliance by the Debtor of the terms of the Arrangement

If the Debtor does not comply with his obligations having been given written notice by the Supervisor which shall specify the period in which the Debtor has the opportunity to remedy the non-compliance the Supervisor shall have the power to terminate the Arrangement at his discretion. He shall report to the creditors when issuing his annual report under Rule 5.31 of the Rules or earlier if he thinks appropriate, if any of the following occurs:

- i** he becomes aware that a bankruptcy petition has been served against the Debtor during the duration of the Arrangement
- ii** the Debtor falls more than three months into arrears with contributions from income, or fails to pay the additional sums due in respect of overtime etc
- iii** the Debtor is in breach any obligation regarding the realisation of assets or after-acquired property
- iv** the Debtor fails to comply with any other of his obligations set out in the Proposal.

Procedure following breach

19(3) Notice of Breach

If, at any time, it appears to the Supervisor that he/she is in breach of the Arrangement, then, unless such breach is remedied forthwith, the Supervisor will as soon as practicable issue to him/her a notice ("Notice of Breach") identifying the breach and requiring him/her within [not less than one month and not more than three months (at the Supervisor's discretion)] of sending the notice:

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

19(4) Remedy of breach

If, within the period of between one month and three months referred to in Sub-paragraph 19(3) above, he/she

- (a) remedy his/her breach of the Arrangement; and
- (b) if so required in the Notice of Breach, provides a full explanation for the breach.

no further action will be taken against him/her, except that the Supervisor will report the breach to the Creditors when the Supervisor next sends his Annual Report to Creditors on the progress and efficacy of the Arrangement, or on the next convenient occasion, if earlier.

19(5) Failure to remedy breach

If he/she has not done those things specified in Sub-paragraph 19(4) above by the time specified or allowed, the Supervisor shall as soon as practicable report to Creditors and obtain their agreement (voting to be as set out in the Rules) to do one of the following :

vary the terms of the arrangement under the Rules; or

issue a certificate (“Certificate of Termination”) terminating the Arrangement by reason of his/her breach; and/or

provided that the Supervisor is holding sufficient funds which after payment of the Nominees fees and Supervisors remuneration and expenses shall be sufficient for such purpose present a petition for his/her bankruptcy.

PART X

CONDITIONS WHERE TAX AUTHORITIES ARE CREDITORS

20. Inland Revenue claims

20(1) The Inland Revenue provisional claim in the Arrangement will include (i) any tax credit overpayment and (ii) Self-Assessment payments on account due for the tax year which the Arrangement is approved, PAYE/SC/NIC deductions due to the date of approval, plus any other earlier unpaid liabilities.

20(2) The Inland Revenue final claim in the Arrangement will additionally include the Self-Assessment balancing adjustment for the tax year in which the Arrangement is approved due with the Self-Assessment Return on the 31 January of the following year.

21. Income commencing after approval

The debtor shall be responsible for payment of Self-Assessment/NIC on any source of income that commences after the date of approval of the Arrangement.

22. Post approval statutory returns and payments

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

23. Overdue accounts and returns

All statutory accounts and returns overdue at the date of the creditors' meeting must be provided to the Inland Revenue and/or Customs and Excise within 3 months of the approval date together with any other information or explanations required.

24. Funds to be paid to Supervisor

The debtor's monthly provision for income tax/NIC as it appears in the income and expenditure statement shall, from the date of approval of the Arrangement to the 5 April ending the tax year in which the Arrangement is approved, be paid to the Supervisor for the benefit of the arrangement.

25. Restriction on payment of dividend

No non preferential Dividend will be made until (i) the Inland Revenue Self-Assessment return for the tax year in which the Arrangement is approved (ii) a VAT or other levy or duty return due to Customs & Excise to the date of the meeting, has been filed or (iii) an Inland Revenue Determination and/or a Customs assessment has been made and the Supervisor has admitted their final claims.

26. Set-off of repayments

During the currency of the Arrangement, any tax/excise/VAT or other repayments that become due to the Debtor by Inland Revenue or Customs and Excise for periods for which claims may arise under the Arrangement, shall be offset against either department's claims in the Arrangement. Any remaining surplus shall be similarly applied to the claims of other government departments before being offered to the Supervisor for the benefit of the Arrangement. Any repayments for any later periods shall be offset against any post approval debts due to Inland Revenue or Customs and Excise. Any remaining surplus will then be treated as a windfall and offered to the Supervisor for the benefit of the Arrangement.

PART XI

MISCELLANEOUS PROVISIONS

27. Tax liabilities arising on realisations

Taxation liabilities of the Debtor 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.

28. Invalidity and/or illegality

If any provision or part of the Arrangement is found to be contrary to the Act 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.

29. Joint Liabilities

The rights of any creditor who has a joint and several claim against a third party will not be affected by this Proposal.

- 30.** It is intended that all amounts paid into the Arrangement shall be utilised in the payment of dividends to unsecured creditors (after payment of the costs of the Arrangement). However, if at the conclusion of the Arrangement there remains money in the scheme fund not exceeding £200 the Supervisor may at his discretion return this to the Debtor as surplus.