

**APPENDIX 5**

**VOLUNTARY ARRANGEMENT  
TERMS AND STANDARD CONDITIONS**

TABLE OF CONTENTS

1. & 2.	<b>Interpretation</b>
3.	<b>Approval</b>
4.	<b>Warranty</b>
5.	<b>Effect of Approval (General)</b>
6.	<b>Duration</b>
7.	<b>Completion</b>
8.	<b>Substantial Compliance</b>
	(a) Issue of Certificate where substantial compliance
	(b) Notification to creditors
	(c) Treatment as full implementation
9.	<b>Default</b>
10.	<b>Circumstances in which Supervisor may present a Default Petition</b>
11.	<b>Circumstances in which Supervisor will present a Default Petition</b>
12.1 & 12.2	<b>Variation</b>
13.	<b>Supervisor's power to summon meetings</b>
14.	<b>Cost of Summoning Meetings</b>
	(a) Security for payment of expenses
	(b) Appropriate Security
	(c) Vote for cost to be an expense of Arrangement
15.	<b>Majorities required to pass resolutions</b>
	(a) Resolutions by majority in value
	(b) Resolutions varying terms of Arrangement
	(c) Votes rendering resolution invalid
16.	<b>Suspension/adjournment of meeting</b>
	(a) Suspension
	(b) Adjournment
	(c) Period of adjournment
	(d) Use of claims and proxies at adjourned meeting
17.	<b>Debtor's obligations</b>
18.	<b>Trust of Arrangement Assets</b>
	(a) Assets in the possession of the debtor
	(b) Assets in the possession of the Supervisor
	(c) Trusts to survive termination of Arrangement
19.	<b>General Obligations</b>
20.	<b>After-acquired Assets</b>
21.	<b>Continuation or Sale of Debtor's Business</b>
22.	<b>Taxation</b>
23.	<b>Third Parties</b>
24.	<b>Expenditure on Assets</b>
25.	<b>Debtor's Assets</b>
26.	<b>Supervisor's Powers</b>
27.	<b>Application of Bankruptcy Provisions</b>
28.	<b>Wrongdoing</b>
29.	<b>Failure</b>
30.	<b>Creditors Committee</b>
	30.1 Establishment
	30.2 Eligibility
	30.3 Application of Rules
	30.4 Expenses of Members
31.	<b>Directions</b>
32.	<b>Agreement of Claims</b>

- 33.1            **Debts payable at future time**
  - (a)            Entitlement to Prove
  - (b)            Entitlement to Dividend
  - (c)            Calculation of amount of reduction
- 33.2            **Debts of uncertain value**
  - (a)            Estimation of debt or liability
  - (b)            Notification of creditor
- 33.3.           **Variation of Proof**
- 33.4           **Admission of Claims**
- 34.            **Secured Creditors**
- 35.            **Landlords**
- 36.            **Priority of Payments**
- 37.            **Payments to Creditors**
- 38.            **Administration, Bank Account, Costs & Expenses**
- 39.            **Death of Debtor**
- 40.            **Termination**
- 41.            **Vacancy in Office**
- 42.            **No Personal Liability for the Supervisor**
- 43.            **Inland Revenue Claims**
- 44.            **Income commencing after approval**
- 45.            **Post-approval statutory returns and payments**
- 46.            **Overdue Accounts and Returns**
- 47.            **Funds to be paid to Supervisor**
- 48.            **Restriction on Payment of Dividend**
- 49.            **Set-Off of Repayments**
- 50.            **Joint creditors**
- 51.            **Joint Proposals**
- 52.            **Breach or Non Compliance by the debtor**
- 53.            **Termination on debtor's request**

## APPENDIX 5

### VOLUNTARY ARRANGEMENT TERMS AND STANDARD CONDITIONS

#### Interpretation

1. (a) These conditions are integral to the proposal and should be read in conjunction with it. Should there be in any respect any conflict or ambiguity between the proposal and these conditions, the proposal shall prevail.  
(b) Where the Arrangement is co-dependent upon the proposal of any other Debtor, then these conditions shall apply to all such proposals.
2. In the proposal and these conditions, except where the context otherwise demands:-
  - (a) "The proposal" means the document annexed hereto and signed by the Debtor together with any amendments that may be made thereto, provided that any such amendments shall be in writing signed by the Debtor or made pursuant to section 258 (2) of the Act.
  - (b) "the Act" means the Insolvency Act 1986;
  - (c) "the Rules" means the Insolvency Rules 1986 and the Insolvency (Amendment) Rules 1987;
  - (d) "the Arrangement" means the proposal and these conditions read together;
  - (e) "IVA Creditors" means any creditor bound by the Arrangement under Section 260 (2) of the Act or subsequently admitted to the Arrangement by the Supervisor in accordance with these conditions.

#### Approval

3. The approval by Creditors of the Arrangement pursuant to the Act and the Rules shall be deemed to include approval of and acceptance of these conditions.

#### Warranty

4. The Debtor warrants that:
  - (a) he has disclosed full particulars of:-
    - (i) all matters relating to his assets and liabilities whether actual or contingent;
    - (ii) all matters required of him under the Insolvency Act 1986 and the Rules thereto.
  - (b) the contents of the proposal are accurate and true;
  - (c) any breach of any of these warranties may at the Supervisor's discretion be treated as a breach of the Arrangement entitling the Supervisor to issue a Certificate of non-compliance against the Debtor.

#### Effect of Approval (General)

- 5.1 Following the approval of the Debtor's proposal pursuant to the provisions of the Act and the Rules:-
  - (a) the Arrangement shall come into effect;
  - (b) the Supervisor shall exercise the functions given to him by the Arrangement and under the Act and Rules;
  - (c) for the duration of the Arrangement (and in addition after the cessation of the Arrangement provided that a certificate of due completion is filed by the Supervisor in accordance with Clause 7 or 8 hereof) no IVA creditor shall be entitled to commence or continue legal action or other proceedings against the Debtor or his property including, without limitation, bankruptcy proceedings, distraint, garnishment or attachment of earnings
  - (d) a creditor who, before the commencement of the Arrangement, has issued execution against the goods or land of the debtor in respect of a debt which is subject to the Arrangement or has attached a debt due to the debtor 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 (to include any Attachment of Earning Orders) as soon after the commencement of the Arrangement as is practicable;
  - (e) for the purposes of sub-paragraph (d):
    - (i) an execution against goods is completed by seizure and sale or by the making of a charging order absolute under section 1 of the Charging Orders Act 1979;

- (ii) an execution against land is completed by seizure by the appointment of a receiver or by the making of a charging order absolute under section 1 of the Charging Orders Act 1979;
- (iii) an attachment of a debt is completed by the receipt of the debt.
- (iv) This voluntary arrangement will not prejudice any claims the debtor may have against any creditor in relation to allegations of mis-sold products such as but not exhaustively, payment protection insurance.

### **Duration**

6. The Arrangement shall subject to clauses 7 and 8 hereof continue for such period of time as is set out in the proposal provided that such a period of time may be extended by agreement of all parties bound by the proposal in accordance with section 260 (2) of the Act or by the Supervisor in his discretion.

### **Completion**

7. On completion of the Arrangement the Supervisor shall in writing notify the creditors thereof by issuing a completion certificate confirming that the debtor has complied with all of his obligations under the Arrangement whereupon the debtor shall be released from all liabilities to the IVA creditors in respect of which the Debtor and the IVA creditors are bound under the Arrangement subject to any exceptions stated in the proposal.

Completion or termination (or both) of the arrangement will not affect the Supervisor's powers to carry out such functions and exercise such powers as are necessary for him to fulfil his duties, obligations and responsibilities under the arrangement, Act and Rules and to resolve any matters that arise during the arrangement.

### **Substantial Compliance**

#### **8. Issue of Certificate where substantial compliance**

- (a) 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:
  - (i) provided a full explanation of any breach of the terms of the Arrangement required by the Supervisor;
  - (ii) 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.

#### **Notification to creditors**

- (b) 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.

#### **Treatment as full implementation**

- (c) If the Supervisor issues a Completion Certificate under sub-paragraph (a) the Arrangement shall be treated as fully implemented for the purposes of Rule 5.34.

### **Default**

9. (a) In the event that there is a failure of the Arrangement as defined hereafter the Supervisor shall at his discretion issue a certificate of non-compliance to the IVA creditors. The issue of a certificate of non-compliance shall terminate the Arrangement without prejudice to the subsistence of the trusts constituted thereby and shall release the IVA creditors from the restrictions contained in clause 5.1 (c). Any IVA creditor so released shall be at liberty to take such action against the debtor as he is entitled to do by law in respect of the balance of any claim against the debtor having taken into account any interim or final distribution made under the Arrangement.
- (b) Default shall be defined in accordance with s 276 of the Act.

- (c) Upon the Supervisor being satisfied that the default has occurred then unless the same is regarded by him as being de minimis, he shall be entitled but not obliged to petition for the bankruptcy of the debtor.
- (d) Prior to the completion of the Arrangement the Supervisor shall retain sufficient funds to enable him to petition for bankruptcy.

On the issue of a certificate of non-compliance the Supervisor shall distribute such funds as are held by him in accordance with the terms of the Arrangement.

#### **Circumstances in which Supervisor may present a Default Petition**

10. The Supervisor may present a petition pursuant to Section 264 (1) (c) of the Act in circumstances where he believes the debtor is in default of the terms of the Arrangement (as modified by creditors or otherwise varied).  
Prior to issuing such a petition the Supervisor may call a meeting of creditors or otherwise canvass the views of creditors as to their preferred course of action.

#### **Circumstances in which Supervisor will present a Default Petition**

11. The Supervisor shall present a Default Petition in the following circumstances:-
- (a) the debtor is in default; and
  - (b) it would, in the opinion of the Supervisor, be beneficial to creditors to petition;
  - (c) the Supervisor has sufficient funds to meet the likely costs of petitioning.

#### **Variation**

- 12.1 The Supervisor may at any time and at his absolute discretion convene a general meeting of the IVA creditors for the purpose of considering and if thought fit, approving any variation to the Arrangement. The notice of the meeting shall set out the proposed variation or variations and will be accompanied by the Supervisor's report giving the reasons for the variation or variations and the expected effect. The Supervisor is entitled to make a reasonable charge of £750 in connection with any submitted variation.
- 12.2 So far as is possible the meeting shall be conducted in accordance with Section 258 of the Act and Rules 5.17 to 5.24 of the Rules except that
- (a) to the proposal shall be taken as references to the proposed variation;
  - (b) references to the Nominee shall be taken as references to the Supervisor;
  - (c) modifications may not include one intended to replace the Supervisor; and
  - (d) preferential creditors claims shall be calculated as at the date of the Interim Order, and all other claims as at the date of the original creditors meeting; and
  - (e) any appeal against the Supervisor's decision on entitlement to vote or any other matter arising at such meeting shall be made under the provisions of Section 263 of the Act.
  - (f) Rules 5.17 (6), (7), (8) and (9) shall not apply.
- 12.3 If at any meeting so held the Supervisor, the Debtor or any IVA creditor is dissatisfied with any resolutions passed he may apply to the Court for directions pursuant to Section 263 of the Act and the decision of the Court shall be final.
- 12.4 No variation to the Arrangement shall be effective without the consent of the debtor such consent shall not to be unreasonably withheld. A copy of the proposed variation shall be sent to the debtor whose consent to same shall be deemed should the debtor not indicate otherwise on or before the day of the meeting, or any adjournment thereof.

### **Supervisor's power to summon meetings**

13. The Supervisor shall have the power to summon meetings of the Voluntary Arrangement creditors for the purpose of obtaining their views, and for any other purposes for which he considers it appropriate to. The Supervisor is entitled to make a reasonable charge of £750 in connection with any further meeting of creditors.

### **Cost of summoning meetings**

14. **Security for payment of expenses**

- (a) Subject to sub-paragraph (c) below the cost of summoning and holding a meeting of creditors at the instance of the debtor or creditors under paragraph 6.1 shall be paid by that person or persons who shall at the Supervisor's discretion deposit security for their payment with the Supervisor.

**Appropriate security**

- (b) 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.

**Vote for cost to be an expense of arrangement**

- (c) Where a meeting is so summoned it may vote that the expenses of convening and holding it shall rank as an expense of the Arrangement.

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

15. **Resolutions by majority in value**

- (a) 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.

**Resolutions varying terms of Arrangement**

- (b) In the case of a resolution varying the terms of the Arrangement a majority of three-quarters or more (in value) of those present and voting in person or by proxy is required to pass the resolution.

**Votes rendering resolution invalid**

- (c) 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 Chairman's belief, associates of the debtor.

### **Suspension/adjournment of meeting.**

16. **Suspension**

- (a) Once only in the course of any meeting the Chairman may in his discretion and without an adjournment declare the meeting suspended for any period up to one hour.

**Adjournment**

- (b) The Chairman at any meeting may, in his discretion and shall, if the meeting so resolves, adjourn it to such time and place as seems to him to be appropriate in the circumstances; provided that if the Chairman is the Supervisor and a resolution has been proposed for his removal, the Chairman 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.

**Period of adjournment**

- (c) An adjournment under this paragraph shall not be for a period of more than 21 days or such longer period as the Court may allow.

**Use of claims and proxies at adjourned meeting**

- (d) Where a meeting is adjourned under this paragraph, claims and proxies may be used if lodged at any time up to 4.00 p.m. on the business day immediately before the adjourned meeting.

### **Debtor's obligations**

- 17.1 The Debtor shall at the request of the Supervisor execute upon such terms as the Supervisor shall require such deeds, transfers, conveyances, declarations, cautions, deeds of trust and powers of attorney as may be required by the Supervisor for the implementation of the scheme the sale of assets, the getting in of assets and the protection of the Debtor's property included in the proposal provided that the Debtor shall not be obliged to execute any power of attorney or deed of trust save in favour of the Supervisor unless otherwise so directed by the Court.

- 17.2 The debtor shall give the Supervisor whatever type of accounts or details (or both) of their income and expenditure relating to their affairs, for whatever date and period, as the Supervisor may reasonable require.
- 17.3 The debtor must obtain the Supervisor's written consent before selling, charging or otherwise disposing of any interest they may have in any asset subject to the arrangement.
- 17.4 A debtor who is subject to redundancy whilst in an IVA must:
- Inform their Supervisor within 14 days of notice of the redundancy, regardless of whether they have received, or is to receive any redundancy payment;
  - Inform their Supervisor of the amount of any redundancy payment within 14 days;
  - Pay to the Supervisor within 14 days of receipt of any redundancy payment any amount in excess of three months' net take home pay (as set out by the last income and expenditure review undertaken). If there is no amount in excess of three months' net take home pay no payment is required; although the debtor shall pay over to the Supervisor an amount equivalent to three months' contributions within 14 days of receipt of any redundancy payment;
  - Keep the Supervisor informed of any changes in employment status.

At the point new employment is obtained the Supervisor will review the debtor's IVA contributions and at that point there will be an expectation that any remaining redundancy funds will be paid into the IVA, and the debtor's performance in this regard will be reported to creditors.

Failure to disclose any such entitlement to redundancy payment will be considered a breach of the IVA.

- 17.5 Where the debtor has failed to disclose exceptional income, the term of the arrangement may be extended at the Supervisor's discretion to recover any sums due (to correct the breach) without any modification being required.
- 17.6 The debtor will be allowed a payment break of up to six months once during the term of the arrangement without any variation being required at the discretion of the Supervisor. The term of the IVA will be extended by the length of the payment break so that the debtor makes the same number of contributions as agreed in the original proposal. An agreed payment break will not constitute a breach. At the conclusion of an agreed payment break the Supervisor shall, if necessary, review the position and consult with creditors where appropriate.
- 17.7 Should the debtor be faced with an emergency item of expenditure or an unforeseen reduction in income and they are unable to pay either the full amount due or anything at all, then, subject to the discretion of the Supervisor, the debtor may be allowed to take a payment holiday without a variation being required. This is subject to all of the following three conditions being met:
- (i) Full details of the debtor's inability to pay must be demonstrated to the Supervisor's satisfaction
  - (ii) No more than the equivalent of three months' payments can be agreed to be missed in this way; and
  - (iii) The duration of the IVA will be extended by the same number of months for which the payments have been suspended to recover the sums due, unless the debtor has otherwise made good the shortfall.
- Any missed payments agreed by the Supervisor in this way should not be counted in the arrears of contributions which would be regarded as a breach of the IVA and details of this will be included in the annual report.
- 17.8 If the debtor is employed he shall not obtain any creditor greater than £500 during the term of the arrangement without the prior consent of the Supervisor.
- 17.9 If the debtor is self employed and requires credit for the running of his business during the term of the arrangement the credit shall be repaid in full within the shorter of 30 days or the creditor's agreed term.

### **Trust of Arrangement Assets**

#### **18. Assets in the possession of the debtor**

- (a) 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.

#### **Assets in the possession of the Supervisor**

- (b) 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.

#### **Trusts to survive termination of Arrangement**

- (c) The trusts referred to in sub-paragraphs 18 (a) and 18(b) 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.

### **General Obligations**

#### **19. For the general implementation of the Arrangement the Debtor shall at the request of the Supervisor:-**

- (a) do all the things that the Supervisor shall reasonably require;
- (b) institute or defend any legal proceedings which touch upon or concern the Arrangement as required by the Supervisor;
- (c) apply for legal aid for such proceedings;
- (d) attend upon the Supervisor when required;
- (e) deliver to the Supervisor upon receipt any communication received by him (save from the Supervisor) which may touch upon or concern the Arrangement or any assets comprised therein.

### **After-acquired Assets**

#### **20. If prior to the completion of the Arrangement the Debtor shall become possessed of or receive assets or property (of whatever nature) which are not included in the proposal and:-**

- (a) the existence of which was not or could not reasonably have been known or envisaged at the date of the creditors' approval of the Arrangement; or
- (b) the existence of which was not disclosed to the Supervisor by the Debtor and that the Debtor owned at approval of the Arrangement; or
- (c) that as a result of any change in law, or any clarification of existing law, would be claimable by a Trustee in Bankruptcy of the Debtor as part of the bankruptcy estate if a Bankruptcy Order were made against the Debtor but would not have been so claimable in the absence of such change or clarification

then the Debtor shall forthwith disclose the same to the Supervisor and make available to the Supervisor the whole of such assets or property or such part of such assets or property as shall allow the Supervisor to pay in full all the liabilities of the Debtor including the costs of the Arrangements and the Supervisor's fees and disbursements comprised in the Arrangement together with interest at the rate applicable to bankruptcies.

### **Continuation or Sale of Debtor's Business**

#### **21.1 The following conditions shall only apply if the Debtor's business is to be continued for whatever reason after approval of the Arrangement.**



- 21.2 The Debtor shall continue his business on his own account:-
- (a) in his own name; or
  - (b) if applicable, in the name or names in which it was conducted immediately before the date of the interim order. The name of the business shall not be changed during the duration of the Arrangement without the Supervisor's consent.
- 21.3 Until such times as the Arrangement has been completed and the provisions of Rule 5.34 complied with or the Arrangement has been terminated and a certificate of non-compliance been issued by the Supervisor, the Debtor shall not:-
- (a) enter into any contract or agreement or undertaking for the sale of his business; or
  - (b) dispose of the goodwill of his business or any assets forming part of or essential to such goodwill; or
  - (c) make any other material changes to the extent, nature or place of his business except:-
    - (i) in accordance with any provisions of the Arrangement; or
    - (ii) with the written agreement of the Supervisor; or
    - (iii) if bound by law to do so.
- 21.4 Until completion of the Arrangement or such time as the Debtor ceases to carry on his business, whichever is the earlier, the Debtor shall:
- (a) submit such accounts to the Supervisor as the Supervisor may require;
  - (b) consult the Supervisor as often as the Supervisor may require on the conduct and management of his business and keep the Supervisor informed on any material developments relating thereto.
- 21.5
- (a) the Debtor shall carry on his business as principal and shall be solely responsible for any liabilities incurred therein after the approval of the Arrangement as well as before and shall not hold out the Supervisor or his firm as agent of the business;
  - (b) notwithstanding the provisions of the Arrangement any creditors shall be at liberty to commence and continue legal proceedings against the Debtor in respect of any liabilities incurred by him after the approval of the Arrangement
- 21.6 Should the debtor's business realise surplus funds from trading being more beneficial than originally envisaged, the debtor may retain same. This term shall be read subject to any provisions set out within the IVA proposal document itself.

### **Capital Gains Tax**

22. Capital gains tax liabilities arising from the disposal of assets under the terms of the Arrangement shall be an expense of the Arrangement only where proceeds of sale of such disposal of assets are passed to the Supervisor for distribution under the terms of the Arrangement.

### **Third Parties**

- 23.1 Where the proposal includes any obligation whatsoever on the part of a third party:-
- (a) such obligation shall be enforceable at the direction of the Supervisor by the Debtor;
  - (b) the failure of such obligation shall be deemed to constitute a failure of the Debtor's obligations within the meaning of section 276 (1) (a) of the Act and a failure by the Debtor to do all such things as may be reasonably required of him within the meaning of section 276 (1) (c) of the Act;
  - (c) any assets transferred to the Supervisor by any such third party shall be held by the Supervisor on trust for the purposes of the Arrangement.
- 23.2 Unless it is so stated in the proposal then no third party funds are proposed to be injected into this Arrangement.

### **Expenditure on Assets**

24. The Supervisor shall only spend any funds in his hands for the purpose of repairing completing or altering any asset held by him or by the Debtor on trust for the purpose of the Arrangement if:-
- (a) he is of the opinion that as a result the asset or assets concerned are likely to become more readily saleable or increase in value by an amount greater than that of the expenditure thus incurred;
  - (b) if so bound to do by the terms of the proposal.

### **Debtor's Assets**

- 25.1 Where the Debtor is to transfer assets to the Supervisor he or she shall do so within the timescale provided in the proposal. The following assets shall not be transferred to the Supervisor but shall be held by the Debtor on trust for the benefit of the creditors within the IVA:-
- (a) freehold or leasehold property;
  - (b) items which cannot be transferred without breaching the terms of any statute or the conditions on which they are held; and
  - (c) the Debtor's business.
- 25.2 The Supervisor may require the Debtor to execute a legal charge over any freehold or leasehold property or any interest therein to secure the sums payable under the IVA. If such a legal charge has not been executed within one month of the approval of the proposal the Supervisor may register a restriction over such property to secure the amount payable.
- 25.3 Where book debts or other assets are to be transferred to the Supervisor the approval of the proposal shall act as an assignment of those debts to the Supervisor. The Supervisor may, if required, execute a bill of sale and register the same to secure those assets that are to be transferred to the Supervisor.
- 25.4 Where the debtor has assets in the form of potential causes of action the supervisor, shall, if he deems it appropriate in his absolute discretion, investigate these and may instruct solicitors to investigate same. The fees, expenses and disbursements incurred in such investigation shall be an expense of the voluntary arrangement. If the solicitor concludes that a claim has good prospects of success the debtor shall co-operate with the supervisor and take all reasonable steps to advance the claim including instructing solicitors and assisting them as appropriate with a view to realising the asset for the benefit of the voluntary arrangement.

### **Supervisor's Powers**

- 26.1 The powers of the Supervisor shall be those set out in the Proposal and these conditions and subject thereto the Supervisor shall have all the powers conferred upon an administrative receiver by virtue of Schedule 1 to the Act provided that the Supervisor shall be under no obligation to exercise such powers unless expressly so required by the Arrangement. The powers set out in the said schedule shall be read and construed as if the same applied to individuals and not bodies corporate.
- Paragraphs 8, 15, 16, 19, 21 and 22 of the said schedule shall not apply.
- 26.2 The Supervisor may delegate to his firm and any partner, servant, employee or agent of his any or all of his duties hereunder save those which by law he is bound to perform personally.
- 26.3 The Supervisor shall report to creditors on an annual basis or more frequently, by letter or formal meeting, if there are material developments or changes in the progress of the Voluntary Arrangement or debtor's circumstances.

- (1) If the Supervisor considers it appropriate he may exercise his discretion to waive strict adherence to any obligations placed upon the debtor under the terms of the arrangement. Before exercising his discretion in this way, he shall give notice to the creditors of his intention and provide an explanation of the reasons giving rise to the proposed exercise of discretion. He will then allow creditors a period of 21 days in which to provide him with their written comments if they do not wish the supervisor to exercise his discretion in the manner intended.
- (2) If no comments are received within 21 days the supervisor will so exercise his discretion providing he still considers it appropriate so to do.
- (3) Should any one (or more) creditor(s) write to the supervisor under (1) above he shall not exercise his discretion unless and until that creditor(s) has indicated an agreement to the exercise of the discretion.

26.4 The Supervisor shall have discretion to permit the debtor to reduce contributions into the arrangement by no more than 15% (relative to the original proposal or last agreed variation) should it appear to the Supervisor that such a reduction would be reasonable having regard to the debtor's circumstances at the time of the request.

#### 26.5 **Postal resolutions**

- (1) **[Application of procedure]** The following procedure may be utilised by the Supervisor, if he thinks fit, for the purposes of ascertaining the wishes of Creditors on any matter concerning the Arrangement other than the removal of the Supervisor.
- (2) **[Notice of proposed resolution]** The Supervisor may send to the Debtor and every Creditor whose address is known to him 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.
- (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.
- (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.
- (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 61 entitled to vote on the resolution have indicated their consent to the resolution in writing.
- (6) **[Application of voting rights and majorities]** The provisions of Paragraphs 59 (entitlement to vote), 60 (admission and rejection of claim) and 61 (majorities required to pass resolutions) shall apply to postal votes as they do to votes at meetings of Creditors.
- (7) **[Copy of resolutions]** A copy of every resolution taken under this Paragraph, together with copies of the votes of Creditors received by the Supervisor endorsed by the Supervisor with the date upon which the vote was received by him, shall be kept with the records of the Arrangement.

#### **Application of Bankruptcy Provisions**

27. Unless stated otherwise provided for in the proposal, or the context of the proposal otherwise demands, the following provisions of the Act shall apply to the proposal:-

- (i) Sections 322 – 326 inclusive
- (ii) Sections 328-329 and 330

with such modifications as shall be appropriate to make and render the same relevant to the proposal provided that unless the proposal so provides no creditor's claim shall carry interest for any period commencing with the day on which the proposal is approved by the Creditors Meeting. Creditors' claims shall be calculated as at such date.

### **Wrongdoing**

28. Unless disclosed in the proposal, if, before completion of the Arrangement, the Supervisor becomes aware of any matter which in the context of a bankruptcy would constitute a prior transaction under sections 339, 340 and 343 or a wrongdoing under sections 353 to 362 inclusive then he may, at his sole discretion, report the same to the creditors, convene a creditors meeting and subject to the right of the Debtor to apply to the Court, propose at such meeting failure of the Arrangement.

### **Failure**

29. The term "failure of the Arrangement" shall mean any of the following events:-
- (a) any matter which would entitle any person to petition for the bankruptcy of the Debtor under sections 264 (1) (c) and 276 of the Act;
  - (b) any bankruptcy petition being filed in respect of the Debtor in respect of any liability arising after the approval of the Arrangement;
  - (c) the failure of the Debtor to comply with any of the terms of the Arrangement;
  - (d) any act or thing which in the opinion of the Supervisor renders the implementation of the Arrangement impossible or frustrated unless such act or thing is envisaged or catered for in the proposal, provided that the sale of an asset or realisation of an asset for a sum less than that estimated in the proposal shall not by itself constitute an act or thing within the meaning of this provision unless such is caused by the wilful or negligent act or default of the Debtor or by someone acting or at his discretion on his behalf other than the Supervisor;
  - (e) the failure of any matter set out in the proposal and stated to be a condition precedent of the Arrangement;
  - (f) the passing of a resolution by the IVA creditors pursuant to condition 28 hereof relating to wrongdoing.

### **Creditors Committee**

#### **30.1 Establishment**

Any meeting of creditors may establish a committee ("the Creditors Committee") consisting of not less than 3 and not more than five members to represent the interests of the Creditors and to provide such assistance and guidance to the Supervisor as he may reasonably require.

#### **30.2 Eligibility**

All the members of the Creditors' Committee must be creditors of the debtor and any creditor (other than the one who is fully secured) may be a member, so long as:

- (a) he has lodged a claim; and
- (b) his claim has neither been wholly disallowed for voting purposes nor wholly rejected for the purposes of distribution or dividend.

#### **30.3 Application of Rules**

The Rules relating to the Creditors Committee in a bankruptcy contained in Rules 6.151 to 6.163 shall apply to the Arrangement with the modifications necessary to apply those rules to a voluntary arrangement.

#### **30.4 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.

- 30.5 The Creditors Committee shall have the power to be able to determine that the Voluntary Arrangement has no future and petition for bankruptcy and any funds from the Voluntary Arrangement not required to meet Arrangement expenses shall be used for such purpose.

### **Directions**

31. If the Supervisor is for whatever reason uncertain as to what action he should take in any situation he may within his own discretion:-
- (a) seek the advice of the creditors committee (if any); or
  - (b) seek the advice of the creditors; or
  - (c) apply so far as is possible the Act and Rules as they relate to bankruptcy; and subject thereto;
  - (d) apply to the Court for directions.

### **Agreement of Claims**

- 32.1 As soon as possible after the approval of the Debtor's proposal (provided no application under section 262 is pending) the Supervisor shall send a notice to each person shown in the Debtor's proposal or statement of affairs as a creditor requiring him/her or it to provide such details as the Supervisor thinks fit of the amount claimed to be due from the Debtor.
- 32.2 The Supervisor shall:-
- (a) send a similar notice to any other person to whom he believes the Debtor may be indebted;
  - (b) 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.
- 32.3 Where a creditor's claim is one which would not be provable in bankruptcy or is one for which a debtor would not be discharged or released pursuant to the provisions of the Act then such creditor, if bound by the Arrangement:-
- (a) shall be entitled to payment of such dividend or distribution in the Arrangement as such claim entitles the creditor to;
  - (b) shall not, during the continuation of the Arrangement, be entitled to the issue or continue with any legal proceedings or enforcement action against the property or person of the debtor (whether or not such enforcement action involves court process);
  - (c) on completion of the Arrangement, shall not be entitled to proceed against the person or property of the Debtor for the balance of the creditors' claim (if any) not paid as at the date of completion and, consequently, such creditor shall be bound by the provisions of Conditions 7 and 8 hereof.
- 32.4 Subject to Conditions 18.5 and 18.6 the amount on which payments or dividends to a creditor are to be calculated under the Arrangement shall be the sum for which a proof would have been admitted had a bankruptcy order been made against the debtor on the day the Proposal was approved.
- 32.5 Where before the Proposal is approved there have been mutual credits, mutual debts or other mutual dealings between the debtor and any person claiming to be a creditor of the debtor, 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. Only the balance (if any) of the account owed by the debtor to the creditor shall be claimable by the creditor. This provision shall not affect voting rights. For the avoidance of doubt, this provision shall not apply in relation to any claims for financial mis-selling against any lender (such as a payment protection insurance mis-selling) in which instance no set off shall be permitted and the monies due in relation to any such claim shall be paid to the Supervisor, and not to the debtor.
- 32.6 For the purpose of providing or claiming a debt incurred or payable in a currency other than sterling the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date on which the Proposal is approved. For this purpose, the 'official exchange rate' is the middle market rate at the Bank of England, as published for the date in question. In the absence of any such published rate, it shall be such rate as the Supervisor shall determine.

**33.1 Debts payable at future time**

(a) **Entitlement to Prove**

A creditor may claim for a debt of which payment was not yet due at the date of commencement of the Arrangement.

(b) **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, he is entitled to dividend equally with other creditors but subject as follows.

(c) **Calculation of amount of reduction**

For the purpose of dividend (and for no other purpose) the amount of the creditor's admitted claim (or if a distribution has previously been made to him the amount remaining outstanding in respect of his admitted claim) shall be reduced by applying the formula:-

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

where "X" is the value of the admitted proof and "n" is the period beginning with the date of the creditors meeting approving the IVA and ending with the date on which the payment of the creditors' debt would otherwise be due.

**33.2 Debts of uncertain value**

**Estimation of debt or liability**

(a) 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.

(b) **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 he may exercise his rights under paragraph 33.4 (b).

(c) Where the value of any debt is estimated by the Supervisor under sub-paragraph (a) the amount provable in the Arrangement shall be the amount of the estimate.

**33.3 Variation of Proof**

A creditor's proof may, by agreement between the creditor and the Supervisor, be varied or withdrawn at any time.

**33.4 Admission of Claims**

(a) A proof may be admitted for inclusion in the Arrangement by the Supervisor either for the whole amount claimed by the creditor or for part only of that amount and if the Supervisor rejects a proof in whole or in part he shall prepare a written statement of his reasons for doing so and shall send it forthwith to the creditor.

(b) In the event of the proof of debt or claim of any creditor or purported creditor being rejected (whether in whole or in part) by the Supervisor the creditor or purported creditor shall have the right of application to the Court on the admissibility or otherwise of such proof of debt or claim [provided that any such application must be made within 21 days of the creditor receiving the written statement mentioned in this paragraph].

(c) 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.

(d) The Supervisor shall have the discretion to admit claims of £1,000 or less, or claims submitted that do not exceed 110% of the amount stated by the debtor in the proposal, without the need for additional verification.

**33.5** A creditor omitted from the proposal but who is bound thereby by virtue of Section 260 (2) (b) shall prove in the Voluntary Arrangement and be entitled to receive dividends under it. If the level of any additional claim is such that in the Supervisor's opinion materially affects the outcome for creditors then the Supervisor shall notify the creditors thereof by letter seeking their views as to how to proceed or alternatively shall call a creditors meeting for such purpose.

### **Secured Creditors**

34. Any creditor of the debtor at the date of approval of the Arrangement who holds security in respect of part or the whole of their debt shall look to assets forming part of their security to discharge their debts. Any creditor believed to be fully secured shall be deemed to rely upon that security for full satisfaction of its debt and is not bound by the terms of the Arrangement save to the extent of any subsequent deficiency discussed below. In the event of a shortfall or deficiency occurring on relation of such security and to the extent that the creditor is no longer fully secured such creditor will rank for dividend purposes as an unsecured creditor. No dividends paid by the Supervisor prior to such shortfall or deficiency occurring on realisation of security shall be prejudiced by any such claim, but the secured creditor shall have a first charge on available funds until such time as the dividend due to that creditor equates to the rate already paid to unsecured IVA creditors. Wherever a secured creditor does not value its security it may value its security with the Agreement of the Supervisor and may rank for dividend for any shortfall.

The Supervisor shall receive any surplus remaining in the hands of the secured creditor after that creditor has been paid in full for the benefit of the IVA creditors as a whole.

### **Landlords**

35. If the debtor is the lessee of any premises:-
- (a) any arrears of rent and any other liabilities due under a lease for the period prior to the approval will rank as an unsecured claim in the Arrangement;
  - (b) where the debtor continues to occupy or to trade from leasehold premises all rent and other liabilities arising under the lease after approval of the proposal will be paid by the debtor as and when they fall due;
  - (c) where the debtor vacates any leased premises without the assignment of the lease to a third party the lessor's claim in the Arrangement for rent will be for the arrears of rent as at the date the proposal was approved, plus the lowest of:-
    - (i) the rent for the period of the duration of the Arrangement as stated in the proposal;
    - (ii) the rent for the remainder of the lease; and
    - (iii) the rent for the period from the date the proposal was approved to the date the premises are re-let by the lessor;
  - (d) the inclusion of a lessor's claim for future rent for a period not in excess of the duration of the Arrangement, as stated in the proposal, shall be deemed to be in full and final settlement of any future claim the lessor may have against the debtor in respect of that lease.

### **Priority of Payments**

36. The funds held by the Supervisor shall be applied strictly in accordance with the terms of the proposal but, subject thereto, in the order of priority as would apply in bankruptcy.

### **Payments to Creditors**

- 37.1 The Supervisor shall not make any payment to creditors until at least 28 days have elapsed since the date of the creditors meeting approving the Arrangement. Subject thereto and provided no application under section 262 or 263 (3) is pending, he shall make payments or distributions to creditors:-
- (a) at the time or times specified in the Arrangement;
  - (b) if no other provision is made at such time or times as he considers appropriate.
- 37.2 In the event that any dividends remain unclaimed for a period of three months from completion of the Arrangement, then:-
- (a) the Supervisor shall pay the amounts thereof by way of dividend amongst the remaining creditors;
  - (b) the Supervisor shall have no further duties, obligations or liabilities to those creditors not claiming a dividend.
- 37.3 It is the duty of every creditor claiming in the Arrangement to advise the Supervisor of any change of address to which any dividend should be forwarded. If upon termination of the Arrangement any funds held for the purposes of payment to creditors remain in the hands of the Supervisor because any creditor

has not cashed any cheque forwarded to him or can no longer be traced the Supervisor shall distribute funds to the other creditors ignoring the claims of untraced creditors. If the costs of distribution would exceed the amount remaining the Supervisor shall pay the remaining amount to the debtor. The debtor shall not be liable to the creditor or creditors concerned for the amounts of such dividends and the issue of the certificate of compliance will release the debtor from any obligations to those creditors.

- 37.4 The Supervisor may, in his absolute discretion, give to any creditors known to him and who have not submitted a claim in the IVA a notice of an intended dividend (For the avoidance of doubt the Supervisor shall be under no duty to give any such notice to creditors or otherwise contact creditors in relation to submitting claims over and above the initial provision of a proof of debt form: it shall be the responsibility of creditors to submit claims and ensure same have been admitted for dividend purposes). The notice shall specify a date up to which claims may be lodged and which shall be at least 21 days from the date of the notice. Claims not lodged in time shall be dealt with under paragraph 37.5 hereof.
- 37.5 Any creditor who has not proved his debt to the satisfaction of the Supervisor before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved but:
- (a) when he has proved that debt he 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 that he has failed to receive; and
  - (b) any dividend or dividends payable under (a) above shall be paid before that money is applied to the payment of any such further dividend.
- 37.6 Where the Supervisor is due to pay a dividend under the terms of the arrangement but has not yet received in all proof of debt forms he may at his absolute discretion postpone payment of any dividends until such time as all proof of debt forms are received.

#### **Administration, Bank Account, Costs and Expenses**

- 38.1 The Supervisor may open one or more accounts with a United Kingdom branch or branches of a recognised bank in his name as Supervisor of the Arrangement and pay into such account or accounts all the funds received by him under the terms of the Arrangement. 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 with any recognised bank in the United Kingdom or invested as the Supervisor decides is in the best interests of the IVA creditors.
- 38.2 The funds held by the Supervisor shall be applied strictly in accordance with the terms of the proposal but subject thereto the Supervisor shall pay from funds under his control in the following order of priority:-
- (a) any fees and disbursements to which the nominee is entitled;
  - (b) any expenses properly incurred by him in pursuance of the Arrangement including, without prejudice to the generality of the foregoing:-
    - (i) the fees of any solicitors appointed to assist the debtor or the nominee in connection with the application for the interim order and proceedings related thereto, if any;
    - (ii) the fees of any valuer or agent retained by the Supervisor to value or dispose of any of the assets assigned to the Supervisor or held by the debtor on trust for the purpose of the Arrangement;
    - (iii) unless the Court orders otherwise, the cost of any action to which the Supervisor is a party wherein costs are incurred by him or awarded against him in his capacity as Supervisor;
    - (iv) any tax assessable on the Supervisor in his capacity as such;
    - (v) the costs of complying with any obligation laid upon the Supervisor by virtue of the Arrangement, the Rules or any other rules, regulations or orders made thereunder;
    - (vi) such other sums as he shall be authorised or required to pay by virtue of the Arrangement or any rule of law.
- 38.3 There shall be paid to the nominee, whether or not he is the Supervisor, such fees, expenses and disbursements as are specified in the Arrangement.



- 38.4 After paying or providing for the fees and expenses payable under the IVA the Supervisor shall apply funds or assets under his or her control towards the following:-
- (a) the costs of the Official Receiver;
  - (b) the agreed petitioning creditors costs (if applicable);
  - (c) preferential claims;
  - (d) non-preferential claims;
  - (e) interest on preferential and other unsecured claims, calculated in accordance with Sections 328 (4) and (5) of the Act the date of approval of the proposal being substituted for the commencement of the bankruptcy;
  - (f) reimbursing persons who have contributed funds or assets to the IVA;
  - (g) claims to be treated as deferred under the IVA;
  - (h) interest on items (f) and (g), calculated as in (e);
  - (i) payment of any remaining surplus to the debtor.

**38.5 Amount of fees**

The Supervisor shall be entitled to charge fees for his services in accordance with the time actually and reasonably expended by him and his staff in carrying out the Supervisor's functions under the Arrangement by reference to the ordinary hourly rates of the Supervisor and his staff as shall apply from time to time.

**38.6 Payment of fees costs and expenses**

38.6.1 The fees, costs, charges and expenses of the Supervisor (and insofar as this section is concerned reference to the Supervisor includes reference to the Nominee) 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.

38.6.2 The Supervisor shall be entitled to charge expenses for the following specific items at the rates shown below:-

A Category 1 expense is specific item of expenditure that is directly related to a particular insolvency cases, where the cost of the expense incurred is referable against an independent external supplier's invoice or published tariff of charges

A Category 2 expense is all other items of expenditure, which cannot, or cannot easily, be directly related to a particular insolvency case because there is an element of shared or allocated cost, and/or where the cost of the expense incurred is an estimated, utilised cost with the estimate based on external costs or opportunity costs.

The following items are recharged at the following rates:

- (a) Printing and Photocopying 10p per sheet
- (b) Postage at the prevailing 1<sup>st</sup> class royal mail rate
- (c) Mileage at the prevailing Legal Services Commission rate (presently 45p per mile)
- (d) Storage Books and Records £2.50 per box per calendar quarter
- (e) File set up fee £10
- (g) Faxes 50p per sheet

38.6.3 In order to minimise costs the Supervisor has agreed fixed fees with Insolvency Case Support Limited (ICS) to undertake certain functions. These are as follows:

Land Registry Search	£58.75	plus disbursements
Registering a Caution	£176.75	plus disbursements
Issuing uncontested bankruptcy proceedings against the debtor	£1175.00	plus disbursements
Anti Money Laundering Searches	£69.00	plus disbursement

- 38.6.4 The case will be managed on a bespoke case management system licensed by ICS. A licence fee of £75 per case per annum is charged by ICS for the use of the software payable in advance.
- 38.6.5 ICS will provide Beesley and Company with a room to hold meeting of creditors. This room is booked on a case by case basis and ICS will charge £75 plus VAT at the applicable rate for such hire.
- 38.6.6 ICS will provide a document collection service to Beesley and Company. There is a charge payable to ICS of £150 plus VAT at the applicable rate.
- 38.6.5 Interlocking proposals - Where a proposal is put forward by a debtor which is an interlocking proposal (and which may or may not also be capable of standing alone with or without variation) then: the nominee's fees stated in each interlocking proposal shall be the total fees for acting as nominee in relation to both proposals but may be apportioned between each proposal in whatever proportions the nominee may in his absolute discretion deem fit: the supervisor's fees for acting as supervisor in relation to both arrangements shall be capable of being apportioned between the arrangements in whatever proportion the supervisor may in his absolute discretion deem fit.
- 38.6.6 Additional Supervisors time - The Supervisor's fees, as estimated in the proposal assume that the Supervisor will perform the basic duties of agreeing creditor claims and paying dividends in relation to same, preparing annual reports and a final report. This will depend upon the timely submission of creditor claims and the agreement thereof together with the timely payment of voluntary contributions. In addition should the Supervisor be required by creditors' modifications to the proposal to carry out additional tasks such as reviews of income and expenditure or pay slips, or additional verification work during the currency of the arrangement, the Supervisor shall be entitled to additional costs from the debtor by requiring the making of additional contributions into the arrangement or extension of the arrangement or otherwise. Additionally should the Supervisor have to spend additional time arising from the debtors failure to comply with the requests for information in a timely basis or fails to do anything else that he is required to do on a timely basis then the Supervisor shall be entitled to similarly claim such funds for the debtor in the manner set out above. The Supervisor shall not be required to issue a certificate of due completion of the arrangement notwithstanding that the debtor may have done what he was contractually obliged to do if he or she has not paid over to the Supervisor his fees and costs incurred as a result of any additional duties placed upon the Supervisor or additional work required in having to liaise with the debtor. This clause will only apply in the event that the Supervisor's fees are fixed or capped in any way, shape or form by modifications proposed by creditors' meetings or adjournments thereof or that an expressed minimum dividend requirement is included by creditors. Any clauses restricting Supervisor's fees shall be read as not affecting this clause unless they specifically make reference to this clause since the operations of this clause will not effect the dividends available to creditors.
- 38.6.7 Realisations: This shall mean the total receipts into the voluntary arrangement(s). Where the voluntary arrangement is put forward with another voluntary arrangement (an interlocking voluntary arrangement) it shall mean the total receipt into both estates.

Monthly Payments: This shall be the total amount paid per calendar month by way of a voluntary contribution into the voluntary arrangement(s) Where the voluntary arrangement is put forward with another voluntary arrangement (an interlocking voluntary arrangement) it shall mean the total voluntary contributions into both estates.

#### 38.6.8 **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 his fees, costs, charges and/or expenses, he shall have the right to refer the matter to the Court whose decision on the matter shall bind all parties.

#### **Death of Debtor**

39. Should the debtor die before the completion of the Arrangement whether by issue of a certificate of completion or certificate of non-compliance the Arrangement shall be binding on his personal representatives and the provisions of the Administration of Insolvent Estates of Deceased Persons Order 1986 shall apply.

## **Termination**

- 40.1 The Arrangement shall cease to have effect once:-
- (a) there are no further funds or assets held by the Supervisor or the Debtor on trust for the purpose of the Arrangement; or
  - (b) the Supervisor has issued a certificate of due completion or a certificate of non-compliance.
- 40.2 The issue of a certificate of non-compliance shall:-
- (a) not release the debtor from any obligation placed upon him under the Arrangement;
  - (b) not prejudice the Supervisor's rights to exercise any of the powers given to him under the Arrangement including the power to realise any of the assets under his control and to distribute any funds in his hands in accordance with the terms of the Arrangement.
- 40.3 When he issues a certificate of due completion or a certificate of non-compliance the Supervisor shall forthwith give notice of that fact to the Debtor and all known creditors. Should a certificate of non-compliance be issued by the Supervisor he may, subject to conditions 9, 10 and 11 hereof, petition for the debtor's bankruptcy under S 264 (i) (c) of the Act.
- 40.4 The debtor's bankruptcy shall not cause the failure of any of the trusts established by the IVA. Where assets subject to any of the trust are realised after termination of the IVA the Supervisor shall deal with such assets as a trustee thereof and shall be remunerated on a quantum meruit basis after making provision for any outstanding expenses and fees of the voluntary arrangement.
- 40.5 On termination of the Arrangement for whatever reason the Supervisor shall be entitled to retain from any funds under his control such funds as he thinks fit, for such period as he thinks fit, on account of his fees, costs and expenses in addition to any other sum contemplated to be retained by him pursuant to the Proposal.

## **Vacancy in Office**

41. Should a vacancy arise in the office of Supervisor a licensed insolvency practitioner who was in partnership with the Supervisor immediately before the vacancy arose shall be appointed by any partner in the Supervisor's firm.

## **No Personal Liability for the Supervisor**

42. The Supervisor is a party to the Arrangement merely for the purposes of reviewing the debtor's compliance with the Arrangement reporting to the creditors and receiving and distributing funds in accordance with the terms of the Arrangement. Accordingly, neither the Supervisor nor any member of his staff shall incur personal liability under or in relation to the Arrangement or in respect of contracts or other obligations of the debtor both present or future except insofar as any such liability shall arise as a result of negligence of the Supervisor or his staff or as a result of any other statute.

## **Inland Revenue Claims**

- 43.1 The Inland Revenue provisional claim in the Arrangement will include:
- (a) any tax credit overpayment; and
  - (b) 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.
- 43.2 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.

- 43.3 Unless the Inland Revenue estimated assessments are adjusted by agreement or S A Determinations are replaced by liabilities based upon properly completed S A Returns the Supervisor will accept all Inland Revenue estimates or determinations for dividend purposes.

#### **Income commencing after approval**

44. 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.

#### **Post approval statutory returns and payments**

45. 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.

#### **Overdue Accounts and Returns**

46. 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.

#### **Funds to be paid to Supervisor**

47. 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.

#### **Restriction on Payment of Dividend**

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

#### **Set-Off of Repayments**

49. During the currency of the Arrangement, any tax/excise/VAT or other repayments that become due to the debtor by the Inland Revenue or Customs & 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 & Excise. Any remaining surplus will then be treated as a windfall and offered to the Supervisor for the benefit of the Arrangement.

#### **Joint creditors**

- 50.1 In so far as the debtor is a joint debtor or has joint and several liabilities the creditor to whom the debt is owed that debt or joint and several debt is owed, shall take no further steps to enforce that debt against any of the co-debtors during the continuance of this arrangement.
- 50.2 Providing the Supervisor issues a completion certificate pursuant to the standard terms and conditions any co-debtor will be released from any liability in respect of any joint or joint and several debt immediately upon the issuing of the said certificate.

#### **Joint Proposals**

- 51 Any proposal put forward jointly with another/(other) debtor(s) may be accepted by creditors on a sole basis notwithstanding the fact that creditors of the other debtor(s) reject that/(those) proposal(s) providing

only that the dividend payable to those creditors who will be bound by the Arrangement is not, in the Supervisor's view, materially reduced as a result of the rejection of the other proposal(s).

### **Breach or Non Compliance by the Debtor**

52.1 The debtor will be regarded as being in breach of the arrangement if:

- (i) they have at any time arrears of contributions equivalent to three months or more of the contributions proposed in the proposal (subject to the exceptions in 17.6 and 17.7 outlined above). If the debtor is in breach in this way but later repays all or some of the arrears, they will be in breach again if the same level of arrears recurs;
- (ii) the debts and liabilities exceed by 15% or more the figure the debtor has estimated for such debts and liabilities for the purposes of the proposal (and if such breach occurs the Supervisor will – without affecting any other alternative available to them – ask the creditors what they wish to do in the context of the arrangement overall);
- (iii) information that was false or misleading in any significant detail or contains any significant omissions;
  - (a) was contained in any statement of affairs or other document that the debtor supplied under Part VIII of the Act to any person; or
  - (b) was otherwise made available by the debtor to creditors at or in connection with any meeting of creditors held, or any resolution taken, concerning the arrangement;
  - (c) they fail to do anything that the Supervisor may for the purposes of the arrangement reasonably ask of you; or
  - (d) they fail to comply with any other of the obligations under the arrangement.

### **52.2 Procedure following breach**

#### **(a) Notice of breach**

If, at any time, the Supervisor thinks that the debtor is in breach of the arrangement, then, unless the debtor corrects the breach immediately, the Supervisor will as soon as possible send to the debtor a notice (“Notice of Breach”) identifying the breach. This will require the debtor within 1-3 months (at the Supervisor's discretion) of receiving the notice:

- (i) to remedy the breach if it can be remedied; and
- (ii) if the Supervisor thinks fit, to fully explain the breach.

#### **(b) Remedy of breach**

If, within 1 - 3 months as referred to in sub-paragraph 9(3), the debtor

- (i) remedies the breach of the arrangement; and
- (ii) if so required in the Notice of Breach, fully explains the breach, then the Supervisor will take no further action against the debtor, except to report the breach to the creditors when he next sends an annual report to creditors on the progress and effectiveness of the arrangement, or on the next convenient occasion, if earlier.

#### **(c) Failure to remedy breach**

If the debtor has not acted as specified in sub-paragraph 9(4) within the time allowed, the Supervisor must report within 28 days to creditors and either issue a Certificate of Termination or if the Supervisor feels it appropriate seek creditor views (voting to be as set out in the Rules) to do one of the following:

- (i) vary the terms of the arrangement; or
- (ii) issue a certificate (“Certificate of Termination”) ending the arrangement because of the breach; or
- (iii) present a petition for the debtor's bankruptcy.

### **Termination on debtor's request**

53. The Supervisor may issue a Certificate of Termination if the debtor requests this in writing, but may delay doing so until the Supervisor's administration of the estate has been completed.