

STANDARD CVA CONDITIONS

Introduction

1. These standard CVA conditions should be read together with the Proposal to which they are Appended ("the Proposal") and the definitions set out in the Proposal will apply to these conditions.
2. Headings used in these conditions are for convenience only and will not affect their interpretation.
3. In the event that Joint Supervisors are appointed then any reference to the Supervisor should be read as a reference to the Joint Supervisors.
4. The purpose of these conditions is to deal with issues which are likely to arise in all Proposals for a CVA and which may therefore conveniently be added as a schedule to Proposals. On some occasions there may be a conflict between these standard conditions and the terms of the Proposal. In this event the terms of the Proposal will prevail. In certain other cases (for example where it is not intended that the Company will continue trading) certain of these standard conditions may not apply to the Proposal.

Dealing with the various classes of creditors

Secured Creditors

5. The rights of any secured creditor under their security will not be affected by the CVA save to the extent that the secured creditor specifically agrees to their rights being varied.
6. If a secured creditor wishes to prove in the CVA for any unsecured element of its claim then the Supervisor shall be entitled (but not bound) to invite any secured creditor to provide a valuation of their security prior to distributing funds to unsecured creditors and may (as a cost of the CVA) seek expert advice upon the value of the creditor's security.
7. A secured creditor will be entitled to claim in the CVA for any deficiency between the amount of its claim (at the date of approval of the CVA) and the amount actually realised for the security (if it has been realised) or if the Supervisor has not been notified that the security has been realised before the Supervisor distributes a dividend to the unsecured creditors, the secured creditor shall be entitled to claim for any shortfall between the value placed on the security by the Supervisor and the value of the secured creditor's claim.
8. The Supervisor will be entitled (but is not obliged) to request from the secured creditor in writing, details of whether or not his security has been realised and if it has been realised the value obtained by the secured creditor on realisation of his security. Should the secured creditor fail to respond to a written request from the Supervisor sent not less than 14 days before the Supervisor pays a dividend, then the Supervisor shall be entitled to assume that the security has not been realised, and will be entitled to place his own value on that security for the purpose of arriving at the calculation of the shortfall and distributing a dividend.
9. In the event that a secured creditor realises a surplus from the assets upon which it is secured, over and above the amount required to pay the secured creditor in full, then such surplus, subject to any secured rights or interest of third parties and subject to the CVA still remaining in force, shall be paid by the secured creditor to the Supervisor for the benefit of creditors under the CVA.
10. Unless otherwise provided in the proposal, if a secured creditor is a holder of a qualifying floating charge (as defined in paragraph 14 of schedule B1 to the Enterprise Act) then the Supervisor shall not be obliged to make the "prescribed part" of the company's net property available to unsecured creditors of the company.

Preferential Creditors

11. Creditors who are entitled to be treated as preferential pursuant to Section 4(7) of the Act (as amended) shall be paid in priority to unsecured claims.

Unsecured Creditors

12. Once preferential creditors have been paid in full, unsecured creditors (including for this purpose secured creditors to the extent that there is a deficiency or shortfall in the amount recovered or recoverable under their security) shall be entitled to be paid a dividend or dividends from the remaining funds available to pay a dividend(s) together with any monies set aside as the Prescribed Part, if such a fund has been provided for under the terms of the proposal itself in accordance with Clause 10 above.
13. Creditor claims will be calculated by reference to the value of their claim as at the date upon which the CVA is approved.
14. The Rules 14.21 to 14.25 (concerning: debts in a foreign currency; payments of a periodical nature; interest, mutual dealings and set-off) shall apply to this CVA in the same manner as it applies in a liquidation. The date for determining rights of set-off shall be the date of approval of the Proposal.

Connected Creditors

15. Unless the Proposal shall state otherwise, any creditors who are connected with the Company as defined by Part I of the Act, shall be treated in the same manner as any other creditors of the same category (i.e. secured, preferential or unsecured).

Leases and Hire Purchase Agreements

16. If the Company is the lessee or hirer of any premises or chattels pursuant to a lease or hire purchase agreement ("HP Agreement") then the lessor shall be entitled:-
 - to claim any arrears of rent or other liabilities outstanding at the date of approval of the CVA as an unsecured claim in the CVA.
 - if the Company continues to occupy premises or use assets in the course of its trade, then such rent and other liabilities as shall arise under the lease/HP Agreement after the approval of the CVA will be met by the Company in full as and when they fall due.

If the Company vacates any leasehold premises or surrenders possession of any chattels to the lessor then the lessor's claim shall be admitted in the CVA to the same extent as such a claim would be admissible in a liquidation of the Company if the lease or HP Agreement had been disclaimed by the liquidator. The admission of such a claim shall be in full and final settlement of the lessor's claims under the lease/HP agreement.

Retention of Title Claims

17. Any supplier wishing to claim retention of title in relation to any goods remaining in the Company's possession, must submit to the Supervisor such information as he may reasonably require in order for him to decide whether the supplier has a valid claim. In the event that the Supervisor determines that the supplier has a valid claim, then the supplier shall be entitled (at the option of the Supervisor) to either the return of his goods or payment for them, at the prices at which the supplier originally sold those goods to the Company.

Tax Liabilities

18. The claims of HM Revenue & Customs shall include taxes due as at the date of approval of the CVA.

19. All outstanding accounts and returns enabling the tax owing by the Company to be calculated as at the date of the approval of the CVA shall be provided by the Company to the Inspector of Taxes or Customs Officer within three months of approval of the CVA.
20. Whilst the CVA is in force any tax, excise or VAT returns due in relation to a period prior to the date of approval of this CVA shall be set-off against any outstanding claim of the Government department as at that date. Any remaining surplus shall be paid to the Supervisor for the benefit of creditors under the CVA. Should any repayment fall due for repayment to the Company in relation to a period after approval of the CVA (and if the CVA remains in force) then such payment shall be made to the Supervisor for the benefit of creditors under the CVA.

General

21. The release of the Company from any liability to a creditor pursuant to the terms of this CVA shall not operate to release any co-debtor from the same debt.
22. Any creditor who is bound by the CVA, by virtue of Section 5(2)(b)(ii) of the Act, as amended, who becomes aware that the CVA has been approved shall if the CVA is still in force, participate in the CVA on a pari passu basis with all other creditors of the same category.

If a dividend or dividends have already been paid to the creditors, such that there are no or insufficient funds to enable a dividend to be paid to the new creditor equal to the aggregate of dividends already paid to other creditors of the same category then, if the Company has assets which are not included within the CVA Proposal, the Company will upon receipt of a written notice from the Supervisor pay such further sum to the Supervisor as shall be sufficient to ensure that such creditor is paid the same dividends as all other creditors of the same category.

If all of the Company's assets are included in the CVA or the Company's assets are insufficient to pay the amount required by the Supervisor to pay a full equalising dividend to the new creditor, then such a creditor shall be paid such funds as are available to distribute (if any) and the new creditor shall be bound by the CVA notwithstanding the Supervisor is unable to pay the creditor a full equalising dividend.

Payment of Dividends

23. Part 14 of the Rules, which relate to claims by and distributions to creditors in Administration, Winding Up and Bankruptcy shall apply to this CVA - (with any necessary amendments) – R14.21 – R14.25.
24. Rule 14.28 which places an obligation on the Supervisor to Gazette the notice of the intended dividend shall not apply to this CVA.
25. Part 14 of the Rules, which relate to creditors owed small debts (Rule 14.31) shall apply to this CVA – that is, the Supervisor may treat a debt, which is a small debt, as if it were proved, for the purpose of paying a dividend.
26. In the event that following the making of a final distribution, funds remain in the hands of the Supervisor. either because a creditor cannot be traced, or because a cheque has not been presented for payment, then the Supervisor shall be entitled to distribute these funds to the other creditors under the CVA without reference to the creditor(s) who can no longer be traced or have not cashed cheques. If the cost of the distribution would (at the discretion of the Supervisor) be uneconomic in relation to the amount available, the Supervisor may pay this amount to the Company or, in the event that the Company has been dissolved to the Treasury Solicitor.

Creditors' Committee

27. In the event that a creditors' committee is established pursuant to the terms of the CVA conditions 27 - 42 will apply.
28. If the creditors resolve to establish a creditors' committee then such a committee shall consist of not less than three, nor more than five creditors as members of the committee. A creditor shall not act as a member of the committee until such time as he has confirmed in writing to the Supervisor his consent to act. The appointment of a creditor shall be of no effect unless the creditor forwards its consent to act to the Supervisor within 28 days of the creditor being appointed as a member of the committee.
29. Any creditor who has been appointed by a committee member must (if not an individual) appoint an individual who is at least of 18 years of age to represent that creditor at the committee meetings. Such appointment should be in writing and shall be produced by the creditor to the Supervisor at his request.
30. Any member of the committee may resign by giving 14 days written notice of his resignation to the Supervisor. A committee member shall automatically vacate office if he is neither present nor represented at any three consecutive meetings of the committee unless at the third meeting of the committee those members of the committee present resolve by a majority that the committee member shall not vacate office.
31. If any vacancy in the Committee occurs (for whatever reason):-
 - 31.1 provided that there are not less than three members of the committee the vacancy need not be filled unless the Supervisor and the majority of the remaining members of the committee agree to fill the vacancy in accordance with Clause 30.2.
 - 31.2 the Supervisor shall have a discretion to appoint a creditor to fill any vacancy that occurs in the committee provided that the majority of the remaining members of the committee agree with the Supervisor's nomination.
 - 31.3 the creditors may fill any vacancy by resolution passed at a general meeting of creditors.
32. The committee shall not be entitled to exercise to any of its powers at any time when the number of members of the committee falls below three, save for the purpose of agreeing to fill any vacancy or vacancies.
33. The quorum for any committee meeting shall be two committee members present in person or by proxy. If no quorum is present at any committee meeting, then the committee shall not be entitled to exercise any of its powers save for the purpose of filling a vacancy or vacancies. In the event that a quorum is not present, the committee meeting will be automatically adjourned to the same place and time seven days after the date upon which the committee meeting is first convened (or the business day falling immediately thereafter should this not be a normal business day) and the quorum for that meeting shall be reduced to one member present in person or by proxy.
34. Unless otherwise stated any proxy appointing a person (other than the Nominee, Supervisor or chairman of the meeting) to represent a creditor at that meeting shall be deemed to be an authority for that representative to sign a consent to act on behalf of the creditor to become a member of the committee and for that person to represent a creditor on the creditors' committee unless the proxy form states otherwise.
35. The Supervisor shall report to the creditors' committee on all matters, which appear to the Supervisor to be of concern to the committee in relation to the CVA. The Supervisor will report in such manner and at such frequency as he thinks fit.

36. The Supervisor shall have regard to the views of the creditors' committee in respect of matters reported to the committee or which are raised by the committee as matters of concern to them and shall not without prior consent of the committee:-
- 36.1 consent to the Company charging, encumbering or otherwise disposing of all or part of the business or assets of the Company in accordance with clause 47.
- 36.2 consent to the payment of any creditors in full except from the proceeds of sale of the asset or assets over which the creditor holds security.
37. Meetings of the creditors' committee shall be convened by the Supervisor at such times as he thinks fit save that:-
- 37.1 the Supervisor shall convene a meeting of the creditors' committee if requested to do so by a majority of the committee members; but the Supervisor shall not be obliged to convene meetings of the creditors committee more frequently than once in any eight week period whilst the CVA is in force and
- 37.2 the first meeting of the creditors' committee shall take place within six weeks of approval of the Proposal.
38. The Supervisor will give not less than fourteen days notice of a creditors committee meeting to each member of the committee or its authorised representative.
39. Any resolution shall be deemed to have been passed if a majority in number of those voting in person or by proxy vote in favour.
40. No member of the committee shall be entitled to vote on any matter in which he has a personal interest other than an interest in his capacity as a creditor of the Company.
41. Meetings of the committee shall be chaired by the Supervisor or by a senior member of his staff experienced in insolvency matters.
42. Any reasonable expenses incurred by a committee member or members representative in attending the meeting may be paid by the Supervisor out of the assets held by him under the terms of the CVA.
43. Any of the powers or functions of the creditors' committee may be exercised by the creditors in general meeting.

Trading in CVA

44. If the terms of the CVA provide for the Company to continue to trade (but not otherwise) conditions 44 - 47 shall apply.
45. Until such time as the CVA is completed or terminated, the Company shall provide the Supervisor with such financial information as he may require on a monthly basis or at such other interval as the Supervisor shall specify in writing to the Company. Such information will include (except to the extent that the Supervisor shall in writing release the Company from the obligation to provide any such information) management balance sheets, profit and loss accounts, budgets, forecasts, cash flow projections, details of capital expenditure undertaken or proposed and aged creditor and debtor analyses together with reports detailing current sales and/or contracts and confirmation that all statutory returns have been completed and submitted by the due date. The Company also undertakes to keep the Supervisor informed of any material developments in relation to the Company's business.
46. The Company will remain solely responsible for the conduct of any future trading of its business, which shall remain under the control of the Company's officers and employees. Neither the Nominee nor the Supervisor will have any personal liability in respect of any such activities or any debts incurred in the course of trading. Nor will the Nominee or the Supervisor have any liability to, or undertake any duty to: creditors, suppliers, customer or

any other party dealing with the Company in the course of the ongoing trading of its business.

47. The Company will obtain the benefit of normal trade credit where available in the ordinary course of its business, but will not incur credit other than in the ordinary course of its business without the consent in writing of the Supervisor. The Company agrees that whilst it continues to trade, it will meet its day to day liabilities including any credit extended as and when they fall due and shall report to the Supervisor in writing if at any stage it becomes unable to pay its debts as they fall due. In this event the Supervisor shall have the power (although not the obligation) to present a winding up petition against the Company and to use the funds held by him to satisfy the costs and expenses of such a petition.
48. Unless and until the CVA is completed successfully, the Company shall not sell, charge or otherwise encumber its assets or agree to sell, charge or otherwise encumber its assets or any part of them or make any material change to its business without the written consent of the Supervisor.
49. The Company undertakes to maintain full insurance upon all its assets throughout the period of the CVA to the satisfaction of the Supervisor, who shall be entitled to nominate independent insurance brokers to prepare a report on the adequacy of the Company's insurance and pay any related cost as an expense of the CVA.
50. If the Company continues to trade, it shall carry on its trading in accordance within the terms of the CVA and in such a manner as is likely to enhance the profitability and solvency of the Company and maximise the dividend payable to creditors under the CVA.

Sale of Assets

51. If the Proposal provides for the business and/or assets of the Company or any of them to be sold, then such sale must be completed by the date stated in the Proposal, or if no date is specified within a reasonable time. The Supervisor shall be entitled in either case to extend the time period, if for any reason or reasons he considers this (in his opinion) to be in the interest of creditors.
52. If the CVA provides for the sale of the business and/or any assets of the Company, the Company will keep the Supervisor informed of its attempts to sell its business and assets and of any offers received. The Company shall not enter into any agreement to sell nor it shall sell any part of its business and/or assets without the written consent of the Supervisor and on such terms as the Supervisor may specify in such consent.
53. The Supervisor shall be entitled to employ a valuer of his choice for the purposes of advising as to the value of any assets which the Company proposes to dispose of and as to the best means of disposal and shall be entitled to defray the cost of such advice from the assets held by him under the terms of the CVA.
54. The Company will comply with any directions given to it by the Supervisor concerning the means by which it should market for sale and/or dispose of any of its assets.

Windfall

55. If, before the CVA is completed, the Company receives or becomes entitled to any assets or income which is not detailed in the Proposals in circumstances which could not reasonably be foreseen at the time of approval of this CVA then such assets shall be deemed to be assets held on trust by the Company for the purpose of this CVA. The Company shall deliver to the Supervisor within 14 days of receipt of written notice from the Supervisor (requiring those assets or their value to be made available to the Supervisor for the purposes of the CVA) the assets or their value. The Company shall be obliged to give the Supervisor's immediate written notice of any assets which appear or may appear to fall within this clause.

56. The Company agrees that it will at the request of the Supervisor, execute such deed or other document as the Supervisor may require, in order to secure the transfer of the value of any assets to the Supervisor for the benefit of the CVA.

Nominee's Remuneration and Liability

57. Neither the Nominee, nor any member of his staff shall incur any personal liability under or in respect of any contracts or other obligations of the Company whether present or future.
58. The Nominee, whether or not appointed as Supervisor, shall be paid the fees and disbursements stated in the Proposal and shall, to the extent that such fees have not been discharged or been provided for prior to the approval of the CVA, be entitled to require the Supervisor to pay to him the value of those fees and disbursements out of the assets coming into the Supervisor's hands.

Supervisor's Remuneration

59. The Supervisor will be entitled to receive remuneration for work carried out in connection with the CVA which, unless an alternative basis is stated in the Proposal, will be fixed by reference to the time properly given by him and his staff in attending to any matters arising out of the CVA, by reference to the ordinary hourly rates of the Supervisor and his staff as shall apply from time to time, together with disbursements (including legal and any other necessary professional fees).

The Supervisor will also be reimbursed for his "Category 1" expenses and be empowered to appoint Solicitors to assist him as he sees fit.

The Supervisor's "Category 2" disbursements reflecting the use of [IP Firm Name]'s facilities shall be paid in accordance with the firm's standard tariff as attached to the proposals.

60. The Supervisor shall in any event be entitled to draw on account and from time to time, such sums as he considers appropriate in relation to his accruing costs.
61. Notwithstanding any other terms of the Proposal, all assets of the Company together with any assets held by the Supervisor within the terms of the CVA, will be subject to a trust in favour of the Supervisor until full discharge of the Nominee's and Supervisor's fees and expenses, including the expenses of any agents employed by the Nominee and Supervisor. All assets realised and in the hands of the Supervisor will be subject to the aforementioned trust to be held by the Supervisor.
62. The Supervisor's fees and expenses shall rank ahead of the claims of the Creditors, and after the costs payable to the Nominee. The remuneration and disbursements of the Supervisor shall be a first charge on the assets of the CVA.

Supervisor's Functions and Powers

63. The Supervisor's functions shall be:
- 63.1 to receive all funds paid into the CVA and supervise the banking of monies to be applied in accordance with the terms of the CVA.
 - 63.2 the agreement of creditors' claims in accordance with the CVA.
 - 63.3 to make distributions to the creditors in the order of priority as described in the CVA from time to time and unless otherwise specified as and when the Supervisor considers the circumstances permit.
 - 63.4 to report to creditors on the progress of the CVA from time to time at such times as the Supervisor in his absolute discretion determines.
 - 63.5 to deal with administrative matters in relation to the CVA.

64. In order to discharge his functions, the Supervisor shall have the following powers:
- 64.1 to employ solicitors and other professional advisors to act and advise in connection with any matters on which he considers assistance is appropriate at the expense of the CVA.
 - 64.2 to defend disputed claims where he considers it appropriate and to use the funds of the CVA for the purpose of such defence and to compromise such claims.
 - 64.3 the Supervisor shall be entitled but not obliged to expend funds in his hands for the purpose of repairing, completing or altering any assets held by him or the Company or on trust for the purposes of the CVA, provided that he considers that it is likely to be in the interest of creditors to do so or that the work is required in the interests of safety, or to comply with any statutory obligation. Such expense will rank as an expense incurred by the Supervisor in accordance with the CVA.
 - 64.4 to take such security as he deems necessary or desirable over the assets of the Company for the purpose of securing the realisation of assets under the terms of the CVA and in any event the Supervisor shall be entitled to register a caution on all and any properties owned by the Company. The Company agrees to execute such documents and take such steps as the Supervisor may require to provide security to the Supervisor for performance of the terms of the CVA
 - 64.5 to present a winding up petition against the Company in the event that the Supervisor issues a Notice of Termination in relation to the CVA.
 - 64.6 the Supervisor may delegate to his firm or any partner or any employees of his firm, any or all of their duties and powers hereunder save for those which by law he is bound to perform personally.
 - 64.7 the Supervisor shall have the power to investigate any matters which might in the event of a liquidation of the Company, fall within the provisions of Section 238 (transactions at an undervalue Section 239 (preferences), 244 (extortionate credit transactions) and Section 245 (avoidance of floating charges) or Section 423 of the Act (transactions defrauding creditors) and to negotiate with any person that may be liable to make a payment to a liquidator under any of these sections and to secure a payment from them into the funds of the CVA for the benefit of creditors.
 - 64.8 the Supervisor shall be entitled to apply to the court for directions in respect of any matters arising in connection with the CVA.
 - 64.9 power to do all other things incidental to the exercise of the foregoing powers
 - 64.10 any act required or authorised to be done by the Supervisor in connection with the CVA where there is more than one Supervisor can be done by either or both of them.
65. If the Company has executed a power of attorney in favour of the Supervisor in order to secure the performance of any of the Company's obligations under the CVA, then the Supervisor shall be entitled (but not obliged) to use the power of attorney in such manner as he shall see fit, having regard to the interests of creditors.
66. If a vacancy arises in the office of Supervisor by death or otherwise, then in the event that there is no remaining Supervisor, the vacancy may be filled by the Supervisor's firm electing an alternative Licensed Insolvency Practitioner to take the appointment as Supervisor (such election to be notified by such replacement Supervisor to the creditors in writing). If there are joint Supervisors and a vacancy should occur by death or otherwise, then the continuing Supervisor may (at his absolute discretion) choose not to replace the Supervisor who has vacated office or, alternatively, may agree to the appointment by the Supervisor's firm of a replacement Supervisor in accordance with the terms of this clause.

67. Notwithstanding any provisions of the CVA, the Supervisor shall not be required to undertake any duties or incur any expenses in relation to the CVA unless he is satisfied that he has sufficient funds under his control to cover such costs and expenses.

Creation of Trust

68. Any funds held by the Supervisor in connection with the CVA and any assets included in the CVA, shall be held upon trust for those creditors bound by the CVA, in the order of priority provided for by the CVA.

Banking of Funds

69. All monies received by the Supervisor for the purposes of the CVA, shall be held by him in an account or accounts opened with a recognised UK clearing bank in the name of the Supervisor as trustee. The Supervisor shall be the signatory on any such accounts with power to delegate to any other licensed insolvency practitioner. The Supervisor shall be empowered to invest funds pending distribution, on deposit or otherwise with a recognised clearing bank under the control of the Supervisor.

VAT

70. The Company will include in its VAT returns, any VAT incurred by the Nominee or Supervisor(s), prior to and during the course of the CVA in respect of costs and expenses (where subject to VAT), within its ongoing VAT returns. The Company will account to the Supervisor(s) for such VAT on a £ for £ basis for the VAT inputs so claimed, within two weeks of the relevant VAT return being submitted to HMRC.

OR

Where the Company is not registered for VAT purposes it is recognised that any VAT charged on costs and expenses paid by the Nominee or Supervisor (where applicable) cannot be recovered.

Company's Obligations to the Supervisor

71. Throughout the period of the CVA, the Company shall and will procure that its officers and employees shall:
- 71.1 provide the Supervisor with its and their fullest co-operation in relation to all and any investigations undertaken by the Supervisor, to include the provision of all information and documents in its or their possession, custody, power or control, including any documents or information in relation to which it may otherwise claim legal professional privilege.
 - 71.2 ensure that the proceeds of all realisations of assets to be paid to the Supervisor shall (if those funds are received by the Company) be paid immediately to the Supervisor.
 - 71.3 immediately inform the Supervisor if any of the following events occur:
 - 71.3.1 a judgement in respect of a debt not included in the CVA remains unpaid for 14 days or a liability is incurred in respect of unpaid rates or any tax or VAT debt falling outside the scope of this CVA remains unpaid and is in arrears for more than 14 days;
 - 71.3.2 a bailiff levies distress on any of the Company's assets or a creditor obtains an attachment on any of its assets;
 - 71.3.3 a statutory demand threatening the issue of a winding up petition against the Company is served on the Company; or
 - 71.3.4 a winding up petition is served upon the Company.

- 71.3.5 any steps are taken which may result in the appointment of an Administrator to the Company
- 71.3.6 any steps are taken that may result in a moratorium being granted in relation to the Company under the Insolvency Act 1986
- 71.4 co-operate with the Supervisor in every way that he may reasonably require in connection with the CVA and generally with a view to ensuring the success of the CVA and maximising the dividend available to creditors bound by the CVA.

Variation of the CVA

- 72. If the Supervisor considers that it is in the interests of the creditors to approve any variation of the CVA, then such a variation will be deemed to be incorporated into the CVA - or if approved by post approval in accordance with the provisions at clauses 72-73.
- 73. If the Supervisor decides to deal with approval of any such variation by correspondence, then he shall send details of the proposed variation to each creditor and shall specify a date (not less than 21 days after posting) by which the creditors must return a voting form indicating their vote for or against the variation. If a Supervisor receives the approval of in excess of three quarters in value of the creditors voting on the proposed variation, then the variation will be deemed to have been approved by the creditors.
- 74. The members agree that their consent to any variation shall not be required and the variation shall be binding upon the Company and its members, if approved by the Company's creditors.

Breach and Termination

- 75. The following shall be regarded as events of breach for the purposes of the CVA:
 - 75.1 any failure by the Company to comply with the terms of this CVA which the Supervisor in his sole discretion considers to be material.
 - 75.2 if it shall come to the Supervisor's attention that either the Proposal or the statement of affairs contains any deliberate or material inaccuracy or there has been a material non-disclosure of the Company's assets.
 - 75.3 If the CVA provides for the Company or a third party to pay sums to the Supervisor, any failure to pay these monies in full within such period as the Proposal provides for, will be regarded as a material breach of the terms of the Proposal and the Supervisor shall be entitled to issue a Notice of Breach. The Supervisor may however (at his absolute discretion) should he consider it to be in the interests of the creditors, extend the Company's time to pay any sum or to allow the monies due to be paid by instalments.
- 76. Where there is a breach of the terms of the CVA, the Supervisor shall be entitled to issue a Notice of Breach giving 28 days' notice to the Company of its requirement to remedy the breach, failing which, the Supervisor will be entitled to issue a Notice of Termination, effectively bringing the CVA to an end.
 - 76.1 The Notice of Breach shall specify the irregularity, omission or default giving rise to the issue of the Notice and
 - 76.2 If the irregularity, omission or default [the breach] is capable of being remedied, the action that the Supervisor requires the Company to take and the timescale within which such action must be taken.

- 76.3 If the irregularity, omission or default [the breach] is remedied within the time period specified, then the Supervisor may not proceed to issue of a Notice of Termination. If however, the breach is not in the opinion of the Supervisor capable of remedy, or if the Company fails to remedy it within the specified timescale, then the Supervisor shall proceed to issue a Notice of Termination without the need to refer the matter to creditors for approval.
77. Unless and until such time as a Notice of Termination is issued by the Supervisor, creditors will be bound by the terms of the CVA and shall be taken to have accepted their participation in the CVA in full and final settlement of all of their claims against the Company at the date of approval of the Proposal (whether such claims are present or future, contingent, ascertained, unascertained or otherwise). In the event that the Supervisor issues a Notice of Termination, he shall advise creditors in writing of the issue of such notice and creditors shall be entitled thereafter to pursue the Company in relation to the debts which they had compromised up to the date of issue the Notice was issued.
78. In the event that the Supervisor issues a Notice of Termination, he shall be entitled (but not obliged) to present a petition for the winding up of the Company should he consider it to be in the interests of the creditors bound by the CVA to do so. Alternatively, the Supervisor may require the directors to take steps to place the Company into Creditors Voluntary Liquidation (CVL).
79. In the event that the Supervisor presents a petition for the winding up of the Company which results in a Winding Up Order being made, or alternatively takes steps to place the Company into a CVL, any assets included in the CVA whether realised or unrealised, shall remain subject to the terms of the trust set out in clause 67 above and will not form part of the general assets of the Company for the purpose of its liquidation. The Supervisor shall apply the proceeds of any such assets in accordance with the priorities set out in this CVA.
80. In the event that the terms of the CVA are fully complied with by the Company, the Supervisor shall issue a Notice of Full Implementation once all assets which are subject to the CVA have been realised and distributed in accordance with the terms of the CVA. On the issue of a Notice of Full Implementation, the Company shall be released from all liabilities to creditors bound by the CVA save insofar as the Proposal specifically excludes such release.