

# IVA PROTOCOL 2021 ANNEX 1 (Full and Final (NI) IVA)

## STANDARD TERMS AND CONDITIONS APPLICABLE TO YOUR IVA PROPOSAL

### TABLE OF CONTENTS FOR STANDARD TERMS AND CONDITIONS

#### **PART 1: INTERPRETATION**

- 1 Definitions
- 2 The terms and conditions

#### **PART 2: YOUR IVA: THE START, EFFECT AND DURATION OF THE ARRANGEMENT**

- 3 When the arrangement will start
- 4 The nature and effect of the arrangement
- 5 How long the arrangement will last
- 6 Completing the arrangement

#### **PART 3: TRANSPARENCY AND COOPERATION: YOUR DUTIES AND OBLIGATIONS**

- 7 Your duties in relation to the Supervisor

#### **PART 4: WHAT HAPPENS IF YOU DO NOT MEET YOUR COMMITMENTS UNDER THE ARRANGEMENT**

- 8(1) Breach of the arrangement
- 8(2) Non-compliance with the arrangement
- 8(3) Notice of breach
- 8(4) Remedy of breach
- 8(5) Failure to remedy breach
- 8(6) Termination on your request
- 8(7) Effect of Termination

#### **PART 5: THE SUPERVISOR'S FUNCTIONS, POWERS ETC**

- 9 Supervisor's duties
- 10 Removing the Supervisor from office

#### **PART 6: ARRANGEMENT ASSETS**

- 11 Holding arrangement assets in trust
- 12 In the event of your death
- 13 Excluded assets

#### **PART 7: DIVIDENDS AND CLAIMS**

- 14 Dividends and claims
- 15 Unclaimed and returned dividends

#### **PART 8: CREDITORS WHO DO NOT HAVE NOTICE**

- 16 Creditors who do not have notice

#### **PART 9: MEETING OF CREDITORS**

- 17 Power to call or requisition meetings of creditors

#### **PART 10: HMRC CLAIMS**

- 18 HM Revenue & Customs ("HMRC") claims
- 19 Income beginning after approval
- 20 Post-approval statutory returns and payments
- 21 Overdue accounts and returns
- 22 Restriction on payment of dividend

- 23 Set-off of repayments
- 24 No response from HMRC

**PART 11: MISCELLANEOUS PROVISIONS**

- 25 Invalidity or illegality
- 26 Joint liabilities

## PART 1: INTERPRETATION

### 1. Definitions

In the arrangement, except where the context requires a different meaning:

- "**the Order**" means the Insolvency (NI) Order 1989 as amended by the Insolvency NI Order 2002.
- "**the arrangement**" means the proposal and the conditions read together.
- "**you**" or "**the consumer**" means the person who makes the proposal.
- "**dividend**" means a distribution to unsecured creditors included in the arrangement.
- "**property**" has the meaning given to it in the Order.
- "**excluded assets**" are those assets that are excluded from an estate in bankruptcy and any other assets specifically identified in the proposal as being excluded from the arrangement.
- "**after acquired assets**" means any asset, windfall or inheritance with a value of more than £500, other than excluded assets that you acquire or receive between the date the arrangement starts and the date it ends or is completed, if this asset could have been an asset of the arrangement had it belonged to or been vested in you at the start of the arrangement.
- "**the meeting of creditors**" is the meeting scheduled in accordance with the Order and Rules to obtain creditor approval to the proposal.
- "**the effective date**" is the date when the arrangement is approved at a meeting of creditors to consider the arrangement.
- "**the proposal**" is the annexed document with modifications and documents incorporated, and is a proposal under the Order.
- "**the Rules**" means the Insolvency Rules NI (1991) as amended by the Insolvency NI Rules 2008.
- an "**unsecured creditor**" is any creditor, except a secured creditor, who is your creditor for any reason that originated or occurred on or before the time and date of approval of the arrangement.
- A "**secured creditor**" is any creditor who holds security in accordance with the Order.
- "**the supervisor**" is the insolvency practitioner(s) for the time being appointed to supervise the implementation of the arrangement; the person responsible for managing the arrangement for its duration.
- "**the nominee**" is the insolvency practitioner(s) instructed to act on the consumer's behalf to make an application for an IVA.
- any term of gender (like 'he', 'she' or 'it') includes any gender.
- a "**lead generator**" is a person or firm that acquires the personal contact details of the consumer and passes their details to an insolvency practitioner firm in return for a fee.
- a "**debt packager**" is a person or firm that gives debt advice then refers consumers to other people or firms to provide the debt solution (e.g. an IVA).
- a "**variation**" is the name given to a 'meeting of creditors' held during the term of an IVA, convened specifically for the purpose of proposing a change to the original IVA proposal. Creditors will be asked to vote on the amendments. Both creditors and the consumer must agree to any variation proposed.

### 2. The terms and conditions

The conditions are an integral part of the arrangement. In the event of any ambiguity or conflict between the terms and conditions, and the proposal and any modifications to it, then the proposal (as modified) shall prevail.

## PART 2: YOUR IVA: THE START, EFFECT AND DURATION OF THE ARRANGEMENT

### 3. When the arrangement will start

The arrangement will begin when it is approved by the creditors under the Order and Rules. This is its effective date.

### 4. The nature and effect of the arrangement

- 4(1)** The arrangement is a proposal under the Order for a scheme to manage your affairs, or in full and final settlement of your debts.
- 4(2)** The arrangement may be interpreted as bringing about a settlement or satisfying a debt owed by someone other than you only if the debt is owed jointly by you, and the proposal states that it does so and the creditor agrees. Otherwise, the provision in **Section 26** applies.
- 4(3)** If the Arrangement does not provide guidance to the supervisor as to what action they should take in any given situation, the supervisor shall apply the provisions of the Order and Rules insofar as they relate to bankruptcy with necessary modifications.
- 4(4)** After the arrangement has begun, no creditor may, in respect of any debt to which the arrangement applies:
- (i) take any action against your property or person; or
  - (ii) start or continue any action or other legal proceeding against you.
- 4(5)** Nothing in these terms and conditions affects the following rights in any way:
- (i) the right of any secured creditor to enforce their security, unless they agree;
  - (ii) the right of the supervisor or any creditor to present a bankruptcy petition in accordance with the Order if you fail to keep to the arrangement;
  - (iii) the right of any creditor to bring or continue legal proceedings against you and to obtain a judgment against you for the full amount of their debt for the sole purpose of making a claim against your insurer under the Third Party (Rights Against Insurers) Act 1930.

### 5. How long the arrangement will last

- 5(1)** Unless extended under these terms and conditions, the arrangement will continue until the end of the period stated in the proposal or until such time as early completion might be achieved.
- 5(2)** The supervisor may, for the purposes of fulfilling the arrangement, extend the arrangement by sending a notice saying so to you and to all creditors ("an extension notice"). The notice must include details of the period the Arrangement has been extended by and confirm the revised duration of the Arrangement.
- 5(3)** The supervisor must include details of any extension notice in the next report to creditors and must state the reasons for the extension. Where the Arrangement is in its final year any extension notice must be sent at least 14 days before the arrangement is due to expire.
- 5(4)** Where an extension notice is sent, the arrangement will continue for the period stated in the notice. The extension will start on the date immediately after the day the arrangement would have expired.
- 5(5)** Any extension for a period longer than 12 months must be approved by a formal variation that both you and the creditors must agree to.

## **6. Completing the arrangement**

- 6(1)** When the arrangement ends, and if you have complied with your obligations under the arrangement, the supervisor will issue a certificate ("the completion certificate") stating that you have fully complied with it. This certificate will be issued within 28 days of all payments and obligations being satisfied and no later than 6 months from the date of the last payment.
- 6(2)** Except as set out in **Paragraph 4(5)** above, when the supervisor has issued a completion certificate, you will be released from all debts that are subject to the arrangement.
- 6(3)** Once the supervisor has issued the completion certificate and completed all closing actions they will be released from office.

## **PART 3: TRANSPARANCY AND COOPERATION: YOUR DUTIES AND OBLIGATIONS**

### **7. Your duties in relation to the supervisor**

- 7(1)** While the arrangement is in force, you should:
- (i) give the supervisor such information about your assets, liabilities and other affairs as they reasonably require
  - (ii) meet the supervisor, their agents, representatives or nominees at such times and at such places as they may reasonably require, having due regard to your own circumstances
  - (iii) keep the supervisor informed of your current residential address, telephone number(s), email address(es) and employment details; and
  - (iv) do all such other things as the supervisor reasonably requires to carry out their functions and duties under the arrangement
- 7(2)** You must get the supervisor's written consent before you sell, charge or otherwise dispose of any interest you may have in any asset subject to the arrangement.
- 7(3)** During the arrangement, you must not obtain any credit greater than £500 without the prior written approval of your supervisor, except for public utilities, insurance policies or other contractual payments as provided for in your income and expenditure. If you do obtain credit of more than £500 without the consent of your supervisor, this will constitute a breach of your arrangement. This clause does not apply to any re-mortgage or release of equity in your property for the purpose of the arrangement.

## **PART 4: WHAT HAPPENS IF YOU DO NOT MEET YOUR COMMITMENTS UNDER THE ARRANGEMENT**

### **8(1) Breach of the arrangement**

You will be regarded as being in breach of the arrangement if:

- (i) your debts and liabilities exceed by 25% or more the total figure you have estimated for such debts and liabilities for the purposes of the proposal. In these circumstances the supervisor will ask the creditors what they wish to do
- (ii) information that was false or misleading in any significant detail or which contains any significant omissions:
  - a) was contained in any statement of affairs or other document that you supplied in accordance with the Order to any person; or

- b) was otherwise made available by you to creditors at or in connection with any meeting of creditors held, or any resolution taken, concerning the arrangement;
- (iii) you fail to do anything the supervisor may, for the purpose of the arrangement, reasonably ask of you;  
or
- (iv) you fail to comply with any other of your obligations under the arrangement.

## **8(2) Non-compliance with the arrangement**

If you do not comply with your obligations after the supervisor has given you written notice specifying how long you have to do so, then the supervisor may end the arrangement at their discretion. The supervisor must report to the creditors when issuing the annual report in accordance with the Rules, or earlier if they think appropriate, if any of the following occurs:

- (i) the supervisor becomes aware that a bankruptcy petition has been served against you while the arrangement is in force.
- (ii) The full and final payment is not received into the arrangement by the date it is due
- (iii) You are in breach of any obligation about the realisation of assets or after-acquired property.
- (iv) You fail to comply with any other of your obligations set out in the proposal.

## **8(3) Notice of breach**

If, at any time, the supervisor thinks that you are in breach of the arrangement, then, unless you correct the breach immediately, the supervisor will as soon as possible send you a notice ("Notice of Breach") identifying the breach. This will require you within 1 month of receiving the notice:

- (i) to remedy the breach if it can be remedied; or propose how the breach can be remedied over a longer period
- (ii) if the supervisor thinks fit, to fully explain the breach.

## **8(4) Remedy of breach**

If, within 1 month as detailed in **Section 8(3)** above, you:

- (i) remedy your breach of the arrangement; or propose a reasonable plan to remedy and
- (ii) if so required in the Notice of Breach, fully explain the breach, then the supervisor will take no further action against you, except to report the breach to the creditors when they next send an annual report to creditors on the progress and effectiveness of the arrangement, or on the next convenient occasion (if earlier)

## **8(5) Failure to remedy breach**

If you have not acted within the time allowed in **Section 8(4)** above, or are otherwise unable to remedy any breach of the arrangement, 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 your bankruptcy.

#### **8(6) Termination on your request**

The Supervisor may issue a Certificate of Termination if you request this in writing, but may delay doing so until the administration of the estate has been completed.

#### **8(7) Effect of Termination**

Upon issuing a Certificate of Termination, any trust over the assets will come to an end.

### **PART 5: THE SUPERVISOR'S FUNCTIONS, POWERS ETC**

#### **9. Supervisors duties**

- 9(1)** The insolvency practitioner must supervise your fulfilment of your obligations under the arrangement and administer the arrangement.
- 9(2)** The supervisor must lodge all funds held for the purpose of the arrangement in a UK bank or building society account.
- 9(3)** The supervisor will have the power to do such things as are necessary or helpful to implement the proposal (without limiting the powers available to the supervisor in law).
- 9(4)** The supervisor will not be personally liable for any liabilities incurred by you or otherwise.
- 9(5)** Completion or termination (or both) of the arrangement will not affect the supervisor's power to carry out such functions and to exercise such powers as are necessary for them to fulfil their duties, obligations and responsibilities under the arrangement, Order and Rules and to resolve any matters that arise during the arrangement.
- 9(6)** The supervisor will have no duty to perform any act or carry out any function except those specified in the arrangement, Order or Rules.
- 9(7)** The Supervisor is not required to retain any funds for the petition of your bankruptcy.
- 9(8)** The arrangement shall terminate when the supervisor issues a Certificate of Termination.

#### **10. Removing the Supervisor from office**

- 10(1)** If a good reason is given, the supervisor may be removed from office by the Court or by a resolution of a meeting of creditors.
- 10(2)** A creditor who is owed at least 25% of the total agreed value of debts may serve a notice on the supervisor requiring them to convene a meeting of creditors to remove the supervisor from office. Such a notice must set out the reasons for the removal.
- 10(3)** The notice sent out by the supervisor to creditors convening such a meeting must state the reasons for the creditor seeking to remove them. It must be accompanied by a report on the supervisor's administration of the arrangement, including an up-to-date summary of receipts and payments.
- 10(4)** If the supervisor wishes to resign their position or is unable to perform their duties as set out in the legislation and this protocol then an application can be made to court for the transfer of the cases to another supervisor in accordance with the Order and Rules.

## PART 6: ARRANGEMENT ASSETS

### 11. Holding arrangement assets in trust

Whilst the arrangement is in force:

- (i) you must hold in Trust, for the purposes of the arrangement, any property in your possession, custody or control that is an asset of the arrangement until it is realised (if required) in accordance with the arrangement. Holding in Trust means that you will not sell, transfer or otherwise dispose of any of the assets that form part of your arrangement
- (ii) the supervisor must hold in Trust for the purposes of the arrangement any property in their possession, custody or control that is an asset of the arrangement
- (iii) the trust will remain in force from the commencement of the Arrangement and will be extinguished on the issuing of the completion certificate by the supervisor. In the event of a bankruptcy order being made against the you, any assets not yet realised will not be held as part of the Trust.

### 12. In the event of your death

- 12(1)** Should you die during the term of the arrangement, property constituting an asset of the arrangement in your or the supervisor's possession, custody or control shall be held upon Trust for the purposes of the arrangement until it is realised.

### 13. Excluded assets

- 13(1)** Assets that would be excluded from your estate in a bankruptcy, as defined in the Order, will be excluded from your arrangement.
- 13(2)** You may seek to exclude other specified assets, if you can demonstrate a good reason to do so, but their exclusion or otherwise will be subject to creditor approval. Your proposal should detail any additional excluded assets.

## PART 7: DIVIDENDS AND CLAIMS

### 14. Dividends and claims

- 14(1)** The supervisor may accept, for dividend purposes, proofs of debt submitted by creditors as at the effective date. If any creditor does not submit a proof of debt in writing within 2 months after the effective date or by the date of the first dividend (whichever is the later) then that creditor may only participate in dividend payments to the extent set out in **paragraph 14(3)** below.
- 14(2)** The supervisor has the discretion to admit claims of £2,000 or less without a proof of debt form, or proofs of debt submitted that do not exceed 120% of the amount stated by you in the proposal, unless this would result in a substantial additional debt being admitted, without the need for additional verification.
- 14(3)** If a creditor submits a late proof of debt, the supervisor will allow this for dividend purposes, subject to the requirement to adjudicate on its authenticity and value. The creditor will be entitled to participate and to receive their full share of dividends, including those paid to date (insofar as funds are or become available) but is not entitled to disturb a distribution made prior to the submission of the late proof of debt.
- 14(4)** The supervisor may ask for any further details or documents that they think necessary to establish the amount due to any person claiming to be a creditor.
- 14(5)** The debts of secured creditors, foreign currency debts, debts payable at a future time, and interest on debts will be dealt with in accordance with the bankruptcy Rules.



## **15. Unclaimed and returned dividends**

- 15(1)** Where a final dividend remains unclaimed 4 months after that distribution has been made, the supervisor shall pay those funds to those creditors whose final dividend has been claimed. Where redistribution of these funds is cost prohibitive (for example the cost of making payment is in excess of the funds in hand) the remaining funds will be dealt with in accordance with **Paragraph 15(3)** below.
- 15(2)** Where an interim dividend remains unclaimed or is returned to the supervisor during the term of the arrangement, the supervisor shall take reasonable steps to allocate that payment. Where it is not possible to allocate the unclaimed or returned dividend, the supervisor may discount the proof of debt received and distribute the funds to those creditors whose dividends have been claimed. A creditor whose claim has been discounted under these provisions is entitled to resubmit a claim that will be dealt with in accordance with **Paragraph 14(3)** above.
- 15(3)** The supervisor must pay you any funds they hold representing dividends that are still un-cashed, unclaimed 6 months after redistributing funds. Once this has been paid to you, the creditors have no further claim to these funds.
- 15(4)** All amounts paid into the arrangement are intended to be used to pay dividends to unsecured creditors (after the payment of the costs of the arrangement). At the end of the arrangement, any surplus funds must be returned to the consumer.

## **PART 8: CREDITORS WHO DO NOT HAVE NOTICE**

### **16. Creditors who do not have notice**

- 16(1)** This voluntary arrangement will be binding on any creditor whose proof of debt has been omitted from it, but who would have been entitled to vote if they had been notified of the meeting of creditors called to approve it.

On discovering the debt of such a creditor, the supervisor must send immediate notice requiring them to submit their proof of debt as at the effective date.

Two months after sending the above notice, the supervisor may use their discretion to exclude such a creditor from dividend if the creditor has not by then submitted their proof of debt.

## **PART 9: MEETINGS OF CREDITORS**

### **17. Power to call or requisition meetings of creditors**

- 17(1)** The supervisor may, if they deem it to be in the best interests of all parties, call a meeting of creditors for any purpose connected with the arrangement in accordance with the Order and the Rules.
- 17(2)** With your consent, you or the supervisor may propose reasonable variations to the proposal after it has been approved and these may be considered at a meeting of creditors convened by the supervisor for this purpose in accordance with **Paragraph 17(3)** below.
- 17(3)** The supervisor must give at least 28 days' notice of the meeting to the creditors. In deciding whether the necessary majority has been obtained, the relevant section of the Rules will apply. If the necessary majority is obtained at the meeting, then the variation(s) or modification(s) will bind every person who is subject to the arrangement. Relevant Rules will also apply when dealing with quorum, conduct, voting rights and the adjournment of meetings.

## **PART 10: HMRC**

### **18. HM Revenue & Customs ("HMRC") claims**

**18(1)** HMRC's provisional claim in the arrangement will include:

- (i) any tax credit overpayment,
- (ii) self-assessment payments on account due for the tax year in which the arrangement is approved,
- (iii) any PAYE/SC/NIC deductions due to the date of approval, and
- (iv) any other earlier unpaid liabilities.

**18(2)** HMRC's final claim in the arrangement will also include any self-assessment balancing adjustment for the tax year in which the arrangement is approved, due with the self-assessment return on 31 January of the following year.

### **19. Income beginning after approval**

You will be responsible for payment of self-assessment/NIC on any source of income that begins after the date of approval of the arrangement.

### **20. Post-approval statutory returns and payments**

All statutory returns and payments due to HMRC following approval must be provided on or before the date they fall due.

### **21. Overdue accounts and returns**

You must send all statutory accounts and returns overdue at the date of the creditors' meeting to HMRC within 3 months of the approval date, with any other information or explanations required.

### **22. Restriction on payment of dividend**

No non-preferential dividend will be made until:

- (i) HMRC has received a self-assessment return for the tax year in which the arrangement is approved; or
- (ii) a VAT (or other levy or duty) return due to HMRC to the date of the meeting has been filed; or
- (iii) a HMRC determination or assessment has been made; or
- (iv) the tax credits renewal due following the end of the year of approval has been received and processed and the supervisor has admitted HMRC's final claim.

### **23. Set-off of repayments**

Any repayment due to you from HMRC, relating to a period before the arrangement was approved, shall be applied firstly against HMRC's claim in the arrangement. Any surplus will be repaid to you. Any repayment due to you from HMRC, relating to a period after the arrangement was approved, shall be applied firstly against other sums owed to HMRC for the post arrangement period. Any surplus will be repaid to you.

**24. No response from HMRC**

If you were not self-employed and have not traded during the tax year in which the arrangement was agreed, and if there are no outstanding returns due to HMRC and no contact has been made by HMRC with the supervisor within 4 months after the effective date, the supervisor has the discretion to disregard the requirement in **Paragraph 22** of the standard conditions to not make a non-preferential dividend before the supervisor has admitted HMRC's final claim. If the supervisor commences payment of dividends, notification should be sent to HMRC and funds may be retained to pay an equivalent dividend to HMRC, based on the amount shown in the statement of affairs.

**PART 11: MISCELLANEOUS PROVISIONS**

**25. Invalidity or illegality**

If any part of the arrangement is found to be contrary to the Order or Rules, illegal, invalid, or contrary to public policy, this will not affect the validity of the rest of the arrangement; and the part of the arrangement in question must be interpreted accordingly.

**26. Joint liabilities**

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