



R3 STANDARD FORM COVID 19 CVA PROPOSAL

IN THE MATTER OF [*INSERT COMPANY NAME*]("COMPANY")

IN THE MATTER OF THE INSOLVENCY ACT 1986

PROPOSAL FOR A

COMPANY VOLUNTARY ARRANGEMENT ("CVA")

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[name of company]

This proposal ("**Proposal**") of the directors of the Company is prepared in accordance with the provisions of Part I of the Insolvency Act 1986 (as amended) and the Insolvency (England & Wales) Rules 2016 (as amended). The Nominee(s) who are licensed to act as insolvency practitioners by their Regulatory body/bodies are acting as nominees in relation to the arrangement proposed by this Proposal, and their report on this Proposal is attached. A CVA is a formal procedure under the Insolvency Act 1986 which enables a company to agree with its creditors, under the supervision of Licensed Insolvency Practitioners, a scheme of arrangement of the Company's affairs or a composition in full and final satisfaction of the Company's Debts.

This Proposal has been drafted using the R3 Covid 19 standard template, and save for the Particulars on this page, the only other changes to the template are listed in Appendix 2.

To: The Nominees

1 Arrangement Particulars

Date of this Proposal	[date]
Nominee(s) and proposed Supervisor(s)	[name, address, email address and regulatory body for each Nominee and proposed Supervisor]
Length of Breathing Space Period(as explained in clause4.2)	[e.g. 6 months]
Length of the Payment Period	[e.g. 12 months]
Date to which last statutory or management accounts were brought up to	[e.g. 1 Jan 2020]
Deferred Debts are debts owed to	[e.g. parties Connected to the Company]
Interest Rate	[E.g. 0% or 2% per annum interest]
Nominee's fee	£[amount]
Supervisor's estimated fee	£[amount]
Referrer and connection to Company	[name, connection to Company/Nominee or "None"]
Referrer's Payment	£[amount or 0] plus VAT

2 Interpretation

- 2.1 Definitions contained within the Particulars in clause 1 above and the standard conditions (“**Conditions**”) in **Appendix 1** apply to the Arrangement.
- 2.2 References to clauses are to clauses in this Proposal, and references to paragraphs are references to paragraphs of the Conditions.
- 2.3 The headings in this Proposal are for convenience only and shall not affect its construction or meaning.
- 2.4 If there is any conflict between the Proposal and the Conditions, the terms of the Proposal shall prevail.
- 2.5 Where there is more than one of them, a reference to a Nominee or Supervisor in the Proposal or Conditions shall mean both of them where the context so dictates.

3 Introduction and Background

- 3.1 Included in **Appendix 3** are details of the officers and members of the Company and other statutory information the directors are obliged to provide to Creditors.
- 3.2 A summary of financial information about the Company, including a statement of its affairs detailing assets and liabilities and a comparison of the estimated outcomes of the Arrangement and of a winding up, is set out in **Appendix 4**.
- 3.3 A brief history of the Company, a description of its business, details of why the Company is or is likely to become insolvent, details of any time to pay agreement(s) with HMRC and filing history for the last three years, how it has been impacted by Covid-19 and the number of employees and whether or not any have been furloughed are set out at **Appendix 5**.
- 3.4 The details of security and guarantees given by the Company are set out in **Appendix 4**. If, in the event that the Company is wound up the Prescribed Part provisions of Section 176A of the Insolvency Act 1986 would apply to the Company, the estimated value of the Company’s net property on the date that the Statement of Affairs was finalised and the amount of the Prescribed Part are stated. If the Prescribed Part does not apply, this will be because there is no security or the floating charge over the Company’s assets predates the introduction of the Prescribed Part provisions.
- 3.5 The Company is experiencing financial distress due to the Covid 19 pandemic. The Proposal, if accepted, is likely to result in a Dividend of 100 pence in the pound to Creditors. If this Proposal is not approved by Creditors, as drafted or in a substantively similar form, the Company will be insolvent on the basis that it will be unable to pay its debts as they fall due. As such the outcome proposed in this Arrangement is substantially better than the outcome in a liquidation, and is therefore the better alternative. The Arrangement is to be a scheme of arrangement whereby full payment of Debts is delayed. For this reason, we believe that Creditors may reasonably be expected to concur to the Proposal. **However, it should be noted that, in common with much of the rest of the economy, the Company is still learning how the pandemic has affected and will affect its business. The Proposal**

therefore includes the provision for the delay of payments to Creditors, and the ability to seek further decisions if more significant changes become necessary.

- 3.6 To become effective, a majority of three-quarters or more in value of Creditors voting in favour of the Proposal is required. A decision is not effective if those voting against it include more than half of the total value of Creditors who are not Connected with the Company. If the Proposal is approved, it will bind all Creditors, whether or not they received notice of the Decision Procedure to approve it, and regardless of whether they voted for or against it, or did not vote at all. The Proposal may not affect the right of a secured creditor to enforce its security except with the concurrence of the secured creditor.
- 3.7 We were introduced to the Nominee's firm by the Referrer. An amount equal to the Referrer's Payment has been or will be paid to the Referrer by the Nominee's firm in consideration of their assistance in preparing the Statement of Affairs and/or obtaining details of the Company's financial position. Neither the Nominee, nor the Nominee's firm, have advised us or the Company prior to discussions concerning our Proposal for a CVA, other than to report to us and/or others on the financial affairs of the Company.

4 Proposal

- 4.1 The Company shall resume or continue trading with the aim to achieve a return to profitability. Debts incurred after the approval of the Proposal (including payments that fall due pursuant to ongoing Hire Purchase Agreements, leases and rental agreements, and approved borrowing in accordance with clause 4.9 below) shall be paid from new trading income and Government support where available.
- 4.2 To the extent there is a period of time between the approval of this Proposal and the recommencement of the Company's trading, that shall be known as the "**Introductory Period**". The Introductory Period cannot last more than three months. The Breathing Space Period starts from the later of (1) the date of approval of the Proposal or (2) the first day of the month following when the Supervisor (in the Supervisor's absolute discretion) believes the Company has substantially recommenced trading.
- 4.3 For the duration of the Introductory Period (if there is one) and the Breathing Space Period, the Company will not be obliged to make any payments in relation to Debts owed as at the date of the approval of the Proposal.
- 4.4 Once the Breathing Space Period has elapsed, the Payment Period shall begin on the first day of the following month.
- 4.4.1 During the Payment Period, the Company shall make monthly instalments to the Supervisor who will distribute the proceeds of those instalments in accordance with clause 10 below (which may not be monthly).
- 4.4.2 The amount of the monthly instalments shall be the Supervisor's estimate of the total amount required to pay in full those distributions listed in clauses 10.2.1 to 10.2.5, divided by the number of months in the Payment Period. The Supervisor shall be entitled to amend this estimate at any stage and increase or decrease the amount of the monthly instalment. The Company is also at liberty to pay additional sums in monthly instalments, to shorten the period of the Arrangement.

- 4.4.3 This Proposal shall not bring forward any payment obligation. If a Creditor would not be entitled to be paid a Debt during the Breathing Space Period or Payment Period, its entitlement to be paid on its contractually due date shall remain unchanged ("**Future Debt**"). If the Creditor is entitled to payment during those periods, it shall be paid in instalments alongside the other Creditors for those payment obligations starting on the first month it was due payment (and such a Debt is not a Future Debt). In this instance, contingent or unascertained Debts are deemed to become payable once the contingency takes place, or the amount is ascertained. In the examples given below in all cases the contractual liability was entered into prior to the approval of the Proposal even where payment has not yet fallen due.

Example 1 - the Company owes Mr Smith £10,000 and the date for payment is prior to the date of approval of this Proposal. Mr Smith will receive no payment during the Breathing Space Period and equal instalments during the entirety of the Payment Period.

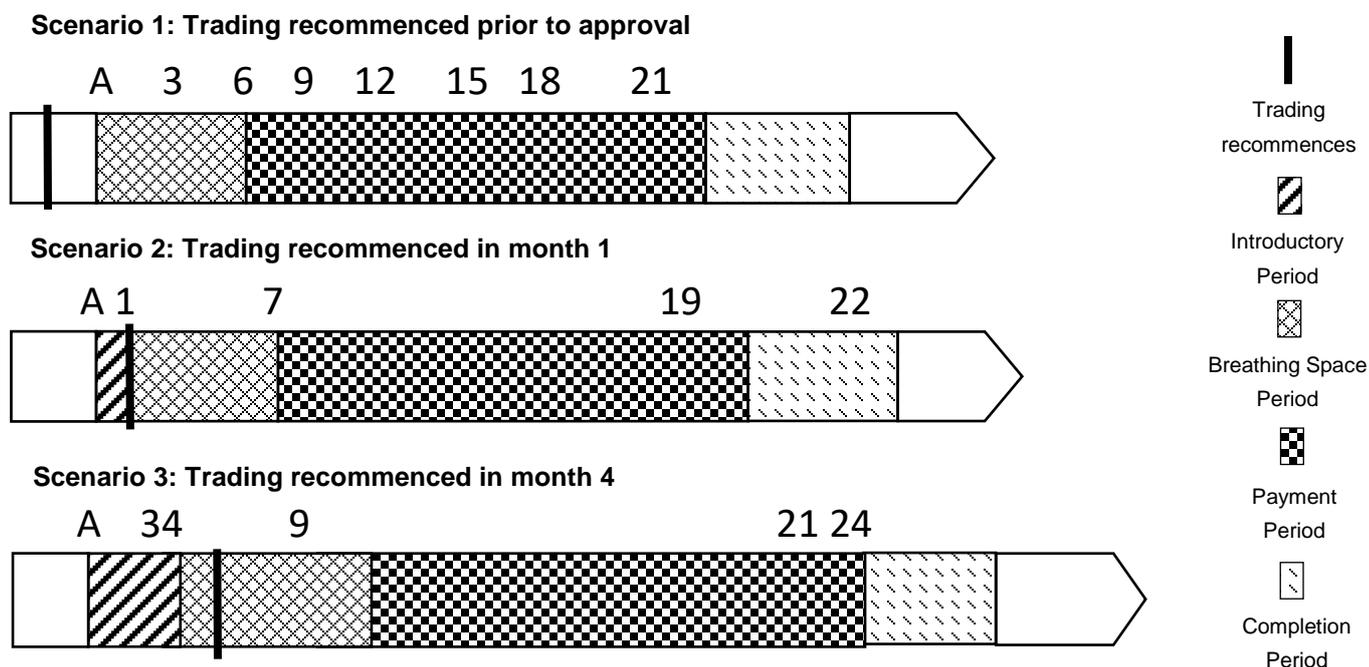
Example 2 - the Company owes Mr Khan £10,000 and the date for payment is during the Breathing Space Period. Mr Khan will receive no payment during the Breathing Space Period and equal instalments during the entirety of the Payment Period.

Example 3 - the Company owes ABC Limited £10,000 and is obliged to pay this half way through the Payment Period. ABC Limited will receive no payment during the Breathing Space Period and equal instalments during the second half of the Payment Period.

Example 4 – the Company owes BankCo £50,000 for an unsecured bounce back loan and is obliged to start repaying this one month after the end of the Payment Period. Although BankCo is bound by this CVA, as it is a Future Debt, BankCo it is not entitled to receive any payment during the Breathing Space Period or the Payment Period (and BankCo will get paid its Debt in the ordinary course on its due date after the Arrangement has been fully implemented).

- 4.5 The Company may, with the agreement of the Supervisor, shorten the Payment Period (and therefore increase its payments to the Supervisor) to enable a swifter successful conclusion to the Arrangement.
- 4.6 The Arrangement will run for the Introductory Period, plus the Breathing Space Period, plus the Payment Period, plus three months (the latter three months being the "**Completion Period**") subject to any extension in accordance with the Conditions ("**CVA Period**"). The Completion Period shall automatically extend until the HMRC Debt has been agreed or otherwise determined in accordance with the Conditions.

An example of the timescales in operation is below, on the assumption the Breathing Space period is set to 6 months and the Payment Period to 12 months.



- 4.7 Deferred Debts will only be paid once all unsecured Debts (not including Future Debts) have been paid in full.
- 4.8 Until the end of the Payment Period, the Company will not declare any dividends and its directors and management and their Connected parties will not receive any increase in salary to that stated in **Appendix 5**.
- 4.9 The Company shall not incur any liability, other than on normal or more beneficial terms, or otherwise borrow for the purposes of trading within the CVAPeriod, without the written consent of the Supervisor. It will constitute a breach of the Arrangement if the Company fails to meet its trading liabilities falling due within the CVA Period.
- 4.10 Until the completion of the Arrangement as defined in this Proposal, or the Company ceases to trade, the Company will prepare quarterly management accounts including a balance sheet, profit and loss account, six month rolling cash flow forecast and management overview and summary. These quarterly management accounts will be provided to the Supervisor within 14 days of the end of each three-month period from the date of approval of the Proposal.
- 4.11 Any Creditors with existing legal proceedings shall be dealt with in accordance with paragraph 5(1) of the Conditions.
- 4.12 Apart from in circumstances where clause 10.5 applies, all of the Company's assets are excluded from the Arrangement. The Excluded Assets, however, are intended to be utilised to generate the turnover and working capital required to enable the contributions to be made into the Arrangement.

4.13 In accordance with the Conditions, upon full implementation of the Arrangement, the Company shall be released from all Debts which are subject to the Arrangement, save for Future Debts (which shall remain payable pursuant to their terms).

4.14 The Supervisor is qualified to act as an insolvency practitioner in relation to the Company.

5 Extension of the Breathing Space Period and/or Payment Period

5.1 It is acknowledged that the Company and Creditors are entering into this Arrangement at a time of profound economic uncertainty. In view of this, if requested by the Company, the Supervisor may extend the Breathing Space Period and/or the Payment Period such that the CVA Period is not extended by more than six months.

5.2 Again if requested by the Company, if there is a Creditors' Committee, that Committee may also agree to a further extension by a simple majority of those committee members present and voting, to the Breathing Space Period and/or the Payment Period such that the CVA Period is not extended by more than a further six months (in addition to the extension in clause 5.1 above).

5.3 If in the Supervisor's sole discretion the Company's business is further impacted by any national, or local lockdown due to any pandemic, the Supervisor may add a "Lockdown Period" during which time the Breathing Space Period is extended, or any payment that would otherwise be due in the Payment Period is postponed (and the relevant Period is extended accordingly). There can be more than one Lockdown Period, but collectively they cannot extend the CVA Period by more than six months. For the purposes of this clause, a 'lockdown' arises where being open for business would be contrary to any regulation or requirement of or guidance issued by any competent authority, statutory or local, including the exercise by the UK Government of a statutory power under the Coronavirus Act 2020 and/or the Scottish Government of a statutory power under the Coronavirus (Scotland) Act 2020.

5.4 If further or additional extension is required to the six month extensions above, this can be sought by a decision from the Creditors as a variation to the Arrangement.

6 Trading

6.1 Until such time as the Arrangement is completed or otherwise terminated, the Company will not sell, transfer, encumber or otherwise dispose of any assets of the business other than in the ordinary course of business save with the Supervisor's prior written consent.

6.2 The Supervisor shall have the option to demand further information before consenting to any request, and approaching the Creditors' Committee or Creditors if the Supervisor sees fit. The Supervisor may also demand conditions for the provision of consent, for instance, that any sale proceeds are held by the Company's solicitor with an undertaking to pay sums to the Supervisor.

6.3 During the CVA Period, each director agrees that, except as provided in this Proposal or to the extent such would be a breach of the director's fiduciary duties, the director will procure that the business of the Company shall be properly managed and shall comply, in all material respects, with all applicable laws and shall maintain all licences, consents and authorisations which are necessary to carry on the business of the Company; insurance cover for the Company is maintained at all times with a reputable insurance company against all such risks

and liabilities in such manner and amounts, and on such terms and conditions, as accord with good commercial practice, having regard to the business and assets of the Company; and the Company shall carry on its business in the ordinary and proper course, so as to maintain it as a going concern.

- 6.4 To the extent any transaction occurs in breach of this clause, the Supervisor shall be at liberty to give Notice of Breach and terminate the Arrangement in accordance with the Conditions.

7 Hire Purchase and rental Creditors

- 7.1 The Company's assets, or assets in the Company's possession subject to Hire Purchase (including chattel leasing agreements or other rental agreements), are required for the Company's continued business. The Company will maintain its normal periodic payments falling due under those agreements during the CVA Period to avoid repossession and damage to the Company's business. During the Breathing Space Period no payments will be made in relation to Debts owed under those agreements as at the date of the approval of the Arrangement.

- 7.2 In any case where Hire Purchase, leased or rented assets are no longer required, disposal will be effected on terms to be agreed with the respective Creditors. Any resulting balances outstanding following such disposals will be dealt with as unsecured claims pursuant to the terms of the Proposal.

8 Landlords & Licences

- 8.1 If the Company is the lessee of any premises:

(a) Save as detailed in clause 8.1(b), any arrears of rent and any other liabilities due under a lease as at the date of the approval of the Arrangement will rank as an unsecured claim and therefore during the Breathing Space Period no payments will be made in relation to rent or other liabilities owed as at the date of the approval of the Arrangement;

(b) all rent and other liabilities accruing under the lease after approval of the Arrangement will be paid by the Company as and when they fall due. To the extent the Arrangement is approved part way through a rent period, the sums due for rent and other liabilities shall be apportioned (between pre-approval and post-approval) and paid monthly in arrears until the next payment date.

- 8.2 In this clause any reference to landlord, rent and lease also means licensor, licence fee and licence.

- 8.3 For the avoidance of doubt, nothing in this clause is intended to compromise or dilute the rights of any beneficiary of a guarantee or surety given by a third party on behalf of the Company as against that third party.

9 Desirability of the Proposal

- 9.1 We have considered other forms of insolvency procedure but we are proposing a CVA because:-
- 9.1.1 we believe there is a viable underlying business;
 - 9.1.2 the continuation of the business will permit regular contributions to be made to the Supervisor out of operational cash flow. If the business ceases to trade, Creditors will not have the opportunity to benefit from future profits; and
 - 9.1.3 the values of the business assets would be reduced in the event that the Company ceased trading.
- 9.2 Accordingly the Proposal aims to preserve the business of the Company.
- 9.3 The Proposal provides for a full repayment of existing Preferential Creditors and unsecured Creditors' claims which were incurred before approval and fall due before or during the Introductory, Breathing Space and Payment Periods. (Interest on such debts is dealt with separately in clause 10.4 below.)
- 9.4 The survival of the Company as a going concern may continue to provide future business for its suppliers.
- 9.5 The rights of secured creditors will not be affected by the CVA.
- 9.6 Where applicable Creditors under Hire Purchase Agreements, leases and rental agreements will benefit from receiving continued payments under the finance agreements, leases and rental agreements.
- 9.7 The survival of the Company as a going concern will give continuing employees continuity of employment. There will be no preferential claims from those employees (provided they are not due wages or other preferential employee liabilities as at the date of approval)) and they will not become unsecured creditors of the Company in respect of pay in lieu of notice and their accrued redundancy entitlements, as they would if the Company ceased trading.
- 9.8 The prospects of a more advantageous realisation of the Company's assets on a winding up are remote, as it is likely that the assets would have to be realised in a fire sale.
- 9.9 Additional claims may arise if the Company ceases to trade.
- 9.10 The costs of other forms of insolvency proceedings are relatively high when compared to the typical costs of a CVA.

10 Distribution

- 10.1 Creditors shall not be entitled to receive any payment or dividend under the terms of the Proposal unless they are bound by it and their claim has been admitted by the Supervisor.
- 10.2 Once the Payment Period begins, the Supervisor will distribute the proceeds of the monthly instalments according to the following order:

- 10.2.1 Nominee's fees and expenses
 - 10.2.2 Supervisor's fees and expenses
 - 10.2.3 Ordinary Preferential Creditors
 - 10.2.4 Secondary Preferential Creditors
 - 10.2.5 Unsecured Creditors after applying the provisions in clause 4.4.3
 - 10.2.6 Deferred Creditors
- 10.3 Before a lower category of Creditors' claims is paid, the claims of the higher category of creditor shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate equally.
- 10.4 If the Creditor is contractually entitled to interest, payments of its Debts will (if the Interest Rate is greater than 0%) include an additional payment of interest, calculated on a straight line basis by the Supervisor at the Interest Rate from the date of the approval of the Proposal (earlier interest is dealt with in paragraph 39 of the Conditions). Creditors contractually entitled to a lower rate of interest than the Interest Rate, shall be paid interest at that lower contractual rate. Deferred Debts and Creditors that would not be entitled to charge interest during the Introductory, Breathing Space or Payment Periods shall not be entitled to any interest payment.
- 10.5 If the Company's business or assets (or part thereof) are sold during the Arrangement (outside of the ordinary course of business), the net proceeds after costs and expenses will be applied first to pay Secured creditors in accordance with their rights, then to pay any amount remaining due to creditors whose debts arose after the commencement of the Arrangement (including any tax chargeable on the sale) and then to pay liabilities in accordance with clause 10.2 save that payment to Unsecured Creditors in clause 10.2.5 shall include Future Debts.
- 10.6 Save where clause 10.7 applies, no non preferential distribution will be made until all tax filings in respect of HMRC Debts, with the exception of corporation tax for the periods for which the filing period had not elapsed on or before the day before the approval of the Proposal, have been made and the Supervisor has admitted or otherwise adjudicated upon their final claims in that respect.
- 10.7 In cases where: (i) the Arrangement terminates pursuant to paragraph 13.1 of the Conditions; (ii) a final non preferential distribution will be made; or (iii) the Company sells the whole or substantially the whole of its assets; then, no non preferential distribution will be made until: (i) the requirement in clause 10.6 is met; and (ii) all tax returns in respect of corporation tax included in the HMRC Debt has been filed and agreed with HMRC and the Supervisor has admitted their final claims in that respect, or they have otherwise been determined in accordance with the Conditions.
- 10.8 Unless the Supervisor believes it uneconomical to do so, distributions shall be paid at least every three months during and after the Payment Period.

11 Supervisor's Powers and Functions

11.1 The Supervisor's powers include powers to:

11.1.1 take action on default;

11.1.2 deal with Creditors' claims; and

11.1.3 pay expenses, costs and Creditors' dividends.

11.2 Further powers and the Supervisor's functions are set out in Part 3 of the Conditions.

11.3 In addition, the Supervisor shall provide a proportionate update to creditors on the progress of the Arrangement at the end of the Breathing Space Period.

12 No Warranties or Representations

The Nominee and Supervisor give no warranties and make no representations in relation to the information contained in the Proposal and Appendices.

13 The Company's warranties, duties and obligations

The Company's warranties, duties and obligations to the Supervisor are set out in Part 4 of the Conditions.

14 Nominee's and Supervisor's Remuneration and Expenses

At **Appendix 6** are details of the remuneration and expenses of the Nominee and proposed Supervisor.

15 Avoidable Transactions

15.1 To the best of our knowledge there are no circumstances giving rise to actual or potential claims under the following sections of the Insolvency Act 1986, in the event of the Company going into liquidation:

15.1.1 Section 238 (transactions at an undervalue)

15.1.2 Section 239 (preferences)

15.1.3 Section 244 (extortionate credit transactions)

15.1.4 Section 245 (invalidity of a floating charge)

15.1.5 Section 423 (transactions defrauding creditors)

15.2 To the best of our knowledge there are also no charges that would be void against a liquidator, administrator or creditor in the event of a liquidation or administration pursuant to section 395 of the Companies Act 1985 or section 859H of the Companies Act 2006.

- 15.3 In the period between this Proposal being received by Creditors, and their approval of it, in order to continue trading it may become necessary to pay a supplier to obtain essential goods and services to procure the continuation of the Company's trade.

16 EU Regulation

The proposed voluntary arrangement will constitute "main proceedings" under the EU Regulation on Insolvency Proceedings 2015 (2015/848) (article 3(1)) as the Company's registered office is and always has been in England, Wales or Scotland and its management and principal trading activities are conducted in the United Kingdom.

17 Directors' Declaration

- 17.1 As Directors, we confirm that this document fairly sets out the Company's proposals to its creditors and members for a CVA.
- 17.2 We confirm that we have disclosed to the Nominee full and complete particulars of all assets and liabilities of the Company, whether actual or contingent.
- 17.3 We acknowledge that we will commit an offence if we make any false representation to members or creditors for the purposes of obtaining the approval of members or creditors to this Proposal, such offence being punishable by imprisonment and/or a fine.
- 17.4 We acknowledge that it has been explained to us that the Nominee has a duty to the Company's creditors and the Court that cannot be fettered by the views of the directors. The Nominee has explained to us that we have the right to take independent legal advice in relation to this Proposal.
- 17.5 We acknowledge that although we have received professional assistance in drafting the Proposal, its contents and the accuracy thereof remain our sole responsibility.
- 17.6 We have included in this Proposal to creditors and members all the information required to be disclosed pursuant to the Act and the Rules. The information and all statements contained herein and the accompanying Statement of Affairs are true to the best of our knowledge and belief.

18 Directors' statement of truth

We believe that the facts stated in this Proposal are true. We understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed by: *[insert name]*

Date: *[insert date]*

(Director)

Signed by: *[insert name]*

Date: *[insert date]*

(Director)

Appendix 1 - R3 COVID 19 CVA Standard Conditions

Appendix 2 - Amendments to the Standard Form R3 COVID 19 CVA

[EG

[Clause 15 – the following are potential antecedent transactions:

[repayment of director's loan of £100k last year.]

[If the Directors are amending the Proposal such that it is not pay-in-full consider clauses to deal with amongst other things windfalls or unanticipated increases in profit/annual contribution review and Future Debts.]

**Appendix 3 - the officers and members of the Company and other statutory information
the directors are obliged to provide to creditors.**

Appendix 4 - A summary of financial information about the Company, including its statement of affairs detailing (1) assets, with an estimate of their respective values and if secured the extent of that security, and (2) liabilities (including pension liabilities (if any)) including full list of creditors with names, addresses and amounts owing, and (3) any guarantees given, and if any guarantors are connected to the Company, and (4) the value of the net property and Prescribed Part (if appropriate) (5) a comparison of the estimated outcomes of the Arrangement and of a winding up

Appendix 5 - A brief history of Company, a description of its business, details of why the Company is or is likely to become insolvent, how it has been impacted by Covid-19, any other attempts that have been made to solve the Company's difficulties, the background and financial history of the directors where relevant, the number of its employees, , and the present levels of salary for management

Appendix 6 - the Nominee's and proposed Supervisor's remuneration and expenses