

JOINT ADMINISTRATORS' CONSENT

UNDER PARAGRAPH 64 OF SCHEDULE B1 TO THE INSOLVENCY ACT 1986

Pursuant to paragraph 64 of Schedule B1 to the Insolvency Act 1986 (“**IA86**”), [ADD NAMES OF THE ADMINISTRATORS] (the “**Joint Administrators**”), the joint administrators of [ADD NAME OF COMPANY] (the “**Company**”), hereby consent to the exercise of the powers set out below by the directors of the Company (the “**Directors**”).

The Joint Administrators have only provided their consent to the exercise of these powers on the basis that they have certified that the administration is reasonably likely to achieve the rescue of the Company as a going concern. The Joint Administrators are also reasonably satisfied that the Company has sufficient funding to pay essential key post-administration costs such as rent, employee salaries, utilities and suppliers on an ongoing basis. The Joint Administrators do not consent to the exercise of any other powers by the Directors, although they remain willing to consider any additional requests for further consents that may be required to achieve the rescue of the Company as a going concern.

For the avoidance of doubt, the Joint Administrators consent to the exercise of these powers subject always to the conditions and restrictions set out below, and subject always to their entitlement to revoke or vary the consent at any time.

PART 1 - Powers

1. The power to exercise the powers conferred upon the Directors by the Articles of Association of the Company in order to carry on the day-to-day business of the Company subject always to the terms and conditions herein.
2. The power to manage, instruct and direct the employees of the Company.
3. The power to acquire stock-in-trade of the type ordinarily purchased by the Company in the ordinary course of the Company's business on reasonable terms and for fair value, subject to monetary limits of:
 - 3.1. [ADD AMOUNT] per single transaction or group of related transactions; and
 - 3.2. [ADD AMOUNT] in total per [week] [month].
4. The power to dispose of stock-in-trade [and other assets] of the type that would ordinarily be disposed of in the ordinary course of the Company's business on reasonable terms and for fair value, subject to:
 - 4.1. [ADD AMOUNT] per single transaction or group of related transactions; and
 - 4.2. [ADD AMOUNT] in total per [week] [month].
5. The power to enter into and perform obligations under contracts for the provision and/or the receipt of services by the Company of the type that would ordinarily be entered into and performed of in the ordinary course of the Company's business, subject to:
 - 5.1. [ADD AMOUNT] per single transaction or group of related transactions; and
 - 5.2. [ADD AMOUNT] in total per [week] [month].

6. The power to pay any salaries (or other payments for services) due under any pre-administration contracts to any employees, contractors or agents, subject to a limit of [ADD AMOUNT] [net of tax] [gross] per person per [week] [month].
7. The power to make any other payments in return for services, subject to:
 - 7.1. [ADD AMOUNT] per single transaction or group of related transactions; and
 - 7.2. [ADD AMOUNT] in total per [week] [month].
8. The power to incur credit with suppliers and other counterparties, subject to:
 - 8.1. [ADD AMOUNT] per single transaction or group of related transactions; and
 - 8.2. [ADD AMOUNT] in total per [week] [month].
9. The power to enter or renew contracts in relation to [SPECIFY TYPE OF CONTRACT] and [SPECIFY TYPE OF CONTRACT], subject to:
 - 9.1. [ADD AMOUNT] per single contract; and
 - 9.2. [ADD AMOUNT] in total per [week] [month].
10. [ADD ANY FURTHER OR OTHER POWERS WHICH THE DIRECTORS NEED TO EXERCISE IN ORDER TO RESCUE THE COMPANY AS A GOING CONCERN.]

PART 2 – Conditions

General

1. The powers set out above shall be exercised only for the purpose of achieving the rescue of the Company as a going concern.

Company Property

2. The Directors shall ensure that they safeguard and maintain the books and records of the Company, and they shall provide the Joint Administrators with access to all books, records and other documents as the Joint Administrators may require.
3. The Directors shall provide the Joint Administrators with access to all property of the Company as the Joint Administrators may require.

Bank Accounts

4. The Directors shall ensure that: (i) the Joint Administrators are provided with details of the Company's pre-administration bank accounts (including sort codes and account numbers); and (ii) the Joint Administrators are authorised to communicate with the Company's bank(s) and to obtain online access to the Company's pre-administration bank accounts.
5. The Joint Administrators shall establish a new bank account for the payment in of post-administration income and the payment out of post-administration trading expenses. The Joint Administrators shall add the Directors to the mandate of the post-administration bank account, subject to the Directors only being able to exercise that mandate within and subject to [the monetary limits set out above]).

Control and Monitoring

6. The Directors shall comply promptly with all requests for information as the Joint Administrators may require.
7. The Directors shall inform the Joint Administrators, in sufficient time to enable their attendance, of all board meetings of the Company, and shall provide copies of the board minutes to the Joint Administrators as soon as reasonably practicable thereafter.
8. The Directors shall also prepare and provide to the Joint Administrators during the administration:
 - 8.1. [[Weekly] [monthly] management accounts [and such other records of a type that would ordinarily be prepared by the Directors] showing a true and fair view of the assets, liabilities, financial position and profit or loss of the Company];
 - 8.2. A [daily] [weekly] [monthly] receipts and payments account;
 - 8.3. A [daily] [weekly] [monthly] account of all orders placed and accepted (including the terms of trade of those orders);
 - 8.4. A [daily] [weekly] [monthly] account of all costs/expenses incurred during the administration;
 - 8.5. [ADD RELEVANT INFORMATION AS APPROPRIATE].
9. The Directors shall inform the Joint Administrators immediately of any threatened or actual termination by contractual counterparties (or requests by counterparties to vary terms).
10. The Directors shall inform the Joint Administrators immediately of any fact or other information which could suggest to a reasonable person that there is no longer any reasonable prospect of achieving the rescue of the Company as a going concern.
11. Without prejudice to the foregoing, the Directors shall provide a report to the Joint Administrators on the business and affairs of the Company by telephone or video-link: (i) every [24] [48] hours during the first [ADD NUMBER OF WEEKS] weeks of the Company's administration; and (ii) every [ADD NUMBER OF DAYS] days thereafter.
12. [ADD ANY FURTHER OR OTHER CONDITIONS WHICH THE JOINT ADMINISTRATORS WISH TO IMPOSE.]

PART 3 – Restrictions

1. The Directors shall not, without the prior consultation of the Joint Administrators: (i) enter into, renew, adopt, terminate or vary any contract of employment; (ii) negotiate or otherwise vary the terms of any business lease with the Company's landlord(s); (iii) negotiate or otherwise vary the terms of any contract for the supply of essential goods and services as defined by Section 233 of IA86; (iv) borrow new money; (v) subject any asset to any new mortgage, charge or security interest; (vi) [INSERT AS APPROPRIATE]

2. The Directors shall obtain the Joint Administrators' prior written consent before: (i) paying any salaries or other sums to any of the Directors or any other persons connected with the Company within the meaning of section 249 of the Insolvency Act 1986; or (ii) entering into any other transactions with the Directors or with such persons.

PART 4 - Termination

1. The Joint Administrators are entitled to revoke or vary this consent at any time (subject to the Directors' right to apply to the Court, on notice to the Joint Administrators to challenge the Joint Administrators' decision to do so).

Signed by: _____

For and on behalf of the Joint Administrators

Dated: _____

Signed by: _____

Director

Dated: _____

Signed by: _____

Director

Dated: _____

Notes:

- (i) All amounts stated above exclude any applicable VAT.
- (ii) For the avoidance of doubt, this consent does not affect, and is without prejudice to, the rights and duties of the Joint Administrators and the Directors under any applicable laws.

EXPLANATORY NOTE

As a result of the COVID-19 crisis, the UK business community is experiencing unprecedented financial distress and liquidity issues. The nationwide “lockdown” has deprived companies of cash-flow that would ordinarily be used to service day-to-day debts and periodic liabilities (e.g. rent and business rates). The UK administration regime is an essential tool to assist in the rescue of otherwise viable enterprises and is sufficiently flexible to allow a bespoke administration process that is specifically designed to promote the rescue of viable businesses whilst simultaneously addressing the volume and scale of the current difficulties.

The consent protocol (“**the Consent Protocol**”) is an integral part of this bespoke administration regime, which is intended to create long-term solutions to what is hopefully a short-term problem, saving businesses and livelihoods across the UK.

The primary statutory objective of administration under paragraph 3(1) of Schedule B1 to the Insolvency Act 1986 (“**Schedule B1**”) is “rescuing the company as a going concern” (“**Rescue Administration**”). Paragraph 64 of Schedule B1 provides an administrator with a broad power to give consent (whether general or specific) to the continuing management of the company by the existing directors under the administrator’s supervision, without seeking creditor approval.

Where the primary objective of an administration is to rescue the company as a going concern, the Consent Protocol is intended to provide a framework to allow the Directors to play a central role in stabilising and rescuing the company under the administrator’s supervision.

The Consent Protocol is not an alternative to standard administration, nor does it replace or amend the current legislation in Schedule B1 of IA86. It is intended to promote Rescue Administration by facilitating corporate survival through pre-existing means.

The Joint Administrators have only provided their consent to the exercise of these powers on that basis that they have certified that the administration is reasonably likely to achieve the rescue of the company as a going concern, as is the required under Schedule B1. The Joint Administrators will also have reasonably satisfied themselves that the company has sufficient funding to pay essential key post-administration costs such as rent, employee salaries, utilities and suppliers on an ongoing basis.

The Consent Protocol is a broad template only, and the powers set out therein are illustrative only. It can be applied to companies of all sizes, and its terms should be specifically adapted and amended to fit the particular circumstances of the case.

It is envisaged that the Consent Protocol can be executed and implemented in individual cases without the need for an application to the Court. This will reduce unnecessary work for the Courts, at a time when their limited resources are severely stretched, and there is insufficient judicial capacity to commence every Rescue Administration via a Court application.

Instead, it is hoped that the Courts will be able in the near future to consider the application of the Consent Protocol in a series of test cases and that, if the Courts’ findings are favourable, this will provide support moving forwards for insolvency practitioners’ decision to adopt the Consent Protocol. In this regard, the High Court (Snowden J) has recently highlighted the Courts’ general desire to assist the insolvency profession during the COVID-crisis in *Re*

Carluccios Limited [2020] EWHC 886 (Ch) (see also Trower J in *Re Debenhams Retail Limited (in Administration)* [2020] EWHC 921 (Ch), at [29]):

“The COVID-19 pandemic is a critical situation which carries serious risks to the economy and jobs in addition to the obvious dangers to health. I think that it is right that, wherever possible, the courts should work constructively together with the insolvency profession to implement the Government’s unprecedented response to the crisis in a similarly innovative manner.”

It is hoped that these test-cases, coupled with the fact that the Joint Administrators’ decision to agree to the Consent Protocol will be matter of commercial judgment (only open to challenge where it is unreasonable or irrational), will encourage insolvency practitioners to adopt the Consent Protocol where the circumstances of the case are appropriate.

The main features of the Consent Protocol are: (a) the identification of broad management powers which can continue to be exercised by the Directors (which, to be clear, does not involve the delegation of any of the Joint Administrators’ powers to the Directors); (b) the identification of specific conditions with which the Directors must comply in order to exercise those powers.

The Consent Protocol contains suggested transaction limits, which should be set at sufficiently high levels to enable the company to engage in ordinary business transactions without requiring permission from administrator. The intention is therefore for the transaction limits to be set at levels which exclude unusually large transactions. This will vary from company to company.

The core requirement is the Directors’ obligation to report periodically to the Joint Administrators and to inform the Joint Administrators of any information that could suggest to a reasonable person that there is no longer any reasonable prospect of rescuing the company as a going concern. In the event that the Joint Administrators believe that it is no longer reasonably likely that the company can be rescued as a going concern, the Joint Administrators should terminate the Rescue Administration.

The Joint Administrators’ consent in Part 1 is intended to enable the Directors to conduct the day-to-day management of the company’s business. However, the Directors shall not without the prior consent or consultation of the Joint Administrators:

- Enter into, renew, adopt, terminate or vary any contract of employment.
- Negotiate or otherwise vary the terms of any business lease with the company’s landlord(s).
- Negotiate or otherwise vary the terms of any contract for the supply of essential goods and services as defined in Section 233 of IA86.
- Borrow new money.
- Subject any asset to any new mortgage, charge or security interest.

During the Rescue Administration, the central role of the Joint Administrators will be the control and supervision of the Directors’ attempts to stabilise and rescue the company (“**the Control and Monitoring Role**”).

The Consent Protocol sets out the basic reporting duties of the Directors and the particulars of the Joint Administrators’ Control and Monitoring Role.

In the event that the Directors do not comply with their duties to provide the necessary information to the Joint Administrators in the prescribed manner, the Joint Administrators will be entitled to terminate the Rescue Administration.

It is envisaged that, where the Joint Administrators have complied with their Control and Monitoring Role, they will have fulfilled their broader duties to stakeholders, and their conduct will not be open to challenge under IA86.

Since the immediate cause of the company's difficulties will in most cases be obvious and a rescue remains reasonably likely, it would be premature for the Joint Administrators to conduct detailed investigations into the reasons for the company entering administration. However, for the Directors to be permitted to exercise management powers, the Joint Administrators will first need to be satisfied, on the basis of the information available to them, that the Directors are not unfit to perform this function. It may become appropriate for the Joint Administrators to perform a more detailed investigation into the reasons for the failure of the company once the Joint Administrators have formed the opinion that the company cannot be rescued.

The Joint Administrators are entitled at any time to vary or terminate the consent provided in the Consent Protocol (subject to the Directors' right to apply to the Court to challenge the decision to do so).

If it proves to be possible to stabilise and preserve the company until the COVID-19 crisis has ended, it is anticipated that the Rescue Administration can then be supplemented by either a consensual arrangement, a Company Voluntary Arrangement, a Scheme of Arrangement or a Restructuring Plan to reach a compromise with the company's creditors, reduce and/or extend the time for payment of the company's liabilities, and secure the company's long-term viability.