

Dated 10th May 2017

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ROYAL INSTITUTION OF CHARTERED SURVEYORS (1)

AND

INSOLVENCY PRACTITIONERS ASSOCIATION (2)

AND

THE ASSOCIATION OF PROPERTY AND FIXED CHARGE  
RECEIVERS (3)

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MEMORANDUM OF UNDERSTANDING

Relating to a scheme for the voluntary registration

of Registered Property Receivers

and the voluntary regulation of them as against agreed Professional Standards

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This Memorandum of Understanding (“**MoU**”) is entered into this 10<sup>th</sup> day of May 2017, by and between:

- (1) ROYAL INSTITUTION OF CHARTERED SURVEYORS, of 12 Great George Street, Parliament Square, London SW1P 3AD (“**RICS**”); and
- (2) INSOLVENCY PRACTITIONERS ASSOCIATION, of Valiant House, 4-10 Heneage Lane, London, EC3A 5DQ (“**IPA**”).
- (3) The Association of Property and Fixed Charge Receivers, whose registered office is at Eversheds 115 Colmore Row Birmingham B3 3AL (“**NARA**”)

Hereinafter “the parties”.

WHEREAS:-

- (A) RICS and IPA entered into a Memorandum of Understanding relating to the voluntary regulation of fixed charge receivers (otherwise and hereinafter known as “Registered Property Receivers”) which took effect from 2 June 1999 and which was later updated with effect from firstly 1 January 2001 and secondly 16 January 2012 and thirdly 16 March 2015, between RICS and IPA, which the parties now wish to further amend to include NARA, in accordance with the terms set out in this MoU.
- (B) The parties wish to redefine a scheme for the voluntary registration and regulation of Registered Property Receivers, most of whom are also members of NARA and also either RICS or the IPA.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:-

## **1. Registered Property Receivers Scheme (“the Scheme”)**

- 1.1 The parties will jointly oversee a registration and regulation scheme for those persons who apply for registration and who satisfy the “Registration Criteria” for Registered Property Receivers set out at Appendix I, as the same are amended from time to time by agreement of the parties.
- 1.2 Entry into the Scheme will generally be by examination subject to any other entry routes agreed by the parties from time to time. Applicants will be required to use the application form developed for this purpose by the parties and will be required to pay an application fee at the same level as the annual registration fee, irrespective of when during a registration year the application is made.
- 1.3 The parties shall agree from time to time what yearly registration and monitoring fees to levy from registrants of the Scheme to fund the administration of the Scheme, including the costs of IPA to undertake the administrative and monitoring functions (as defined below in clause 3.3). The fees shall be fair and reasonable, aimed at administering the Scheme

on a stand-alone basis but not with a view to making a profit. The membership year will commence on the 1 January each year.

- 1.4 RICS and IPA will jointly award the designation “Registered Property Receiver”, or as jointly determined by the parties from time to time, only to those persons who have:
  - a) demonstrated they meet the prevailing criteria for first registration set out in Appendix 1, as may be amended; or
  - b) been designated a Registered Property Receiver prior to 01 January 2017; and
  - c) undertaken to conform with the criteria for continued registration set out in Appendix 1, as may be amended; and
  - d) paid any fees and other charges as may be properly due under the terms of the Scheme; and
  - e) not been excluded or de-registered from the Scheme for non-conformity with its terms (unless any criteria for re-registration have been met).
- 1.5 Non-payment of registration or monitoring fees within 90 days of their due date will be notified by the IPA to the parties and the registrant will be deregistered from the Scheme and notified accordingly.
- 1.6 The parties will promote the Scheme to their members and will regularly informally consult with one another to this end. Neither party will make any public statement or give any press release other than in respect of agreed Scheme policy without first obtaining the other parties’ agreement and approval of the text. Any promotion or communication about the Scheme will be transparent about the nature of its regulation and will be clear that it is jointly overseen by the parties.
- 1.7 All external communications about the Scheme will be branded jointly with the logos of the parties displayed with equal prominence (though the communicating party may place these logos in an order of their choosing). All external communications will carry the text “The Registered Property Receivers’ Scheme provides for the voluntary registration and regulation of fixed charge receivers and is overseen jointly by RICS, IPA and NARA.”
- 1.8 The parties will maintain a composite register of current Scheme registrants to be made publicly available on a Scheme website and in such other manner as may be agreed between the parties from time to time.
- 1.9 The parties agree to publish this MOU on the Scheme website.

## **2. Term and legally binding clauses**

- 2.1 This MoU shall become effective from the date set out in the heading and shall continue to run until terminated in accordance with clause 11. For the

avoidance of doubt it replaces the former Memorandum of Association relating to the Scheme dated 16 March 2015 which shall be deemed terminated on the date of this agreement, but which shall apply to the matters contained within it up to the date of its termination.

### **3. Governance of the Scheme**

- 3.1 The parties will maintain a continuing dialogue about any matter that may affect public confidence in the maintenance of accepted professional standards amongst members of the Scheme.
- 3.2 The parties will meet at least bi-annually preferably in March and September to discuss the functioning of the Scheme and any alterations that may be necessary from time to time of the terms of this agreement. At each meeting, the IPA will provide an account of any financial transactions in respect of the Scheme's operations for the 6 month period ending 31 December and 30 June preceding the date of the meeting and an anonymised summary of the work of the Quality Assurance Panel during the period. The parties will have equal standing in the process of Governance of the Scheme and no changes to the terms of this agreement may be made without the unanimous agreement of the parties.
- 3.3 The IPA will provide secretariat services to the scheme, and in doing so will undertake the following activities:
  - a) Processing applications for Scheme registration, in accordance with the registration and competency criteria;
  - b) Processing annual renewal of Scheme registrants, in accordance with the registration and competency criteria;
  - b) Maintenance of a Scheme website containing a list of all current RPRs and providing access to such NARA Practice Statements as may have been endorsed by the IPA and RICS (or links to the same);
  - c) Notification to the parties of non-payment by any Scheme registrant of any sum due and payable under the terms of the Scheme;
  - d) Notification to the parties of any application for registration where the exercise of any discretion concerning admittance is sought;
  - e) Management accounting and preparation of financial statements in respect of the Scheme activities;
  - f) Maintaining a register of complaints received against Scheme registrant;
  - g) Directing complainants, or potential complainants to the appropriate professional body of the Scheme registrant;
  - h) Providing minutes of any meeting conducted in relation to the Governance of the Scheme, for agreement by the parties.

- i) Administration of an examination process whereby the competence of applicants for Scheme registration may be examined;
  - i) The maintenance of a register of conflicts of interests and how these are cleared or addressed, which shall be open to Scheme registrants.
- 3.4 Where a registration or renewal applicant evidences their competency with reference to their membership of the IPA or other professional body except RICS, the IPA will retain any application or renewal fee paid by them as against the cost of providing the above services. Where the registration or renewal applicant evidences their competency with reference to their membership of RICS, the IPA may retain a sum equivalent to 10% (plus VAT, if applicable) of any registration or renewal fee paid by them by way of an administration charge for the above services and shall account the cumulative balance of the fees so paid to RICS on a bi-annual basis. Additionally, the IPA may retain funds from registration or renewal fees that would otherwise be payable to RICS for the purposes of defraying 50% of the agreed costs of maintaining and developing the Scheme website, no such costs to be incurred without the express agreement of RICS.

#### **4. Registration and Competency criteria**

- 4.1 The parties have set out at Appendix I their agreed Registration Criteria for admission to and continuing registration under the Scheme as being those reasonably required to demonstrate that a person may be fit and proper to carry out fixed charge property receivership work. The parties may amend these criteria from time to time, in writing and by agreement, setting high professional standards and having regard to the public interest at all times.

#### **5. Standards of Professional Competence**

- 5.1 Scheme registrants shall at all times be expected to comply with any prevailing Code of Professional Conduct or Ethics Code as may be in force by virtue of their membership of the parties and/or of any other professional body upon whose membership they have relied in support of their registration to the scheme.
- 5.2 In addition to such Codes, NARA shall be responsible for the development and recommendation of appropriate Practice Statements reflecting expected standards of practice specifically amongst Scheme Registrants in the conduct of fixed charge property receivership appointments. Practice Statements developed and recommended in this manner may not conflict with any prevailing Code, and in the event of a conflict arising the relevant Code shall prevail.
- 5.3 RICS and IPA shall each utilise their respective professional standards setting mechanisms to procure the endorsement of those standards, with such revision as may be agreed unanimously between the parties. Once endorsed by both RICS and IPA, compliance with the Practice Statements

shall be mandatory upon Scheme registrants. Departure from the standards contained in endorsed Practice Statements shall be a matter capable of referral to the Quality Assurance Panel in accordance with clause 7.

- 5.4 Where the revision of an existing Practice Statement or the creation of a new Practice Statement is considered warranted by the parties, Nara will be invited to draft such a Statement, for consideration by RICS and IPA. Any revisions or additions to existing standards shall be subject to an appropriate consultation process, conducted jointly by the parties, prior to formal endorsement by RICS and IPA.
- 5.5 RICS and IPA shall at all times be at liberty to unilaterally refuse to endorse a Practice Statement or withdraw their endorsement of an existing Practice Statement upon the provision of a reasonable explanation to the other parties to this Memorandum.
- 5.6 NARA shall remain the legal proprietor of the Practice Statements. NARA gives permission for such practice statements as are endorsed by RICS and IPA to be accessible from the Scheme website, for the benefit of Scheme registrants and the broader public.
- 5.7 NARA shall make available to RICS and IPA the Guidance Notes produced by it. These shall be utilised by RICS and IPA in the administration of the RPR scheme and in the monitoring undertaken thereunder. For the avoidance of doubt, NARA shall remain the legal proprietor of the Guidance Notes and is at liberty to determine the basis upon which access to them is afforded to Scheme registrants and/or the broader public. The Guidance Notes will not be mandatory upon Scheme registrants and in relation to any regulatory action against a Scheme registrant, their status shall be that of good (as opposed to required) practice.

## **6. Examinations, Training and Support**

- 6.1 The parties shall agree between them an appropriate examination syllabus for the purpose of testing the competency of applicants for Scheme registration in accordance with Appendix I. The syllabus shall be reviewed by the parties on an annual basis, in consultation with any Examiner appointed in accordance with clause 6.2.
- 6.2 RICS and IPA shall appoint a suitably qualified and experienced person to act as Examiner, for the purposes of authoring suitable examination questions to meet the syllabus. The Examiner will mark the exam submissions of candidates, subject to an external moderation process, to be agreed between the parties. The Examiner may not also be a member of the Quality Assurance Panel.
- 6.3 Following the publication of examination results, the Examiner will provide anonymised feedback to the parties on the general performance of

examination candidates in respect of those elements of the syllabus that were examined. NARA will utilise this information to inform the future training needs of examination candidates.

- 6.3 IPA will administer a process by which candidates may register for an examination, to be held annually. IPA shall be at liberty to determine the costs to candidates of such provision, which shall be reasonable and reflect comparable market rates for professional examinations. The amounts paid by examination candidates shall be used first to defray the costs of the Examiner, invigilator(s), moderator(s) and of any examination venue.
- 6.4 RICS shall operate a fair and effective system for peer review of applicants for scheme registration, including an appeal process. RICS shall be at liberty to determine the costs to applicants, which shall be reasonable and reflect comparable market rates for similar services. The amounts paid by applicants shall be used first to defray the costs of any assessors employed in this function.
- 6.5 NARA will act as the primary provider of high quality training for RPR examination candidates and also make available to RPRs not less than 10 (ten) hours of professional training as part of the Scheme Registrants' obligations of Continuing Professional Development as required by the Registration Criteria at Appendix 1. NARA shall be at liberty to determine the costs to participants of such provision, which shall be reasonable and reflect comparable market rates for professional training.

## **7. Regulation of Scheme Registrants**

- 7.1 RICS and IPA will ensure that Scheme registrants continue to uphold the standards of professional competence agreed by the parties from time to time by establishing an inspection and monitoring regime for the Scheme. Inspection and monitoring activity shall reflect any relevant Code of Professional Conduct / Ethical Code issued by the parties and applicable in respect of those persons registered, and in all cases the NARA Practice Statements as are issued from time to time and endorsed by RICS and IPA.
- 7.2 The scope of regulation of Scheme registrants will be set out in the registration and competency criteria set out in Appendix 1. These requirements will be shared with registrants of the Scheme in a transparent manner and Scheme registrants will be required to signify annually their agreement to be bound by the provisions contained therein. Such regulation will usually include at least one (1) monitoring visit in the first three (3) years of registration of every new Scheme member.
- 7.3 RICS and IPA will establish a Quality Assurance Panel ("**QAP**") comprised of three (3) Registered Property Receivers considered by the parties to be of good standing and one (1) appropriately experienced Lay Member. RICS shall be entitled to nominate two (2) Registered Property Receivers from

amongst their members and IPA shall be entitled to nominate one (1) Registered Property Receiver from amongst its membership and one (1) Lay Member, The IPA will also appoint a suitably qualified person to act as Secretary of the QAP. As the representative body for Property Receivers, NARA will not perform any function in respect of the QAP.

- 7.4 Appointment to the QAP will be via the usual appointment processes operated by the RICS and IPA in respect of their respective nominees. Appointments to the QAP will ordinarily be for a period of 3 years. The appointing party shall be at liberty to remove a panel member via their usual removal processes, where they reasonably believe it to be in the interests of the scheme or the public interest to so do.
- 7.5 The QAP shall have oversight of the inspection and monitoring mechanisms. It will uphold the standards of professional competence of Scheme registrants and shall do so in accordance with its Terms of Reference as set out in Appendix II (or such amended terms as may be agreed between the parties from time to time).
- 7.6 The QAP should also be invited to determine any application for Scheme registration where it appears to the secretariat that the applicant falls short of the Registration Criteria. The QAP may exercise its discretion to accept an applicant for scheme registration only where good cause is shown; where no diminution in expected standards is anticipated to result from the decision to register the applicant; and with the unanimous agreement of the panel members.
- 7.7 The functions of inspection and monitoring such standards will be carried out by the IPA (or such other competent body agreed by the parties) in accordance with the Inspection and Monitoring Agreement set out in Appendix III ("**Inspection and Monitoring Agreement**"). The IPA will carry out the tasks set out in the Inspection and Monitoring Agreement on behalf of RICS and IPA jointly, but without creating any duty, partnership or agency to RICS, except as described in the Inspection and Monitoring Agreement and this clause.
- 7.8 The parties will report any matter which it considers may affect public confidence in the conduct of registrants of the Scheme to the QAP, so that the QAP can consider taking appropriate action, which may include the following:
  - a) removing the registrant from the Scheme;
  - b) suspending the registrant from the Scheme, suspension will be automatic where the registrant has been suspended from membership of his/her professional body (i.e. RICS or IPA as the case may be in accordance with their respective rules) and desist from reinstating registration to the Scheme for so long as the relevant professional body suspends that registrant;

c) setting conditions for the registrant's continued registration or reinstatement to the Scheme;

d) requesting the registrant submit to a further targeted inspection visit, at the registrant's expense;

or any combination of b), c) and d) above.

In performing these functions, the QAP will at all times act within its prevailing Terms of Reference..

7.9 The provision of inspection and monitoring services by the IPA will be undertaken under the Inspection and Monitoring Agreement on a rolling annual basis commencing 1 January each year subject to its termination in the event of termination of this MoU in accordance with clause 11. The IPA shall be entitled to retain the monitoring fees paid by Scheme registrants by way of payment for the services provided under the Inspection and Monitoring Agreement.

7.10 It is agreed that RICS shall only be able to exercise its rights and responsibilities as a professional body to regulate (or procure that the IPA do so) registrants of the Scheme who are RICS members. RICS shall not be entitled to and shall have no jurisdiction over those registrants of the Scheme who are not RICS members.

7.11 It is agreed that IPA shall only be able to exercise its rights and responsibilities as a professional body to regulate registrants of the Scheme who are IPA members. IPA shall not be entitled to and shall have no jurisdiction over those registrants of the Scheme who are not IPA members.

7.12 In relation to those members of the Scheme who are neither IPA nor RICS members, IPA and RICS shall liaise through the QAP and agree any course of action they jointly believe in good faith is required to be taken for the benefit of maintaining and upholding the quality, reputation and nature of the Scheme, its standards, themselves and the public interest. This may include referring the conduct cited as a joint and formal complaint to any Professional Body of which the member of the Scheme is also a member, or other appropriate Regulatory Authority.

7.13 The QAP will be responsible for ensuring that outcomes from inspection and monitoring matters considered by it are reported to the relevant professional body by way of a complaint where serious competence or conduct issues arise.

7.14 Any person sitting on the QAP who becomes aware of a conflict of interest concerning a Scheme registrant, shall immediately declare such conflict and remove themselves from any decision making process relating to the registrant concerned. All decisions of the QAP must be unanimous as amongst those panel members that have not withdrawn for reasons of conflict of interest. Where a position of unanimity cannot be reached within

a reasonable period of time, any member of the panel may request that the matter be referred an independent adjudicator, selected by the parties, in accordance with clause 9.

## **8. Professional Standards**

- 8.1 Where RICS or IPA conclude a regulatory/disciplinary action in respect of one of their members who is also a Scheme registrant, they shall notify the QAP of any adverse regulatory/disciplinary outcome or other matter that may have a bearing on a Scheme registrant's continuing eligibility, so that the QAP can consider taking appropriate action, in accordance with clause 7.7 and its Terms of Reference set out in Appendix II.
- 8.2 Where the parties become aware of an adverse regulatory/disciplinary outcome from another professional body that may have a bearing on a Scheme registrant's continuing eligibility, they will notify the QAP of such matters as are within their knowledge, so that the QAP can consider taking appropriate action, in accordance with clause 7.8 and its Terms of Reference set out in Appendix II.

## **9. Notification of Decisions and Appeal to an Independent Adjudicator**

- 9.1 Any decision of the QAP will be notified to the Scheme registrant, RICS and IPA in writing within 15 working days. The Scheme registrant, RICS and IPA will be provided with a period of 15 working days in which to give notice of appeal that decision. Where the decision is one to remove or suspend a Scheme Registrant, the QAP will also notify the parties.
- 9.2 The QAP will notify the parties and the Scheme registrant upon receipt of a notice of appeal. Where the decision to be appealed is one to remove a registrant from the Scheme, the registrant will be suspended from the Scheme until the appeal has been determined.
- 9.3 The parties will jointly appoint an Independent Adjudicator through an appropriate process to hear appeals by Scheme registrants, RICS and IPA about any decision taken by the QAP that directly affects them or any matter upon which the QAP has been unable to reach a unanimous decisions.
- 9.4 An application by a scheme member, IPA or RICS for appeal to the Independent Adjudicator shall be accompanied by a deposit as against the costs of the Independent Adjudicator, to be set at a fair and reasonable level to be agreed between the parties. In the event that the appeal is successful in whole or in part, that deposit shall be refunded to the applicant, IPA or RICS in full. Where the decision of the QAP is fully upheld, that deposit shall be forfeited by the appealing party and utilised, to defray the costs of the Independent Adjudicator. Any costs of the Independent Adjudicator not so met shall be met in equal shares by RICS and IPA.

## **10. Complaints referral process**

- 10.1 Any complaints against Scheme registrants are to be managed through the existing regulatory procedures of the Scheme registrant's professional body.
- 10.2 The IPA will maintain a Register of Complaints, noting:
- a) The date the complaint was received;
  - b) The nature of the complaint
  - c) The name of the complainant;
  - d) The name of the registrant complained about;
  - e) The professional body to which the complainant was referred;
  - f) The outcome (if and when known)
  - g) The date upon which the outcome was referred to the QAP (if applicable).
- 10.3 RICS and NARA shall at any time be entitled to inspect the Register of Complaints, save that the information contained at 10.2 c) and d) shall not be disclosed to NARA unless or until the outcome f) has been recorded upon the register. The Register will at all times be made available to the QAP.
- 10.4 The QAP will be responsible for ensuring that outcomes from Monitoring matters are reported to the relevant professional body where serious competence or conduct issues arise. Any such referral shall be recorded in the Register of Complaints, noting the complainant as the QAP.

## **11. Termination**

- 11.1 For the avoidance of doubt, this MoU and the Inspection and Monitoring Agreement under which IPA provides inspection and monitoring services shall be co-terminous as between RICS and IPA and termination of either one of them will automatically result in termination of the other at the same time.
- 11.2 Either IPA and RICS may terminate this MoU and the Inspection and Monitoring Agreement, providing not less than twelve (12) months' notice to the parties in writing.
- 11.3 If RICS or IPA is in material default of either this MoU or the Inspection and Monitoring Agreement which it fails to remedy within thirty (30) days of written notice of the default as notified by the other party, then the non-defaulting party shall have the right to serve notice of termination with immediate effect (or a notice period of the non-defaulting party's choice) in writing to the other and termination will occur at the expiry of the period of notice stated. For these purposes, "material default" shall mean either gross or willful breach of either this MoU or of the Inspection and

Monitoring Agreement or a succession of minor defaults of either which, collectively, amount to material breach of the same. Where such a notice is served, it shall simultaneously be notified to NARA.

- 11.4 NARA may terminate this MoU for convenience providing not less than twelve (12) months' notice to the other in writing. Termination of the MoU by NARA shall not act to terminate the Inspection and Monitoring Agreement as between RICS and IPA, though may be grounds for the termination thereof. RICS and IPA shall be at liberty to put in place such alternative arrangements as they consider appropriate to ensure the maintenance of appropriate professional standards as amongst those persons they jointly designate as Registered Property Receivers.
- 11.5 If NARA is in material default of this MoU which it fails to remedy within thirty (30) days of written notice of the default as notified jointly by RICS and IPA, then RICS and IPA shall have the right to jointly serve notice of termination with immediate effect (or a notice period of RICS and IPA's choice) in writing to NARA and termination will occur at the expiry of the period stated. For these purposes, "material default" shall mean either gross or willful breach of either this MoU or a succession of minor defaults of either which, collectively, amount to material breach of the same.
- 11.6 On termination of the MoU for any reason, the parties will cease to refer to the other parties as jointly participating in the Scheme. The parties will immediately cease and desist from using any trade mark, logo or reference of the other parties, or declare any affiliation with the other parties in connection with the regulation or membership of its own members who are Registered Property Receivers.
- 11.7 Termination of the Scheme shall not prevent RICS or IPA from regulating those of its own members who are Registered Property Receiver in any manner they choose.
- 11.8 Subject to clause 12, the parties shall not be liable to the other for any a) loss of profits, b) loss of business, c) depletion of goodwill, d) loss of contracts, e) loss of or corruption of data, or f) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses howsoever arising from the Monitoring, the Monitoring Agreement and related activities.

## **12. Liability and Insurance**

- 12.1 Nothing in this MoU limits or excludes the liability of either party for death or personal injury arising from their negligence; or any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation.
- 12.2 IPA's total liability in contract, tort or arising in connection with the performance or contemplated performance of this MoU or the Monitoring Agreement and the reporting and results of the Inspection and Monitoring

as between RICS and IPA shall be limited to £50,000.00 (fifty thousand pounds sterling) each year in aggregate for all claims arising in that year (taken to run from 1 January to 31 December of the following calendar year).

- 12.3 Each party undertakes to take out and maintain adequate professional indemnity insurance in relation to the obligations it undertakes hereunder.

### **13. Relationship of the parties**

- 13.1 Nothing in this MoU is intended to create a partnership or legal relationship of any kind which would impose liability on one party for the act or failure to act of another party except as otherwise stated.
- 13.2 None of the parties shall make representations or otherwise seek to bind another party to do or refrain from doing anything.

### **14. Jurisdiction:**

- 14.1 This MoU and the Inspection and Monitoring Agreement and any disputes or claims arising out of or in connection with either of them shall be governed and construed in accordance with English law and for the exclusive jurisdiction of the English courts.
- 14.2 This MoU has been entered into on the date stated at the beginning of it, as witness the hands of the parties hereto:-