

Date: *28 September* 2016

**The Financial Reporting Council Limited (1)**

**The Institute of Chartered Accountants in England and Wales (2)**

## Delegation Agreement

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THIS DELEGATION AGREEMENT is made the <sup>20<sup>th</sup></sup> day of September 2016

**BETWEEN:**

- (1) The **FINANCIAL REPORTING COUNCIL LIMITED** a company registered in England and Wales (company registration no. 02486368) whose registered office is at 8th Floor, 125 London Wall, London EC2Y 5AS (the "**FRC**"); and
- (2) The **INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES**, (registered by Royal Charter in England and Wales under Company No.: RC000246 ) whose registered office is at Chartered Accountants' Hall, Moorgate Place, London, EC2R 6EA (the '**RSB**').

**BACKGROUND:**

- (A) Under the Statutory Auditor and Third Country Auditors Regulations 2016 ("**SATCAR 2016**") the FRC is designated as the competent authority with ultimate responsibility for the performance and oversight of the audit regulation tasks mandated by EU Regulation 537/2014 ("**Audit Regulation**") and EU Directive 2006/43/EC as amended and as implemented by SATCAR 2016 ("**Regulatory Tasks**").
- (B) The RSB is recognised as a recognised supervisory body under Schedule 10 of the Companies Act 2006; and
- (C) Further to SATCAR 2016 and the Secretary of State Direction made on 17 June 2016 thereunder ("**Secretary of State Direction**") it is the intention that in support of establishing a proportionate regulatory regime focussed on the common objective of promoting high quality audit (the "**Audit Objective**") the FRC will delegate to the RSB certain of the Regulatory Tasks and that the FRC will retain those Regulatory Tasks which cannot by law be delegated and such other of the Regulatory Tasks as may be agreed or as it may consider appropriate to retain or reclaim (on a class or on a case by case basis) in pursuit of the Audit Objective and where those cases or classes raise issues which have the potential to affect the public interest in the UK.

**IT IS AGREED:**

**1. Interpretation and Definitions**

1.1 In this Delegation Agreement the words defined in Regulations 2 and 5 of SATCAR 2016 shall have the meanings set out there and, in addition:

"**Audit Enforcement Procedure**" means the audit enforcement procedure made available by the FRC to the RSB and updated by the FRC from time to time;

"**Ceding RSB**" means the RSB which performed a Reclaimed Task(s) before the FRC reclaimed such task(s).

"**Central Government Body**" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;

- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

**"Conditions of Delegation"** means the conditions of delegation set out at Clause 3 of this Delegation Agreement;

**"Conduct Committee"** has the meaning given to it in the Audit Enforcement Procedure;

**"Confidential Information"** means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;

**"Data"** means Personal Data processed (as defined under Data Protection Legislation) under this Delegation Agreement;

**"Data Protection Legislation"** means the EU Data Protection Directive 94/46/EC, the General Data Protection Regulation, or other EU legislation relating to data protection that may be promulgated from time to time and its implementing legislation (if any) in EU Member States and any binding guidance opinions or decision of regulatory bodies, courts or other bodies as applicable or any other data protection legislation that applies to either of the Parties from time to time;

**"Delegated Tasks"** has the meaning set out in clause 2.1 of this Delegation Agreement;

**"Delegation Agreement"** means this Agreement;

**"Dispute Resolution Procedure"** means the procedure set out in clause 21;

**"Effective Date"** means the date specified in clause 4;

**"Eligibility Criteria"** means criteria determined by the FRC for the purpose of determining whether persons are eligible for appointment as statutory auditors. Persons includes individuals and firms;

**"FOIA"** means the Freedom of Information Act 2000;

**"FRC Procedures"** means the Audit Enforcement Procedure and such processes and procedures which the FRC may have in place from time to time including in particular for the conduct by the FRC of Retained Tasks and Reclaimed Tasks;

**"FRC Representative"** means a suitably qualified nominated contact appointed by the FRC and named in Appendix 6;

**"Information"** has the meaning given under section 84 of the FOIA;

**"Insolvency Event"** means:

- (a) proposing a voluntary arrangement;
- (b) having a receiver, administrator or a manager appointed over the whole or any part of its business or assets;

- (c) if any petition will be presented, order will be made or resolution passed for its winding up (except for the purposes of a bona fide amalgamation or reconstruction), bankruptcy or dissolution;
- (d) if it will otherwise propose or enter into any composition or arrangement with its creditors or any class of them; or
- (e) if it ceases to carry on business or if it claims the benefit of any statutory moratorium;

"Party" means the RSB or the FRC (as appropriate) and "Parties" will mean both of them;

"Personal Data" has the meaning contained in the applicable Data Protection Legislation;

"Processing" (and "process" and "processes" shall be construed accordingly) has the meaning contained in the applicable Data Protection Legislation;

"Request for Information" has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" will apply);

"Reclaimed Task(s)" means any case(s) or class(es) of audit work within a Delegated Task which the FRC reclaims from the RSB either by agreement with the RSB or pursuant to the provisions of the Secretary of State Direction issued pursuant to SATCAR 2016;

"Registered Auditors" means those individuals and firms appointed, registered or otherwise regulated by the RSB pursuant to this Delegation Agreement;

"Retained Task(s)" means:

- (a) determining technical standards (which must meet the requirements of Schedule 1 of SATCAR 2016) and of other standards (which must meet the requirements of that schedule) on professional ethics and internal quality control of statutory auditors and statutory audit work;
- (b) determining the manner in which the standards under (a) are to be applied in practice;
- (c) determining criteria for the purpose of determining whether persons are eligible for appointment as statutory auditors;
- (d) setting procedures for maintaining the competence of persons eligible for appointment as statutory auditors;
- (e) monitoring audits of Public Interest Entities and such other entities as is permitted by SATCAR 2016 and any Secretary of State Direction issued thereunder;
- (f) Investigations, adjudication and disciplinary measures arising out of (e) above, arising from referrals from other authorities and/or retained by the FRC by agreement or as otherwise permitted by SATCAR 2016 and the Secretary of State Direction;
- (g) cooperation with Competent Authorities of other Member States and third countries;
- (h) any other task which the FRC retains by agreement with the RSB or otherwise in accordance with the provisions of the Secretary of State Direction issued pursuant to SATCAR 2016; and
- (i) oversight of Audit Regulation including the RSB's performance of the Delegated Tasks;

**"RSB Audit Materials"** means any materials created or developed by the RSB and used in the performance of any Delegated Tasks, including (but not limited to) audit processes, methodology, software, forms, reports, checklists, helpsheets, guidance notes, articles, course materials and videos;

**"RSB Representative"** means a suitably qualified nominated contact appointed by the RSB and named in Appendix 6;

**"RSB Review Meetings"** has the meaning given in Appendix 6;

**"RSB's Rules"** means any and all rules, practices, bye-laws, regulations and arrangements maintained by the RSB pursuant to the requirements of Schedule 10 Companies Act 2006 and/or for the purposes of regulating those firms and individuals it registers or otherwise regulates pursuant to this Delegation Agreement;

**"Staff"** means all directors, officers, employees, agents, consultants and contractors of the RSB and/or of any sub-contractor of the RSB engaged in the performance of all or any part of the RSB's obligations under this Delegation Agreement;

**"Standard Contractual Clauses"** mean the model clauses for the transfer of Personal Data to processors approved by the European Commission from time to time, the approved version of which in force at present is that set out in the European Commission's Decision 2010/87/EU as may be amended or replaced from time to time;

**"Term"** means the period from the Effective Date until termination in accordance with the provisions at clause 16 (Termination) or if earlier, by agreement otherwise or direction of the Secretary of State or a court or body of competent jurisdiction; and

**"Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In this Delegation Agreement, unless the context otherwise requires:

- (a) references to numbered clauses are references to the relevant clause in this Delegation Agreement;
- (b) any obligation on any Party not to do or omit to do anything will include an obligation not to allow that thing to be done or omitted to be done;
- (c) the headings to the clauses of this Delegation Agreement are for information only and do not affect the interpretation of this Delegation Agreement;
- (d) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (e) the word "including" will be understood as meaning "including without limitation".

## 2. Delegation

2.1 The FRC delegates to the RSB and the RSB accepts the delegation of the performance of the following tasks in relation to Registered Auditors subject to the terms of this Delegation Agreement:

- (a) the application of technical standards and of other standards on professional ethics and internal quality control of statutory auditors and statutory audit work (including provision for securing compliance with those standards);
- (b) the application of the FRC's criteria for as the purpose of determining whether persons are eligible for appointment as statutory auditors, the registration of such persons, keeping the register and making it available for inspection;
- (c) procedures for maintaining the competence of such persons;
- (d) monitoring of statutory auditors and audit work save for Retained Tasks; and
- (e) investigations and imposing and enforcing sanctions in relation to breaches of Relevant Requirements by statutory auditors save for Retained Tasks,

(the "Delegated Tasks").

### **3. Conditions of Delegation**

- 3.1 The RSB may only exercise those tasks expressly permitted by this Delegation Agreement or by a decision of the FRC's Conduct Committee pursuant to the FRC's Audit Enforcement Procedure and only whilst recognised as a recognised supervisory body under Schedule 10 of the Companies Act 2006.
- 3.2 The RSB has and will continue to comply with its duties, conditions, representations, warranties and undertakings at clauses 5 (Duties of the Parties) and 11 (Warranties).
- 3.3 The FRC may retain or reclaim any of the Delegated Tasks either as a class or on a case-by-case basis, either by agreement with the RSB or otherwise pursuant to the Secretary of State Direction.
- 3.4 The RSB will fund the performance of the Delegated Tasks and the FRC's performance of the Retained Tasks and/or Reclaimed Tasks insofar as such funding relates to the RSB's Registered Auditors.
- 3.5 The RSB will comply with the following task-specific conditions:
  - (a) the conditions set out at Appendix 1 in relation to the Delegated Task set out at clause 2.1(b) above;
  - (b) the conditions set out at Appendix 2 in relation to the Delegated Task set out at clause 2.1(c) above;
  - (c) the conditions set out at Appendix 3 in relation to the Delegated Task set out at clause 2.1(d) above; and
  - (d) the conditions set out at Appendix 4 in relation to the Delegated Task set out at clause 2.1(e) above.
- 3.6 The RSB will comply with the reporting, information, monitoring and inspections conditions set out at Appendix 5 and with the governance and reporting conditions set out at Appendix 6.



#### **4. Commencement and Duration**

4.1 This Delegation Agreement will take effect on 1 October 2016 (the "**Effective Date**") and will continue until termination in accordance with the provisions at clause 16 (Termination) or if earlier, by agreement or direction of the Secretary of State or a court or body of competent jurisdiction.

#### **5. Duties of the Parties**

5.1 In consideration for each agreeing to enter into this Delegation Agreement, the Parties will:

- (a) perform their respective tasks in accordance with this Delegation Agreement and the provisions of SATCAR 2016 and any other applicable legislation from time to time;
- (b) co-operate with each other and with any other recognised supervisory bodies as may be required by the FRC from time to time in furtherance of the Audit Objective including but not limited to co-operating with arrangements reasonably requested by the FRC to facilitate the transfer and effective performance of Reclaimed Tasks by the FRC and/or a replacement RSB.

#### **6. Confidentiality, Transparency and Publicity**

6.1 Subject to clause 6.2 and 6.4, each Party will:

- (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- (b) not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under this Delegation Agreement.

6.2 A Party may disclose Confidential Information which it receives from the other Party:

- (a) where disclosure is required by applicable law or by a court of competent jurisdiction;
- (b) to its auditors or for the purposes of regulatory requirements;
- (c) on a confidential basis, to its professional advisers;
- (d) to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- (e) where the receiving Party is the RSB, to the Staff on a need to know basis to enable performance of the RSB's obligations under this Delegation Agreement provided that the RSB will procure that any Staff to whom it discloses Confidential Information under this clause (e) will observe the RSB's confidentiality obligations under this Delegation Agreement; and
- (f) where the receiving Party is the FRC:
  - (i) on a confidential basis to the employees, agents, consultants and contractors of the FRC;

- (ii) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the FRC transfers or proposes to transfer all or any part of its business;
- (iii) to the extent that the FRC (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (iv) in accordance with clause 7.

and for the purposes of the foregoing, references to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the FRC under this clause 6.

6.3 Save as otherwise agreed by the parties, this Delegation Agreement is not intended to be Confidential Information. The parties will consult with the other before making any press announcement in relation to this Delegation Agreement.

6.4 The obligations set out in clause 6.1 above shall not apply, or shall cease to apply, to Confidential Information which the receiving Party can show to the disclosing Party's reasonable satisfaction:

- (a) that it is, or has become generally available to the public other than as a direct or indirect result of the information being disclosed by the receiving Party in breach of these terms;
- (b) was already lawfully known to the receiving Party before it was disclosed by the disclosing Party; or
- (c) has been received by the receiving Party from a third party source which is not connected with the disclosing Party and that such source was not under any obligation of confidence in respect of that information.

## **7. Freedom of Information**

7.1 The FRC is subject to the requirements of the FOIA and the Environmental Information Regulations 2004. Accordingly, the RSB will:

- (a) assist and cooperate where reasonably requested by the FRC to enable the FRC to comply with such obligations;
- (b) transfer to the FRC all Requests for Information relating to this Delegation Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the FRC with a copy of all Information belonging to the FRC requested in the Request for Information which is in its possession or control in the form that the FRC requires within 5 Working Days (or such other period as the FRC may reasonably specify) of the FRC's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the FRC.

7.2 Save always that the FRC will be responsible for determining in its sole discretion whether any Information relating to the RSB is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004 the FRC will take reasonable steps, where appropriate, to give the RSB advance notice of an intended disclosure of Information concerning the RSB or, failing that, draw the disclosure to the RSB's attention after such disclosure.

## 8. Protection of Personal Data and Security of Data

8.1 The Parties will comply with any obligations that they have under the Data Protection Legislation which arise in connection with this Delegation Agreement and will:

- (a) process any Data only for the purposes of this Delegation Agreement and/or the proper performance of their statutory duties in the pursuit of the Audit Objective and / or for compliance with any legal or regulatory obligation;
- (b) not disclose the whole or any part of the Data to any third party, except to the extent reasonably necessary for the purposes of this Delegation Agreement, the proper performance of their statutory duties in the pursuit of the Audit Objective and/or as required under the Data Protection Legislation or other applicable law or regulation;
- (c) put in place and maintain appropriate technical and organisational measures to protect the Data against unauthorised or unlawful processing and against accidental loss, alteration or destruction of, or damage to, such Data;
- (d) not unlawfully process or permit the unlawful processing of Data outside of the European Economic Area;
- (e) not perform their obligations under this Delegation Agreement in such a way as to cause the other party to breach any of their respective obligations under Data Protection Legislation;
- (f) promptly notify the other party of:
  - (i) any breach of the security requirements referred to in clause 8.1(c); and
  - (ii) any complaint, request, notice or communication in relation to the Data if such breach, complaint, request, notice or other communication is relevant to the other Party; and
- (g) put in place within 21 days of the Effective Date and maintain reasonable organisational measures to notify existing and new members of the RSB and bring to the attention of third parties that Personal Data held by the RSB in the performance of the Delegated Tasks may be provided to the FRC (or to another RSB as delegate of the FRC) for the necessary exercise of the FRC's public functions in the public interest as Competent Authority for statutory audit (reasonable organisational measures may include but need not be limited to direct correspondence and clear and accessible website notices).

8.2 When handling the FRC data (whether or not Personal Data), the RSB will ensure the security of the data is maintained in line with the security requirements of the FRC, including as set out in clause 8.1(a) and as notified to the RSB from time to time.

8.3 Where either Party fails to comply with any of its obligations under this clause 8, the non-compliant Party will indemnify and keep indemnified and defend at its own expense the other Party against all costs, claims, damages or expenses incurred by the compliant Party or for which the compliant Party may become liable due to any failure by the non-compliant Party, its employees or agents or any data processor, to comply with any of its obligations under this clause 8.

8.4 The FRC shall indemnify, and keep the RSB indemnified, against costs, claims, damages or expenses reasonably and properly incurred by the RSB arising out of, or in connection with, any claim made against the RSB by a Data Subject or investigation by the Information Commissioner arising out of, or in connection with, the RSB's proper performance of its obligations under Appendix

7, paragraph 2, subject to the RSB having acted reasonably throughout the term of this Delegation Agreement to mitigate such prospective losses including but not limited to having complied with its obligations under clause 8.1 above.

## **9. Prevention of Fraud and Corruption**

9.1 The RSB will not offer, give, or agree to give anything to any person as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Delegation Agreement or for showing or refraining from showing favour or disfavour to any person in relation to this Delegation Agreement.

9.2 The RSB will take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the RSB (including its shareholders, members and directors) in connection with this Delegation Agreement and will notify the FRC immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

9.3 If the RSB or the Staff engages in conduct prohibited by clause 9.1 or commits fraud in relation to this Delegation Agreement or any other contract with the Crown (including the FRC) the FRC may:

- (a) terminate this Delegation Agreement and recover from the RSB the amount of any loss suffered by the FRC resulting from the termination, including the cost reasonably incurred by the FRC of making other arrangements for the performance of the Delegated Tasks and any additional expenditure reasonably incurred by the FRC throughout the remainder of this Delegation Agreement; and/or
- (b) recover in full from the RSB any other loss sustained by the FRC in consequence of any breach of this clause.

## **10. Variation of the Delegation Agreement**

10.1 At any time, the FRC or the RSB may request changes in writing to any part or parts of this Delegation Agreement, including additions, deletions or other amendments.

10.2 Where the RSB proposes a change to the FRC, the RSB will provide, at its own cost, such information as the FRC may reasonably request which may include the following:

- (a) the impact of implementing the proposed change on the performance of the Delegated Tasks;
- (b) whether any new third party contracts are to be entered into by the RSB as part of the proposed change;
- (c) material changes which will be required to this Delegation Agreement, including any changes to the Delegated Tasks, the Conditions of Delegation and any applicable performance criteria; and
- (d) any impact on the funding arrangements set out in or otherwise referred to in this Delegation Agreement.

10.3 The FRC may decide in its absolute discretion whether to accept the RSB's proposed variation (in which case this Delegation Agreement will be amended accordingly) or refuse the proposed change (in which case this Delegation Agreement will continue in force unchanged).

10.4 If there is disagreement between the Parties regarding a variation proposed by the RSB either Party may refer the matter in accordance with the Dispute Resolution Procedure.

10.5 Until a change is formally agreed in writing between the Parties in accordance with this clause 10 the RSB will continue to perform its obligations under this Delegation Agreement as if the change had not been proposed.

## 11. Warranties

11.1 Each of the Parties represents, warrants and undertakes to the other that:

- (a) it will comply with all applicable laws;
- (b) it will not do or say anything which negatively impacts the reputation of the other; and
- (c) it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Delegation Agreement, and that this Delegation Agreement is executed by its duly authorised representative.

11.2 As a condition of delegation the RSB represents warrants and undertakes to the FRC that the RSB's Rules:

- (a) require its Registered Auditors to be subject to and comply with the FRC Procedures;
- (b) specify that monitoring and enforcement of all Retained Tasks and Reclaimed Tasks will be performed by the FRC;
- (c) in the case of Reclaimed Tasks permit the FRC (and any replacement RSB to which a Reclaimed Task has been delegated) to apply:
  - (i) the RSB's Rules; or
  - (ii) its own rules,in the conduct of that Reclaimed Task; and
- (d) in the case of Retained Tasks and Reclaimed Tasks provide that an obligation which a statutory auditor or statutory audit firm has by virtue of the RSB's Rules is an obligation owed to the FRC or the replacement RSB, as applicable.

11.3 The RSB undertakes that it will:

- (a) perform its obligations under this Delegation Agreement with the skill, care and diligence to be expected of a recognised statutory body acting reasonably;
- (b) perform the Delegated Tasks in accordance with the Conditions of Delegation;
- (c) adequately resource the performance of the Delegated Tasks with appropriately skilled personnel;
- (d) organise itself in such a manner that conflicts of interest are avoided;
- (e) implement and maintain appropriate continuity arrangements and provide the FRC with such information as it reasonably requires from time to time concerning such continuity arrangements; and

- (f) not amend or vary the RSB's Rules in relation to the matters in clause 11.2 without the FRC's prior written approval.

## **12. Indemnities**

- 12.1 Each Party will indemnify, and keep indemnified, the other Party in full against all costs, expenses, damages and losses (whether direct or indirect) including any interest, penalties, and any reasonable legal and other professional fees awarded against or incurred or paid by the other in respect of any breach of clause 6 (Confidentiality) or any claim that the use of any intellectual property by either Party, as permitted by clause 13 (Intellectual Property Rights) below, infringes the intellectual property of any third party.
- 12.2 The RSB will indemnify, and keep indemnified, the FRC in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the FRC as a result of or in connection with any claim made against the FRC arising as a result of or in connection with the RSB's performance of its obligations under this Delegation Agreement.
- 12.3 In relation to any claim to be indemnified under this clause 12 or elsewhere in this Delegation Agreement, the indemnified Party shall:
- (a) as soon as is reasonably practicable give written notice of that matter to the indemnifying Party, specifying in reasonable detail the nature of the relevant matter and shall use its reasonable endeavours to avoid and mitigate the losses it incurs;
  - (b) not make any admission of liability, or enter into any agreement or compromise in relation to the matter in respect of which it seeks to be indemnified without the prior written consent of the indemnifying Party (such consent not to be unreasonably withheld or delayed); and
  - (c) allow the indemnifying Party to have conduct of the proceedings relating to the indemnity (and cooperate with the indemnifying Party in relation to all such proceedings, at the indemnifying Party's costs) and the indemnifying Party shall at its sole discretion decide what action (if any) to take in respect of such matter and shall not be obliged to bring or defend any such proceedings if it decides in its sole discretion not to do so.

## **13. Intellectual Property Rights**

- 13.1 All intellectual property rights in any materials provided by the FRC to the RSB for the purposes of the parties carrying out their responsibilities under this Delegation Agreement will, to the extent that they were owned by the FRC at the time of such provision, remain the property of the FRC but the FRC grants the RSB a personal, non-assignable, non-sub licensable, royalty-free, irrevocable, non-exclusive and non-transferable licence to use such materials (excluding FRC codes, standards, guidance and/or other materials provided by the FRC to the RSB for corporate governance, stewardship, corporate reporting, accounting, auditing, assurance services and actuarial work) to perform its obligations under this Delegation Agreement during the Term. If and to the extent that any intellectual property rights in such materials vest in the RSB by operation of law the RSB assigns to the FRC by way of present assignment of future rights all its intellectual property in such materials (with full title guarantee and free from all third party rights).
- 13.2 All intellectual property rights (foreground and background) in the RSB Audit Materials will vest in the RSB. If, and to the extent that, any intellectual property rights in such materials vest in the FRC by operation of law, the FRC assigns to the RSB by way of a present assignment of future rights that will take place immediately on the coming into existence of any such intellectual property rights, all its

intellectual property rights in such materials (with full title guarantee and free from all third party rights).

13.3 The RSB grants the FRC a royalty-free, irrevocable, non-exclusive non-transferable licence to use the RSB Audit Materials for the purposes of performing one or more Delegated Tasks, and such licence shall be effective from the day that the FRC reclaims a Delegated Task and shall continue until reinstatement of the Delegated Task to the RSB.

13.4 Where the FRC reclaims from the RSB an individual case or a substantive part of or entire Delegated Task and instructs another party to complete such Reclaimed Task the RSB hereby grants the appointed party an irrevocable, non-exclusive, non-transferable licence to use such RSB Audit Materials as are reasonably required to enable the appointed party to complete the transferred work in progress. Such licence shall expire on the earlier of:

(a) in the case of Reclaimed Tasks deriving from the Delegated Tasks at clause 2.1(e), completion by the appointed party of the respective transferred investigation(s); or in the case of Reclaimed Tasks deriving from the Delegated Tasks at clauses 2.1(a)-(d), completion by the appointed party of the transferred matters for the applicable regulatory year;

(b) reinstatement of the Delegated Task to the RSB; or

(c) the retention by the FRC of the Delegated Task as a Retained Matter by the FRC.

13.5 The RSB acknowledges that it may be the recipient of a licence granted by another RSB under a different delegation agreement which is identical to or substantially the same as the licence set out above at clause 13.4. The RSB unconditionally and irrevocably:

(a) undertakes to use RSB Audit Materials granted under any such licence in good faith and solely for the purpose of completion of the transferred matters, not to exploit the Ceding RSB's intellectual property for benefit or commercial gain and to use its best endeavours to adhere to the terms of any such licence; and

(b) acknowledges that a Ceding RSB may rely on this clause 13.5 as a cause of action accordingly.

#### 14. Transfer of Staff

14.1 Where an RSB voluntarily cedes a Delegated Task or where the FRC reclaims a Delegated Task from an RSB, or where the FRC has performed a Retained Task or Reclaimed Task and subsequently delegates the same to an RSB (**Ceding Employer**), and transfer of staff from the Ceding Employer is effected by law or by agreement to the FRC or a replacement RSB (**Transferring Employee(s)**, **Relevant Transfer** and **New Employer** respectively), the Ceding Employer shall indemnify the New Employer against any Employee Liabilities in respect of such Transferring Employees arising from or as a result of:

(a) any act or omission by the Ceding Employer or any of its sub-contractors, whether occurring before, on or after the Relevant Transfer Date.

(b) any act or omission of the Ceding Employer in relation to their obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 save to the extent that such liability arises from the New Employer's act or omission in relation to its obligations under those Regulations.

14.2 For the purposes of this clause 14, "**Employee Liabilities**" means all claims, actions, proceedings, orders, demands, complaints, investigations and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation; and "**Relevant Transfer Date**" means the date upon which a transfer of employment takes place by operation of law or agreement and arising out of or in connection with the FRC's delegation of tasks pursuant to SATCAR 2016, any Secretary of State Direction issued thereunder and/or this Delegation Agreement.

## 15. Liability

15.1 Exemptions from liability in Schedule 10 Companies Act 2006 and/or in orders or regulations made under s.18A of the Companies (Audit, Investigations and Community Enterprise) Act 2004 will have effect.

15.2 The RSB will not be responsible for any injury, loss, damage, cost or expense suffered by the FRC if and to the extent that it is caused by the negligence or wilful misconduct of the FRC or by breach by the FRC of its obligations under this Delegation Agreement.

15.3 Subject always to clauses 15.4 and 15.5:

- (a) in no event will the FRC be liable to the RSB for any:
  - (i) loss of profits;
  - (ii) loss of business;
  - (iii) loss of revenue;
  - (iv) loss of or damage to goodwill;
  - (v) loss of savings (whether anticipated or otherwise); and
  - (vi) any indirect, special or consequential loss or damage.

15.4 Nothing in this Delegation Agreement will be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence or that of its Staff;
- (b) fraud or fraudulent misrepresentation by it or that of its Staff; or
- (c) any other matter which, by law, may not be excluded or limited.

15.5 The parties' liability under the indemnity in clause 12.1 will be limited to £1 million.

## 16. Termination

16.1 This Delegation Agreement will terminate with immediate effect if at any time during the Term:

- (a) the RSB's status as a recognised supervisory body under Schedule 10 of the Companies Act 2006 is revoked or suspended (either temporarily or permanently) for any reason;
- (b) the RSB rescinds, varies or adds any term or condition which has the effect of altering (whether materially or non-materially) a term or condition requiring a Statutory Auditor to submit to the FRC's jurisdiction in relation to:



- (i) audits carried out for such period as the Statutory Auditor may be registered by the RSB; or
- (ii) investigations and/or regulatory action by the FRC concerning acts or omissions of the Statutory Auditor which occurred during the period in which the Statutory Auditor was registered by the RSB,

without the FRC's prior written consent (which the FRC may withhold in its sole discretion);

- (c) the FRC's designation as the single competent authority under the SATCAR 2016 expires or is revoked; or
- (d) the FRC is required to terminate this Delegation Agreement due to any direction or order by the Secretary of State or a change in law.

16.2 Without prejudice to any other right or remedy it might have, the FRC may terminate this Delegation Agreement by written notice to the RSB with immediate effect if the RSB:

- (a) fails to perform any of its funding obligations under this Delegation Agreement;
- (b) (without prejudice to clause 16.2(e)), is in material breach of any obligation under this Delegation Agreement which is not capable of remedy;
- (c) repeatedly breaches any of the terms and conditions of this Delegation Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this Delegation Agreement;
- (d) is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the RSB receiving notice specifying the breach and requiring it to be remedied;
- (e) breaches any of the provisions of clauses 7, 8 and 9;
- (f) undergoes an Insolvency Event; or
- (g) fails to comply with its legal obligations in the fields of environmental, social or labour law.

16.3 The RSB will without delay notify the FRC where an event occurs that gives rise to automatic termination of this Delegation Agreement under clause 16.1 or a right to terminate under clause 16.2.

16.4 Subject to the FRC having given the RSB a fair opportunity to rectify any breaches of this Delegation Agreement, either party may terminate this Delegation Agreement for convenience by giving 18 months' written notice.

16.5 Termination or expiry of this Delegation Agreement will be without prejudice to the rights of either Party accrued prior to termination or expiry and will not affect the continuing rights of the Parties under this clause and clauses 1, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 21, 23, 24.1, 24.3, paragraph 6 of Appendix 4 and paragraph 3 of Appendix 6 or any other provision of this Delegation Agreement that either expressly or by implication has effect after termination.

## 17. Effect of Termination

17.1 Upon termination or expiry of this Delegation Agreement, the RSB will:

- (a) immediately cease to perform the Delegated Tasks;

- (b) return (or destroy, at the FRC's absolute discretion) all requested documents, information and data provided to the RSB pursuant to this Delegation Agreement to the FRC as soon as reasonably practicable;
- (c) give all reasonable assistance to the FRC and/or any third party that is or will be performing any or all Reclaimed Tasks (both during the Term and during any extension period under clause 17.2, and for a reasonable period after the Term and any extension period under clause 17.2); and
- (d) at the FRC's election and at no cost to the FRC, assign or novate to the FRC (or to procure the assignment or novation to the FRC of) the benefit of any agreement between the RSB and a third party insofar as it relates exclusively to the performance of the Delegated Tasks. The RSB will not terminate any such agreement without giving the FRC 30 days' prior notice that it intends to do so.

17.2 Where this Delegation Agreement is due to expire or is terminated under clause 16.2 or 16.4 the FRC may, by giving the RSB written notice prior to expiry or termination of this Delegation Agreement, extend this Delegation Agreement in whole or in part for periods of up to 6 months so as to phase the transfer of the performance of the Delegated Tasks back to the FRC or to a new or different recognised supervisory body as nominated by the FRC.

## **18. Exit Management**

The provisions of Appendix 7 (Exit Management) will apply.

## **19. Force Majeure**

Neither Party will have any liability under or be deemed to be in breach of this Delegation Agreement for any delays or failures in performance of this Delegation Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate this Delegation Agreement by written notice to the other Party.

## **20. Assignment and sub-contracting**

- 20.1 Subject to clause 20.2 and 20.4, the RSB will not assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of this Delegation Agreement or any part of this Delegation Agreement.
- 20.2 Subject to clause 20.4, the RSB will not sub-contract any obligation under this Delegation Agreement or any part of this Delegation Agreement without the written consent of the FRC which the FRC may withhold in its absolute discretion. The FRC may, in the granting of such consent, provide for additional terms and conditions relating to such sub-contract. The RSB will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 20.3 Where the FRC has consented to the placing of sub-contracts, the RSB will, at the request of the FRC, send copies of each sub-contract, to the FRC as soon as is reasonably practicable redacting, where appropriate, any commercially sensitive information which is not reasonably required by the FRC in the proper performance of its statutory duties or for the purposes of assessing the RSB's performance of its obligations under this Delegation Agreement.
- 20.4 Clauses 20.1 and 20.2 shall not apply to the hiring of individual sub-contractors by RSBs from time to time to assist the RSBs' permanent staff in the completion of Delegated Tasks.

## 21. Dispute Escalation and Enforcement Measures

### Disputes in relation to performance of Tasks

21.1 If there is a dispute in relation to the performance of the Delegated Tasks (a "**Performance Issue**"), the Parties will use their reasonable endeavours to negotiate and settle the Performance Issue in accordance with the following escalation procedure:

(a) Escalation to the FRC's Director of Professional Oversight and the RSB Representative, who will engage in oral and written communication to resolve the Performance Issue. If appropriate, the RSB Representative may prepare a remediation plan which may include:

- (i) proposals for re-performing the Delegated Tasks; and
- (ii) proposed changes to this Delegation Agreement,

and the Performance Issue will be deemed settled if the FRC's Director of Professional Oversight approves such remediation plan (and such approval may be withheld in their absolute discretion).

(b) If a remediation plan under clause 21.1(a) has not within 15 Working Days been:

- (i) proposed by the RSB; or
- (ii) approved by the FRC,

the Parties may escalate the Performance Issue to the FRC's Director of Audit Division and an Executive Director of the RSB, who will engage in oral and written communication to resolve the Performance Issue.

(c) If the Performance Issue has not been resolved under clause 21.1(b) within a further 15 Working Days the Parties may refer the Performance Issue to the FRC's and the RSB's respective Chief Executive Officers, who will engage in oral and written communication to resolve the Performance Issue.

(d) If the Performance Issue has not been resolved under clause 21.1(c) within a further 15 Working Days the FRC Executive may refer the Performance Issue to the FRC's Board for a decision in accordance with clause 21.2 below.

21.2 Where a Performance Issue has been referred to the FRC Board:

- (a) the FRC Executive will notify the RSB that the Performance Issue has been referred to the FRC Board and of the date of the FRC Board Meeting;
- (b) the RSB may make a written submission to the FRC Board for consideration at its meeting;
- (c) the FRC Board shall consider any representations from the RSB and may decide to exercise any or a combination of the following measures:
  - (i) a direction to do or refrain from doing a particular action;
  - (ii) a decision to reclaim a case or task;
  - (iii) termination of this Delegation Agreement; and/or

- (iv) such other measure(s) as the Board deems reasonable and appropriate in all the circumstances; and
- (d) a decision of the FRC Board to exercise the measures at clause 21.2(c) above is a decision taken pursuant to its statutory designation and is subject to judicial review.

### **Other disputes**

- 21.3 Save in respect of the FRC's qualitative assessment of the RSB's performance of a Delegated Task (which shall be addressed under the Performance Issue provisions of clauses 21.1 and 21.2 above), if there is a dispute in relation to the meaning or effect of or rights or obligations under this Delegation Agreement (a "**Dispute**"), the Parties may:
- (a) refer the Dispute to the FRC's and the RSB's respective Chief Executive Officers, who will use best endeavours to attempt to resolve the dispute;
  - (b) if resolution under clause 21.3(a) has not been achieved within 15 Working Days, refer the Dispute to the Chairman of the FRC and President of the RSB to use best endeavours to attempt to resolve the dispute;
  - (c) if resolution under clause 21.3(b) has not been achieved within 15 Working Days, refer the Dispute to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 10 Working Days of the notice of referral to CEDR, the mediator will be nominated by CEDR; and
  - (d) if resolution under clauses 21.3(a) - (c) has not been achieved seek a declaration of the High Court as to the meaning or effect of the provision(s) in dispute.

### **22. Notices**

- 22.1 Any notice to be given under this Delegation Agreement will be in writing and may be served by personal delivery, first class recorded to the address of the relevant Party set out in this Delegation Agreement, or such other address as that Party may from time to time notify to the other Party in accordance with this clause 22.
- 22.2 Notices served as above will be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery will be deemed to occur on the next Working Day. An email will be deemed delivered when sent unless an error message is received.
- 22.3 Notices under clauses 16 (Termination) and 19 (Force Majeure) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in this clause 22.

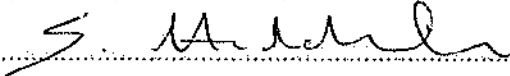
### **23. Governing Law and Jurisdiction**

The validity, construction and performance of this Delegation Agreement, and all contractual and non-contractual matters arising out of it, will be governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**24. General**

- 24.1 Except where otherwise indicated in this Delegation Agreement, a person who is not a party to this Delegation Agreement will have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 24.2 This Delegation Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 24.3 This Delegation Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Delegation Agreement on the basis of any representation that is not expressly incorporated into this Delegation Agreement. Nothing in this clause will exclude liability for fraud or fraudulent misrepresentation.
- 24.4 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Delegation Agreement will be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract will not constitute a waiver of any right or remedy arising from any other breach of this Delegation Agreement.
- 24.5 This Delegation Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Delegation Agreement. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 24.6 Except as otherwise expressly provided by this Delegation Agreement, all remedies available to either Party for breach of this Delegation Agreement (whether under this Delegation Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.
- 24.7 If any provision of this Delegation Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Delegation Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Delegation Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Delegation Agreement.

**SIGNED for and on behalf of THE FINANCIAL REPORTING COUNCIL:**

.....  
Signature 

.....  
Print name & title **STEPHEN HADDOCK CEO**

.....  
Date **28<sup>th</sup> September 2016**

**SIGNED** for and on behalf of the **INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES**

*Michael Gzyy*

Signature

*MICHAEL ICA - CEO*

Print name & title

*20 September 2016*

Date

## Appendix 1 - Registration of Statutory Auditors and Statutory Audit Firms Conditions

1. The RSB has submitted to the FRC key principles of its work plan in relation to this task by way of the RSB's submission to the FRC of its regulatory plan in accordance with Appendix 5 or such other information as the FRC may reasonably request.
2. The RSB's Rules shall contain provisions covering:
  - (a) eligibility for approval and registration as a statutory auditor or audit firm;
  - (b) application for registration as a statutory auditor or audit firm;
  - (c) cessation and removal of registration;
  - (d) assessment of continuing eligibility for registration; and
  - (e) submission of accurate data on a timely basis to update the public audit register.
3. The RSB's Rules must, at a minimum, require the RSB to comply with the Eligibility Criteria issued by the FRC and otherwise be to the FRC's reasonable satisfaction in relation to the task of registration.
4. The RSB will have a committee (the "**Committee**") which has responsibility for the task of registering persons eligible for appointment as statutory auditors and for considering whether the registration of such persons should continue including:
  - (a) ensuring registrations are carried out to a consistent standard in accordance with the requirements of Schedule 10 Companies Act 2006 and the FRC's Eligibility Criteria;
  - (b) considering applications for dispensations from the requirements; and
  - (c) considering cessation of registration.
5. The processes relating to registration and cessation of registration shall be documented in a procedures manual which is approved by the Committee.
6. The RSB will inform the FRC of significant changes to its procedures manual and to the RSB's Rules.

## **Appendix 2 - Continuing Professional Development Conditions**

1. The RSB has submitted to the FRC key principles of its work plan in relation to this task by way of the RSB's submission to the FRC of its Regulatory Plan in accordance with Appendix 5 or such other information as the FRC may reasonably request.
2. The RSB's Rules in relation to continuing professional development shall be to the FRC's satisfaction and shall ensure that its Registered Auditors continue to maintain an appropriate level of competence in the conduct of statutory audits.
3. The RSB shall set an appropriate approach, subject to FRC approval, to assess the CPD of its Registered Auditors. The RSB should establish its preferred approach to measuring CPD activity from three models: output based, input-based, or combination approaches.
4. The RSB should establish a regime designed to ensure that its Registered Auditors comply or explain with the RSB's CPD requirements, and that compliance is adequately monitored and enforced. The RSB's CPD requirements should include compliance with IES7 and IES8. If the RSB's requirements depart from these standards (insofar as they relate to Statutory Audit) then it must explain the reasons to the FRC.
5. The RSB shall establish a regime that requires the CPD undertaken by its Registered Auditors to be appropriate to their work and professional responsibilities, taking into account factors such as industry focus and client base.
6. The RSB may liaise with employers of its Registered Auditors to provide training and development. An RSB may establish a scheme whereby its Registered Auditors are automatically deemed to have complied with the RSB's CPD requirements.
7. The RSB should promote the importance of CPD and maintenance of professional competence to its Registered Auditors.

### **Monitoring of CPD compliance**

8. The RSB shall require its Registered Auditors to submit an annual declaration of compliance with the RSB's CPD requirements. A Registered Auditor which is a firm may make the annual declaration on behalf of its individual principals and employees.
9. Each year the RSB shall select a sample of its Registered Auditors. The RSB shall require the selected Registered Auditors to submit their CPD record to the RSB in a timely manner. Once received, the RSB will review the CPD record to determine if the Registered Auditor has complied with the RSB's CPD approach and requirements.
10. The RSB may conduct the review of the CPD records within a monitoring visit to an employer or via sample of Registered Auditors.
11. If the RSB has established an employer CPD regime the regime should be subject to regular review and monitoring by the RSB to ensure that it continues to comply with the RSB's approach.

### **Non-compliance of Statutory Auditor/Audit Firms with requirements**

12. The RSB should establish a range of follow up actions which may be employed if a Registered Auditor is found not to be complying with the CPD requirements. The follow up actions and/ or penalties should be proportionate.



### **Appendix 3 - Audit Monitoring Conditions**

1. The RSB has submitted to the FRC key principles of its work plan in relation to this task by way of the RSB's submission to the FRC of its Regulatory Plan in accordance with Appendix 5 or such other information as the FRC may reasonably request.
2. The RSB shall have a committee which has responsibility for discharging the function of audit monitoring (the "Committee") - including reviewing the results of audit inspections, in particular those which result in an unsatisfactory grade<sup>1</sup> and for ensuring that inspections are carried out to a consistent standard.

#### **Key performance indicators**

3. The RSB shall agree key performance indicators ("KPIs") with the FRC which focus on the improvement of audit quality. Where targets are not met the RSB may be required to conduct a root cause analysis.
4. KPIs shall also be agreed which relate to the RSB's annual review activity.

#### **Selection of Registered Auditors<sup>2</sup> for review**

5. Where a Registered Auditor has carried out a statutory audit of an entity not subject to the small companies regime during any of the previous five years, the RSB should use a risk based approach to selecting a Registered Auditor for review, subject to inspecting that Registered Auditor at least once every six years, as required by Schedule 10<sup>3</sup> to the Companies Act 2006.
6. Where a Registered Auditor has carried out statutory audits only of entities subject to the small companies regime during the previous five years, the RSB should use a risk based approach to selecting a Registered Auditor for review, subject to inspecting that audit firm at least once every ten years.
7. For Registered Auditors that have not carried out a statutory audit during any of the previous five years the RSB shall agree an appropriate risk-based approach with the FRC.
8. The risk factors to be considered by the RSB under paragraphs 5-7 above should include: the risks of non-compliance with the RSB's Rules; the size/ complexity of the Registered Auditor (if a firm) and of its audit clients; the instructions of the Committee; past review outcomes; intelligence from other departments of the RSB, and current circumstances.

#### **Selection of audits for review**

9. The number and selection of audits to be reviewed as part of an audit inspection monitoring visit should appropriately reflect the risk and size profile of the audit clients of the Registered Auditor and not solely focus on coverage of those individuals in the firm responsible for statutory audit work.

#### **Scope of review work relating to individual audits**

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<sup>1</sup> Grading terminology used by the RSBs differ and the appropriate grading level for the purpose of this specification will be agreed between the RSB and the FRC.

<sup>2</sup> The term Registered Auditor is used to refer to statutory auditors and audit firms approved and registered to carry out statutory audits

<sup>3</sup> Paragraph 13(3)(b)(ii)

10. In selecting the areas of an audit to be reviewed the RSB shall adopt a risk based approach which has regard to the materiality and complexity of the different aspects of the audit.
11. The proportion of audit work reviewed should be sufficient to enable an appropriate and justifiable conclusion on the quality of the audit overall to be reached.

#### **Review methodology and documentation**

12. The audit review methodology to be followed before, during, and after a monitoring visit shall be documented in a review manual which is reviewed and updated by the RSB at least annually and is subject to periodic approval at the FRC's discretion.
13. The audit file grading and visit grading systems for review results should be agreed with the FRC and should ensure consistency of grading of results between inspectors and over time. The system should include appropriate quality control review within the RSB.

#### **Post monitoring visit follow-up actions**

14. The RSB shall have procedures for the notification to, and consideration by, the Committee of visits with an unsatisfactory review grade, or which otherwise indicate non-compliance with the Relevant Requirements and/or any applicable FRC processes and procedures or with the RSB's Rules. Circumstances where the results of a review shall be considered by the Committee and circumstances where such considerations may be delegated to staff shall be set out in the Committee's terms of reference and notified to the FRC.
15. Such procedures should aim to ensure steps are taken by a Registered Auditor to identify areas for performance improvement and appropriate follow up actions.
16. Such follow up actions should be actions designed to produce and maintain an appropriate improvement in the quality of audit work within a reasonable but expeditious timeframe.
17. The RSB should also consider the impact of the review result on its own selection of Registered Auditors for review, for example by scheduling an early follow up visit to that firm.
18. Failure of the Registered Auditor to improve the standard of work carried out in respect of statutory audit functions, as reflected by consistently unsatisfactory review grades, should be referred to the Committee with a view to the possible imposition of regulatory penalties or referred for disciplinary action as set out within the constitution of the Committee.

## Appendix 4 - Enforcement Conditions

1. The RSB has submitted to the FRC key principles of its work plan in relation to this task by way of the RSB's submission to the FRC of its Regulatory Plan in accordance with Appendix 5 or such other information as the FRC may reasonably request.

### Rules and Procedures

2. The RSB's Rules must be to the FRC's satisfaction and:
  - (a) incorporate at least the requirements set out in this Appendix in particular and this Delegation Agreement in general insofar as they apply to Enforcement (as defined below);
  - (b) incorporate an effective system for the handling and investigation of complaints and conduct of administrative and disciplinary proceedings in order to detect, correct and prevent breaches of relevant requirements as defined in SATCAR 2016 (**Relevant Requirements, Enforcement and Enforcement Arrangements** respectively); and
  - (c) specify the RSB committees to be involved in its Enforcement Arrangements and the governance arrangements relating to the composition of those committee(s) and the conduct of business by those committee(s);
3. The Enforcement Arrangements must furthermore:
  - (a) incorporate processes to ensure that the conduct of complaints and investigations and the imposition of administrative measures and/or sanctions are consistent appropriate and timely;
  - (b) provide effective, proportionate and dissuasive sanctions where there has been a breach of a Relevant Requirement;
  - (c) include at least those sanctions set out in SATCAR 2016;
  - (d) provide that when determining the type and level of administrative sanctions and measures to be imposed, the RSB will take into account all relevant circumstances including where appropriate:
    - (i) the gravity and duration of the breach;
    - (ii) the degree of responsibility of the responsible person;
    - (iii) the financial strength of the responsible person (for example, in respect of a firm, as indicated by its turnover and, in respect of an individual, the annual income of that individual);
    - (iv) the amounts of the profits gained or losses avoided by the responsible person in so far as they can be determined;
    - (v) the level of cooperation of the responsible person with the RSB and/or other authorities including the FRC; and
    - (vi) previous breaches by the responsible legal or natural person.
  - (e) ensure that decisions taken are subject to a right of appeal; and

(f) contain effective mechanisms to encourage reporting of breaches of the relevant requirements to that RSB and other relevant authorities. Such mechanisms should be designed to protect the Personal Data concerning the person who reports the suspected breach and the Personal Data and human rights of any person suspected or accused of committing a breach, save as permitted by law.

4. Financial penalties recovered from a person under its Enforcement Arrangements shall be retained and used by the RSB for the purposes of recovering its costs of that investigation and/or administrative or disciplinary action and for funding future delegated Enforcement tasks.

#### **Publication Conditions**

5. Following the imposition of a sanction under its Enforcement Arrangements the RSB shall publish on its website as soon as reasonably practicable after the person has been informed of the decision:

(a) information concerning the type of contravention and its nature;

(b) the identity of the person sanctioned unless the RSB considers the publication of Personal Data would be disproportionate, jeopardise the stability of financial markets, jeopardise an ongoing criminal investigation or cause disproportionate damage to an institution or individual concerned; and

(c) information concerning the status and outcome of any appeal, where the sanction is subject to appeal.

6. The RSB must keep such information available on its website for at least 5 years from the date of the sanction or, in where the sanction has been appealed, at least 5 years from the conclusion of that appeal, or such longer period as is proportionate to the breach in question.

7. The RSB shall ensure that the publication of sanctions and measures and any public statement issued pursuant to its Enforcement Arrangements shall, save as otherwise permitted by law, respect all applicable legislation including in relation to the human and data protection rights of the person in question.

#### **Specific Reporting Conditions**

8. The RSB must:

(a) inform the FRC of any temporary prohibitions immediately;

(b) refer to the FRC any complaint or issue of which the RSB becomes aware otherwise which relates to the audit of a Public Interest Entity (PIE); and

(c) inform the FRC if the RSB receives a complaint about a person eligible to be a statutory auditor which is not in relation to the audit of a PIE but raises or appears to raise important issues affecting the public interest in the UK.

## Appendix 5 - Reporting and Information, Inspection and Monitoring Conditions

### Approval

1. The FRC will review the RSB's regulatory plan setting out the RSB's intended work plan annually.
2. To the extent not already contained in the regulatory plan, the RSB will provide to the FRC at least the following information annually in relation to the Delegated Tasks:
  - (a) in relation to Audit Monitoring, at least the planned number of monitoring visits; the criteria used to select firms for review - including the measures of risk applied and details of changes to review methodology and documentation since the previous year;
  - (b) in relation to Continuing Professional Development, at least the proposed scope and size of the sample of members to be selected in the year in relation to CPD activity relating to those eligible for appointment as a statutory auditor. The sample should be selected on a risk based approach, taking into account for example: type and size of employer, personnel seniority level, amount and type of audit work performed, audit monitoring performance history of the employer, information from other departments in the RSB and other regulators; and
  - (c) in relation to registration and enforcement any material changes to procedures or turnaround targets, such other information as the parties may agree from time to time and such information as the FRC may reasonably request to be included.

### Reporting

3. The RSB will report to the FRC upon its performance of the Delegated Tasks as follows:
  - (a) a report prepared annually in accordance with paragraph 4 below (an "Annual Return"); and
  - (b) interim reporting by exception to include any:
    - (i) significant changes proposed to its rules and regulations and/or processes in relation to the Delegated Tasks;
    - (ii) material developments in performance of each of the Delegated Tasks, any material uncertainties in current or anticipated performance of Delegated Tasks, or eligibility for this Delegation Agreement; and
    - (iii) significant complaints received by the RSBs in relation to the RSB's performance of Delegated Tasks.
4. Each Annual Return shall contain at least the following information:
  - (a) in relation to registration (see Appendix 1): (1) the number of applications and withdrawals approved in the period covered by the Annual Return; (2) an explanatory commentary covering any significant trends or issues arising from the approval and registration of statutory auditors and audit firms process; (3) any internal quality review report on the registration function completed during the year; and (4) reconciliation of the RSB's registration records to the Register of Statutory Audit at the end of the year;

- (b) in relation to Continuing Professional Development (see Appendix 2), at least: (1) the percentage of annual compliance returns received; (2) the number of members CPD records which have been reviewed in the period covered by the Annual Return; (3) the number of CPD records found to be unsatisfactory; and (4) the number of any specific incidents where a lack of CPD contributed to deficiencies in audit work;
- (c) in relation to Audit Monitoring (see Appendix 3), and subject to the confidentiality of the review results of individual firms: (1) the number of reviews completed in the period covered by the Annual Return compared to plan; (2) the outcomes of completed reviews; (3) an explanatory commentary covering the number of reviews completed during the period and in the year to date, the outcomes, and any significant trends or issues resulting from the reviews; and (4) comparison of review results against those of previous years. It should also identify areas for improvement by its Registered Auditors; and
- (d) in relation to Enforcement (see Appendix 4), at least providing annually aggregated information regarding all administrative measures and all sanctions imposed under its Procedure for Audit Enforcement.

### **Information**

- 5. The RSB's Regulatory Plan or Annual Return (as applicable) and interim reporting will contain such detail as the FRC reasonably requires for the FRC to fulfil its statutory oversight and reporting responsibilities.
- 6. The RSB will provide to the FRC such other information as may be reasonably requested by the FRC (and will in good faith volunteer provision of such information as the FRC may reasonably consider to be relevant were the FRC to be aware of the existence of such information) in relation to the parties' exercise of their rights and responsibilities arising out of or in connection with the Audit Objective and/or this Delegation Agreement.

### **FRC Inspection**

- 7. The FRC can inspect the RSB to assess the RSB's compliance with the terms of this Delegation Agreement as follows:
  - (a) upon 30 days' notice; or
  - (b) without notice or at short notice, where the FRC has reasonable grounds for believing that the RSB has not complied with its obligations under this Delegation Agreement and where appropriate in all the circumstances.
- 8. The FRC will have full access, only for the purposes as set out in this Appendix, and to the extent reasonably required to the RSB's offices, minutes of the relevant committee meetings, and/or such other documentation as the FRC reasonably requires, to staff working on and decision makers in relation to Delegated Tasks, and those elements of RSBs' systems, controls and procedures which relate to the Delegated Tasks. If an FRC inspection reveals non-compliance with the RSB's obligations in this Delegation Agreement the Dispute Resolution Procedure shall apply, and the RSB will be responsible for the cost of a follow up inspection.

### **FRC Monitoring**

- 9. The FRC will monitor the performance of the Delegated Tasks and assess compliance with the Conditions of Delegation including (but not limited to) the following:

- (a) review of interim reporting;
  - (b) review of the RSB's annual work plan already submitted for the applicable year ;
  - (c) inspection(s) in accordance with paragraphs 7 - 8 above; and
  - (d) accompanying RSB review staff on monitoring visits at the FRC's discretion.
10. The FRC may report the results of its monitoring to the RSB with recommendations and/or directions for improvement as the FRC deems reasonably necessary. In the event of non-compliance with recommendations or directions the FRC may at its discretion consider whether to enter into a Delegation Agreement.
11. The FRC may from time to time request such additions or other changes to the reporting requirements as it considers reasonably necessary in order to fulfil its statutory oversight, reporting and regulatory responsibilities.

## Appendix 6 - Governance and Records

1. The RSB appoints **Duncan Wiggetts** (the "**RSB Representative**") and the FRC appoints the Director of Professional Oversight (the "**FRC Representative**"). The RSB Representative and FRC Representative will be responsible for the management and oversight of all matters relating to the performance of the Delegated Tasks. The RSB and FRC will also appoint a suitably qualified deputy to act in the absence of either the RSB Representative or the FRC Representative.
2. Regular meetings to review the RSB's performance of the Delegated Tasks will take place at a location agreed between the Parties throughout the Term at the direction of the FRC ("**RSB Review Meetings**"). The RSB Review Meetings will be attended, at a minimum, by the RSB Representative and the FRC Representative or such substitute as may be agreed. Each party will use reasonable endeavours and cooperate with the other to meet actions agreed at the RSB Review Meetings. In cases where the RSB Representative and the FRC Representative fail to reach a solution within a reasonable period of time, the matter will be dealt with in accordance with the Dispute Resolution Procedure.
3. The RSB will keep and maintain for a rolling seven (7) year period, or as long a period as may be agreed between the Parties, full and accurate records of this Delegation Agreement in accordance with good industry practice and law including records relating to its performance of the Delegated Tasks, all payments made to the FRC and agreed minutes of RSB Review Meetings held in accordance with this Appendix. The RSB will provide such access to those records as may be reasonably requested by the FRC in connection with this Delegation Agreement.



## Appendix 7 - Exit Management

Where the FRC reclaims a Reclaimed Task(s) from a Ceding RSB either to perform it directly or to delegate the same to another RSB (**Replacement RSB**), the Ceding RSB shall:

1. use its best endeavours and in good faith cooperate with the FRC and any Replacement RSB both before and after it ceases to perform the Reclaimed Task(s) in order to maintain the continuity of performance of the Reclaimed Task(s) and shall do so in accordance with the provisions of this Appendix.
2. Within 10 Working Days of service of a notice by either party to terminate this Agreement or by the FRC to reclaim a Delegated Task:
  - 2.1 take such steps and provide all the information reasonably necessary and/or reasonably requested within such time frame and in such form as is reasonably requested by the FRC and/or a Replacement RSB to enable the FRC or Replacement RSB to continue to perform the Reclaimed Task(s) upon the effective date of termination or reclaim as applicable including, but not limited to the information set out in (a)-(d) below:
    - (a) in relation to the Delegated Task at **clause 2.1(b) [Registration] (and associated licensing)**
      - (i) the Ceding RSB's applicable rules for eligibility and registration as a statutory auditor or audit firm;
      - (ii) copies or records of applications for such registration and or current licences including at least the identity of the applicant, date of application, date of registration and/or status of their/its application over the last 12 months or such other period as the FRC reasonably requests;
      - (iii) copies, records and information in relation to decisions or consideration of cessation and/or removal of registration;
      - (iv) assessments of continuing eligibility for registration; and
      - (v) the most recent submission by the Ceding RSB of information to the public audit register and date on which it was supplied;
      - (vi) provide information, account for and hold to the FRC's or Replacement RSB's account such reasonable, pro-rata apportionment of annual licence revenue as may be reasonably requested to be transferred to the FRC or the Replacement RSB in relation to the discharge of the Ceding RSB's obligations for the year to which the licence revenue relates;
    - (b) in relation to the Delegated Task at **clause 2.1(c) [CPD]**
      - (i) the RSB's applicable rules in relation to continuing professional development and confirmation of any current departure from IES7 and IES8;
      - (ii) copies or a record of annual declarations of compliance received from its Registered Auditors for the past 12 months or such other period as the FRC reasonably requests;

- (iii) a record of which of its Registered Auditors have been assessed as being CPD compliant over the last 12 months or such other period as the FRC reasonably requests;
  - (iv) details of any CPD monitoring visits carried out on Registered Auditors over the last 12 months or such other period as the FRC reasonably requests; and
  - (v) details of any employer CPD regimes accepted by the RSB as being compliant and dates of applicable RSB reviews and monitoring of such employer regimes;
- (c) in relation to the Delegated Task at **clause 2.1(d) [Audit Monitoring]**
- (i) the number and selection criteria applied for audit reviews over the last 12 months or such other period as the FRC reasonably requests;
  - (ii) the results of audit inspections completed over the last 12 months or such other period as the FRC reasonably requests categorised to indicate satisfactory and unsatisfactory inspections and any post monitoring visits or actions agreed with the firm/auditor in question;
  - (iii) files in relation to audit inspections completed in (ii) above with a content and length of history of up to 6 years where such information has been gathered and/or is reasonable available and relevant to the audit inspection in question;
  - (iv) the identity of audit inspections in progress at the date of handover and in each case a high level summary note reasonably sufficient to enable the FRC or the Replacement RSB to takeover and complete the review including in relation to:
    - (A) the risk approach taken for the audit review in question;
    - (B) a handover note summarising the extent of review undertaken to date and remaining recommended areas for review/completion;
    - (C) any draft audit review reports completed; and
    - (D) any steps taken or recommendations in connection with constructive engagement or enforcement action; and
- (d) in relation to the Delegated Task at **clause 2.1(e) [Enforcement]**
- (i) a record of Enforcement cases concluded (by imposition of sanction, acceptance of undertaking, constructive engagement or discontinued or otherwise) by the Ceding RSB over the last 12 months or such other period as the FRC reasonably requests;
  - (ii) a schedule of matters under the Ceding RSB's consideration for audit enforcement action, in progress at the date of handover;
  - (iii) case files for each matter in (ii) above including at least:
    - (A) the complaint;
    - (B) any decision imposed or offered;
    - (C) relevant evidence gathered;

- (D) details of any third parties instructed (external advisors or experts);
- (E) a summary reasonably sufficient to enable the FRC or Replacement RSB to take over and complete the enforcement matter including the stage of consideration by the Ceding RSB, any reports or draft reports, agreed facts, facts in dispute, identification of any matters for expert evidence and a recommendation of next steps in the investigation or matter;
- (F) handover of all evidence gathered in their original format;
- (G) costs schedules and/or estimates on each matter of the Ceding RSB costs and third party disbursements incurred up to the date of transfer for the purposes of the FRC and/or Replacement RSB reimbursing in whole or in part such expenditure from any future costs award successfully collected from the respondent; and
- (H) confirmation of payment by the Ceding RSB of all third party costs and disbursements incurred up to the date of transfer; and

(iv) a schedule (and case files as above) of any matter under appeal under the Ceding RSB's disciplinary or enforcement processes;

- 2.2 inform those Statutory Audit Firms or Statutory Auditors that it regulates of the fact and effective date that the Ceding RSB shall cease performing the task;
- 2.3 consult with the FRC in relation to the Ceding RSB's communications in relation to the cessation of Delegated Task by the Ceding RSB; and
- 2.4 co-operate in good faith with the FRC and any applicable Replacement RSB to effect an orderly and timely transfer of worker arrangements which is reasonably acceptable to the FRC or the Replacement RSB as applicable and which do not unreasonably impede the transfer and effective performance of a Reclaimed Task(s) by the FRC or a Replacement RSB.
- 3. The FRC will:
  - 3.1 agree a reasonable time period for any of steps at paragraph 2 to be performed where such steps are not reasonably capable of performance within 10 working days; and
  - 3.2 consult with the Ceding RSB in relation to FRC communications in relation to the cessation of the Reclaimed Task(s) by the Ceding RSB.

