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Mr Chris Aujard  
Post Office Ltd  
148 Old Street  
London  
EC1V 9HQ

7<sup>th</sup> April 2014

Dear Sirs

**STRICTLY PRIVATE AND CONFIDENTIAL**  
**PRIVILEGED IN CONTEMPLATION OF LITIGATION**

We are pleased to set out for your approval the arrangements under which we propose to assist Post Office Ltd ("You"). We understand that You are responding to allegations that the "Horizon" IT system, used to record transactions in Post Office branches, is defective and/or that the processes associated with it are inadequate (the "Allegations").

In order to defend the Allegations, You require services from us, as outlined in paragraph 2(b) below. These arrangements are set out in this letter together with the enclosed Terms of Business and appendices.

So that we are able to assist You effectively, please ensure that You have considered fully all of the terms and conditions set out in this letter and its enclosures and that You are satisfied that the scope of our Services described below is sufficient for Your needs.

**1 Scope and objectives**

In order to respond to the Allegations (which have been, and will in all likelihood continue to be, advanced in the courts), POL wants to demonstrate that the Horizon system is robust, fit for purpose, and/or operates within an appropriate control framework. In response to this, POL has either been provided or has commissioned a number of independent assurance reviews into matters relating to Horizon's operating environment and processing integrity.

The purpose of seeking input from Deloitte LLP (UK) ("Deloitte") is to provide, based upon the information made available to us by You, an independently produced summary relating to these sources of assurance, for presentation to and discussion with the POL Board ("Part 1 work").

We understand that the input provided by Deloitte will inform Your decisions relating to potential areas of additional work that You may choose to commission to defend the Allegations, and that we may be involved in the delivery of such additional work ("Part 2 work").

You have asked us to provide the Services set out in Section 2 below and to prepare the report described in Section 2(d). (the “**Purpose**”).

We understand that any work being undertaken by us in accordance with this engagement letter is being undertaken in relation to ongoing litigation and regulatory action, and potential future litigation, and hence is subject to legal professional privilege.

In addition, this matter is strictly confidential. Save as permitted under Section 4 of our terms of business, no information relating to this matter, or our work for it, will be disclosed to any third party without mutual written consent.

You have advised us that all correspondence and all preparatory papers for any report we might make are legally privileged, as they are being prepared in relation to ongoing litigation and regulatory action, and linked to the provision of legal advice. We will therefore take reasonable skill and care to identify papers, memoranda, correspondence and other materials prepared by us for circulation outside of Deloitte (and its Directors, Partners and employees) as being “Legally Privileged and Confidential” (or bear equivalent wording) and they are circulated through Rodric Williams, Your litigation lawyer. These materials will not be circulated within our organisation (beyond the members of our Engagement Team (see below)) without prior discussion with You to ensure that appropriate steps are taken to retain privilege.

## **2 Our Services and responsibilities**

### **(a) Our Engagement Team**

It is our intention that Gareth James will be the Partner responsible to You for the Services described in this letter, unless otherwise agreed with You (such agreement not to be unreasonably withheld or delayed). David Noon, our Service Line Leader with overall responsibility for the services we provide to You, will also be available as required.

Chris Lauder, a Director within our Governance and Controls team, will lead the delivery of our Services to You, together with Mark Westbrook and Charlotte Desourdy, both Senior Managers. They will establish direct working relationships with the appropriate people working on the Client Team. Gareth, Chris, Mark and Charlotte will be supported by Tom Scampion, Partner, who has particular experience in performing work and preparing reports under similar circumstances; and other members of our team as required.

We understand that You do not require any of our team to be available to act as a named expert witness. Should this be required, we would need to agree a separate engagement letter for those Services and Deliverables.

Together they comprise the “**Engagement Team**”.

For the purposes of this engagement, we are advised that the client team at POL will consist of Lesley Sewell, Chief Information Officer; Chris Aujard, General Counsel; Belinda Crowe, Programme Director; and Rodric Williams, Litigation Lawyer. The client team will report on this engagement to Paula Vennells, Chief Executive. We note that we will be advised of any future changes to the client team.

Together they comprise the “**Client Team**”.

**(b) Services**

Part 1 of our Services will provide the following:

- ∞ Obtain a reasonable level understanding of the key circumstances behind the allegations and key risks in the Horizon processing environment to the integrity of processing and other background matters necessary to complete our Deliverable;
- ∞ Review, understand and consolidate the corresponding investigations, assurance activities and remediation actions which POL or third parties have undertaken (see Appendix 1 for the “Sources of Information” known to be within scope at this stage) focussing on three primary areas:
  - Work that has been performed to assure key control activities that created and preserve the integrity of processing across the Horizon environment;
  - Work that has been performed to assure key control activities that created and preserve the integrity of interfaces with key third party systems and the Horizon environment, consisting of DVLA, Camelot and Premium Bond systems;
  - Investigation responses and actions that have been taken in response to the thematic findings of Second Sight, as outlined in Your supplied document “POL Summary of Second Sight anomalies” (see Appendix 1).
- ∞ Hold discussions with relevant members of staff in POL and other key stakeholders as pre-agreed with You, to deliver the work outlined above;
- ∞ Prepare the Deliverable outlined in section 2(d) below;
- ∞ Attend meetings or conference calls with POL’s Client Team, to explain our approach, status of work and the commentary within our Deliverable; and
- ∞ Carry out any other work required by You which is reasonably incidental to the above.

You do not require Deloitte to comment on or test the quality of the assurance work performed, nor opine on either its adequacy, sufficiency or conclusions, or the integrity of the Horizon processing environment.

As engagement requirements are discussed, clarified and agreed further, we will outline the additional scope and timeline for such work via the Change Order process as set out in Appendix 2. Any Part 2 work You require us to perform will be agreed under these Change Order processes. This may include, but will not be limited to:

- ∞ Testing on data held within the system audit trails, to (for example) assess conclusions previously drawn by non-independent parties into the extent of known deficiencies;
- ∞ Assessment and profiling of system audit trails, to look for characteristics of and trends in unusual behaviours in the system transactional core;
- ∞ Enquiry into the nature and extent of testing of the Horizon system during its implementation;

- ∞ Understand and test the operating integrity of dataflows to and from certain external / third party systems; and
- ∞ Testing of responses to thematic concerns raised by other independent reviews.

The scope of our services and any deliverables will be limited solely to the Services and Deliverables set out in this Contract. We will make no representations in respect of and will not consider any other aspect.

Our work will be performed through a combination of desk based inspection of documentation, corroborative enquiry and through third party provided evidence or contact, as agreed between You and us.

### **(c) Our responsibilities**

In performing the Services, we will be responsible for:

- ∞ undertaking the procedures as necessary to produce our deliverables; and
- ∞ confirming the factual accuracy of our report with You.

You agree that other than set out in the Services section above, we will not audit or otherwise test or verify the information given to us in the course of the Services. In particular, unless otherwise instructed by You to do so, we will not perform or re-perform any assurance work that has tested and concluded on the design, implementation and operational effectiveness of any internal controls over the Horizon processing environment.

Our work will be limited by the time and the information available. Whilst we will report our findings in accordance with the agreed scope of work having considered the information provided to us in the course of carrying out the Services, additional information that You may regard as relevant may exist that is not provided to (and therefore not considered by) us. Accordingly, our Deliverable(s) and our work should not be relied upon as being comprehensive in such respects. We accept no responsibility for matters not covered by or omitted from our Deliverable(s) due to the specific nature of our work instructions from You.

In particular, we note that, in certain respects, we will be reliant on the integrity of those people whom we interview, and that our ability to corroborate and test what we have been told may be limited by the available information.

We shall discuss with You any difficulties we encounter with completing our work should any problems arise.

You acknowledge that You are responsible for establishing and maintaining an effective internal control system that reduces the likelihood that errors or irregularities will occur and remain undetected; however, it does not eliminate that possibility. Nothing in our work guarantees that errors or irregularities will not occur, nor is it designed to detect any such errors or irregularities should they occur.

The scope of our Services and our responsibilities will not involve us in performing the work necessary for the purpose of providing, neither shall we provide, any assurance on the reliability, proper compilation or clerical accuracy of any plan, budget, projection or forecast ("prospective financial information") nor the reasonableness of the underlying assumptions.



Since any prospective financial information relates to the future, it may be affected by unforeseen events. Actual results are likely to be different from those projected because events and circumstances frequently do not occur as expected, and those differences may be material.

**(d) Format and use of the Deloitte Deliverables**

The format and timing of the report (the “Deliverable”) issued by us will be agreed with You.

The content of such Deliverable is expected to be a written report, and will include the following sections:

- ∞ Executive Summary – key points from our report, suitable for Board presentation and discussion;
- ∞ Our Approach – outlining the procedures we have adopted in the delivery of our work, those documents reviewed and the individuals we have interviewed;
- ∞ Understanding the Processing Environment – based on the documentation provided to us, provide an overview:
  - Relating to the Technical processing environment – envisaged to be a description of technical matters of the Horizon system, consisting of, where information is available to us:
    - key statistics relating to the processing environment and its range of functions (as stipulated by Fujitsu);
    - key matters relating to its network architecture, internal and external interfaces, software components, hardware components;
    - key project controls at the time of its implementation, including the extent of unit, system and user acceptance testing; and
    - key responsibilities relating to the operation of key controls, including change control, security management, system operations (including error handling procedures, follow-up and resolution), end-user support and system recovery.
  - Relating to the User environment – envisaged to be a description of the usage environment of the Horizon system, consisting of, where information is available to us:
    - a description of the types of users in the system and the physical environments in which Horizon is accessible;
    - the types of transactions processed by the system and, at a reasonable level, how the integrity of these transactions is verified and preserved;
    - how more than daily, daily, weekly, monthly, quarterly and annual reconciliation processes operate and how variances and/or errors are handled;
    - the nature of key workarounds and other ad hoc processes that are commonly adopted by users;
    - a summary of the categories of the alleged defects in Horizon.
- ∞ An Assurance Map - showing those sources of Your assurance which You have shared with us and the areas of key risk relating to the integrity of processing that these were designed to assure;
- ∞ Matters for Consideration - an assessment of Your Assurance Map in the context of Your objectives and significant matters we have observed during our work that we recommend You consider further.

Any Deliverable should not be copied, referred to or quoted to any other party, except in the context of Your defence of the Allegations, or be used for any other purpose. We draw Your attention to clause 5 of the enclosed Terms of Business that sets out the conditions under which the Deliverables will be provided to You.

In the event that You wish to share our Deliverable outside of POL, we may consent to such a course subject to us receiving 'hold harmless' undertakings (or their equivalent). These procedures notify them that:

- ∞ the disclosure to them will not create any duty, liability or responsibility whatsoever to them in relation to our Deliverable or any of its contents;
- ∞ the Deliverable was not prepared for their use or with their needs or interests in mind; and
- ∞ they should keep our Deliverable confidential and not copy or circulate our Deliverable, or any extracts of them, to any third party without our express written permission.

We understand that POL is unlikely to make any public announcements which would refer to our work. If this situation changes however, You agree that You will not make any such public announcement(s) on this matter referring to Deloitte or our work in any way without providing prior notification of the wording of any public announcement to us and without our prior written consent to such wording, such consent will not be withheld unreasonably.

### **3 Client Responsibilities and Assumptions**

#### **(a) Client Responsibilities**

In connection with the provision of the Services, we refer You to clause 3 of the enclosed Terms of Business. These confirm Your responsibility for the provision of information and decision-making in connection with the Services we are to provide. In addition, our delivery of the Services is dependent upon Your completion of the following:

- ∞ You acknowledge and agree that our performance of the Services is dependent on the timely and effective completion of Your own activities and responsibilities in connection with this engagement, as well as timely decisions and approvals by You;
- ∞ You agree to making available to us all information You deem relevant to this review;
- ∞ You agree to providing timely access to relevant personnel at POL in order for us to obtain sufficient information to inform our understanding and report;
- ∞ Unless we are otherwise instructed, You agree to carrying out all contact with third parties;
- ∞ You agree to providing a nominated point of contact for us throughout the work;
- ∞ You agree to provide a room for our team and secure storage facilities for paperwork, if required, at 148 Old Street, London; and

- ∞ You agree to assess the Deliverable we provide to You, to determine the most appropriate courses of action for POL.

You acknowledge and agree that our performance of the Services is dependent on the timely and effective completion of Your own activities and responsibilities in connection with this engagement, as well as timely decisions and approvals by You.

The responsibilities set out above and those contained in clause 3 of the Terms of Business are together referred to in this Contract as the “**Client Responsibilities**”.

#### **(b) Assumptions**

The Services, Charges (as set out in Section 4 below) and timetable are based upon the following assumptions, representations and information supplied by You (“**Assumptions**”).

- ∞ Deloitte will not provide a legal or any other opinion at any point throughout the work;
- ∞ That sufficient information is available on a timely basis regarding the scope of Services and Deliverables for us to be able to carry out our work;
- ∞ That all pertinent information relating to the nature of the Allegations against POL has been provided to us such that we are fully aware of the detail of the Allegations;
- ∞ Unless otherwise instructed, that Deloitte staff will have no direct contact with any third parties other than named Fujitsu contacts that You provide to us;
- ∞ The individuals we may need to interview will be available to us for sufficient time for us to perform our work during the period of our assessment and third parties can be contacted on a timely basis by You to request further information should this be required;
- ∞ Deloitte will not verify or test any information provided directly by POL, or indirectly by third parties via POL;
- ∞ Deloitte will adopt a time limited approach to our work, operating to key milestone dates; and
- ∞ Deloitte will not review any contractual provisions in place between POL and third parties.

#### **(c) Client contacts**

We understand that Rodric Williams, Litigation Lawyer, will be Your nominated point of contact and that requests for information and documentation should be copied to Belinda Crowe.

### **4 Our Charges**

We will base our charges upon the actual time and materials incurred, plus out-of-pocket expenses and applicable value added tax. The billing rates we will apply match those of previous specialist advisory work which we have performed for You in 2013. We estimate that the Part 1 work will take approximately 15 days of senior time to deliver.

<b>Grade</b>	<b>Advisory Rate /hr</b>
Partner	630
Director	540
Senior Manager	430
Manager	400
Senior Consultant	310
Consultant	185
Analyst	145

If during the course of our work, or change order there-under, a need for ancillary specialist services not specified in this Contract is identified, agreement to their use and related charges will be obtained before any expenditure is incurred.

## **5 Terms of Business and Liability Provisions**

The enclosed Terms of Business form an integral part of the Contract between us and Your attention is drawn to them. You agree that for the purpose of clause 6 of these Terms of Business, our aggregate liability arising from or in any way in connection with the Services shall not exceed £500,000.

## **6 Variations**

If You or we wish to request or recommend any addition, modification or other change to the Services or performance required under this Contract, we each agree to follow the change control procedures described in Appendix 2.

## **Acknowledgement and acceptance**

We appreciate the opportunity to be of service to You and look forward to working with You on this assignment. You can be assured that it will receive our close attention.

If, having considered the provisions of this Contract You conclude that they are reasonable in the context of all the factors relating to our proposed appointment and You wish to engage us on these terms, please let us have Your written agreement to these arrangements by signing and returning to us the enclosed copy of this letter.

Yours faithfully

**Deloitte LLP**



**Post Office Ltd agrees to the appointment of Deloitte LLP on and subject to the terms of the Contract set out in this Engagement Letter and its enclosures.**

**Signed:** \_\_\_\_\_

Duly authorised for and on behalf of Post Office Ltd

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

**Enclosures:**

Appendix 1 – Sources of Information

Appendix 2 – Change Control Procedures

Appendix 3 – Template Change Order

Appendix 4 - Deloitte LLP Terms of Business, Consulting and Advisory Services

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## APPENDIX 1

### ENGAGEMENT LETTER DATED 7 APRIL 2014 SOURCES OF INFORMATION

For Part 1 work, we will use the following sources of information which have been provided by You:

1. "Horizon Core Audit Process" which outlines how Horizon has been designed to operate;
2. "Draft Factfile" which deals with how POL uses Horizon in the branch network;
3. "Description of Fujitsu's System of IT Infrastructure Services supporting Post Office Limited's POLSAP and HNG-X applications" which outlines the environment in which Horizon operates;
4. "Table of the deficiency themes" which outlines areas that underlie some of the allegations that Horizon is deficient;
5. "POL Summary of Second Sight anomalies" which is an internal POL summary of the anomalies within Horizon referring to para's 6.4 to 6.10 of Second Sight's July 2013 Report;
6. Fujitsu's response on the "Local Suspense" / 14 Branch anomaly;
7. Fujitsu's response on the "Receipts Payments" / 62 Branch anomaly;
8. The "Spot Review Bible", which contains the ten "Spot Reviews" sent to POL and POL's responses (cf para 2.7 of Second Sight's July 2013 Report);
9. Fujitsu's "Horizon Data Integrity" document, which provides a technical description of the measures built into Horizon to ensure data integrity, including a description of several failure scenarios, and descriptions as to how those measures apply in each case;
10. Fujitsu's "Horizon Online Data Integrity for Post Office Ltd" document, which provides a technical description of the measures that are built into Horizon Online (also known as HNG-X) to ensure data integrity and descriptions as to how those measures apply in each case;
11. Current Fujitsu POA ISO27001 certification;
12. The associated Fujitsu POA ISMS Statement of Applicability;
13. The Post Office Horizon PCI DSS certificate;
14. The Post Office Horizon PCI DSS signed AOC;
15. The Post Office Horizon PCI DSS ROC;
16. The last 3 published Post Office ISMF minutes with Fujitsu; and
17. The last 3 Fujitsu Security Ops Reports

Additional documents may be provided by You as part of our engagement. The full list of information sources will be disclosed in our Deliverable.

## APPENDIX 2

### ENGAGEMENT LETTER DATED 7 APRIL 2014 CHANGE CONTROL PROCEDURES

- 1 If at any time either party wishes to request or recommend any addition, modification or other change to the Services or performance required under the Contract (a **"Change"**), the party proposing the Change will submit a written request for the Change (a **"Change Request"**) to the other party.
- 2 All Change Requests will require the authorisation in writing by the named person who has signed the Engagement Letter for and on behalf of the Client, in the case of Change Requests initiated by the Client or the Deloitte client service partner as specified in the Engagement Letter in the case of Change Requests initiated by Deloitte.
- 3 Deloitte will investigate the implications for the Contract of implementing each Change Request, and prepare and submit to the Client a proposed Change Order, in the form attached as Appendix 3, in respect of such Change Request. If in a party's judgement, the time to evaluate and respond to one or more Change Requests, because of their magnitude, complexity or frequency, may result in a delay in the Services, that party will notify the other party. The parties will then need to agree an appropriate course of action.
- 4 The Client will notify Deloitte in writing of its decision as to whether or not it wishes to implement the proposed Change as soon as reasonably practicable but in any event no later than 5 days (or such other period agreed by the parties) after receipt of the Change Order submitted by Deloitte. Should the parties wish to proceed with the proposed Change, the Change Order shall be signed by the named person who has signed the Engagement Letter for and on behalf of the Client and the client service partner, or other authorised representatives (such signed document being referred to as a **"Change Order"**).
- 5 Neither party is obliged to proceed with any proposed Change (and the related changes) and no Change (and related changes) will be effective and enforceable against a party, unless and until a Change Order for that Change is signed on behalf of both parties. Until the Change Order for any proposed Change is signed, Deloitte will continue to perform and be paid for the Services as if the Change had not been proposed.
- 6 Deloitte shall be entitled to charge for all reasonable costs and expenses incurred in connection with investigating the implications of a Change Request, whether or not a Change Order is signed in respect of such Change Request.

## APPENDIX 3

### ENGAGEMENT LETTER DATED 7 APRIL 2014 CHANGE ORDER NUMBER \_\_\_\_

Date

<Client Name and Address>

For the attention of < >

Dear Sirs

This Change Order (including any appendices, schedules, and/or attachments), records agreed changes to the Contract between Deloitte LLP ("Deloitte" or "we") and < > dated < >, as amended by prior agreed Change Order(s) or amendments thereto. This Change Order constitutes the entire understanding and agreement between the Client and Deloitte with respect to the changes set out in this document, supersedes all prior oral and written communications with respect to such changes (including, but not limited to Change Requests), and may only be amended in writing, signed by authorised representatives of both parties.

The section(s) of the Engagement Letter set forth below [and any earlier Change Order(s) or amendments thereto] is/are hereby amended, effective as of [effective date of changes], by the following text:

- 1 Scope and objectives**
- 2 Our Services and responsibilities**
- 3 Client Responsibilities and Assumptions**
- 4 Our Charges**
- 5 Consequential changes to the Contract**



Except as expressly modified herein, all other terms and conditions of the Contract remain unchanged. Please indicate Your agreement to the terms of this Change Order by signing and returning to Deloitte the enclosed copy of this Change Order.

Yours faithfully,

**Partner**  
**Deloitte LLP**

**Agreed by Post Office Ltd:**

**Signed:** \_\_\_\_\_

For and on behalf of Post Office Ltd

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

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**APPENDIX 4****ENGAGEMENT LETTER DATED 7 APRIL 2014  
DELOITTE LLP - TERMS OF BUSINESS****DELOITTE LLP  
TERMS OF BUSINESS****Consulting and Advisory Services****1 THE CONTRACT BETWEEN US**

1.1 The whole of the contract between you (the "Client", or "you") and the UK limited liability partnership of Deloitte LLP ("Deloitte" or "we") is described in the covering engagement letter, proposal and/or statement of work and any appendices and enclosures thereto other than these Terms of Business ("Engagement Letter"), and these Terms of Business, (together the "Contract"). Nothing we discussed prior to your signature of the Engagement Letter induced, nor forms part of, the Contract (including but not limited to any confidentiality agreements which, if any, you agree are terminated hereby) unless it is specifically set out in this Contract. No-one is authorised to agree any variations in the Terms of Business or the Contract unless any variations are documented and agreed in writing between us.

1.2 If we have already started work (e.g. by gathering information, project planning or giving initial advice) then you agree that this Contract applies retrospectively from the start of our work.

1.3 The definitions set out in these Terms of Business, the Engagement Letter and any appendices or enclosures shall have the same meaning throughout this Contract. If there is a conflict between these Terms of Business and the Engagement Letter, these Terms of Business govern.

1.4 If any provision of this Contract is determined to be illegal, void or unenforceable in whole or in part, such provision or the affected part shall be deemed not to form part of this Contract but all other provisions together with the remainder of the affected provision shall remain in full force and effect.

1.5 Deloitte LLP is the United Kingdom member firm of Deloitte Touche Tohmatsu Limited ("DTTL"). For the purpose of this Contract, "Deloitte Parties" means all entities that are members of the DTTL worldwide network and each of their subsidiaries, predecessors, successors and assignees, and all partners, principals, members, owners, directors, employees and agents of all such entities. Deloitte LLP (which for these purposes includes reference to its subsidiaries) uses the word "partner" in respect of its members and certain of its senior employees in its dealings with you to describe, respectively, a member and senior employee of Deloitte LLP in their capacity as such. Deloitte LLP gives a number of its employees the title of "director", which denotes that they are senior employees and not that they hold the office of director for the purposes of the Companies Act 2006.

**Contracting parties and assignment**

1.6 This Contract is between you and Deloitte. You agree that your relationship is solely with Deloitte as the entity contracting with you to provide the Services. Notwithstanding the fact that certain Services under the Contract may be carried out by personnel provided to Deloitte from other Deloitte Parties through service or other agreements, you agree that none of the Deloitte Parties (except Deloitte) will have any liability to you and that you will not bring any claim or proceedings of any nature (whether in contract, tort, breach of statutory duty or otherwise and including, but not limited to, a claim for negligence) in any way in respect of or in connection with this Contract against any of the Deloitte Parties (except Deloitte) or any subcontractors that we may use to provide the Services. The foregoing exclusion does not apply to any liability, claim or proceeding founded on an allegation of fraud or other liability that cannot be excluded under English law.

1.7 This Contract does not make either of us an agent or legal representative of the other, nor does it create a partnership or joint venture.

1.8 Neither of us may assign or otherwise transfer the benefit of this Contract without the prior express written consent of the other, save that we may assign the benefit of this Contract to any of the Deloitte Parties, including any successor to our business. Further, neither of us will directly nor indirectly agree to assign or transfer any claim against the other arising out of this Contract to any other person.

**Third party rights**

1.9 No person who is not a party to this Contract other than the Deloitte Parties and our subcontractors, if any, shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

1.10 This Contract can be varied without any third party's consent.

**2 OUR SERVICES AND RESPONSIBILITIES TO YOU**

2.1 The scope of our services and any Deliverables to be provided under this Contract together with our responsibilities for them (together the "Services") are as described in the Engagement Letter. We will use all reasonable efforts to supply the Services in accordance with any timetable referred to in the Engagement Letter or otherwise specified by the parties. However, unless both parties specifically agree otherwise in writing, all dates given by Deloitte or specified by you for the supply of the Services are intended for planning and estimating purposes only and are not contractually binding.

**Engagement Team**

2.2 Whilst we will attempt to comply with your request for specific individuals, the appointment of all personnel to perform the Services and the nature and duration of their assignment shall be made as Deloitte considers appropriate. We may at any time replace or reassign any personnel assigned by us to the Services; in such circumstances we will endeavour to give you reasonable notice.

2.3 You will be responsible for ensuring that your staff involved with this Contract have the appropriate skills and experience. If any of your staff fail to perform as required, you will provide additional or replacement staff as we may reasonably request.

**Data Protection**

2.4 In providing the Services to you or otherwise in connection with the Services, we may:

(i) need to collect, hold and use information (e.g. contact details) about identifiable individuals ("Data Subjects"). We may also use such information as part of our client account opening and general administration process (e.g. in order to carry out anti-money laundering, conflict and financial checks or debt recovery). Information about a Data Subject may be transferred to or accessible from DTTL or DTTL member firms' offices around the world for these purposes or for the purposes identified in the following paragraph. Should your officers or employees enquire, please inform them that we may hold information relating to them for these purposes; and

(ii) occasionally contact a Data Subject with details of events/seminars we are holding, or we may send a Data Subject publications or newsletters, which we believe may be of

interest to him or her. If a Data Subject does not wish to receive this information, please let us know by informing the partner responsible for the Services.

2.5 We reserve the right to monitor telephone calls and electronic communications for the purposes of ensuring compliance with our legal and regulatory obligations and internal policies.

2.6 In providing some of the Services to you we may be processing information about Data Subjects on your behalf and thus act as a "Data Processor" for the purposes of the Data Protection Act 1998. In these circumstances, we will (i) only process personal data in accordance with your lawful and reasonable instructions; and (ii) comply with security obligations equivalent to those imposed on you, as Data Controller, by the seventh principle of that Act.

### 3 YOUR RESPONSIBILITIES

3.1 You are responsible for determining that the scope of the Services is appropriate for your needs.

3.2 Our performance of the Services, the timetable, the level of our Charges and any fee estimates each depend on the accuracy and completeness of any assumptions set out in the Engagement Letter. Please tell us if you believe any of these assumptions are unrealistic for any reason.

3.3 You will give us all the information that is necessary for the performance of the Services. In this context, you agree we shall not be treated as being on notice of information given to us in the course of previous engagements and so all information that is relevant to the Services must be given directly to the engagement team even if the same information has been given to us previously in the course of a different contract or engagement. Please note that, other than as set out in the Engagement Letter, we will not audit or otherwise test or verify the information provided to us in the course of the Services. You agree that we shall be entitled to rely on all information provided to us and on your decisions and approvals in connection with our Services and to assume that all such information provided to us from whatever sources is true, complete and not misleading. We will not be responsible for the consequences of any information provided to us in the course of the Services not being complete, accurate or current.

3.4 Where needed to assist us in performing the Services, you will (i) take decisions and obtain management approvals promptly; (ii) give us full and prompt access to your people and premises and those of your affiliates and to your other advisors associated with the engagement, together with all necessary administrative support; (iii) obtain any approvals, licences and security clearances promptly (including any relating to third parties, our personnel and any subcontractors); and (iv) keep us promptly informed of any proposals or developments in your business relevant to the Services.

3.5 You agree that you remain solely responsible for managing all aspects of your business, for taking all decisions and operating all accounting, internal control or management information systems. This includes applying your independent business judgement to evaluate any advice or recommendations that we give you. You will be responsible for deciding whether our recommendations make sense in the context of your business, and whether you wish to rely on, implement or act on them, including the actions necessary to realise any expected benefits.

3.6 Where you are using third parties to provide information, materials or other assistance in support of the Services, or you are employing other suppliers whose work may affect our ability to deliver the Services, you will be responsible for the management of such persons and their performance, including the timeliness and quality of their input and work.

3.7 You will also be responsible for paying the Charges in accordance with this Contract.

#### Legal advice

3.8 Our Services may be conducted alongside your legal advisers, acting separately for you. To the extent they relate to our performance of the Services, we may need to review sections of draft agreements

prepared by your legal advisers but we are not qualified to provide legal advice. Any agreement is the product of negotiation between its parties and you agree that it is your responsibility to obtain appropriate legal advice and to decide whether in all the circumstances you are prepared to accept any proposed agreement.

### 4 RESPONSIBILITIES TO EACH OTHER

#### Confidentiality

4.1 We each agree that where either of us is in possession of information about the other that is by its nature confidential, or is designated as such by the other (whether in writing or orally), including this Contract ("Confidential Information"), we each undertake to (i) keep it confidential; (ii) use it only in connection with providing and receiving the Services; and (iii) not to disclose it to any other person without the other's prior written consent. These undertakings will not apply to any information that otherwise becomes generally publicly available, was possessed prior to the commencement of the Services (or prior to being designated as Confidential Information), or is lawfully acquired from a third party who is under no obligation of confidence or information which is or has been independently developed by the recipient.

4.2 We each will be entitled to disclose Confidential Information to our legal advisors to protect our legitimate interests and to comply with any legal, professional or regulatory requirement. You agree to reimburse any costs we may incur in complying with any such disclosure requirement relating to any of our Services to you imposed in any proceedings or regulatory process not involving any substantive claim or proceeding against us, provided that we notify you promptly and, where reasonably or legally possible, prior to disclosure.

4.3 You agree that we may share Confidential Information with any Deloitte Party and any subcontractors we use to provide the Services (or more generally to support our office administration) on the understanding that they will treat the information as Confidential Information in accordance with the provisions of this Contract.

4.4 Unless you tell us otherwise, we may in the performance of the Services attend meetings to discuss your affairs with your other advisers and may do so openly, free from any obligation to you of confidentiality.

4.5 When offering our services to others we may disclose to them that we have acted for you unless you instruct us to the contrary.

4.6 Nothing in this Contract will prevent or restrict any Deloitte Party from providing services to other clients (including services which are the same or similar to the Services) or using or sharing for any purpose any knowledge, experience and skills used in, gained or arising from performing the Services subject to the obligations of confidentiality set out in clause 4.1 even if those other clients' interests are in competition with your own. Equally, you agree that to the extent that we possess information obtained under an obligation of confidentiality to another client or other third party, we are not obliged to disclose it to you or make use of it for your benefit, however relevant it may be to the Services.

#### Conflicts of interest

4.7 It is our practice, in appropriate circumstances, to check for conflicts of interest before taking on engagements. Deloitte Parties provide many different professional services to clients and we cannot be certain that we will identify promptly all situations where there may be a conflict with your interests. Please notify us promptly of any potential conflict affecting this engagement of which you are, or become, aware.

#### Electronic communications

4.8 We each agree that where appropriate we may communicate with each other electronically over the internet (including by way of e-mail). Our personnel will also need access to our own systems and data. You agree that you will (at your discretion) i) allow our personnel to use a Deloitte Local Area Network at your premises; ii) and/or provide our personnel with analogue dial-up connections or an Ethernet connection to allow our hardware (typically Deloitte's laptop computers used by members of the engagement team) to connect to our network via your internet communications facilities. Further, in



order for our personnel to operate effectively and efficiently they may need access to your electronic data and also to your internet communications facilities for the purpose of the engagement. We will only access your internal networks, applications, data or other systems through the terminal hardware or software you make available to us for the purpose.

4.9 Access to your systems by our personnel will be subject to such conditions as you at your sole discretion consider necessary to protect the security and integrity of your data and systems. We each recognise that the internet is inherently insecure and that data can become corrupted, communications are not always delivered promptly (or at all) and that other methods of communication may be appropriate. Electronic communications are prone to contamination by viruses. Each of us will be responsible for protecting our own systems and interests and neither of us will be responsible to the other on any basis (contract, tort or otherwise) for any loss, damage or omission in anyway arising from the use of electronic data (including e-mail) as a form of communication or from our personnel's access to your networks, applications, data or other systems. Nothing in this clause shall exclude any liability arising from the negligent addressing of an email.

#### **Staff**

4.10 We each agree not to offer employment to or solicit the other's personnel who within 6 months of such action has been involved directly in the Services or otherwise connected to this Contract (except where an individual responds directly to a general recruitment campaign) nor use the services of any such personnel (either independently or via a third party) for a period of 6 months from the date that the individual concerned ceases to be permanently involved with the Services.

## **5 DELIVERABLES**

#### **Drafts and oral discussions**

5.1 In formulating our conclusions, we may discuss ideas with you orally or show you drafts of the Deliverables (as specified in the Engagement Letter) for your comment. We do this on the basis that you will not rely on any drafts or oral comments or advice unless their content is finalised and confirmed to you in writing in the final Deliverables. Accordingly, we will not be responsible if you choose to act, or refrain from acting, on the basis of any drafts or oral comments or advice. If you want to rely or act on oral comments, or advice, please let us know in order that we may deal with them in our final Deliverables. Furthermore, for your convenience, the Deliverables may be made available to you in draft or in electronic as well as hard copy format. Multiple copies and versions of documents may therefore exist in different media. In the case of any discrepancy, the signed hard copy of the final Deliverable is definitive.

5.2 Unless the Engagement Letter specifies other arrangements, you agree that each Deliverable will be deemed accepted by you (and our Services, or the relevant part of them, completed) when it is in its final form or when you first make use of the Deliverable, whichever first occurs.

#### **Use of Deliverables**

5.3 The Deliverables and any other advice we provide to you are for your exclusive use and must be used solely for the purpose described in the Engagement Letter. They must not be used for any other purpose, recited or referred to in any document, copied or made available (in whole or in part) to any other person without our prior written express consent. You acknowledge that were you to do so (and without limitation) this could expose us to a risk that a third party who otherwise would not have access to the Deliverable (and/or Confidential Information as defined in clause 4 above), might claim to have relied upon the Deliverable (and/or Confidential Information) to its detriment and might bring or threaten to bring an action, claim or proceedings against us.

5.4 Save as expressly provided by the Engagement Letter, no person other than you may rely on the Deliverables and/or information derived from them and we accept no responsibility to any other person

to whom the Deliverables are shown or into whose hands they may come.

#### **Post date events**

5.5 We have no responsibility to update any Deliverable for events occurring after completion of this Contract (which, unless provided otherwise in the Engagement Letter, will be the date on which the final Deliverable is delivered or signed), nor to monitor its continuing relevance or suitability for your purposes.

#### **Ownership and intellectual property**

5.6 On payment of all of our Charges, you will acquire ownership of the Deliverables in their tangible form and the right to use them internally in your business. We will own and retain ownership of all intellectual and other proprietary rights of any kind in the Deliverables, our working papers (if any) and in all other reports, materials, documentation, software, system interfaces, templates, methodologies and processes and ideas and concepts and techniques that we may use or develop in connection with this Contract (other than materials provided to us by you in which you retain intellectual and other proprietary rights). In circumstances where we may hold certain documents on your behalf, you agree that we may destroy them (together with any other documents related to the engagement) at any time after 6 years from conclusion of the work to which those documents relate.

5.7 You and we agree that neither of us will use the other's name, trademarks, service marks, logos, trade names and/or branding without prior written consent.

## **6 LIABILITY PROVISIONS**

6.1 We will perform the Services with reasonable skill and reasonable care.

6.2 Without prejudice to any defence which we may have, you agree that we will not be liable to you for any loss, liability, damage, cost, charge or expense of whatever nature and howsoever caused and including interest (together "Losses") unless and then only to the extent that such Losses are finally determined to have resulted from our breach of contract or negligence, subject always to the following provisions:

6.2.1 We will not be liable for any Losses arising out of your use of our Deliverables or our advice for a purpose other than as set out in the Engagement Letter.

6.2.2 We will not be liable for Losses arising from the acts or omissions of any person other than Deloitte or any subcontractor (including any Deloitte Party) that we may use to provide the Services.

6.2.3 We will not be liable for Losses arising as a result of the provision of false, misleading or incomplete information or documentation by, or the withholding or concealment or misrepresentation of information or documentation, by any person other than the Deloitte Parties unless and then only to the extent that detection of such defect in the information or documentation or such withholding, concealment or misrepresentation should reasonably have been expected because it was evident without further enquiry from the information or documentation provided to us and expressly required to be considered by us pursuant to the provision of the Services.

6.2.4 Any liability which we may have to you under or in connection with this Contract for Losses suffered by you shall (so far as permitted by law) be limited to such an amount as is finally determined to be just and equitable, having regard to the extent of responsibility for the Losses of us, you, (including your directors, officers, employees or agents), and any person other than us who is jointly or severally liable to you for all or part of the same Losses, provided always that Deloitte's liability to you shall not under any circumstances exceed in aggregate the amount set out hereunder. Any limitation or exclusion or restriction on the liability of any such other person under any jurisdiction,



whether arising under statute or contract or resulting from death, bankruptcy or insolvency, or any settlement of such liability agreed with you, shall be ignored for the purposes of determining whether that other person is liable to you and the extent of responsibility of that other person to you.

6.2.5 Our total liability of whatever nature, whether in contract, tort (including, without limitation, negligence), under statute or otherwise to you and to all other persons who we both have agreed may have the benefit of and rely on our work on the terms hereof, (you and they each a "Beneficiary"), for any and all Losses arising from or in any way in connection with this Contract shall not exceed the amount specified in the Engagement Letter or, if no amount is specified there, £500,000 (five hundred thousand pounds sterling).

6.2.6 Where there is more than one Beneficiary of the Services, the limitation in this clause 6.2 on our total liability to all Beneficiaries shall be apportioned by them amongst them. No Beneficiary shall dispute or challenge the validity, operation or enforceability of this clause on the grounds that no such apportionment has been so agreed or on the ground that the agreed share of the limitation amount so apportioned to any Beneficiary is unreasonably low.

6.2.7 In no event shall we be liable to you, whether in contract, statute, tort (including, without limitation, negligence) or otherwise for (i) loss or damage incurred as a result of third party claims; (ii) loss of profit, goodwill, business opportunity or anticipated savings, loss of or corruption to data, loss of revenues or wasted management or staff time; or (iii) incidental, special, punitive, exemplary, indirect or consequential loss or damage; (together, "Excluded Losses") which you may suffer, howsoever caused and whether or not you or we knew, or ought to have known, that the Excluded Losses would be likely to be suffered.

6.3 Deloitte neither owes nor accepts any duty to any person other than you. No Deloitte Party shall be liable for any Losses suffered by any other person caused by that or any other person's use of or reliance on our Deliverables or our advice.

6.4 Nothing in this Contract shall exclude, restrict (or prevent a claim being brought in respect of) any liability arising from fraud or other liabilities which cannot lawfully be limited or excluded.

6.5 Unless and then only to the extent they have been finally and judicially determined (including the conclusion of any appeal) to have been caused by the fraud of any of the Deloitte Parties, you agree to indemnify and hold harmless the Deloitte Parties against all Losses which they incur in the defence and settlement (including meeting any judicially determined award of damages) of any demand, action, claim or proceeding (a "Claim") brought by any third party in any way arising in connection with this Contract whether or not such Claim is founded upon an allegation of our negligence.

6.6 Any claim or action brought by you under or connection with this Contract must be brought within 24 months of the cause of action arising.

## 7 CHARGES

7.1 We will render invoices in respect of the Services comprising our fees, out-of-pocket expenses and any charges of specialists, subcontractors and advisers, plus applicable taxes including VAT (together our "Charges"). These will be in accordance with any schedules set out in the Engagement Letter. Our fees are generally calculated on the basis of the time and level of staff required to conduct the Services during normal office hours. Other factors may also be taken into account, including the use of our proprietary expertise, technology and know how, the need to act rapidly or exclusively or outside normal office hours or the importance, complexity or monetary value of the matter concerned. Out-of-pocket expenses will depend on the nature of the Services and where appropriate, staff travelling and subsistence will be reimbursable in accordance with our normal personnel policies.

7.2 Any estimate of the fees involved in the Services will be based upon our assessment of the work involved, taking account of any assumptions set out in the Engagement Letter. Unless we have agreed otherwise in the Engagement Letter, our fees may be adjusted if the Services prove more complex or time consuming than expected. We will let you know when we consider any estimate is likely to be exceeded.

7.3 A fee estimate assumes that we will have full and prompt access at all reasonable times to your premises, directors, staff and any advisers relevant to the Services. It also assumes that you will provide reasonable work space for our people without charge, as well as a suitable office environment and facilities including occasional secretarial support services, photocopying and computer facilities and access to telephone, fax and modem communications.

7.4 Unless otherwise specified in the Engagement Letter, we will invoice our Charges monthly in arrears and a final invoice on completion of the Services. These invoices are due for settlement within 14 days of receipt. You agree that we are entitled to charge you interest on overdue invoices at 2% over the prevailing Royal Bank of Scotland plc base rate.

7.5 We will be entitled to receive all charges incurred up to the date of termination of this Contract for any reason.

## 8 TERMINATION

8.1 We each may terminate this Contract without notice in the event that the other becomes the subject of insolvency proceedings or calls a meeting of its creditors. Alternatively, either of us may terminate this Contract at any time on 30 days' written notice to the other.

8.2 Should any action taken by you create a situation which amounts to a professional conflict of interest under the rules of the professional and/or regulatory bodies regulating the activities of the Deloitte Parties, we may terminate this Contract without penalty on written notice. We will inform you as soon as reasonably practicable of any situation that occurs that we become aware of that may create a professional conflict which could result in termination in accordance with this clause 8.2.

8.3 Any provisions of the Contract which either expressly, or by their nature, extend beyond the expiry or termination of this Contract shall survive such expiration or termination.

## 9 GENERAL TERMS OF BUSINESS

### Quality of Service

9.1 If, at any time, you believe our service to you could be improved, or if you are dissatisfied with any aspect of our services you should raise the matter with the partner responsible for providing the Services to you. If you would prefer to discuss the matter with someone other than that partner, or if you wish to make a complaint, please call or write to Richard Punt, the firm's Managing Partner, Growth & Markets.

9.2 We will investigate all complaints. You have the right to take any complaint up with the Institute of Chartered Accountants in England and Wales (the ICAEW). You may obtain an explanation of the mechanisms that operate in respect of a complaint to the ICAEW at [www.icaew.com/complaints](http://www.icaew.com/complaints) or by writing to the ICAEW. To contact the ICAEW write to the Professional Standards Office, Level 1, Metropolitan House, 321 Averbury Boulevard, Milton Keynes, MK9 2FZ.

### Negotiation / mediation

9.3 We each agree that we will attempt in good faith to resolve any dispute or claim arising out of or in connection with the Contract promptly through negotiations between your senior executives and our management. If the matter is not resolved through negotiation then, prior to the commencement of legal proceedings, we will each attempt in good faith to resolve the dispute or claim by participating in an Alternative Dispute Resolution (ADR) procedure which, if not otherwise agreed, will be as recommended to us by the Centre for Effective Dispute Resolution. If the matter has not been resolved by

an ADR procedure within 45 days of such procedure being commenced, then the matter may be dealt with through legal proceedings.

**Legal and other obligations**

9.4 Nothing in this Contract precludes us from taking such steps as are necessary in order to comply with any legal or regulatory requirement or any professional or ethical rules of any relevant professional body of which we or any of our partners or employees is, at the time, a member.

**Force majeure**

9.5 Neither of us will be liable for any delays or failures in performance or breach of contract due to events or circumstances beyond our reasonable control.

**Governing law and jurisdiction**

9.6 The Contract and our relationship (including all contractual and non-contractual rights and obligations arising out of or relating thereto) are governed by English law and the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute that may arise in connection with this Contract and our relationship (including all contractual and non-contractual rights and obligations arising out of or relating thereto).

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