



**INSTRUMENT OF DELEGATION  
(AUDIT REGULATIONS 2020)**

**From**

**THE FINANCIAL REPORTING COUNCIL OF NIGERIA (FRC)**

**To**

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN)  
RELEVANT PROFESSIONAL BODY (RPB)**

## **Instrument of Delegation of Audit Regulation in Nigeria**

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**THIS Instrument of DELEGATION** is made this (.....) day of \_\_\_\_\_202\_\_\_\_

**From:**

- (1) The **FINANCIAL REPORTING COUNCIL OF NIGERIA** a Regulatory body established by **FRC Act, No. 6, 2011** (as amended) to promote trade and investment in Nigeria by ensuring high standards of financial reporting, auditing and corporate governance with office address at 4th and 5th Floor, Alexander House, Plot 8, Otunba Jobi Fele Way (By Japaul House) Alausa Central Business District, Ikeja, Lagos herein after referred to as **'FRC' or 'the Council'**

**To**

- (2) **The INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN)**, a statutory organisation established by Act of Parliament with registered office address at Plot 16, Idowu Taylor Street Victoria Island Lagos (hereinafter referred to as Relevant Professional Body (RPB)).

## **1. INTERPRETATION AND DEFINITIONS**

- 1.1 In this Instrument of Delegation the words defined in FRC Act, No. 6 2011 (**as amended**) shall have the meanings set out there and, in addition:

**"Audit Enforcement Procedure"** refers to the audit enforcement procedure made available by the Council to RPB and updated by the COUNCIL from time to time;

**"Ceding Professional Body"** is the RPB which performed a Reclaimed Task(s) before the Council reclaimed such task(s).

**"Conditions of Delegation"** is the conditions of delegation set out in Clause 3 of this Instrument of Delegation;

**"Confidential Information"** means all Information, whether written or oral, 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

**"Council"** refers to the Financial Reporting Council of Nigeria.

**"Data"** refers to Personal Data processed as defined under the Nigeria Data Protection Regulation issued by the National Information Technology Development Agency – NITDA:

**"Delegated Tasks"** has the meaning set out in clause 3.1 of this Instrument of Delegation:

**"Instrument of Delegation"** refers to this Delegation arrangement;

**"Dispute Resolution Procedure"** refers to the procedure set out in clause 20;

**"Effective Date"** is the date specified in clause 5;

**"Eligibility Criteria"** is the criteria determined by the Council for determining whether persons are eligible for appointment as statutory auditors. Person includes individuals and firms;

**"Enforcement Committee"** refers to the Committee which comprises representatives of (DIM) the Directorate of Inspection and Monitoring and Directorate of Auditing Practices Standards (DAPS) and any other person as appointed by the Council;

**"FOIA"** refers to the Freedom of Information Act 2011;

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

**"FRC Representative"** is a suitably qualified nominated contact or appointee by the Council and named in Appendix 6;

**"Information"** has the meaning given under section 30(3) of the Freedom of Information Act (FOIA) 2011:

"Party" refers to the RPB and "Parties" will mean both the Council and the RPB;

**"Processing"** (and 'process "and "processes" shall be construed accordingly) has the meaning contained in the Nigeria Data Protection Regulation issued by the National Information Technology Development Agency;

**"Professional Body Representative"** refers to a suitably qualified nominated contact appointed by the RPB and named in Appendix 6;

**"RPBs"** Means relevant Professional Bodies "a body recognized under the FRC Act 2011 (as amended) for the purposes of the registration and supervision of Auditors and other assurance service providers of Non-Public Interest Entities".

**"Request for Information"** has the meaning set out in the FOIA or any other regulation as relevant (where the meaning set out for the term "request" will apply);

**"Reclaimed Task(s)"** includes any case or class of audit work within a Delegated Task which the Council reclaims from RPB either by Delegation with RPB or pursuant to the provisions of the FRC Act.

**"Registered Auditors"** are those individuals and firms licensed to practice by RPB and registered by FRC pursuant to this Instrument of Delegation.

**"Retained Task(s)"** includes:

- a. determining technical standards (which must meet the requirements of the Council and of other standards) on professional ethics and internal quality control of statutory auditors and statutory audit work;
- b. determining the manner in which the standards under (a) above 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 the Council;
- f. investigations, adjudication and disciplinary measures arising out of (e) above, arising from referrals from other authorities and/or retained by the Council;
- g. any other task which the Council retains by Delegation with the RPBs; and
- h. oversight of Audit Regulations including the RPB's performance of the Delegated Tasks;

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

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

**"RPB's Rules"** refers to any and all rules, practices, bylaws, regulations and arrangements maintained by the RPB for the purposes of regulating those firms and individuals it registers or otherwise regulates pursuant to this Instrument of Delegation.

**"Staff"** refers to all directors, officers, employees, agents, the RPB engaged in the performance of all or any part of the RPB's obligations under this Instrument of Delegation;

**"Term"** refers to the period from the Effective Date until termination in accordance with the provisions or if earlier by Delegation otherwise or direction of the Council of FRC or a court or body of competent jurisdiction;

**"Third Party"** refers to any other person to which the Council assigns or transfers any work.

**"TC"** is the Technical Committee of the Board of the FRC; and

**"Working Day"** -exclude public holiday declared by the Federal Government of Nigeria

1.2 In this Instrument of Delegation; unless the context otherwise requires:

- (a) References to numbered clauses are references to the relevant clause in this Instrument of Delegation;
- (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 Instrument of Delegation are for information only and do not affect the interpretation of this Instrument of Delegation;
- (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 bylaw made under that enactment; and
- (e) the word "including" will be understood as meaning "including without limitation".

## **2. BACKGROUND:**

- (a). Under the **FINANCIAL REPORTING COUNCIL OF NIGERIA ACT, No. 6, 2011**, the Council is established as the regulator with ultimate responsibility for the protection of investors through audit oversight in Nigeria.
  - (i) In accordance with Section 7, the Council is empowered to do all things necessary for or in connection with the performance of its functions.
  - (ii) Specifically, relevant Sections of the enabling Act {S8.1(h), S8.1(m), S26(f), S28.4(a), 61.1, 8.1(r) etc.} empowers the Council to promote compliance with the adopted standards issued by the IFAC; play appropriate role in the development of regulations which affect the conduct of auditing and assurance services; establish such systems, schemes or engage in any relevant activity; make such examinations and inquiry as may be necessary to ascertain whether or not the provisions of its Act or any regulation made are complied with either alone or in conjunction with any other organization or agency; to conduct annual, three-year periodic or special quality reviews (inspections) for categories of auditors; and perform such other functions which in the opinion of the Board are necessary or expedient to ensure the efficient performance of the functions of the Council.
  - (iii) Furthermore, by virtue of section 7.2(a), the Council is also empowered to enforce and approve enforcement of compliance with accounting, auditing, corporate governance and Financial Reporting Standards in Nigeria.

- (b). The purpose of this arrangement is to delegate some regulatory powers of the Council to the RPB to give effect to the implementation of the Council's Audit Regulations and its reviews from time to time.
- (c). As part of its responsibilities of promoting high-quality audits and in its drive to standardise and expand the Audit Regulations implementation coverage in Nigeria, the Council hereby delegates to the RPB certain of the Regulatory Tasks and that the Council 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 in pursuit of the Audit Objective and public interest in Nigeria.
- (d). Annually practice reviews (inspections) shall be conducted by the Council for professional accountants that audit Public Interest Entities (PIEs) and delegate the review of Registered Auditors of non-public interest entities and other entities as may be delegated from time to time, to the RPB.
- (e) The Council may order a special inspection of any professional accountant at any time.

### **3. DELEGATION**

- 3.1. The Council delegates to the RPB the performance of the following Audit Regulations tasks in relation to Registered Auditors subject to the terms of this Instrument of Delegation:
- 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. Keeping the register of its members 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. Investigating and submitting reports to the Council who will impose and enforce appropriate sanctions in line with the Procedure for Audit Regulatory Sanction and other applicable sanctions specified by the FRC Act in relation to breaches of Relevant Requirements by statutory auditors save for Retained Tasks.

### **4. CONDITIONS OF DELEGATION**

- 4.1. The RPBs may only exercise those tasks expressly permitted by this Instrument of Delegation or by a decision of the Council's Board pursuant to the Council's Audit Regulations enforcement procedure and only whilst recognised as a relevant professional body under section 60 of the FRC Act 2011 (as amended)
- 4.2. The RPB has and will continue to comply with its duties, conditions, representations, and undertakings at clauses 6 (Duties of the Parties).

4.3. The Council may retain or reclaim any of the Delegated Tasks either as a class or on a case-by-case basis, either by Delegation with the RPB or otherwise pursuant to the Council's direction.

4.4. The RPB will comply with the following task-specific conditions:

- a) the conditions set out in Appendix 1 in relation to the Delegated Task set out at clause 3.1 (b) above;
- b) the conditions set out in Appendix 2 in relation to the Delegated Task set out at clause 3.1(c) above;
- c) the conditions set out in Appendix 3 in relation to the Delegated Task set out at clause 3.1 (d) above: and
- d) the conditions set out in Appendix 4 in relation to the Delegated Task set out at clause 3.1 (e) above.

4.5. The RPB will comply with the reporting, information, monitoring, and inspection conditions set out in Appendix 5 and with the governance and reporting conditions set out in Appendix 6.

## **5. COMMENCEMENT AND DURATION**

5.1. This Instrument of Delegation will take effect from the day the document is signed (the Effective Date") and will continue until termination in accordance with the provisions at clause 15 (Termination) or if earlier, by agreement or direction of the Council or a court of competent jurisdiction.

## **6. DUTIES OF THE PARTIES**

6.1. In consideration for each agreeing to enter into this Instrument of Delegation, the Parties will:

- a) Perform their respective tasks in accordance with this Instrument of Delegation and the provisions of the FRC Act 2011 (as amended) and any other applicable legislation from time to time;
- b) Co-operate with any other RPB as may be required by the Council from time to time in furtherance of the Audit Objective including but not limited to co-operating with arrangements reasonably requested by the Council to facilitate the transfer and effective performance of Reclaimed Tasks by the Council and/or a replacement RPB.

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

7.1. Subject to clauses 7.2 and 7.4, 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 Instrument of Delegation.

7.2. 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 anti-corruption agencies where the Party has reasonable grounds to believe that the other Party is involved in an activity that may constitute a criminal offense under Nigerian Law relating to Bribery and Corruption;
- e) where the receiving Party is the RPB, to the Staff on a need to know basis to enable the performance of the RPB's obligations under this Instrument of Delegation provided that the RPB will procure that any Staff to whom it discloses Confidential Information under this clause (7) will observe the RPB's confidentiality obligations under this Instrument of Delegation; and
- f) Where the receiving Party is the Council:
  - i. on a confidential basis to the employees, agents, consultants and contractors of the Council;
  - ii. on a confidential basis to any other Federal Government Body, any successor body to the Federal Government;
  - iii. to the extent that the Council (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 Delegation or arrangement containing terms no less stringent than those placed on the Council under this clause 7.

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

7.4. The obligations set out in clause 7.1 above shall not apply, or shall cease to be Confidential Information if 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.

## **8. FREEDOM OF INFORMATION**

8.1. The Council is subject to the requirements of the FOIA and other information Regulations in the country. Accordingly, the RPB will:

- (a) Assist and cooperate where reasonably requested by the Council to enable the Council to comply with such obligations;
- (b) Transfer to the Council all Requests for Information relating to this Instrument of Delegation that it receives as soon as practicable and in any event within 3 Working Days of receipt;
- (e) Provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and;
- (d) Not respond directly to a Request for Information unless authorised in writing to do so by the Council.

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

## **9. PROTECTION OF PERSONAL DATA AND SECURITY OF DATA**

9.1. The Parties will comply with any obligations that they have under the Nigeria Data Protection Regulation which arise in connection with this Instrument of Delegation and will:

- (a) Process any Data only for the purposes of this Instrument of Delegation 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 Instrument of Delegation, the proper performance of their statutory duties in the pursuit of the Audit Objective and/or as required under the Data Protection and Privacy Law 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 perform their obligations under this Instrument of Delegation in such a way as to cause the other party to breach any of their respective obligations under Nigeria Data Protection Regulation;
- (e) Promptly notify the other party of:
  - i. Any breach of the security requirements referred to in clause 9.1 (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 RPB and bring to the attention of third parties that Personal Data held by the RPB in the performance of the Delegated Tasks may be provided to the Council (or to another RPB as a delegate of the Council) for the necessary exercise of the Council's public functions in the public interest as Regulator for statutory audit (reasonable organisational measures may include but need not be limited to direct correspondence and clear and accessible website notices).

9.2. When handling the Council data (whether or not Personal Data), the RPB will ensure the security of the data is maintained in line with the security requirements of the Council, including as set out in clause 9.1 (a) and as notified to the RPB from time to time.

9.3. Where either Party fails to comply with any of its obligations under this clause 9, 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 9.

9.4. The Council shall indemnify and keep the RPB indemnified, against costs, claims, damages or expenses reasonably and properly incurred by the RPB arising out of, or in connection with, any claim made against the RPB by a data subject or investigation by the Council arising out of, or in connection with, the RPB's proper performance of its obligations under Appendix 7, paragraph 2, subject to the RPB having acted reasonably throughout the term of this Instrument of Delegation to mitigate such prospective losses including but not limited to having complied with its obligations under clause 9.1 above.

## **10. PREVENTION OF FRAUD AND CORRUPTION**

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

## **11. VARIATION OF THE INSTRUMENT OF DELEGATION**

11.1. At any time, the Council or the RPB may request changes in writing to any part or parts of this Instrument of Delegation, including additions, deletions, or other amendments.

11.2. Where the RPB proposes a change to the Council, the RPB will provide, such information as the Council 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 RPB as part of the proposed Change;
- (c) Material changes which will be required to this Instrument of Delegation, including any changes to the Delegated Tasks, the Conditions of Delegation and any applicable performance criteria; and;

11.3. The Council may decide in its absolute discretion whether to accept the RPB's proposed variation (in which case this Instrument of Delegation will be amended

accordingly) or refuse the proposed change (in which case this Instrument of Delegation will continue in force unchanged).

11.4. Until a change is formally agreed in writing between the Parties in accordance with this clause to the RPB will continue to perform its obligations under this Instrument of Delegation as if the change had not been proposed.

## **12. WARRANTIES**

12.1. 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 Instrument of Delegation, and that this Instrument of Delegation is executed by its duly authorised representative.

12.2. As a condition of delegation the RPB represents warrants and undertakes to the Council that the RPB's Rules:

- (a) Require its Registered Auditors to be subject to and comply with the Council Procedures;
- (b) specify that monitoring and enforcement of all Retained Tasks and Reclaimed Tasks will be performed by the Council;
- (c) In the case of Reclaimed Tasks permit the Council (and any replacement RPB to which a Reclaimed Task has been delegated) to apply:
  - (i) RPB'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 RPB's Rules is an obligation owed to the Council or the replacement RPB, as applicable.

12.3. The RPB undertakes that it will:

- (a) Perform its obligations under this Instrument of Delegation with the skill, care and diligence to be expected of a relevant professional 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 Council with such information as it reasonably requires from time to time concerning such continuity arrangements; and
- (f) Not amend or vary the RPB's Rules in relation to the matters in clause 12.2 without the Council's prior written approval.

### **13. INDEMNITIES**

13.1 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 7 (Confidentiality) or any claim that the use of any intellectual property by either Party, as permitted by clause 14 (Intellectual Property Rights) below, infringes the intellectual property of any third party.

13.2. ICAN 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 ICAN wilful professional negligence in the performance of its obligations under this Instrument of Delegation.

13.3. FRC will indemnify, and keep indemnified, ICAN 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 ICAN as a result of or in connection with any claim made against ICAN arising as a result of or in connection with the performance of ICAN's obligations under this Instrument of Delegation except in the case of proven wilful professional negligence of ICAN.

13.4. In relation to any claim to be indemnified under this clause 13 or elsewhere in this Instrument of Delegation, 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.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

14.1. All intellectual property rights in any materials provided by the Council to the RPB for the purposes of the parties carrying out their responsibilities under this Instrument of Delegation will, to the extent that they were owned by the Council at the time of such provision, remain the property of the Council but the Council grants the RPB 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 Council to the RPB for corporate governance, stewardship, corporate reporting, accounting, auditing, assurance services and actuarial work) to perform its obligations under this Instrument of Delegation during the Term.

14.2. All intellectual property rights (foreground and background) in the RPB Audit Materials will vest in the RPB. If, and to the extent that, any intellectual property rights in such materials vest in the Council by operation of law, the Council assigns to the RPB 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).

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

14.4. Where the Council reclaims from the RPB an Individual case or a substantive part of or entire Delegated Task and instructs another party to complete such Reclaimed Task, the RPB hereby grants the appointed party an Irrevocable, non-exclusive, non-transferable licence to use such RPB 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 3.1, 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 3.1 (a)-(d), completion by the appointed party of the transferred matters for the applicable regulatory year;

(b) Reinstatement of the Delegated Task to the RPB; or

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

14.5. The RPB acknowledges that it may be the recipient of a licence granted by another RPB under a different Instrument of Delegation which is identical to or substantially the same as the licence set out above at clause 14.4. The RPB unconditionally and irrevocably:

(a) Undertakes to use RPB 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 RPB'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 RPB may rely on this clause 14.5 as a cause of action accordingly

## **15. TERMINATION**

15.1. This Instrument of Delegation will terminate with immediate effect if at any time during the Term:

(a) The RPB's status as a relevant professional body ceases to exist (either temporarily or permanently) for any reason;

(b) The RPB 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 Council in relation to:

(i) audits carried out for such period as the Statutory Auditor may be registered by the RPB; or

- (ii) investigations and/or regulatory action by the Council concerning acts or omissions of the Statutory Auditor which occurred during the period in which the Statutory Auditor was registered by the RPB, without the Council's prior written consent (which the Council may withhold in its sole discretion)
  - (c) The Council is required to terminate this Instrument of Delegation due to any direction or order by the Board of the Council or a change in law.
  - (d) In the event of immediate termination of the Instrument of Delegation due to a direction or order by the Board, or the supervising Minister, FRC shall reimburse ICAN all costs incurred by ICAN up to the date of the termination in respect of work done before termination.
- 15.2. Without prejudice to any other right or remedy it might have, the Council may terminate this Instrument of Delegation by written notice to the RPB with immediate effect if the RPB:
- (a) Fails to perform any of its obligations under this Instrument of Delegation;
  - (b) without prejudice to clause 15.2(e), is in material breach of any obligation under this Instrument of Delegation which is not capable of remedy;
  - (c) Repeatedly breaches any of the terms and conditions of this Instrument of Delegation 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 Instrument of Delegation;
  - (d) Is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the RPB receiving notice specifying the breach and requiring it to be remedied;
  - (e) Breaches any of the provisions of clauses 8, 9 and 10 of this instrument of delegation;
  - (f) Where the RPB ACT is repealed; or
- 15.3. The RPB will without delay notify the Council where an event occurs that gives rise to automatic termination of this Instrument of Delegation under clause 15.1 or a right to terminate under clause 15.2.
- 15.4. Subject to the Council having given the RPB a fair opportunity to rectify any breaches of this Instrument of Delegation, either party may terminate this Instrument of Delegation for convenience by giving written notice.
- 15.5. Termination or expiry of this Instrument of Delegation 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 7, 8, 9, 10, 14, 16, 17, 23, 23.1, 23.3, paragraph 6 of Appendix 4 and paragraph 3 of Appendix 6 or any other provision of this Instrument of Delegation that either expressly or by implication has effect after termination.

## **16. EFFECT OF TERMINATION**

16.1. Upon termination or expiry of this Instrument of Delegation, the RPB will:

- (a) Immediately cease to perform the Delegated Tasks;
- (b) Return (or destroy, at the Council's absolute discretion) all requested documents, information and data provided to the RPB pursuant to this Instrument of Delegation to the Council within a period of 90 days;
- (c) give all reasonable assistance to the Council 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 16.2, and for a reasonable period after the Term and any extension period under clause 16.2); and
- (d) at the Council's election and at no cost to the Council, assign or novate to the Council (or to procure the assignment or novation to the Council) the benefit of any Delegation between the RPB and a third party insofar as it relates exclusively to the performance of the Delegated Tasks.

The RPB will not terminate any such Delegation without giving the Council 30 days' prior notice that it intends to do so.

16.2 Where this Instrument of Delegation is due to expire or is terminated under clause 15.2 or 15.4 the Council may by giving the RPB written notice prior to expiry or termination of this Instrument of Delegation, extend this Instrument of Delegation 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 Council or to a new or different relevant professional body as nominated by the Council.

## **17. EXIT MANAGEMENT**

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

## **18. FORCE MAJEURE**

Neither Party will have any liability under or be deemed to be in breach of this Instrument of Delegation for any delays or failures in performance of this Instrument of Delegation 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 Instrument of Delegation by written notice to the other Party.

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

- 19.1. Subject to clauses 19.2 and 19.4, the RPB will not assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of this Instrument of Delegation or any part of this Instrument of Delegation.
- 19.2. Subject to clause 19.4, the RPB will not sub-contract any obligation under this Instrument of Delegation or any part of this Instrument of Delegation without the written consent of the Council which the Council may withhold in its absolute discretion. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such sub-contract. The RPB will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 19.3. Where the Council has consented to the placing of sub-contracts, the RPB will at the request of the Council, send copies of each sub-contract, to the Council as soon as is reasonably practicable redacting, where appropriate, any commercially sensitive information which is not reasonably required by the Council in the proper performance of its statutory duties or for the purposes of assessing the RPB's performance of its obligations under this Instrument of Delegation.
- 19.4. Clauses 19.1 and 19.2 shall not apply to the hiring of individual sub-contractors by RPB from time to time to assist the RPB's permanent staff in the completion of Delegated Tasks.

## **20. DISPUTE ESCALATION AND ENFORCEMENT MEASURES**

- 20.1. 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 Head of the Directorate of Auditing Practise Standards and ICAN Representative, who will engage in oral and written communication to resolve the Performance Issue. If appropriate, ICAN Representative may prepare a remediation plan which may include:
    - (i) proposals for re-performing the Delegated Tasks; and
    - (ii) proposed changes to this Instrument Delegation, and the Performance Issue will be deemed settled if the Council approves such remediation plan (and such approval may be withheld in their absolute discretion).

- (b) If a remediation plan under clause 20.1 (a) has not within 15 Working Days been:
- (i) proposed by ICAN; or
  - (ii) approved by the FRC,

the Parties may escalate the Performance Issue to the FRC's Head of the Directorate of Inspection and Monitoring and ICAN's Deputy Registrar who will engage in oral and written communication to resolve the Performance Issue.

- (c) If the Performance Issue has not been resolved under clause 20.1 (b) within a further 15 Working Days the Parties may refer the Performance Issue to the FRC's and ICAN's respective Chief Executive Officers/Registrar, who will engage in oral and written communication to resolve the Performance Issue.

- (d) If the Performance Issue has not been resolved under clause 20.1 (c) within a further 15 Working Days the FRC Executive may refer the Performance Issue to the TC for a decision in accordance with clause 20.2 below.

20.2 Where a Performance Issue has been referred to the TC:

- (a) the FRC Executive will notify ICAN that the Performance Issue has been referred to the TC and of the date of the FRC Board Meeting;
- (b) ICAN may make a written submission to the TC for consideration at its meeting;
- (c) the TC shall consider any representations from ICAN 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 Instrument of Delegation; and/or
- (iv) such other measure(s) as the TC deems reasonable and appropriate in all the circumstances; and

- (d) a decision of the TC to exercise the measures at clause 20.2(c) above is a decision taken pursuant to its statutory designation and is subject to judicial review.

### **Other disputes**

20.3 Except in respect of the FRC's qualitative assessment of ICAN's performance of a Delegated Task (which shall be addressed under the Performance Issue provisions of clauses 20.1 and 20.2 above), if there is a dispute in relation to the meaning or effect of or rights or obligations under this Instrument of Delegation (a "Dispute"), the Parties may:

- (a) refer the Dispute to the FRC's and the ICAN's respective Chief Executive Officers, who will use their best endeavours to attempt to resolve the dispute;

(b) if resolution under clause 20.3(a) has not been achieved within 15 Working Days, refer the Dispute to the Chairman of the FRC and President of the ICAN to use best endeavours to attempt to resolve the dispute;

(c) if resolution under clauses 20.3(a) and(b) has not been achieved seek a declaration of the High Court as to the meaning or effect of the provision(s) in dispute.

## **21. NOTICES**

21.1. Any notice to be given under this Instrument of Delegation will be in writing and may be served by personal delivery, email or facsimile sent to the address of the relevant Party set out in this Instrument of Delegation, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

21.2. Notices served as above will be deemed served provided it is served on the Working Day and delivery is before 4.00 pm on a Working Day. Otherwise, delivery will be deemed to occur on the next Working Day. An email will be deemed delivered when sent by the sending party unless an error message is received.

All notices should be addressed to the following:

### **FOR THE FINANCIAL REPORTING COUNCIL OF NIGERIA (FRC):**

The Executive Secretary  
The Financial Reporting Council of Nigeria  
Plot 8, Otunba Jobi Fele Way  
Alausa Central Business District  
Ikeja, Lagos.  
Email: enquiries@frc.gov.ng

### **FOR THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA - ICAN (The RPB):**

The Chief Executive/Registrar  
ICAN National Head Office,  
Plot 16, Idowu Taylor Street  
Victoria Island Lagos  
Email:

## **22. GOVERNING LAW AND JURISDICTION**

The validity, construction and performance of this Instrument of Delegation will be governed by Nigeria Constitution and will be subject to the exclusive jurisdiction of the courts in Nigeria

## **23. General**

23.1. Except where otherwise indicated in this Instrument of Delegation, a person who is not a party to this Instrument of Delegation will have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written Delegation of the Parties.

- 23.2. This Instrument of Delegation cannot be varied except in writing signed by a duly authorised representative of both Parties.
- 23.3. This Instrument of Delegation contains the whole Delegation between the Parties and supersedes and replaces any prior written or oral Delegations, representations or understandings between them. The Parties confirm that they have not entered into this Instrument of Delegation on the basis of any representation that is not expressly incorporated into this Instrument of Delegation. Nothing in this clause will exclude liability for fraud or fraudulent misrepresentation.
- 23.4. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Instrument of Delegation 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 Instrument of Delegation.
- 23.5. This Instrument of Delegation will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than as expressly provided for in this Instrument of Delegation. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 23.6. Except as otherwise expressly provided by this Instrument of Delegation, all remedies available to either Party for breach of this Instrument of Delegation (whether under this Instrument of Delegation, 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.
- 23.7. If any provision of this Instrument of Delegation 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 Instrument of Delegation and rendered ineffective as far as possible without modifying the remaining provisions of this Instrument of Delegation and will not in any way affect any other circumstances of or the validity or enforcement of this Instrument of Delegation.
- 23.8. Where any part of this Delegated Delegation contradicts any part or parts of Audit Regulations, the provision(s) of the Audit Regulations will prevail.

**IN WITNESS WHEREOF** the Parties have executed this Instrument of Delegation in the day and year first above written.

The Common Seal of the within named “**FINANCIAL REPORTING COUNCIL OF NIGERIA**” was affixed in the presence of:

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**Executive Secretary**

The Common Seal of the within named “**ICAN**” was affixed in the presence of:

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President

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Registrar/Chief Executive

## **APPENDIX 1- CONDITIONS FOR REGISTRATION OF STATUTORY AUDITORS AND STATUTORY AUDIT FIRMS**

1. Pursuant to S. 8 (1f), and S41.1 of the FRC Act (as amended), and the need to ensure high quality of individuals licensed by the RPB for registration to practice by FRC, the RPB shall continue to strengthen the quality and process for award of practice licence to qualified members and firms.
2. The RPB's Rules shall have in place provisions covering:
  - (a) Minimum criteria for registration as a sole practitioner or audit firm.
  - (b) Application for registration as a sole practitioner or audit firm.
  - (c) Cessation and removal of practising license.
  - (d) Assessment of continuing eligibility for registration; and
  - (e) Update and regularly publish register of licensed practicing auditors.
3. The RPB's must from time to time ensure that licensed practitioners comply with the minimum Eligibility Criteria to retain the license.
4. The RPB will have relevant committee (the "Committee") which has responsibility for the task of registering and monitoring person's eligible for appointment 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 RPB's set requirements;
  - 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 Council of the RPB.
6. The RPB will inform the FRC of significant changes to its procedures manual or rules.

## **APPENDIX 2 - CONTINUING PROFESSIONAL DEVELOPMENT CONDITIONS**

1. In the exercise of its power under S8.1(i) of the FRC Act (as amended), the Council shall monitor professional training of registered auditors as one of the veritable avenue to ensure audit quality. To this end, the ICAN shall have in place effective continuous Professional development for audit-practicing members geared toward improvement of audit skills.
2. ICAN shall submit to the Council key principles of its work plan in relation to this task by way of ICAN's submission to the Council of its Regulatory Plan in accordance with Appendix 5 or such other information as the Council may reasonably request.
3. ICAN's Rules in relation to continuing professional development will ensure that its Registered Auditors continue to maintain an appropriate level of competence in the conduct of statutory audits.
4. ICAN will set an appropriate approach to assess the Mandatory Continuous Professional Development (MCPD) of its Registered Auditors.
5. ICAN should establish a regime designed to ensure that its Registered Auditors comply or explain with ICAN's MCPD requirements and that compliance is adequately monitored and enforced. ICAN's MCPD requirements should include compliance with IES7 and IES8. If ICAN's requirements depart from these standards (insofar as they relate to Statutory Audit) then it must explain the reasons to the Council.
6. ICAN will establish a regime that requires the MCPD 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.
7. ICAN may liaise with employers of its Registered Auditors to provide training and development. ICAN may establish a scheme whereby its Registered Auditors are automatically deemed to have complied with ICAN's MCPD requirements.
8. ICAN should promote the importance of MCPD and maintenance of professional competence to its Registered Auditors.

### **Monitoring of MCPD compliance**

9. ICAN will require its Registered Auditors to submit an annual declaration of compliance with ICAN's MCPD requirements. A Registered Auditor, which is a firm, may make the annual declaration on behalf of its individual principals and employees.
10. ICAN may conduct the review of the MCPE records within a monitoring visit to an employer or via sample of Registered Auditors.

11. If ICAN has established an employer MCPE regime the regime should be subject to regular review and monitoring by ICAN to ensure that it continues to comply with ICAN's approach.

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

12. ICAN should establish a range of follow-up actions that may be employed if a Registered Auditor is found not to be complying with the MCPD requirements. The follow-up actions and or penalties should be proportionate.

### **APPENDIX 3 - AUDIT MONITORING CONDITIONS**

1. Pursuant to S.60 and S61(1), the RPB shall submit to the Council key principles of its work plan in relation to this task by way of the RPB's submission to the Council of its Regulatory Plan in accordance with Appendix 5 or such other information as the Council may reasonably request.
2. ICAN 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 and for ensuring that inspections are carried out to a consistent standard.

#### **Key Performance Indicators**

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

#### **Selection of Registered Auditors" for review**

5. Where a Registered Auditor has carried out a statutory audit of an entity during any of the previous five years, ICAN should use a risk based approach to selecting a Registered Auditor for review, subject to inspecting that Registered Auditor at least once every three years.
6. For Registered Auditors that have not carried out a statutory audit during any of the previous five years ICAN will agree an appropriate risk-based approach with the Council.
7. The risk factors to be considered by ICAN under paragraphs 5& 6 above should include: the risks of non-compliance with ICAN'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 ICAN, and current circumstances.

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

8. 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**

9. In selecting the areas of an audit to be reviewed ICAN will adopt a risk-based approach which has regard to the materiality and complexity of the different aspects of the audit.

10. 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**

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

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

13. ICAN will have procedures for the notification to, and consideration by, the Inspection Team with an unsatisfactory review grade, or which otherwise indicates non-compliance with the relevant requirements and/or any applicable Council processes and procedures or with ICAN's Rules. Circumstances where the results of a review shall be considered by the Team and circumstances where such considerations may be delegated to staff shall be set out in the Team's terms of reference and notified to the FRC.
14. Such procedures should aim to ensure steps are taken by a Registered Auditor to identify areas for performance improvement and appropriate follow-up actions.
15. 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.
16. ICAN 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.
17. 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. Pursuant to S7.2.(a) of the FRC Act (as amended), ICAN shall submit to the Council key principles of its work plan in relation to this task in accordance with Appendix 5 or such other information as the Council may reasonably request.

### **Rules and Procedures**

2. The ICAN's Rules shall be to the Council's satisfaction and:
  - (a) Incorporate at least the requirements set out in this Appendix in particular and this Instrument of Delegation 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; and
  - (c) Specify the RPB 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 some of those sanctions set out in Council's Operational Guideline for Inspection and Monitoring of Auditors, Other Assurance Providers and Audit Committee Members;
- (d) Provided that when determining the type and level of administrative sanctions and measures to be imposed, the RPB 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 RPB and/or other authorities including the COUNCIL; 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 the RPB 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 RPB 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 RPB 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 RPB 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 RPB 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 RPB 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.

## **APPENDIX 5 • REPORTING AND INFORMATION, INSPECTION AND MONITORING CONDITIONS**

### **Approval**

1. The Council will review ICAN's regulatory plan setting out ICAN's intended work plan annually.
2. To the extent not already contained in the regulatory plan, ICAN will provide to the Council 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 Mandatory Continuing Professional Education, at least the proposed scope and size of the sample of members to be selected in the year in relation to MCPE 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: the 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 RPB 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 Council may reasonably request to be included.

### **Reporting**

3. ICAN will report to the Council 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 Instrument of Delegation; and

(iii) significant complaints received by ICAN in relation to ICAN'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 ICAN's registration records to the Register of Statutory Audit at the end of the year;

(b) in relation to Mandatory Continuing Professional Development(see Appendix 2), the schedule of statutory auditors and their MCPD compliance status ;

(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. ICAN's Regulatory Plan or Annual Return (as applicable) and interim reporting will contain such detail as the Council reasonably requires for the Council to fulfill its statutory oversight and reporting responsibilities.

6. ICAN will provide to the Council such other information as may be reasonably requested by the Council (and will in good faith volunteer provision of such information as the Council may reasonably consider to be relevant were Council 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 Instrument of Delegation.

## **FRC Inspection**

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

## **FRC Monitoring**

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

## **APPENDIX 6 - GOVERNANCE AND RECORDS**

1. ICAN appoints the Director, (the "ICAN Representative") and the Council appoints the Director of Professional Oversight (the "Council Representative"). ICAN Representative and Council Representative will be responsible for the management and oversight of all matters relating to the performance of the Delegated Tasks. ICAN and Council will also appoint a suitably qualified deputy to act in the absence of either ICAN Representative or the Council Representative.
2. Regular meetings to review ICAN's performance of the Delegated Tasks will take place at a location agreed between the Parties throughout the Term at the direction of the Council (ICAN Review Meetings"). ICAN Review Meetings will be attended, at a minimum, by ICAN Representative and the Council Representative or such substitute as may be agreed. Each party will use reasonable endeavours and cooperate with the other to meet actions agreed at ICAN Review Meetings. In cases where the ICAN Representative and the Council 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. ICAN will keep and maintain for a rolling six (6) year period, or as long a period as may be agreed between the Parties, full and accurate records of this Instrument of Delegation in accordance with good industry practice and law including records relating to its performance of the Delegated Tasks, all payments made to the Council and agreed minutes of ICAN Review Meetings held in accordance with this Appendix. ICAN will provide such access to those records as may be reasonably requested by the Council in connection with this Instrument of Delegation.

## **Appendix 7 • Exit Management**

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

1. use its best endeavours and in good faith cooperate with the Council and any Replacement RPB 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 Council to reclaim a Delegated Task 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 Council and/or a Replacement RPB to enable the Council or Replacement RPB to continue to perform the Reclaimed Task(s) upon the effective date of termination or reclaim as applicable.