

Dated

18 December

2013

(1) **AUKETT FITZROY ROBINSON GROUP PLC**

(2) **ROBERT FRY**

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**SERVICE AGREEMENT**

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**LONDON**

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## SERVICE AGREEMENT

DATE: 18 December 2013

### PARTIES:

- (1) **AUKETT FITZROY ROBINSON GROUP PLC** whose registered office is at 36 – 40 York Way, London N1 9AB (“Company”) and
- (2) **ROBERT FRY** [REDACTED] (“the Executive”)

IT IS AGREED as follows:

### 1. INTERPRETATION

#### 1.1 Definitions:

In this Agreement the following words and phrases have the meanings given below:-

"Appointment"	the employment of the Executive on the terms of this Agreement;
"Board"	the Board of Directors of the Company including any duly appointed committee or nominee of the Board;
"Financial Year"	a period of one year ending on the accounting reference date of the Company from time to time;
"Group"	the Company, its Subsidiaries or Holding Companies from time to time and any Subsidiary of any Holding Company from time to time;
"Holiday Year"	12 months to 31 <sup>st</sup> March;
"London Stock Exchange"	London Stock Exchange plc;
"Remuneration"	shall mean all remuneration and other payments of whatsoever nature payable by the Company to or in respect of the Executive including,

without limitation, any Salary, bonus payments, pension payments or payments of medical or other insurance premiums

"Remuneration Committee"

the Board or such committee of directors as the Board may appoint to determine the Remuneration from time to time of the Company's executives;

"Salary"

the basic salary payable from time to time under Clause 6.1;

"Scheme"

the Company's group income protection scheme in place from time to time;

"Subsidiary and Holding Company"

"subsidiary" and "holding company" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) a nominee;

"Termination Date"

means the date on which the Appointment ends for whatever reason, whether lawful or not;

"UKLA"

the Financial Conduct Authority in its capacity as the competent authority for the purposes of the Financial Services and Markets Act 2000 or such replacement body or authority as may exist from time to time.

## 1.2 Construction:

- (a) References to acting directly or indirectly include acting alone or jointly with or on behalf of or by means of another person and/or giving advice or providing services with a view to assisting another person.

- (b) References to a person include an individual, firm, corporation and any other organisation however it is constituted and words denoting the singular include the plural and vice versa.
- (c) References to an individual holding a position in the Company or the Group mean the holder of that position from time to time or his or her nominee or such other representative as the Board may nominate.
- (d) References to statutory provisions are construed as references to those provisions as amended or re-enacted from time to time (whether before or after the date of this Agreement) and references to documents are construed as references to documents as replaced or amended from time to time after the date of this Agreement.
- (e) References to this Agreement include the Schedules which form part of this Agreement for all purposes.
- (f) Unless the context otherwise requires, references to Clauses and Schedules are to clauses and schedules to this Agreement and reference in a Schedule to paragraphs are to paragraphs of that schedule.

## **2. APPOINTMENT**

- 2.1 The Company will employ the Executive and the Executive will serve as a Director and Managing Director - International, or in any other comparable capacity reasonably required by the Company on the terms of this Agreement. The Company reserves the right to change the Executive's job title to another title suitable for his position.
- 2.2 The Executive's period of continuous employment began on 13 July 1987.
- 2.3 The Executive will also serve as a director of the Company, and any Group company that the Company may direct, subject to the articles of association of the relevant company. If there is any conflict between the terms of this Agreement and the articles of association, the articles will prevail. The Executive has no contractual right to hold such appointment.
- 2.4 The Executive will report to the Board and, in the absence of any specific directions from the Board (but subject always to the memorandum and articles of association of the Company and any Group company), shall have general control and responsibility

for the management of the business of the Company and any Group company in respect of the UK or other Group operation as directed.

- 2.5 It is a condition of this agreement that the Executive holds Dip ARCH and shall continue at all times during the Appointment to be so qualified.
- 2.6 The Executive shall immediately notify the Company if he ceases to hold Dip ARCH during the Appointment, or becomes subject to any inquiry, investigation or proceeding that may lead to the loss of the qualification.
- 2.7 The Executive represents and warrants to the Company that, by entering into this agreement or performing any of his obligations under it, he will not be in breach of any court order or any express or implied terms of any contract or other obligation binding on him and undertakes to indemnify the Company against any claims, costs, damages, liabilities or expenses which the Company may incur as a result if he is in breach of any such obligations.
- 2.8 The Executive warrants that he is entitled to work in the United Kingdom without any additional approvals and will notify the Company immediately if he ceases to be so entitled during the Appointment.
- 2.9 The Executive warrants that he is not subject to any restrictions which prevent him from holding office as a director.

### **3. DUTIES DURING THE APPOINTMENT**

- 3.1 The Executive will (unless prevented by ill health or injury) devote the whole of his working time, attention and abilities during the Appointment to the business of the Group and will not without the prior written consent of the Board:
  - (a) accept any other appointment, work for or be directly or indirectly engaged in or concerned with the conduct of any other business; or
  - (b) be directly or indirectly financially interested in any such business, other than through his holding or being interested in bona fide investments representing not more than three per cent of any class of shares or securities in any company whether or not listed or dealt in on any recognised stock exchange.
- 3.2 The Company may:
  - (a) require the Executive to carry out different or additional duties as long as they are consistent with his status and position in the Company;

- (b) require the Executive to perform services for, or hold office in, any company in the Group, without additional remuneration;
- (c) appoint someone else to act jointly with the Executive.

3.3 During the Appointment the Executive will:-

- (a) loyally and diligently perform such duties and exercise such powers for the Group as the Board may from time to time reasonably require and accept without further payment other offices within the Group to the best of his ability and carry out his duties in a proper and efficient manner;
- (b) keep the Board properly and regularly informed about the business of the Group with which the Executive is involved and his activities in that part of the Group's business;
- (c) carry out the lawful orders of the Board and comply with the rules, policies and procedures of the Company and any other company in the Group, in force from time to time;
- (d) do such things as are necessary to ensure compliance by himself and the Company or any other company in the Group with the Combined Code on Corporate Governance of the UKLA;
- (e) comply with the articles of association of the Company and any other company within the Group, the City Code on Takeovers and Mergers, the applicable regulations for UKLA (including the "Model Code" for transactions in securities by directors and certain senior executives of listed companies), the requirements of the London Stock Exchange (including for the avoidance of doubt the rules for AIM Companies published by the London Stock Exchange) and any other applicable stock exchange, the code mentioned in Clause 3.7 and any other internal codes of conduct for employees of the Group;
- (f) immediately upon the Company's request supply any and all information which the Company or any Group Company may reasonably require in order to be able to comply with any statutory or regulatory provision or stock exchange rule or requirement, including for the avoidance of doubt the Listing Rules of the UK Listing Authority;

- (g) co-operate with the Group in complying with its obligations on health and safety;
- (h) comply with the provisions of the Criminal Justice Act 1993 or any other legislation relating to insider trading or market abuse; and
- (i) use his reasonable endeavours to promote and protect the interests of the Group, always giving it the full benefit of his knowledge, expertise and skill and not knowingly or deliberately doing anything which is to its detriment.

3.4 The Executive acknowledges that he is in the position of a fiduciary having regard to the nature and seniority of his position and owes a duty to disclose to the Company his own misdeeds and those of any other person employed or engaged by the Company or any other company in the Group.

3.5 The appointment of the Executive as a director of the Company and any other company in the Group are subject to the relevant articles of association from time to time.

3.6 Unless he has the prior written consent of the Board, the Executive will not directly or indirectly receive or retain any payment or benefit, either in respect of any business transacted (whether or not by him) by or on behalf of the Group or with a view to any such business being transacted.

3.7 During the Appointment or while he is a director of any company in the Group the Executive will comply and will procure, so far as he is able, that his spouse (or civil partner) and infant children (if any) or any trust in which he, his spouse (or civil partner) or infant children may be concerned or interested in as trustee or beneficiary, comply with any code of conduct relating to securities transactions by directors and specified employees applicable within the Group. A copy of the code adopted by the Board, being the code applicable at the date of the Appointment, has been received by the Executive. The Executive will promptly give the Company such information as the Group may require to enable it to comply with its legal obligations or the requirements of UKLA, London Stock Exchange or any other applicable stock exchange.

#### **4. LOCATION**

4.1 The Executive will be based at the Company's head office from time to time, but may be required to work at other locations within the M25, whether on a temporary or

permanent basis and overseas on a temporary basis, in the performance of his duties. If the Executive agrees to change his principal residence at the request of the Company, it will reimburse him such removal and other incidental expenses as the Board considers fair and reasonable in the circumstances.

## **5. WORKING HOURS**

- 5.1 The Executive has no normal working hours but is required to work during normal business hours and such other hours as may be reasonably necessary for the proper performance of his duties for the Group.
- 5.2 The Executive agrees that the duration of his working time is not measured or pre-determined and can be determined by him in a manner consistent with the Appointment. In view of the Executive's seniority and managerial duties and responsibilities, the Executive is regarded as a "managing executive" for the purposes of the Working Time Regulations 1998 ("the Regulations") and therefore covered by the exemption set out in Regulation 20 (1) of the Regulations.
- 5.3 For statutory sick pay purposes, the Executive's qualifying days are Monday to Friday.

## **6. SALARY AND INCENTIVES**

- 6.1 The Company will pay to the Executive a Salary at the rate of £121,000 per annum including any director's fees from the Group. This Salary will accrue from day to day and will be calculated on the basis of 260 working days per annum. Salary will be payable monthly in arrears normally on the last day of each month, and will be subject to such deductions as may be required by law or under the terms of the Appointment.
- 6.2 The Executive will, in addition to his Salary, be eligible for discretionary bonus payments on such terms and of such amounts as may be determined by the Remuneration Committee in its sole discretion from time to time. Any bonus paid will not be taken into account in calculating pension contributions under Clause 10.1. The Executive will not be considered for or entitled to any bonus if, on the date that bonuses are paid, the Executive is no longer employed by the Company or either the Executive or the Company has served notice to terminate the Executive's Appointment.
- 6.3 The Company may withhold or deduct from any sums due from the Company to the Executive (whether during the Appointment or after the Termination Date) (and without prejudice to the Company's other rights and remedies) any money owing or

due to be paid by the Executive to it under this Agreement or otherwise, including, but not limited to, any outstanding loans, advances, or Salary paid in respect of holiday taken in excess of that which had accrued as at the Termination Date.

- 6.4 The Remuneration Committee will review the Salary from time to time and in any event not less frequently than annually. The Remuneration Committee may, in its sole and absolute discretion, increase the salary by any amount it decides is appropriate but may not reduce it. The Remuneration Committee is under no obligation to award an increase following a salary review.

## **7. EXPENSES**

- 7.1 The Executive will be entitled, upon production of satisfactory evidence of payment or expenditure, to be reimbursed all reasonable out-of-pocket expenses properly and wholly incurred by him in the performance of his duties. Any credit card supplied to him by the Company may only be used for expenses incurred by him in the performance of those duties.

## **8. ILL HEALTH AND INJURY**

- 8.1 If at any time during the Appointment the Executive is physically or mentally unable to perform his duties for the Group as a result of ill health or injury, he will nevertheless be entitled to the maxima of his Salary in full for 130 working days within any period of 12 calendar months or in any continuous period of absence:
- 8.2 Thereafter, for so long as the Appointment remains in force and, subject to Clause 13, any further payments will be limited to any payments which may be due under the Scheme. Any other payment will be at the sole discretion of the Board. As a condition of any such payment, the Executive may be required to comply with Clause 16 as if the Appointment had been terminated.
- 8.3 Once the Executive has exhausted his entitlement to the payments set out in Clause 8.1, he will not be eligible for payment from the Company for any period of further absence unless he has attended work for an uninterrupted period of 130 working days.
- 8.4 The payment of any Salary under Clause 8.1 will be:-
- (a) subject to the production of satisfactory evidence from a registered medical practitioner in respect of any period of absence in excess of seven consecutive days; and

(b) inclusive of any statutory sick pay to which the Executive may be entitled and the Company may deduct from his Salary the amount of any social security benefits he may receive or be entitled to receive.

8.5 If the Executive is unable to perform his duties for the Group as a result of ill health or injury, at the request and expense of the Company the Executive will submit himself to a medical examination by a suitably qualified person of the Company's choice. If such person is unable to confirm that he is fit to perform his duties or if there are factors which such person considers are relevant to the performance of those duties, the Executive will co-operate as far as he is able in ensuring the prompt delivery of all relevant medical reports to the Company and will allow the Company access to any relevant medical report which has been prepared by a medical practitioner responsible for his clinical care.

## **9. HOLIDAYS**

9.1 The Executive will (in addition to normal public holidays) be entitled to 30 paid days' holiday in each complete Holiday Year during the Appointment, three days of which will be taken between Christmas and the New Year when the office is closed. The Executive will take no fewer than 20 days holiday (excluding public holidays) in each Holiday Year. This holiday is to be taken at such times as are convenient to the Company in line with its operational requirements and the availability of other directors of the Company. The Company may require the Executive to take any outstanding holiday during any period of notice under Clause 14 or for which he is not required to work pursuant to Clause 15.

9.2 The entitlement to holiday accrues pro rata throughout each Holiday Year. Any entitlement to holiday remaining at the end of any Holiday Year will lapse (unless the prior written consent of the Board has been obtained) and no Salary in lieu of such entitlement will be paid.

9.3 On the termination of the Appointment (other than by reason of Clause 14.3 or where he terminates the Appointment in breach of its terms) the Executive will be entitled to a day's Salary (calculated on the basis of 260 working days per annum) in lieu of each day's holiday accrued due but not taken. If he has taken holiday in excess of his accrued entitlement, the Company may deduct a day's Salary for each excess day taken from any monies owed to him by the Company.

## **10. BENEFITS DURING THE APPOINTMENT**

- 10.1 The Executive will be eligible to be a member of the Company's Executive Pension Plan SSIP (the "Plan"), or such other pension scheme as may be set up by the Company to replace the Plan, subject to the provisions governing such other pension scheme, including conditions relating to risk benefits and the powers of amendment and termination. Subject to such limitations as are imposed by law or regulation (including the tax relief and exemptions available from HM Revenue and Customs ("HMRC") as amended from time to time), the Company will each month make a payment into the Plan equal to 9% of the Executive's Salary at the same time that Salary is paid to the Executive.
- 10.2 The Company will provide the Executive with life assurance cover to assure a sum equal to four times his annual Salary, payable if he dies during the Appointment subject to HMRC limits and to Clause 13 (Conditions Applicable to Insured Benefits).
- 10.3 The Company will reimburse the Executive with the subscriptions paid by him in respect of membership to three professional associations, to which he is required by the Company to belong for the performance of his duties.
- 10.4 A contracting-out certificate is not in force in respect of the Appointment.

## **11. PRIVATE MEDICAL INSURANCE SCHEME**

- 11.1 Subject to Clause 13 (Conditions Applicable to Insured Benefits) the Executive and spouse (or civil partner) and dependant children up to the age of 21 years old are eligible to join the Company's private medical insurance scheme.

## **12. GROUP INCOME PROTECTION INSURANCE**

- 12.1 Subject to Clause 13 (Conditions Applicable to Insured Benefits) the Executive is eligible to join the Scheme, subject to the terms and conditions thereof.
- 12.2 At any time during any period of incapacity the Company may refer the Executive to the insurers of the Scheme subject always to the provisions of this Clause 12 and Clause 13.
- 12.3 If any claim under the Scheme is accepted in whole or in part:

- (a) the Company will immediately upon that acceptance cease to be under any obligation to pay any amounts or to provide any benefit to the Executive other than those provided under the terms of the Scheme; and
- (b) the provisions of Clause 16 will immediately apply as if the Appointment had terminated. The Company will then automatically become entitled to appoint a successor to the Executive to perform all or any of his duties and Clauses 2 and 3 will be amended accordingly.

12.4 If the Executive has been incapacitated by ill health or injury for a total period of 260 working days in any period of 12 calendar months and either his claim under the Scheme is rejected (and any appeal has been refused) or he ceases to receive or to be eligible to receive benefits under the Scheme (and any appeal has been refused), the Company will be entitled to terminate the Appointment upon 13 weeks' written notice to him and during that period the Executive shall not have any entitlement to receive his salary or any bonus payment but shall otherwise be entitled to his contractual benefits under this Agreement.

12.5 The provision of group income protection insurance does not restrict the Company's rights to terminate the Executive's Appointment in accordance with the terms of this Agreement.

### **13. CONDITIONS APPLICABLE TO INSURED BENEFITS**

13.1 The terms of this Clause 13 apply to the benefits referred to in Clauses 10.2 (Life Assurance), 11 (Private Medical Insurance) and to those under the Scheme, as referred to in Clause 12 (Group Income Protection Insurance) (together the "Insured Benefits").

13.2 The Executive's participation in the Insured Benefits is subject to the terms and eligibility criteria of the relevant scheme in force from time to time. The Executive acknowledges that the decision on whether, and if so, to what extent, benefits may be provided to him in respect of Insured Benefits will be taken by the scheme insurer. To the extent that there is any disparity between the rules and conditions of the relevant Insured Benefit and the terms of this Agreement the relevant scheme rules and conditions shall take precedence. The Company shall not have any liability to pay any benefit to the Executive (or any family member) under any Insured Benefit unless it receives payment of the benefit from the insurer under the scheme and shall not be responsible for providing the Executive (or any family member) with any benefit in

respect of an Insured Benefit in the event that the relevant insurer refuses for whatever reason to pay or provide or to continue to pay or provide that benefit to the Executive (or family member).

- 13.3 The Executive's participation in the Insured Benefits (and any other insurance-related benefit scheme in which he may participate from time to time) is subject to the normal underwriting requirements of the relevant scheme in force from time to time.
- 13.4 The Executive will not be eligible for any Insured Benefit in respect of which cover is not available from the Company's chosen insurer or is only available from such insurer subject to additional premiums or conditions.
- 13.5 Third party providers (e.g. insurers or pension providers) may from time to time provide additional information to the Executive. The Company does not accept responsibility for the accuracy of any such third party information and such information does not form part of the Executive's contract of employment.
- 13.6 The Company may vary, replace or withdraw the provision of any of the Insured Benefits at its absolute discretion. The Company will be under no obligation to provide any compensation or any other benefit if it, at any time and for any reason, exercises such discretion.

#### **14. TERMINATION**

- 14.1 The Appointment will continue until either party gives to the other not less than six months' written notice.
- 14.2 The Company may, in its absolute discretion, pay the Executive his Salary and contractual benefits as set out in this Agreement (save as provided for in Clause 6.2) in lieu of all or part of any period of notice. Any such payment in lieu of notice shall be an amount equal to the sum of the Salary (at the rate applicable when the Company exercises its right under this clause) and the cash value of the cost to the Company of providing the Executive with the Insured Benefits for the relevant period of notice based on the costs over the equivalent period preceding the Termination Date. The amount in each case shall be calculated by reference to the notice period under Clause 14.1 (or, if applicable, the remainder of the notice period). Such payments will be subject to income tax and national insurance contributions. The Executive agrees that he will only be entitled to payment under this Clause 14.2 if the Company notifies him in writing of its decision to make the payment in lieu of notice. The Company may make a payment under this Clause 14.2 regardless of whether or by whom notice

under Clause 14.1 has been given. For the avoidance of doubt, the right of the Company to make a payment in lieu of notice does not give rise to any right of the Executive to receive such payment.

14.3 The Company may, notwithstanding any other provision of the Appointment and irrespective of whether the grounds for termination arose before or after it began, at any time by notice in writing to the Executive terminate the Appointment with immediate effect:-

- (a) if he is guilty of misconduct or commits any serious or (having been given notice in writing) persistent breach or non-observance of any of his obligations to the Company or the Group (whether under this Agreement or otherwise);
- (b) if he refuses or neglects to comply with any lawful acts or directions given to him by the Board;
- (c) if he is guilty of any serious breach or non-observance of any of the provisions of this Agreement or directions of the Board or relevant rules and/or codes issued by or on behalf of any recognised stock exchange or is guilty of any continued or successive breaches or non-observance of any such provisions or directions in spite of written warning to the contrary by the Board;
- (d) if a petition is presented or any order is made or any notice is issued convening a meeting for the purpose of passing a resolution for his bankruptcy or he becomes bankrupt or makes any composition or enters into any deed of arrangement with his creditors generally including a voluntary arrangement under the Insolvency Act 1986;
- (e) if he is prohibited by law or by any decision of a regulatory body from being a director or taking part in the management of the Group;
- (f) resigns as a Director of the Company or any company in the Group, or his Directorship with the Company or any other company in the Group otherwise ends, without written consent of the Board;
- (g) is disqualified by law or is liable to be disqualified from being a Director;
- (h) if he is convicted of:

- (i) any criminal offence by a court of competent jurisdiction (other than a minor motoring offence for which a fine or other non-custodial penalty is imposed); or
  - (ii) an offence under the Criminal Justice Act 1993 (or the Financial Conduct Authority becomes entitled to impose a penalty on the Executive pursuant to section 123 of the Financial Services and Markets Act 2000) or the Executive is otherwise convicted or found liable under any other present or future statutory enactment or regulation relating to insider dealing and/or market abuse;
- (i) if he is guilty of any serious default or gross misconduct or gross incompetence in connection with or affecting the business of the Group and/or his duties hereunder;
  - (j) if he commits any act of theft or other dishonesty either at or outside work;
  - (k) is of unsound mind or a patient for the purpose of any statute relating to mental health;
  - (l) if he commits any act of deliberate unlawful discrimination or harassment;
  - (m) if he carries out or neglects to carry out any action which in the reasonable opinion of the Board may seriously damage the interests of the Company or Group or wilfully or negligently breaches any legislation or any regulation to which the Company or Group may be subject which may result in any penalties being imposed on him or any directors of the Company or Group; or
  - (n) if he commits any other act warranting summary termination at common law including (but not limited to) any act justifying dismissal without notice in the terms of the Company's disciplinary rules.

## **15. GARDEN LEAVE**

15.1 At any time after the Company or the Executive has given notice to terminate the Appointment or if the Executive resigns without giving the required notice the Company may:

- (a) change the Executive's duties in whatever way it decides is appropriate;
- (b) withdraw any or all of the Executive's powers and responsibilities;

- (c) require that the Executive does not contact or communicate with any clients, employees or suppliers of the Company or any company in the Group about any aspect of the business of the Company or any company in the Group;
- (d) prohibit the Executive from entering any premises of the Company or any company in the Group;
- (e) require that the Executive complies with any or all of his obligations under Clause 16.1;

( **“Garden Leave”**).

- 15.2 At any time during Garden Leave, the Board may require the Executive to resign immediately from his directorship or other office with the Company and any company in the Group.
- 15.3 During any Garden Leave, unless the Board agrees otherwise, the Executive will not:
- (a) do any work, whether paid or unpaid, for any third party;
  - (b) hold himself out as a director or other officer of the Company or company in the Group if he no longer holds office with such company;
  - (c) make any comment to any person about the change to his duties, except to confirm that he is on Garden Leave.
- 15.4 The Executive acknowledges that he will remain employed by the Company on the terms of this Agreement during any Garden Leave and, in particular, he remains bound by the express obligations contained in this Agreement except as varied by this Clause 15 and by the implied obligations of good faith and confidentiality owed by an employee to his employer.
- 15.5 The Company will continue to pay the Executive’s Salary and provide contractual benefits during any Garden Leave as long as he complies with his obligations under this Agreement, save that the Executive will not be considered for or entitled to any bonus.
- 15.6 The Company’s rights under this clause are distinct from the Company’s right to suspend the Executive to investigate any allegations against him in accordance with Clause 22.2.

## 16. OBLIGATIONS RELATING TO TERMINATION

- 16.1 Upon the termination of the Appointment, or at any other time in accordance with instructions given to him by the Board (including upon the exercise by the Company of its right under Clause 15), the Executive will:
- (a) resign immediately without compensation from any office or trusteeship that he holds in or on behalf of the Company or any Group Company;
  - (b) transfer without payment to the Company or as it may direct any shares or other securities held by him in the Company or any Group Company as a nominee or trustee for the Company or any Group Company and deliver to the Company the related certificates;
  - (c) immediately deliver to the Company all documents, books, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of the Company or any Group Company or its business contacts, any keys, credit card and any other property of the Company or any Group Company, which is in his possession or under his control;
  - (d) irretrievably delete any information relating to the business of the Company or any Group Company stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the Company's premises; and
  - (e) provide a signed statement that he has complied fully with his obligations under this clause together with such reasonable evidence of compliance as the Company may request.
- 16.2 Where the Employee has been placed on Garden Leave he shall not be required by Clause 16.1 to return until the end of the Garden Leave any property provided to him as a contractual benefit for use during the Appointment.
- 16.3 The Executive hereby irrevocably appoints the Company to be his attorney to execute and do any such instrument or thing and generally to use his name for the purpose of giving the Company or its nominee the full benefit of Clauses 16.1(a) and 16.1(b).
- 16.4 The Company may withhold any sums owing to the Executive on the termination of his employment until the obligations in Clause 16.1 have been complied with and, if he does not comply with Clause 16.1, he shall be required to account to the Company for any resulting losses.

## **17. STATEMENTS AND FURTHER ASSISTANCE**

17.1 After the termination of the Appointment the Executive:-

- (a) will not at any time make any adverse, untrue or misleading statement about any member of the Group or its officers or employees or represent himself as being employed by or connected with any such company; and
- (b) will co-operate with any company in the Group for which he performed duties by providing such reasonable assistance as may be required in connection with any matters where it considers that the Executive has knowledge or information which is relevant to such matter. The provision of such assistance may include attending meetings, giving and signing statements and attending hearings. The Company will reimburse the Executive for his reasonable out of pocket expenses incurred in providing such assistance.

## **18. CONFIDENTIALITY, INTELLECTUAL PROPERTY RIGHTS AND RESTRICTIVE COVENANTS**

18.1 The Executive agrees to observe and be bound by the provisions of Schedule 1.

## **19. CONTINUING OBLIGATIONS**

19.1 The termination of the Appointment will not affect the rights or remedies of either party against the other in respect of any antecedent breach of any of its provisions or the continuing obligations of the Executive or the Company (as the case may be) under any provision of the Appointment expressed to have effect after it has terminated.

## **20. CORPORATE RECONSTRUCTION**

20.1 If the Appointment terminates

- (a) by reason of the liquidation of the Company for the purposes of amalgamation or reconstruction; or
- (b) as part of any arrangement for the amalgamation of the undertaking of the Company not involving liquidation; or
- (c) as part of any arrangement for the transfer of the whole or part of the undertaking of the Company to company in the Group;

and the Executive is offered employment of a similar nature with any person resulting from such amalgamation or reconstruction or with which the undertaking of the Company is amalgamated or company in the Group on terms which are not less favourable in any material respect to the Executive than the terms of the Appointment, the Executive will have no claim against the Company or any company in the Group in respect of the termination of the Appointment by reason of the events described in (a), (b) or (c) of this clause.

## **21. AGREEMENTS WITH OTHER COMPANIES IN THE GROUP**

21.1 Pursuant to the Contract (Rights of Third Parties) Act 1999, the Company and any company in the Group are expressly provided with the right to directly enforce the terms of this Agreement against the Executive. The Contracts (Rights of Third Parties) Act 1999 will not create any rights in favour of the Executive in relation to the benefits granted now or at any time in connection with his employment.

21.2 The consent of any company in the Group shall not be required for the variation or termination of this Agreement, even if that variation or termination affects the benefits conferred in this Agreement on any company in the Group.

## **22. OTHER MATTERS**

22.1 The Company's normal statutory disciplinary and grievance procedures apply to the Executive. Except in so far as the disciplinary rules impose obligations to be complied with by the Executive, the Company's disciplinary and grievance procedures will not form part of the Executive's contract of employment.

22.2 The Company may suspend the Executive on Salary and contractual benefits for a reasonable period to investigate any allegations of the Executive's involvement in any misconduct or breach of the terms of this Agreement. During the period of suspension the Executive will not attend work but will provide whatever co-operation and assistance the Company may require to allow it to complete its investigations. The Executive will not take any holiday while he is suspended unless the Board expressly allows him to do so.

22.3 The Executive agrees to be bound by the provisions of Schedule 2.

## **23. NOTICES**

- 23.1 All notices and other communications relating to the Appointment will take effect if delivered, upon delivery; if posted, at the earlier of the time of delivery and (if posted in the United Kingdom by first class post) 10.00am on the second business day after posting; or if sent by facsimile, when a complete and legible copy of the communication has been received. Any communications posted to the Executive should be sent to his last known domestic address or his last known home fax number. Any communications posted to the Company should be sent to the Company's head office, for the attention of the Company Secretary or faxed to any fax number indicated by the Company for the use of confidential documents addressed to the Company Secretary. Notice shall not be deemed valid if given by email.

## **24. MISCELLANEOUS**

- 24.1 The Appointment operates in substitution for and wholly replaces with effect from the date of this Agreement all terms previously agreed between the Company and the Executive which will be deemed to have been terminated by mutual consent and the Executive acknowledges that he has no outstanding claims against any member of the Group in respect of Salary or any matter prior to that date.
- 24.2 The Executive confirms that he has not been persuaded to enter into this Agreement by any representation which is not set out in the Agreement. The Executive waives all his rights arising from any representation given in connection with this Agreement, other than his rights to claim a breach of the terms of this Agreement. This waiver of rights does not apply to any fraudulent representation.
- 24.3 The Appointment constitutes the entire agreement and understanding between the parties and no variation or addition to it and no waiver of any provision will be valid unless in writing and signed by or on behalf of both parties.
- 24.4 There is no collective agreement affecting the terms of the Appointment.
- 24.5 This Agreement will be construed in accordance with English law and the parties irrevocably submit to the jurisdiction of the English Courts to settle any disputes which may arise in connection with this Agreement.

The parties have shown their acceptance of the terms of this Agreement by executing it below as a Deed.

SIGNED

)

)

duly authorised for and on behalf of

)

**AUKETT FITZROY ROBINSON GROUP PLC** )

SIGNED as a Deed by

)

**ROBERT FRY**

)

in the presence of:

)

Witness's Signature:

Name (in capitals): *Nick McCarthy*

Address:

Occupation:

## SCHEDULE 1

### 1. Confidentiality

#### 1.1 The Executive acknowledges

- (a) that the Company possesses a valuable body of Confidential Information (as defined in paragraph 1.2 of Schedule 1);
- (b) that the Company will give the Executive access to Confidential Information relating to the business of the Group in order that he may carry out the duties of his Appointment; and
- (c) that the duties of his Appointment include, without limitation, a duty of trust and confidence and a duty to act at all times in the best interests of the Company.

#### 1.2 "Confidential Information" includes but is not limited to information and trade secrets relating to:

- (a) corporate and marketing strategy, business development and plans, sales reports and research results;
- (b) business methods and processes, manuals and operating procedures, technical information and know-how relating to the Group's business and which is not in the public domain, including inventions, intellectual property, designs, programs, techniques, database systems, formulae and ideas;
- (c) business contacts, lists of customers or prospective customers and suppliers or prospective suppliers and details of contracts with them and their current or future requirements;
- (d) information on employees, including their particular skills and areas of expertise and their terms of employment;
- (e) prices or pricing policies, budgets, management accounts, trading statements and other financial reports;

- (f) unpublished price sensitive information relating to shares or securities listed or dealt in on any recognised stock exchange;
- (g) any document marked “confidential” or “secret” or any information which the Executive has been told is confidential or which he might reasonably expect the Company or the Group to regard as confidential;
- (h) any information which has been given to the Company or any company in the Group in confidence by customers, suppliers or other persons; and
- (i) any information not in the public domain.

1.3 The Executive will not during the Appointment (otherwise than with the proper authority of the Company or in the proper performance of his duties and then only to those who need to know such information or secrets) or thereafter (except with the prior written consent of the Board or as required by law) either directly or indirectly:-

- (a) divulge or communicate to any person (including any representative of the press or broadcasting or other media);
- (b) cause or facilitate any unauthorised disclosure through any failure by him to exercise all due care and diligence; or
- (c) make use (other than for the benefit of the Group) of

any Confidential Information or trade secrets relating to the business of the Group which have come to his knowledge during his employment with the Company or in respect of which the Executive knows or could reasonably be expected to know the Group is bound by an obligation of confidence to any third party. The Executive will also use all reasonable endeavours to prevent the publication or disclosure of any such Confidential Information or trade secrets. These restrictions will not apply either during the Appointment or after the Appointment has terminated to information which has become available to the public generally, otherwise than through unauthorised disclosure. Those restrictions shall not operate to prevent the Executive making a “protected disclosure” pursuant to Part IVA of the Employment Rights Act 1996.

1.4 At any time during the Appointment, including during any Garden Leave, the Company may require the Executive to return promptly to the Company:

- (a) all Confidential Information and all original and copy documents, notes, memoranda, software and any other information-storing medium belonging or relating to the business of the Company or the Group; and
- (b) any other property belonging to the Company or the Group or belonging to any third party who has provided the property to the Company or any company in the Group for the use of that company which is in his possession or under his control.

1.5 The Executive will in any event return to the Company (or as the Company directs) on or immediately following the termination of the Appointment for whatever reason all or any material of the type described in paragraph 1.4 of Schedule 1 above.

1.6 The Executive will confirm in writing that he has complied fully with his obligations under paragraphs 1.4 to 1.6 (inclusive) of Schedule 1, if required to do so by the Company.

## **2. Intellectual Property Rights**

2.1 The Executive acknowledges that in the course of his employment with the Company, he may conceive, make, develop or produce individually or with others in any media discoveries and developments (whether or not patentable or capable of registration) and/or documents, designs and other works in which copyright and/or unregistered design right and/or other Intellectual Property rights may subsist, (collectively, "Works").

2.2 For the purposes of this paragraph 2 of Schedule 1, Works shall be deemed to have been conceived, made developed or produced in the course of his employment where the same (without limitation) relate in any manner to the business of the Company or to its actual or demonstrably anticipated activities, or involve the use of any equipment, supplies, facilities, Confidential Information (as defined in paragraph 1.2 of Schedule 1), documents or Intellectual Property (as defined below) of the Company, whether or not the same are conceived, made, developed or produced during working hours (other than Works made wholly outside normal working hours and wholly unconnected with the Executive's employment).

2.3 The Executive will disclose in writing to the Company all Works promptly upon conception or creation (as appropriate).

- 2.4 The Executive acknowledges that any Works and any and all Intellectual Property subsisting or which may in the future subsist in such Works will on creation vest in and be the exclusive property of the Company in all parts of the world and where the same does not automatically vest in the Company the Executive hereby assigns the same to the Company (or as it may direct) or in the case of any future Intellectual Property in the same the Executive hereby assigns such Intellectual Property to the Company by way of present assignment of future rights.
- 2.5 The Executive hereby irrevocably waives any rights which he may have in the Works which are or have been conferred on you by chapter IV of part 1 of the Copyright, Designs and Patents Act 1988 headed "Moral Rights" and by any other laws of a similar or equivalent nature in any of the countries of the world.
- 2.6 The Executive will also, at the Company's request and expense, execute and deliver specific assignments and such other documents and take such further action as the Company may require, at any time during or subsequent to the period of his employment, to vest or evidence title in Works in the Company (or as it may direct) and to obtain, maintain and defend the Intellectual Property in the Works or to otherwise give effect to the provisions of this Agreement.
- 2.7 The Executive HEREBY IRREVOCABLY APPOINTS the Company to be his attorney in his name and on his behalf under section 4 of the Powers of Attorney Act 1991 to execute and deliver any deed or document and generally to use the Executive's name for the purpose of giving to the Company or its nominee the full benefit of the provisions of this paragraph 2 of Schedule 1 and acknowledge in favour of any third party that a certificate in writing signed by any Director or the Secretary of the Company that any deed or document falls within the authority granted shall be conclusive evidence that such is the case.
- 2.8 The Executive shall not knowingly do or permit to be done any act or omit to do anything which might imperil, jeopardise or prejudice any of the rights referred to in this paragraph 2 of Schedule 1 or which might invalidate or prejudice any application made by the Company for the registration or protection of the Works.
- 2.9 "Intellectual Property" means copyrights (including rights in computer software), database rights, rights in designs, trade marks, trade or business names, patents, inventions, (whether or not any of these is registered and including applications for registration of any such thing) and all other intellectual or industrial property rights

and rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

### **3. Restrictive Covenants**

3.1 Without prejudice to Clause 3 of this Agreement, during the Appointment and in the case of each of the sub-paragraphs (a) - (d) for the periods set out at the start of each sub-paragraph after the termination of the Appointment he will not (except with prior written consent of the Board) directly or indirectly on his own behalf or on behalf of, or in conjunction with, any firm, company or person do or attempt to do any of the following:

- (a) for twelve months solicit, entice, induce or encourage a Client or Prospective Client away from the Company or any Group Company in respect of the supply of Competitive Services;
- (b) for six months in competition with the Company or any company in the Group accept business from, or otherwise deal with, a Client or Prospective Client for the supply of Competitive Services;
- (c) for twelve months solicit, entice, induce or encourage an Employee to leave or seek to leave his or her position with the Company or any company in the Group regardless of whether or not that Employee acts in breach of his or her contract of employment with the Company or any company in the Group by so doing;
- (d) for six months employ or otherwise engage any Employee; or
- (e) for twelve months interfere with the arrangements between the Company or any company in the Group and any Supplier.

3.2 The periods for which the restrictions in sub-clause 3.1 apply shall be reduced by any period that the Executive spends on Garden Leave immediately prior to the Termination Date (as defined in the Agreement).

3.3 For the purpose of this paragraph 3:

- (a) "Competitive Services" means architectural and related building design work or such other services as the Company or any company in the Group was supplying or negotiating or actively and directly seeking to supply to a Client

or Prospective Client and with which during the Relevant Period the Executive was materially concerned in the performance of his duties.

- (b) “Client” means a person:
  - (i) who is or who was at any time during the Relevant Period a client of the Company or any company in the Group (whether or not goods or services were actually provided during such period); and
  - (ii) with whom the Executive or an Employee reporting directly to him had dealings at any time and/or for whom the Executive was responsible and/or about whom he was in possession of Confidential Information (as defined in paragraph 1.2 of Schedule 1), in any such case in the performance of his or their duties to the Company or any company in the Group during the Relevant Period.
  
- (c) “Employee” means a person who is employed by or who renders services to the Company or any company in the Group at director or associate director level and/or who has responsibility for Clients and/or Suppliers of the Company or any Associated Company or influence over them and/or who is in possession of Confidential Information about the Group's business and who in any such case was so employed or so rendered services during the Relevant Period and who had dealings with him during that period.
  
- (d) “Prospective Client” means a person:
  - (i) to whom, at any time during the Relevant Period, the Company or any company in the Group offers to supply goods or services, or to whom the Company or any company in the Group provides details of the terms on which it would or might be willing to supply goods or services, or with whom the Company or any company in the Group has any negotiations or discussions regarding the possible supply of goods or services; and
  - (ii) with whom the Executive or an Employee reporting directly to him had dealings or and/or for whom the Executive was responsible and/or about whom he was in possession of Confidential Information, in any such case in the performance of his or their duties to the Company or any company in the Group at any time during the Relevant Period.

- (e) “Relevant Period” means, where the Executive’s duties, powers and responsibilities are totally withdrawn in accordance with Clause 15 (Garden Leave), the period of 12 months immediately before the start of the Garden Leave; and otherwise, the period of 12 months ending on the Termination Date, or the period of the Appointment if the Executive has been employed by the Company for less than 12 months.
- (f) “Supplier” means any person with whom the Company or any company in the Group has, at the Termination Date, arrangements in place for the supply of goods or services to the Company or any company in the Group.

3.4 Each sub-clause and part of such sub-clause of this paragraph 3 constitutes an entirely separate and independent restriction and does not operate to limit any other obligation owed by the Executive, whether that obligation is express or implied by law. If any restriction is held to be invalid or unenforceable by a court of competent jurisdiction, it is intended and understood by the parties that such invalidity or unenforceability will not affect the remaining restrictions.

3.5 The Executive acknowledges that each of the restrictions in this paragraph 3 goes no further than is necessary for the protection of the Company's and any company in the Group’s legitimate business interests.

3.6 Before accepting any offer of employment either during the Appointment or during the continuance of the restrictions in this paragraph 3, the Executive will immediately provide to the person making such offer a copy of this Schedule 1 and shall tell the Company the identity of that person as soon as possible after accepting the offer.

3.7 The Company accepts, as trustee for each company in the Group, the benefit of all undertakings given by the Executive in this Schedule to any Associated Company.

## **SCHEDULE 2**

### **Data Protection and Office Equipment**

#### **1. DEFINITIONS**

1.1 For the purposes of this Schedule 2:

- (a) "Personal Data" means personal data (as defined by s.1(1) Data Protection Act 1998) about the Executive; and
- (b) "Sensitive Personal Data" means sensitive personal data (as defined by s.2 Data Protection Act 1998) about the Executive.

#### **2. DATA PROTECTION**

2.1 For the purpose of the Data Protection Act 1998, the Executive, by signing this Agreement, consents to the collection, holding, use, and processing (both electronically and manually) by the Company or any company in the Group (or a company appointed by them for such purposes) of the Executive's Personal Data. The Executive's Personal Data including any Sensitive Personal Data may be used solely for purposes relating to the Executive's employment and the operation, management, security and administration of the business of the Company or any company in the Group. This may include but is not limited to processing done in connection with:

- (a) administering and maintaining personnel records;
- (b) planning, paying and reviewing Salary and other remuneration and benefits;
- (c) planning, providing and administering benefits whether statutory or contractual;
- (d) assessments of the Executive's performance or conduct including performance appraisals and reviews and for disciplinary and grievance procedure purposes;
- (e) maintaining sickness and other absence records;
- (f) maintaining health and safety records and ensuring a safe working environment;
- (g) taking decisions on the Executive's fitness to work and complying with obligations under the Disability Discrimination Act 1995;

- (h) providing references and information to future employers (whether inside the Group or outside the Group);
- (i) providing information to the appropriate external authorities for tax, social security and other purposes as required by law to comply with any statutory duty;
- (j) equal opportunities, ethnic monitoring and compliance with legal obligations in connection with them;
- (k) providing information to any future purchasers of the Company after receiving confidentiality undertakings from such future purchasers: and
- (l) planning or reviewing options, in relation to the operation or management of the Company.

1.2 The Executive further consents to the transfer, storage and processing by the Company or any company in the Group or its or their agents of such Personal Data, including Sensitive Personal Data, outside the European Economic Area.

### **3. USE AND MONITORING OF EQUIPMENT**

3.1 Unless he has the prior written consent of Chief Executive Officer, the Executive will not use any computer hardware or software or any other technical equipment or systems owned, licensed or rented:

- (a) by the Company for any purpose other than to carry out his proper duties; or
- (b) by him or any person other than the Company for any purpose connected with the carrying out of his proper duties.

3.2 The Executive agrees that the Company and/or the Group may monitor, intercept and/or record his use of office equipment, including but not limited to: email, the internet, facsimile machines, photocopiers, his telephone and any mobile phone issued to the Executive by the Company. The Executive acknowledges that the Company may undertake such monitoring from time to time and gives his consent and authorisation to it.