

Programme Management 2015 to 2018 – Reporting and audit requirements 6.3.11

The following 'Standardised Terms of Engagement' should be read in conjunction with the [Technical Release – AAF 01/10](#), Framework Document for Accountants' Reports on Grant Claims, published by the [ICAEW](#).

Standardised Terms of Engagement

The following are the terms of engagement on which the Homes and Communities Agency (Agency) agrees to engage [insert name of accountant/RICS surveyor] (the 'independent auditor') to perform agreed upon procedures and report in connection with procedural compliance in relation to the receipt of Social Housing Assistance and grants to facilitate the development and provision of affordable housing.

An agreement between [insert name of the provider] (the 'Grant Recipient') its reporting independent auditor and the Agency on these terms is formed if the Grant Recipient and the independent auditor enter into a commissioning arrangement incorporating the following terms of engagement.

The duties owed to the Agency by the independent auditor under the agreement cease when the specified checks and report, are submitted by the independent auditor on the CA system to be viewed by the Agency.

1 Introduction

The Grant Recipient is required to commission the independent auditor to provide to the Agency reports as set out in Clause 3 below in order to provide independent assurance. These terms of engagement set out the basis on which the independent auditor will sign the report.

2 The Grant Recipient's responsibilities

- 2.1 The Grant Recipient is responsible for using grant for the purposes provided, maintaining proper records complying with the terms of any legislation or regulatory requirements and the Agency's terms and conditions of grant and providing relevant information to the Agency on a basis in accordance with the requirements of the grant conditions. The Grant Recipient is responsible for ensuring that the non-financial records can be reconciled to the financial records.
- 2.2 The management of the Grant Recipient will make available to the independent auditor all records, correspondence, information and explanations that the independent auditor considers necessary to enable the independent auditor to perform the independent auditor's work.
- 2.3 The Grant Recipient and the Agency accept that the ability of the independent auditor to perform the work effectively depends upon the Grant Recipient providing full and free access to the financial and other records and the Grant Recipient shall procure that any such records held by a third party are made available to the independent auditor.
- 2.4 The independent auditor accepts that, whether or not the Grant Recipient meets its obligations, the independent auditor remains under an obligation to the Agency to perform the work with reasonable care. The failure by the Grant Recipient to meet its obligations may cause the independent auditor to qualify the report or be unable to provide a report.

3 Scope of the independent auditor's work

- 3.1 The Grant Recipient will provide the independent auditor with such information, explanations and documentation that the independent auditor considers necessary to carry out its responsibilities. The independent auditor will seek written representations from management in relation to matters for which independent corroboration is not available. The independent auditor will also seek confirmation that any significant matters of which the independent auditor should be aware have been brought to the independent auditor's attention.
- 3.2 The independent auditor will perform the following work in relation to reports required by the Agency:
 - 3.2.1 Grant return: The independent auditor will perform agreed performance tests as set out in the relevant procedural checklists, replicated by the Compliance Audit system and published on the [Agency website](#); and submit responses to enable the Compliance Audit system to produce a report based on identified procedural findings. This report will automatically list of schemes checked and should include the independent auditor's observations that arise from the completion of the procedural checks.
 - 3.2.2 The procedural compliance checklists used will depend upon the category of product being developed and the financial year in which grant approval was given and be automatically presented by the Compliance Audit system.
- 3.3 The independent auditor will not subject the information provided by the Grant Recipient to checking or verification except to the extent expressly stated. While, the independent auditor will perform the work with reasonable skill and care, it should not be relied upon to disclose all misstatements, fraud or errors that might exist.

4 Form of the Independent Auditor's Findings

4.1 The Independent Auditor's Findings are prepared on the following basis:

- 4.1.1 The Independent Auditor's Findings are prepared solely for the confidential use of the Grant Recipient (and their Lead Grant Recipient if another organisation and agreed with the Grant Recipient) and the Agency and solely for the purpose of submission to the Agency in connection with the Agency's requirements in connection with its grant. They may not be relied upon by the Grant Recipient or the Agency for any other purpose. The Agency may only disclose the findings to others who may have statutory rights of access to the findings ("Others").
- 4.1.2 Neither the Grant Recipient, nor the Agency may rely on any oral or draft reports the independent auditor provides. The independent auditor accepts responsibility to the Grant Recipient and the Agency for the independent auditor's final submitted (on Compliance Audit system) findings only.
- 4.1.3 The Independent Auditor's submitted findings must not be recited or referred to in whole or in part in any other document (including, without limitation, any publication issued by the Agency) without the prior written approval of the independent auditor.
- 4.1.4 Except to the extent required by court order, law or regulation or to assist in the resolution of any court proceedings the Independent Auditor's submitted findings must not be made available, copied or recited to any other person

(including, without limitation, any person who may use or refer to any of the Agency's publications).

4.1.5 To the fullest extent permitted by law, the firm of independent auditors, its partners and staff neither owe nor accept any duty to any person other than the Grant Recipient and the Agency (including, without limitation, any person who may use or refer to any of the Agency's publications including the Others) and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by any other party's (including the Others) reliance on representations in the Independent Auditor's submitted findings.

5 Liability Provisions

5.1 The independent auditor will perform the engagement with reasonable skill and care and acknowledges that it will be liable to the Grant Recipient and the Agency for losses, damages costs or expenses ("losses") caused by its breach of contract, negligence or wilful default, subject to the following provisions.

5.1.1 The independent auditor will not be responsible or liable if such losses are due to the provision of false, misleading or incomplete information or documentation or due to the acts or omissions of any person other than the independent auditor, except where, on the basis of the enquiries normally undertaken by independent auditors within the scope set out in these terms of engagement, it would have been reasonable for the independent auditor to discover such defects.

5.1.2 The independent auditor accepts liability without limit for the consequences of its own fraud and for any other liability that is not permitted by law to limit or exclude.

5.1.3 Subject to the previous paragraph (5.1.2), the total aggregate liability of the independent auditor whether in contract, tort (including negligence) or otherwise, to the Agency and the Department for Communities and Local Government arising from or in connection with the work which is the subject of these terms (including any addition or variation to the work), shall not exceed the amount of £1 million.

5.2 The Grant Recipient and the Agency agree that they will not bring any claims or proceedings against any individual partners, members, directors or employees of the independent auditor. This clause is intended to benefit such partners, members, directors and employees who may enforce this clause pursuant to the Contracts (Rights of Third Parties Act 1999) ("the Act"). Notwithstanding any benefits or rights conferred by this agreement on any third party by virtue of the Act, the parties to this agreement may agree to vary or rescind this agreement without any third party's consent. Other than as expressly provided in these terms, the provisions of the Act are excluded.

5.3 Any claims whether in contract, negligence or otherwise, must be formally commenced within three years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the action in any event no later than six years after any alleged breach of contract, negligence or other cause of action. This expressly overrides any statutory provision that would otherwise apply.

5.4 This engagement is separate from, and unrelated to, the independent auditor's audit work on the financial statements of the Grant Recipient for the purposes of the Companies Act 1985 (or its successor) or other legislation and nothing herein creates obligations or liabilities regarding the independent auditor's statutory audit work, which would not otherwise exist.

6 Fees

6.1 The independent auditor's fees, together with VAT and out of pocket expenses, will be billed to the Grant Recipient. The Grant Recipient shall be solely responsible for the payment of such amounts in full. The Agency is not liable in any circumstances to pay the independent auditor's fees or expenses.

7 Quality of service

7.1 The independent auditor will investigate all complaints. The Agency or the Grant Recipient has the right to take any complaint to the relevant professional body. The Agency or the Grant Recipient may obtain an explanation of the mechanisms that operate in respect of a complaint via the [ICAEW website](#) or in the case of the mechanisms that operate in respect of RICS via the [RICS website](#).

8 Providing services to other parties

8.1 The independent auditor will not be prevented or restricted by virtue of the independent auditor's relationship with the Grant Recipient and the Agency including anything in these terms of engagement, from providing services to other clients. The independent auditor's standard internal procedures are designed to ensure that confidential information communicated to the independent auditor during the course of an assignment will be maintained confidentially.

9 Applicable law and jurisdiction

9.1 This agreement shall be governed by, and interpreted and constructed in accordance with English law.

9.2 The Grant Recipient and the Agency and the independent auditor irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counter claims) which may arise on any basis in connection with the validity, effect, interpretation or performance of, or the legal relationship established by this agreement or otherwise arising in connection with this agreement.

10 Alteration to terms

10.1 All additions, amendments and variations to these terms of engagement shall be binding only if in writing and signed by the duly authorised representatives of the parties. These terms supersede any previous agreements and representations between the parties in respect of the scope of the independent auditor's work and the Independent Auditor's Findings (via the Compliance Audit System) or the obligations of any of the parties relating thereto (whether oral or written) and represents the entire understanding between the parties.