



Department
for Business
Innovation & Skills

REGIONAL GROWTH FUND

Due Diligence Engagement
Template Terms

FEBRUARY 2015

WITHDRAWN

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Indicative Engagement Terms that would be acceptable to BIS.

In these terms of engagement:

“[Applicant]“ refers to the organisation that is required to submit the report to BIS.

”BIS” refers to the Secretary of State for Business, Innovation and Skills, the body that is proposing to provide Regional Growth Funding to the Applicant.

The “Due Diligence Service Provider” or named “[firm]” refers to the firm appointed by the Applicant and agreed by BIS to perform the Due Diligence work.

The “Grant” means the amount of state funds offered by BIS to the Applicant in the Conditional Grant Offer Letter dated [insert date] or under the terms of any letter relating to the same grant which varies or supersedes it (together the “Grant Offer Letter”).

“HMG” refers to any Minister who is a member of the UK Government.

The “Parties” refer to [the Applicant] and the Due Diligence Service Provider, each being a Party.

1 Introduction

The [Applicant] is required to submit to BIS a Due Diligence report prepared by the Due Diligence Service Provider which covers the scope of the Due Diligence work set out in Appendix 7 of the Conditional Grant Offer Letter (the “Due Diligence report”). These terms of engagement set out the basis on which the Due Diligence Service Provider will provide such a report.

The Due Diligence Service Provider may also write separately to the Applicant regarding matters such as the timing of the Due Diligence work, staffing, and fee arrangements. Where this is the case, each Party’s obligation to fulfil their responsibilities set out under these terms of engagement is subject to the agreement between the Due Diligence Service Provider and the Applicant of those additional terms as long as the BIS reporting deadline is not compromised.

2 The [Applicant]’s and BIS’s responsibilities

- 2.1 The Applicant is responsible for producing the application for grant aid in accordance with the published terms and conditions of the Regional Growth Fund scheme (the “Application Conditions”) and providing relevant information to BIS in accordance with the requirements of the Application Conditions. The Applicant is responsible for ensuring that the non-financial records can be reconciled to the financial records to enable the Due Diligence Service Provider to perform the Due Diligence work.
- 1.2 The management of the [Applicant] will make available to the Due Diligence Service Provider all records, correspondence, information and explanations that the Due Diligence Service Provider considers necessary to enable the Due Diligence Service Provider to perform the Due Diligence work. The Due Diligence Service Provider will seek written representations from management in relation to matters for which independent corroboration is not available. The Due Diligence Service Provider will also seek confirmation from management that any significant matters of which the Due Diligence Service Provider should be aware have been brought to their attention.
- 1.3 The [Applicant] and BIS accept that the ability of the Due Diligence Service Provider to perform its work effectively depends upon the Applicant providing full and free access to its financial and other records and appropriate staff. The [Applicant] shall procure that any such records held by a third party are made available to the Due Diligence Service Provider in a timely fashion. To assist with the execution of the Due

Diligence work in a timely and cost effective way, a timetable shall be defined and agreed between the Applicant and the Due Diligence Service Provider.

- 1.4 The failure by the [Applicant] to meet its obligations (in relation to the Grant) will cause the Due Diligence Service Provider to include details of such failure within the report or be unable to provide a report.
- 1.5 BIS will be responsible for evaluating the Due Diligence report and deciding whether it is satisfactory to enable the offer of the Grant to be finalised (without prejudice to any other outstanding conditions under the Grant Offer Letter).
- 2.6 It is agreed that the Applicant will have full regard for, and will prepare any prospective financial information (PFI) such as budgets, forecasts or projections (whether relating to the Applicant or otherwise), in accordance with the following procedures. The Applicant will confirm acceptance of responsibility for the Due Diligence report and the assumptions in a factual accuracy letter before the report is finalised
 - Prepare PFI based on internally consistent cash flow, profit and loss and balance sheet information;
 - Prepare business analyses covering both the cash flows of the [Project] and the terms and conditions and commercial considerations associated with banking, BIS and other financing relationships;
 - Consider the strategy and plans of the business and the related implementation risks together with checks against external evidence and opinion; and
 - Assess whether there is sufficient margin or headroom to cover reasonable worst case scenario (sensitivity analysis).

3 Timetable and scope considerations

- 3.1 The Due Diligence work will be performed by the Due Diligence Service Provider within agreed timescales as reflected in the timetable below, which is consistent with the timetable contained in the Grant Offer Letter.
- 3.2 It is acknowledged by the Parties that failure by the Applicant and/or the Due Diligence Service Provider to provide the final signed Due Diligence report (in the form at Schedule [7] to the Grant Offer Letter and satisfactory to BIS in its content) by [date] will cause the offer of the Grant to automatically lapse.

3.3 Timetable

	Activity	Responsibility	Timetable
1	Kick-off meeting	Applicant, BIS & Due Diligence Service Provider	Prior to start of Due Diligence work
2	Due Diligence work	Due Diligence Service Provider	By [date]
3	Draft Due Diligence report agreed by Applicant & submitted to BIS	Due Diligence Service Provider	By [date]
4	Discuss key issues with BIS and address issues raised	BIS and Due Diligence Service Provider	By [date]
5	Final signed Due Diligence report (including factual accuracy confirmation)	Applicant and Due Diligence Service Provider	By [date]

3.4 The scope of the Due Diligence Service Provider's work, as determined by BIS, is set out in Appendix [7]. The scope of the Due Diligence Report shall not be amended by the Due Diligence Service Provider. If the Due Diligence Service Provider is unable for any reason to satisfy the scope of Due Diligence this should be stated clearly in the Due Diligence Report together with the explanation for this. The acceptance of any variations to the scope of Due Diligence shall be at BIS's sole discretion.

3.5 The Due Diligence Service Provider will accept no responsibility for any PFI or for the ultimate realisation of such PFI. The bases and assumptions of such information will have been determined by, and are the sole responsibility of the [Applicant]. Since any PFI and the assumptions on which it is based relate to the future and may be affected by unforeseen events, except in so far as is expressly stated in Appendix [7] the Due Diligence Service Provider will not provide any

opinion as to how closely the actual result achieved will correspond to the profit [forecast] [estimate]. Accordingly the Due Diligence Service Provider neither confirms nor otherwise accepts responsibility for the ultimate accuracy and achievability of the PFI¹.

- 3.6 Where the Applicant provides the Due Diligence Service Provider with spreadsheets and or computer models (“Models”), the Due Diligence Service Provider is entitled to rely on the key outputs of the Models. All Models have limits and may not produce valid results for all possible combinations of input data; errors and potential errors may thus go unnoticed. The Due Diligence Service Provider will review and comment on the logical integrity and fitness for purpose of the Models and the derivation of any funding gap calculation that is used in support of the grant amount applied for.
- 3.7 The Due Diligence Service Provider will indicate within the report the sources of the information presented and will satisfy themselves, so far as possible, that the information presented is consistent with other information, which is made available to them in the course of the work. Except in so far as is expressly stated in Appendix [7] the Due Diligence Service Provider will not seek to establish the reliability of the sources by reference to other evidence or otherwise subject the information provided by the [Applicant] to checking or verification except to the extent expressly stated in writing as part of the Due Diligence Service Provider’s scope of work. While, the Due Diligence Service Provider will perform the Due Diligence work with reasonable skill and care, this work should not be relied upon to disclose all misstatements, fraud or errors that might exist.
- 3.8 The procedures the Due Diligence Service Provider will use to perform the work set out herein will not constitute an audit or review made in accordance with any generally accepted auditing or review standards. Accordingly, except in so far as is expressly stated in Appendix [7] the Due Diligence Service Provider will not express an opinion or give any other form of assurance on the financial statements or any other financial information (including prospective financial information) nor in the operating or internal controls of the [Applicant]. If the Due Diligence Service Provider were to perform additional procedures or perform an

¹ Since the forecasts/projections relate to the future, actual results are likely to be different from the projected results because events and circumstances frequently do not occur as expected, and the differences may be material.

audit or review in accordance with generally accepted auditing or review standards, other matters might come to the Due Diligence Service Provider's attention that may be reported to BIS – for example during the production of a Letter of Assurance in respect to unaudited historical financial figures provided by the [Applicant].

- 3.9 The Due Diligence findings shall not constitute recommendations to BIS as to whether or not BIS should proceed with the offer of the Grant.
- 3.10 [If applicable, where the Due Diligence Service Provider is also the Statutory auditor, the statutory audit work performed on the financial statements of [Applicant] is carried out in accordance with its statutory obligations and, for the avoidance of doubt, is subject to separate terms of engagement with the Applicant. This engagement will not be treated as having any effect on the firm's separate duties and responsibilities as [Applicant]'s statutory auditors. The Statutory Auditor's audit reports on the financial statements are made solely to [Applicant]'s members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. The Statutory Auditor's audit work is undertaken so that the Statutory Auditor might state to [Applicant]'s members those matters it is required to state to them in an auditor's report and for no other purpose. The Statutory Auditor's audits of [Applicant]'s financial statements are not planned or conducted to address or reflect matters in which anyone other than such members as a body may be interested for such purpose. In these circumstances, to the fullest extent permitted by law, the Statutory Auditor does not accept or assume any responsibility to anyone other than [Applicant] and [Applicant]'s members as a body, for its audit work, for its audit reports, or for the opinions the Statutory Auditor has formed in respect of those audits.] To the fullest extent permitted by law the Statutory Auditor does not and will not, by virtue of its work under this contract, assume or accept any duty of care or liability under this engagement to [Applicant] or to BIS or to any other party, whether in contract, negligence or otherwise in relation to the audits of [Applicant]'s financial statements.
- 3.11 In the event that the Due Diligence Service Provider is unable to compile a report in compliance with the requirements set out in Appendix [7] it will inform the Applicant and BIS of that fact at the earliest opportunity.

4 Form of the Due Diligence report

- 4.1 The Due Diligence report shall take the form of a written report covering the findings of the scope of work as set out in Appendix [7] and will be prepared on the following bases:
- 4.2 The Due Diligence report is prepared solely for the confidential use of the [Applicant] and BIS, including HMG, and solely for the purpose of submission to BIS in connection with the proposed grant as set out in the conditional Grant Offer Letter dated [date]. They may not be relied upon by the [Applicant] or BIS for any other purpose;
- 4.3 The Due Diligence report may contain Personal Data (as defined in the Data Protection Act 1998). BIS, [the Applicant] and the Due Diligence Service Provider, to the extent applicable, agree to comply with the Data Protection Act and in particular undertake to keep any Personal Data in the Due Diligence report confidential (save that BIS may share the Data with HMG as appropriate) and secure and agree not to use any Personal Data in the Due Diligence report for any purpose other than for the Applicant's application to BIS for a grant from the Regional Growth Fund.
- 4.4 Neither the [Applicant], BIS [or others] may rely on any oral or draft reports the Due Diligence Service Provider provides. The Due Diligence Service Provider accepts responsibility to the [Applicant] and to BIS for the final signed Due Diligence report only.
- 4.5 The report will be released to [Applicant] [and BIS] on the basis that it shall not be copied, referred to or disclosed, in whole or in part (save as otherwise permitted by agreed written terms or where disclosure is to HMG), without the Due Diligence Service Provider's prior written consent, except where (1) there is a legal right of access, including where such right of access arises under European Union law, as a result of a decision by the European Commission or as a result of an obligation under statute, for example the Freedom of Information Act 2000, or (2) disclosure is made voluntarily to the European Commission in connection with any notification or other communication to the European Commission which relates to the proposed grant. Without assuming or accepting any responsibility or liability in respect of the report to any party other than [Applicant] [and to BIS], the Due Diligence Service Provider acknowledges that where a third party exercises a legal right to obtain, or the European Commission is voluntarily provided with, a copy of the report from the Applicant or BIS (as applicable), the Applicant or BIS will inform that third party (including where relevant the European Commission) that the report is confidential and is provided to them

without any assumption of liability or responsibility on the part of the Due Diligence Service Provider;

- 4.6 Where appropriate and the Due Diligence Service Provider is a firm of statutory auditors, an Accountant's important notice may be attached to the Due Diligence report in a prominent position, substantially in the form "to the fullest extent permitted by law, except for the [Applicant] and the BIS, [the firm], its partners and staff neither owe nor accept any duty to any person (including, without limitation, any person who may use or refer to any of BIS's publications) and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by any person's reliance on this Due Diligence report".
- 4.7 The Due Diligence Service Provider shall have no responsibility under this engagement after the date of the final Due Diligence report, being the date on which the report is submitted to BIS, to monitor or consider the Applicant or to identify the occurrence of any subsequent event nor to assess the impact (if any) which any such subsequent event may have on the findings of the work. Nothing in this clause is intended to affect the Due Diligence Service Provider's responsibility, prior to the date of the report, to perform the work with reasonable skill and care in accordance with this agreement.

5 Liability Provisions

- 5.1 The Due Diligence Service Provider will perform the engagement with reasonable skill and care and accepts responsibility to the [Applicant] and BIS for losses, damages, costs or expenses ("losses") caused by its breach of contract, negligence or wilful default, subject to the following provisions:
- 5.2 The Due Diligence Service Provider will not be responsible or liable if and to the extent that 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 Due Diligence Service Provider, except where, on the basis of the enquiries normally undertaken by those undertaking due diligence work within the scope set out in these terms of engagement, it would have been reasonable for the Due Diligence Service Provider to discover such defects.
- 5.3 The Due Diligence Service Provider accepts liability without limit for the consequences of its own fraud and for any other liability which it is not permitted by law to limit or exclude.

- 5.4 Subject to the previous paragraph (5.1.2), the total liability of [the firm] whether in contract, tort (including negligence) or otherwise, to BIS, arising from or in connection with the work which is the subject of these terms (including any addition or variation to the work), shall be a minimum of £1,000,000 [or higher depending on amount of grant]. For the purposes of this clause the liability amount also relates to any other work carried out by the same firm in relation to the same Grant and must remain in place throughout the Monitoring Period (defined in Para 2 of Schedule 3 of the Conditional Grant Offer Letter and the subsequent Final Grant Offer Letter issued to the RGF Applicant).
- 5.5 The Due Diligence Service provider will provide Professional Indemnity Insurance cover directly to BIS with a minimum value of £2,000,000 for any one claim. This is not to be confused to a joint indemnity exposure with the RGF Applicant.
- 5.6 The [Applicant] and BIS agree that they will not bring any claims or proceedings against any individual partners, members, directors or employees of [the firm]. 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 Act is excluded.
- 5.7 Any claims, whether in contract, negligence or otherwise, must be formally commenced within [2] years (or a minimum of the duration of the Monitoring Period whichever is longest) after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the action and in any event no later than [4] years (or a minimum of the duration of the Monitoring Period whichever is longest) after the relevant report was issued (or, if no report was issued, when the Due Diligence Service Provider accepted the engagement in writing). This expressly overrides any statutory provision which would otherwise apply.

6 Fees

- 6.1 The Due Diligence Service Provider's fees, together with VAT and out-of-pocket expenses, will be agreed with and billed to the [Applicant]. BIS is not liable to pay the Due Diligence Service Provider's fees.

7 Quality of Service

7.1 The Due Diligence Service Provider will investigate all complaints. Where the Due Diligence Service Provider is also a member of the ICAEW, BIS and/or the [Applicant] have the right to take any complaint to the ICAEW. BIS and/or the [Applicant] may obtain an explanation of the mechanisms that operate in respect of a complaint to the ICAEW at www.icaew.co.uk/complaints or by writing to the ICAEW at the ICAEW Professional Standards Office, Metropolitan House, 321 Avebury Boulevard, Milton Keynes MK9 2FZ UK.

8 Providing Services to Other Parties

8.1 The Due Diligence Service Provider will not be prevented or restricted by virtue of the firm's relationship with the [Applicant] and BIS, including anything in these terms of engagement, from providing services to other clients. The firm's standard internal procedures shall ensure that confidential information communicated to the Due Diligence Service Provider during the course of an assignment will be maintained confidentially.

9 Applicable law and jurisdiction

9.1 This agreement (and all contractual and non-contractual rights and obligations relating to it) shall be governed by, and interpreted and construed in accordance with the law of England and Wales.

9.2 The [Applicant], BIS and [the firm] irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims and including in relation to the Parties' and BIS's contractual and non-contractual rights and obligations thereunder) 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 Freedom of Information Act 2000

10.1 If the Applicant receives or become aware of a request under the Freedom of Information Act 2000 for the disclosure of Confidential Information, it will inform [the firm] promptly of such request and ensure that any representations made by [the firm] within a reasonable period of time in relation to such request are fully taken into account when it responds to it.

10.2 If BIS receives a request under the Freedom of Information Act 2000 for the disclosure of Confidential Information, it will inform the Applicant promptly of such request and ensure that any representations made by the Applicant or the Due Diligence Service Provider within a reasonable period of time in relation to such request are fully taken into account when it responds to it. However, the decision whether or not to release the information rests with BIS.

11 Alteration to Terms

11.1 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 and BIS. These terms supersede any previous agreements and representations (unless based on fraud) between the Parties and BIS in respect of the scope of the Due Diligence work and the Due Diligence Service Provider's report or the obligations of any of the parties relating thereto (whether oral or written) and represents the entire agreement and understanding between the Parties and BIS. These terms do not affect any separate agreement in writing between the [Applicant] and Due Diligence Service Provider.

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Appendix A - Scope of Due Diligence

[As per standard template in Grant Offer Letter; please update using Applicants' Conditional Grant Offer Letter]

Executive summary

The executive summary will summarise the key findings:

- Sources and uses of funding;
- State aid ;
- Additionality;
- Minimum amount of aid needed
- Management, financial reporting and internal controls;
- Financial performance and position;
- Review of credibility of financial projections and timescales, including the supporting evidence;
- Review of employment impacts;
- Other grant assistance and grant offer letters still current and/or subject to continuing conditions;
- Parent financial performance and position;
- Management representations; and
- Any other points of relevance and interest that are identified in the work.

Sources and uses of funding

Obtain a breakdown of and enquire into and comment on the level and nature of supporting third party evidence on the following:

1. The total funding requirement for the Project;
2. The sources of funding for the Project including terms; and
3. The uses of funding for the Project.

State aid

Support will only be given to projects that comply with State aid rules on support to undertakings. Due Diligence on the State aid implications of the proposed RGF support is required in the following areas:

Common provisions <this section may be deleted where application is for Regional Investment Aid as the requirements are covered in the Regional Investment Aid section>

1. Confirm that the Project will take place in a sector compatible with Article 1 of the General Block Exemption Regulation: (http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=uriserv:OJ.L_.2014.187.01.0001.01.ENG);
2. Confirm that the aid will not be granted to a firm in difficulties within the meaning set out in the Community Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (C(2014) 4606/2, section 2.2) (point 20);
3. Confirm that work on the Project did not begin before the date on which the Company was informed that the aid would be given (Article 6 of the General Block Exemption Regulation), including setting out the evidence reviewed as part of this work;

Incentive Effect <This section is only applicable where the applicant is a large company>

Confirm that the Applicant has analysed in an internal document the viability of the aided project or activity with aid and without aid, confirm that this document contains a credible analysis and demonstration of the “incentive effect” of the aid as defined in Article 6 of the General Block Exemption Regulation 2014-20 and append a copy of such internal document to the Due Diligence Report that has been or is being submitted to BIS by the Applicant in accordance with paragraph 2(b) of this Grant Offer Letter.

Specifically, confirm that that documentation prepared by the applicant establishes that the aid will result in one or more of the following:

(a) in the case of regional investment aid: that a project is carried out, which would not have been carried out in the area concerned or would not have been sufficiently profitable for the beneficiary in the area concerned in the absence of the aid.

(b) in all other cases, that there is:

1. a material increase in the scope of the project/activity due to the aid, or

2. a material increase in the total amount spent by the beneficiary on the project/activity due to the aid, or
3. a material increase in the speed of completion of the project/activity concerned;

and confirm on which of the above grounds the incentive effect is established.

SME Investment aid

1. Confirm status of the applicant as an SME as defined in Annex I of the General Block Exemption Regulation 2014-20);
2. Confirm that the costs set out in Table [A2] of Schedule 2 of this Conditional Grant Offer Letter are eligible costs as defined in Article 17 – of the General Block Exemption Regulation 2014-20 and provide summaries of the categories of eligible expenditure; and
3. Confirm that the Applicant's calculation of the Gross Grant Equivalent and Aid Intensity of the aid is consistent with the provisions of Article 7 and Article 17 of the General Block Exemption Regulation 2014-20 and the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02). Annex a copy of the Gross Grant Equivalent calculation to the Due Diligence Report in a format that will allow Us to validate the calculation used.

Regional Investment aid

The State Aid rules governing Regional Investment aid are contained in the General Block Exemption Regulation 2014; and in the Guidelines on regional State aid for 2014-2020 (2013/C 209/01) (the Regional Aid Guidelines)

<http://eur->

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:209:0001:0045:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:209:0001:0045:EN:PDF).

1. Confirm that the Premises at which the Project is to be undertaken are located in an Assisted Area as defined in the Assisted Areas Order 2014 (SI 2014/1508):
<http://www.legislation.gov.uk/ukxi/2014/1508/contents/made>
2. [Confirm the status of the Company as an SME as defined in Annex I of the General Block Exemption Regulation 2014-20];

3. Confirm that the costs set out in Table [A2] of Schedule 2 of this Conditional Grant Offer Letter are eligible costs as defined in Article 14 of the General Block Exemption Regulation 2014-20 and at paragraphs 20(e), (h) and (z) of the Regional Aid Guidelines (and provide summaries of the categories of eligible expenditure;
4. [Confirm that aid calculated on the basis of the expected wage costs arising from job creation as a result of an investment project complies with the provisions in paragraphs 37 and 103 of the Regional Aid Guidelines;]
 - a. Confirm that the Applicant's calculation of the Gross Grant Equivalent and Aid Intensity of the RGF support is consistent with the provisions of Article 7 and Article 14 of the General Block Exemption Regulation 2014-20, paragraph 20 and Section 5.4 of the Regional Aid Guidelines, and the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02). This calculation should take into account any other aid for the project, whether it comes from local, regional, national or European Community sources, as set out in paragraph 92 of the Regional Aid Guidelines. Confirm that the Gross Grant Equivalent and Aid Intensity so calculated are within the relevant aid ceiling as set out in Article 4 and Article 14 of the General Block Exemption Regulation 2014-20 and Section 5.4 of the Regional Aid Guidelines. Annex a copy of the Gross Grant Equivalent calculation to the Due Diligence Report in a format that will allow Us to review the calculation used;
5. Confirm that the Project as proposed will comply with the provisions of the Regional Aid Guidelines as follows:
 - a. that the Project will take place in a sector to which the Regional Aid Guidelines apply (paragraphs 9-19);
 - b. that the aid will not be granted to a firm in difficulties within the meaning set out in the Community Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (C/2014) 4606/2, section 2.2) (paragraph 20);

- c. that work on the Project did not begin before the date on which the Company applied for aid (paragraphs 64-65);
- d. that the aid beneficiary is providing a financial contribution of at least 25% of the eligible costs (paragraph 38);
- e. with reference to management representations, that the Project does not form part of a larger project that could be regarded as a single investment project as defined in paragraph 20 of the Regional Aid Guidelines and Article 14(13) of the General Block Exemption Regulation 2014-20
- f. that the amount of aid is no more than the minimum required to induce additional investment or activity in the area concerned; and
- g. that the aid being granted does not constitute operating aid (working capital funding) (paragraph 16).

Research and Development and Innovation

The State aid rules governing support for Research and Development and Innovation are contained in the General Block Exemption Regulation 2014-20 and in The Framework for State Aid for Research and Development and Innovation C(2014)3282

http://ec.europa.eu/competition/state_aid/modernisation/rdi_framework_en.pdf

1. Confirm that the costs set out in Tables [B2] and [C2] of Schedule 2 of this Grant Offer Letter are eligible costs as defined in Article 25, Paragraph 3 of the General Block Exemption Regulation 2014-20;
2. Provide summaries of the categories of eligible expenditure and confirm the allocation of eligible costs to the categories of research (Fundamental Research, Industrial Research, Experimental Development and Feasibility Studies) defined in Article 2 (83-98) of the General Block Exemption Regulation 2014-20 and provide a summary explanation of why the aid is be considered to be compatible with the relevant category of research defined in Article 2 of the General Block Exemption Regulation 2014-20. For the avoidance of doubt, a reasoned argument will be required as to why each of the costs have been classified to each area. Where the allocation of costs / intervention rates

differ to those proposed by the Applicant in the application form, please explain and quantify the impact on the amount of Grant requested;

3. Provide a summary explanation of how and to what extent the activity to be supported fits the definition of the specified category of research as defined in Article 2 of the General Block Exemption Regulation 2014-20; and
4. Examine and confirm the Applicant's calculation of the Gross Grant Equivalent and Aid Intensity of the RGF support is consistent with the provisions of Article 7 and Article 25 of the General Block Exemption Regulation 2014-20 and the [Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02).] Annex a copy of the Gross Grant Equivalent calculation to the Due Diligence Report in a format that will allow Us to review the calculation used.

Training Aid

The State aid rules governing Training Aid are contained in the General Block Exemption Regulation 2014-20

1. Confirm that the costs set out in Table [D2] of Schedule 2 of this Conditional Grant Offer Letter are eligible costs as defined in Article 31 Paragraph 3 of the General Block Exemption Regulation 2014-20 and provide summaries of the categories of eligible expenditure;
2. Confirm that the supported activity is not training to ensure that companies comply with national mandatory standards on training; and
3. Examine and confirm the Applicant's calculation of the Gross Grant Equivalent and Aid Intensity of the Regional Growth Fund support is consistent with the provisions of Article 7 and Article 31 of the General Block Exemption Regulation 2014-20 and the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02). Annex a copy of the Gross Grant Equivalent calculation to the Due Diligence Report in a format that will allow Us to review the calculation used.

Notifiable aid

1. Determine whether the aid is notifiable under the terms of Article 4 of the General Block Exemption Regulation 2014-20, based on information provided by management. Where the aid is notifiable, review, comment on and include as part of the report the information provided by the beneficiary, including that relating to third parties, in full and final form, to allow BIS to proceed with the notification process in the manner determined by the European Commission.
2. Determine whether the Project is a large investment project as set out in Article 2 paragraph 52 of the General Block Exemption Regulation 2014-20 and paragraph 20 of the Regional Aid Guidelines, based on information provided by management. Where the Project is a large investment project, determine the adjusted aid amount, in accordance with Article 2, point 20 of the General Block Exemption Regulation 2014-20, to determine whether the aid is notifiable under Article 4 of that Regulation.

Information for publication

Collect and present validated information covering the following, which is required for publication under Article 9 of the General Block Exemption Regulation 2014-20 to inform notification of awards to the Commission. Specifically:

- a. Name of the beneficiary
- b. Beneficiary's identifier (i.e. company reference number, charity reference number or equivalent)
- c. Classification of enterprise size (SME/large) at the time of granting with reference to Annex I of the General Block Exemption Regulation 2014-20, taking into account all partner and linked enterprises as defined in paragraphs 2 and 3 of Article 3 of Annex I.
- d. Region in which the beneficiary is located, at NUTS level II ²
- e. Sector of activity at NACE group level³
- f. Aid element, expressed as full amount in national currency⁴

² NUTS — Nomenclature of Territorial Units for Statistics. Typically, the region is specified at level 2.

³ Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community ([OJ L 293, 24.10.1990, p. 1](#)), as amended by Commission Regulation (EEC) No 761/93 of 24 March 1993 ([OJ L 83, 3.4.1993, p. 1](#), and corrigendum, [OJ L 159, 11.7.1995, p. 31](#)).

⁴ Gross grant equivalent, or for risk finance schemes, the amount of the investment. For operating aid, the annual amount of aid per beneficiary can be provided. For fiscal schemes and for schemes under Articles 16

- g. Aid instrument⁵ (Grant/Interest rate subsidy, Loan/Repayable advances/Reimbursable grant, Guarantee, Tax advantage or tax exemption, Risk finance, Other (please specify))
- h. Date of granting
- i. Objective of the aid
- j. Granting authority
- k. For schemes under Articles 16 (Regional Urban Development Aid) and 21 (Risk Finance Aid), name of the entrusted entity, and the names of the selected financial intermediaries
- l. Reference of the aid measure⁶.

Additionality

Support will only be given for Projects, Packages and Programmes that will not be pursued in the absence of RGF support — i.e. RGF must lead to additional economic activity.

Assess the Applicant's additionality argument, described on part 1 of the RGF application form, including:

1. Whether the Project would proceed without RGF funding;
2. Any alternative ways the applicant may have to take the Project forward in the absence of RGF support; and
3. The minimum amount of funding required to allow the Project to proceed.

And comment thereon by performing one or more of the following:

1. Obtain information from the Applicant about the investment appraisal criteria used by the Applicant and/or its Group and its use in this case. Comment on such information including by reference to evidence provided by the Applicant and/or its Group to demonstrate that the appraisal criteria used for this evaluation are consistent with those used by the Applicant and/or its Group to evaluate projects more generally;

(Regional urban development aid) and 21 (Risk finance aid), this amount can be provided by the ranges set out in Article 9(2) of this Regulation.

⁵ If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument.

⁶ As provided by the Commission under the electronic procedure referred to in Article 11 of this Regulation.

2. Set out details of the precise location and strengths of the alternative option(s) for the Project. Comment on the level of the Applicant's knowledge that exists around the alternative scenario(s) as included within the application and evidence that the Project team has considered the alternatives. Obtain a comparison of the full discounted returns (NPV) to be earned by the Project taking into account all relevant factors for the preferred location with the alternative Project options and compare key differences with relevant historical trading data or other evidence.
3. Review the Applicant's sensitivity analysis for selected key differences for each of the scenarios.
4. [Additional tests to be tailored for cases that use a different additionality case, e.g. aid speeds project up, expands its scope or scale or reduces risks.]

Minimum amount of aid needed

All RGF Applicants have declared that the amount they have bid for represents the minimum sum necessary to execute their project, package or programme.

Review the Applicant's calculation for the amount of support needed. Comment on the analysis available to support their claim that this is the minimum amount needed to allow the Project, Package or Programme to proceed. Conclude whether the evidence provided by the Applicant supports this claim.

Assessing the Applicant's method and information used to determine the amount of support needed, may include:

1. examining any investment appraisal analysis undertaken (for example examine the hurdle rate(s) used, IRR rates on approved historic projects and their pay-backs);
2. the cash flow or profit projections used to compare this Project, Package or Programme against alternative options, including the 'do nothing' option where applicable;
3. the evidence underpinning the calculation of a funding gap for the Project, Package or Programme by the Applicant and whether this

supports the amount and form of aid applied for (this may include non financial considerations used to justify the level of funding as well as financial constraints imposed by external parties such as banking covenants, which may be taken at a higher level than Project, Package or Programme, such as division or entity where this is appropriate); and

4. sensitivity analysis using historic performance to determine the potential impact this may have on the Applicant's calculation of the amount of support needed (including sensitivity to foreign exchange rates, free cash flow conversion rates, profitability, etc.).

[Alternative tests to be tailored for cases that use a different justification for the amount of aid applied for.]

Management, financial reporting and internal controls

Undertake a high level review and comment on:

1. the Applicant's corporate governance arrangements, project governance and anti-corruption policies, based primarily on discussions with, and evidence provided by, the Applicant;
2. Issues of key person dependence, gaps in management, succession plans, financial management and governance;
3. Remuneration policy and procedures, including dividends; and
4. Overview of financial, management and internal financial reporting procedures, including key accounting policies, compliance with UK GAAP and issues arising from the Board summary report of the auditors

Financial Performance and Position

Undertake a high level analysis and comment on the financial performance and balance sheet position of the UK entity business and/or UK group (as appropriate) with reference to:

1. The last three years audited financial statements;
2. Last full year unaudited management accounts, where audited accounts for that year are not available;

3. Latest management accounts with comparison to budget.

This analysis will include the tests set out in Annex 1 of this letter.

Review of financial projections and timescales, including the supporting evidence

Based on information provided by the Applicant, undertake an analysis and comment on the viability of the Project and in particular:

1. Whether the information within the Project's present business plan is consistent with the Project detailed in the original RGF Application, highlighting any material differences (material being defined as a variation of +/- 5% to the business plan presented by the Applicant to Us);
2. Review the Project and business plan to identify the key elements in order to assess the extent of evidence supporting the Project objectives and the forecast assumptions with reference to other appropriate evidence e.g, historical experience, financial buffers, contingency planning and material risks to the overall delivery of the Project and draw our attention to any areas of weakness that are identified during the review;
3. Understand and comment on the process of setting budgets / project planning and historical forecasting accuracy. Comment on the processes and the internal and external teams that have been assembled to manage the Project and draw our attention to any areas of weakness that are identified during the review ;
4. Whether the Company and/or Group has experience of similar projects and whether these were successfully executed or were there delays or difficulties in execution, project failures, or budget overspends. Comment on the processes and controls the Company has in place to mitigate such risks and draw our attention to any areas of weakness that are identified during the review;
5. Current project status;
6. Comment on the status and level of commitment of the finance arrangements for the Project including as appropriate contributions from the UK company, parent, third party equity, bank finance etc., identifying

the current status, key risks and the contingency planning in this regard;
and

7. Comment on the ability of material cost overruns to be funded by the Company and/or its parent to ensure the Project is completed and on the apparent limit to such funding relative to the proposed Project.

Review of Employment Impacts

Undertake a high level analysis, and comment on:

1. By reference to HR/Payroll information, confirm the baseline employment at the Premises on the date of the application (XX MONTH YEAR) and at the start of the Project;
2. Confirm that the anticipated Site Total employment at the end of the Project at the Premises is consistent with the financial projections and is based upon reasonable assumptions;
3. Confirm that the anticipated Site Total employment at the end of the Project at the Premises is consistent with the original RGF application, stating any reasons for a divergence;
4. The credibility of the safeguarding argument presented by management – comment and provide an opinion on the jobs deemed to be safeguarded are at imminent risk of being lost if the Project does not proceed; and
5. By reference to management representations, confirm the number of jobs still in conditions under previous grant assistance contracts.

Other grant assistance and grant offer letters still current and/or subject to continuing conditions

By reference to management representations and any other available sources (including relevant grant assistance contracts provided to You by the Company), comment on whether the Project description and forecast deliverables, capital expenditure and jobs to be created and/or safeguarded appear to be separate and distinct from any other grant assistance and grant offer letters identified as still current and/or subject to conditions.

Parent financial performance and position

Review and comment on the following in respect of [name, company registration and registered address of parent]:

1. Its ability to meet its contractual commitments under the RGF grant application, as applicable, and its capability to meet any cost overruns to support the Company in general and specifically to complete the Project, using as appropriate public information and Applicant information as well as discussions with [name of parent] (to include their level of commitment to the Project); and
2. Financial position, key ratios and management's going concern consideration using as appropriate available public information, results, presentations, management information, brokers reports, share price trends and market capitalisation. Comments to include:
 - a. Summary of the parent's balance sheet as the last audited year end including principal categories of assets and liabilities, contingent or unrecorded liabilities (if identified), the net borrowing position and gearing;
 - b. Profitability including EBITDA;
 - c. Cashflow generation;
 - d. Level of available liquidity, maturity profile of debt;
 - e. Key current credit rating agency ratings for the group (including changes in trends in rating over the last 24 months); and
 - f. Litigation (if identified).

Management representations

The factual sections of the final report are to be shown to the management of the Applicant to confirm that, to the best of their knowledge, the facts, as stated, are accurate in all material respects, any opinions attributable to them are fairly stated and reasonably held, they have made available all significant information relevant to the final report of which they have knowledge and they are not aware of any material matters relevant to our terms of reference

which have been excluded. The final report will comment on the absence of, or limitations to, such management representations.

Annex 1: Due Diligence Requirements on Historical Financial Information

Historical Trading Results

1. Summary of the profit and loss accounts per statutory accounts for the last 3 years plus current year to date trading (management accounts). Explanation of basis of preparation, including:
 - a. Brief outline of key accounting policies;
 - b. impact of any significant changes in the last 3 years;
 - c. impact of any restatements for consistency.
2. Analysis of sales development as appropriate, e.g. by product (price and volume), activity, geography, mix changes, seasonal patterns and trends (if material). Brief overview of customer base; highlighting any concentration issues.
3. Margin trends by product or other relevant sub-category.
4. Comment on significant fluctuations in overheads. Provide analysis of fixed versus variable cost base and comment on evidence of historical ability to manage such cost base during market downturn or period of growth.
5. Analysis of profit margins and EBITDA and reasons for significant fluctuations over time
6. Comment on the quality of earnings
7. Analysis of and commentary on items below EBITDA:
 - a. “extraordinary” items
 - b. interest
 - c. details of any prior period adjustments.
8. Brief details of any material long term and/or onerous contracts.

9. Year to date trading per latest management accounts, compare to budget and previous year to date and identify and quantify key trends in results.

Historical Cash Flows

10. Headline overview of operating and net cash flows for the last 2 years and latest period available and brief comment on historical cash conversion record. How much cash and cash equivalents does the business currently hold?
11. Analysis of working capital profile by key component, comment on intra-month working capital requirement and current basis of funding working capital requirement.

Historical Net Assets

12. Overview of net assets at each year end for the last three financial years and at latest available date with an explanation of significant trends.
13. Overview of intangible fixed assets.
14. If significant stock levels held, analysis of inventories, including basis of accounting, existence, ageing and basis of provisioning.
15. Trends in current and quick ratio. Issues with bad debts (current and historical). Assessment of the Applicant's provisions on the Balance Sheet.
16. Analysis of the net interest bearing debt by component and maturity (including cash and equivalent, bank overdrafts, loans, intra group financing, finance leases, other interest bearing liabilities).
17. Any terms of borrowings significantly different from market conditions; any exposure to specific financing instruments; contingent liabilities and capital commitments as disclosed by directors.
18. Summary and implication of any off balance sheet financing arrangements.
19. A summary of any current, pending or threatened litigation by or against the Applicant Company, as disclosed by the Directors and their

quantification of any potential liabilities or contingencies associated therewith.

[<For awards containing Research and Development and Innovation Aid >]

Annex 2: Research and Development and Innovation Eligible Cost Guidance Table

This table explains the coverage and limits of eligible spend within the Research and Development and Innovation Aid section (Section 4, Article 25) of the General Block Exemption Regulation 2014-20 (Regulation active from 1st July 2014).

Figure 1.

A. Nature of the expenditure:	B. Section of the General Block Exemption Regulation this comes under:	C. Expenditure is eligible to the following extent, with reference to Column D, where appropriate)	D. Additional guidance on this (where appropriate):
Payroll costs (researchers, technicians and supporting staff).	Section 4, Article 25, Point 3 (a)	To the extent and for the period that they are proportionally working on the R&D project.	n/a
Instruments and equipment (lifespan of which do not exceed the end of the	Section 4, Article 25, Point 3 (b)	To the extent and for the period that they are proportionally used on the R&D project.	n/a

A. Nature of the expenditure:	B. Section of the General Block Exemption Regulation this comes under:	C. Expenditure is eligible to the following extent, with reference to Column D, where appropriate)	D. Additional guidance on this (where appropriate):
project)			
Instruments and equipment (lifespan of which goes beyond the end of the project)	Section 4, Article 25, Point 3 (b)	Depreciation costs corresponding to the lifespan of the project, to the extent they are used for the R&D project.	Depreciation must be calculated on the basis of generally accepted good accounting principles.
Land	Section 4, Article 25, Point 3 (c)	The extent and for the period they are proportionally working on the R&D project.	n/a
Buildings	Section 4, Article 25, Point 3 (c)	Depreciation costs corresponding to the lifespan of the project, to the extent they are used for the R&D project.	Depreciation must be calculated on the basis of generally accepted good accounting

A. Nature of the expenditure:	B. Section of the General Block Exemption Regulation this comes under:	C. Expenditure is eligible to the following extent, with reference to Column D, where appropriate)	D. Additional guidance on this (where appropriate):
			principles.
Contractual research	Section 4, Article 25, Point 3 (d)	Cost (bought or licenced) sourced externally, directly related to the R&D project.	Transaction must be carried out at arm's length, at market rates and with no element of collusion.
Technical knowledge	Section 4, Article 25, Point 3 (d)	Cost (bought or licenced) sourced externally, directly related to the R&D project.	Transaction must be carried out at arm's length, at market rates and with no element of collusion.
Patents	Section 4, Article 25, Point 3	Cost (bought or licenced) sourced externally, directly	Transaction must be carried out

A. Nature of the expenditure:	B. Section of the General Block Exemption Regulation this comes under:	C. Expenditure is eligible to the following extent, with reference to Column D, where appropriate)	D. Additional guidance on this (where appropriate):
	(d)	related to the R&D project.	at arm's length, at market rates and with no element of collusion.
Consultancy (or equivalent services) used exclusively for research activity)	Section 4, Article 25, Point 3 (d)	Cost (bought or licenced) sourced externally, directly related to the R&D project	Transaction must be carried out at arm's length, at market rates and with no element of collusion.
Overheads	Section 4, Article 25, Point 3 (e)	Only additional overheads incurred directly as the result of the R&D project.	n/a

A. Nature of the expenditure:	B. Section of the General Block Exemption Regulation this comes under:	C. Expenditure is eligible to the following extent, with reference to Column D, where appropriate)	D. Additional guidance on this (where appropriate):
Materials, supplies or similar products	Section 4, Article 25, Point 3 (e)	Only additional overheads incurred directly as the result of the R&D project.	n/a

Aid Intensity Reckoner (Research and Development and Innovation Aid)

The aid intensity for your project **should not exceed that specified in Row F** for the type of aid contained in the triggers of your offer letter. This should also be at or below the overall cap stated in Row G below:

Figure 2.

		Fundamental	Industrial	Experimental	Feasibility
A	Basic	100%	50%	25%	50%
B	Small SME	n/a	+20%	+20%	+20%
C	Medium SME	n/a	+10%	+10%	+10%
D	Collaborative Categories (as specified in Article 25, Point 6(b))	n/a	+15%	+15%	n/a
E	Appraisal or Cap Adjustment (case specific)	-/+ % or n/a	-/+ % or n/a	-/+ % or n/a	-/+ % or n/a
F	Aid Intensity for this activity in your project	0%	0%	0%	0%
G	Aid should not exceed cap of:	100%	80%	60%	70%

[<For awards containing Training Aid >]

Annex 3: Training Eligible Cost Guidance Table

This table explains the coverage and limits of eligible spend within the Training Aid section (Section 5, Article 31) of the General Block Exemption Regulation 2014-20 (Regulation active from 1st July 2014).

Figure 1.

A. Nature of the expenditure:	B. Section of the General Block Exemption Regulation this comes under:	C. Expenditure is eligible to the following extent, with reference to Column D, where appropriate)	D. Additional guidance on this (where appropriate):
Personnel Costs (trainers)	Section 5, Article 31, Point 3 (a)	For the hours during which they participate in the training activity.	n/a
Personnel Costs (trainees)	Section 5, Article 31, Point 3 (d)	For the hours during which they participate in the training activity.	n/a
Travel Expenses (trainers and trainees)	Section 5, Article 31, Point 3 (b)	Costs incurred in direct relation to the training activity.	n/a
Materials and	Section 5, Article	Costs incurred in direct relation to	n/a

A. Nature of the expenditure:	B. Section of the General Block Exemption Regulation this comes under:	C. Expenditure is eligible to the following extent, with reference to Column D, where appropriate)	D. Additional guidance on this (where appropriate):
Supplies	31, Point 3 (b)	the training activity.	
Tools and Equipment	Section 5, Article 31, Point 3 (b)	Depreciation costs to the extent they are exclusively used for the training activity	Depreciation must be calculated on the basis of generally accepted good accounting principles.
Accommodation for (trainees/workers) with Disabilities	Section 5, Article 31, Point 3 (b)	Minimum necessary to enable participation in the training activity.	n/a
Advisory Services	Section 5, Article 31, Point 3 (c)	Costs incurred in direct relation to the training activity.	n/a
Rent, Overheads and Administration Costs	Section 5, Article 31, Point 3 (d)	For the hours the actual training activity takes place (excludes planning).	n/a

Aid Intensity Reckoner (Training Aid)

The aid intensity for your project should not exceed that specified in Row F which should also be below the overall cap stated in Row G below:

Figure 2.

a	Standard	50%
b	Small SME	+20%
c	Medium SME	+10%
d	Disabilities/disadvantaged Workers	+10%
e	Appraisal or Cap Adjustment (case specific)	-/+%
f	Aid Intensity for your project	0%
g	Aid should not exceed cap of:	70%

WITHDRAWN



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Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000
Email: enquiries@bis.gsi.gov.uk

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