



Department  
for Business  
Innovation & Skills

Employer Ownership

Terms of Engagement for  
Accountants' Reports

JUNE 2015

WITHDRAWN

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## A. Introduction

1. This document provides the pre-agreed terms of engagement on which **“the grant recipients”**, engage accountants to perform a reasonable assurance engagement and report to the Department for Business, Innovation and Skills (“BIS”), **“the grant paying body”**, and the grant recipient in connection with the Employer Ownership Pilot (EOP) / Employer Ownership Fund (EOF).
2. BIS accepts that an agreement between the grant recipient, its reporting accountants and BIS on these terms is formed when the accountants sign and submit to BIS a report as set out in the section CI herein. NB: BIS will not need to sign anything. By publishing this document, BIS confirms that these pre-agreed terms form its agreement with the grant recipient and the reporting accountants. Once the accountants’ report is submitted to BIS in accordance with these terms, BIS will accept that an agreement is formed. If the terms of the standardised engagement letter are to be revised, BIS will need to confirm its acceptance of the new terms before an agreement is formed.
3. The grant recipient and the accountant may agree additional engagement terms between themselves, but these terms do not affect the rights and obligations of BIS in respect of the grant or the grant report.
4. In these terms of engagement:
  - ‘the grant-paying body’** ‘BIS’ refers to the body that is providing the grant funding. The grants are administered on behalf of BIS by the Skills Funding Agency, an executive agency of BIS;
  - ‘the grant recipient’** refers to the organisation that is required to submit the report to the grant-paying body; and
  - ‘the accountant’** refers to the grant recipient’s independent reporting accountants. “Independent” means that the reporting accountants are independent with respect to the Grant Recipient within the meaning of the Code of Ethics for Professional Accountants issued by the International Federation of Accountants.
5. The grant recipient is required to submit to BIS reports as set out in section C below that are also signed by an accountant to provide independent assurance. These terms of engagement set out the basis on which the accountant will sign the report.
6. All Projects are required to submit annual external accountants’ reports, except where the annual grant value is below £20,000 or where otherwise specified by BIS.

## B. The Grant Recipient’s Responsibilities

7. The grant recipient is responsible for producing the information, maintaining proper records complying with the terms of any legislation or regulatory requirements and BIS’s terms and conditions of grant (“the grant conditions”) and providing relevant information to BIS 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.

8. The management of the grant recipient will make available to the accountant all records, correspondence, information and explanations that the accountant considers necessary to enable the accountant to perform the accountant's work.

9 The grant recipient and BIS accept that the ability of the accountant to perform its 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 accountant.

10. The accountant accepts that, whether or not the grant recipient meets its obligations, the accountant remains under an obligation to BIS to perform its work with reasonable skill and care. The failure by the grant recipient to meet its obligations may cause the accountant to qualify its report or be unable to provide a report.

## **C. Scope of the Accountant's Work**

11. The grant recipient will provide the accountant with such information, explanations and documentation that the accountant considers necessary to carry out its responsibilities. The accountant will seek written representations from management in relation to matters for which independent corroboration is not available. The accountant will also seek confirmation that any significant matters of which the accountant should be aware have been brought to the accountant's attention.

12. The accountant will perform the following work in relation to reports required by the grant-paying body:

- a) Grant return: The accountant will carry out a reasonable level of assurance assignment as set out in the terms and conditions of the grant and subject to any adverse findings will produce a report in the form set out in the relevant Schedule of the Grant Offer Letter, in line with the ICAEW's technical release AAF 01/10, Framework document for accountants' reports on grant claims.
- b) Where a limited level of assurance only is required by BIS, when required, the procedures adopted are specified in the appendix to the Accountant's report.
- c) The accountant will not subject the information provided by the grant recipient to checking or verification except to the extent expressly stated. While the accountant will perform the accountant's work with reasonable skill and care, the accountant's work should not be relied upon to disclose all misstatements, fraud or errors that might exist.

## **D. Form of the accountant's report**

13. The accountant's reports are prepared on the following bases:

- a) The accountant's reports are prepared solely for the confidential use of the grant recipient and BIS and solely for the purpose of submission to BIS in

connection with BIS's requirements in connection with [EOP/EOF]. They may not be relied upon by the grant recipient or BIS for any other purpose;

- b) without imposing on the accountant and without the accountant assuming (or being perceived as assuming) any duty or responsibility and without imposing or accepting any liability to anyone except the grant recipient and BIS, BIS and the grant recipient may disclose the reports to others who demonstrate statutory or regulatory rights of access to the report;
- c) neither the grant recipient, BIS, nor any other parties may rely on any oral or draft reports the accountant provides. The accountant accepts responsibility to the grant recipient and BIS for the accountant's final signed reports only;
- d) the report will be prepared solely for the confidential use of the grant recipient and BIS, and solely for the purpose of facilitating the grant claim. The report will be released to the grant recipient 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), without our prior written consent, except where requested by a Minister who is a member of the UK Government, or where there is a legal or statutory right of access. Without assuming or accepting any responsibility or liability in respect of the report to any party other than the grant recipient and BIS, we acknowledge that the grant recipient and BIS (or one of them) may be required to disclose this report to parties demonstrating a statutory right to see it, to enable such parties to exercise their statutory rights of access to this report;
- e) to the fullest extent permitted by law, except for the grant recipient and BIS, the firm of accountants, 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 the accountant's work or reports.

## E. Liability provisions

14. The accountant will perform the engagement with reasonable skill and care and accepts responsibility to the grant recipient and BIS for losses, damages, costs or expenses ('losses') caused by its breach of contract, negligence or wilful misconduct, subject to the following provisions:

- a) The accountant 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 accountant, except where, on the basis of the enquiries normally undertaken by accountants within the scope set out in these terms of engagement, it would have been reasonable for the accountant to discover such defects;
- b) The accountant 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;

- c) Subject to the previous paragraph (13b), the total aggregate liability of the accountant whether in contract, tort (including negligence) or otherwise, to BIS and the grant recipient, 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 determined in accordance with the capping formula shown in Table 1.

**Table 1: Capping formula for accountants' liability**

Amount of Grant being reported on in a claim	Proportion of Amount	Total Cap
Up to £1m	100%	Amount of grant included in claim
Between £1m and £5m	100% of first £1m + 50% of remainder	£1m + 50% of amount in excess of £1m
Between £5m and £15m	100% of first £1m + 50% of amount between £1m and £5m + 20% of remainder	£3m + 20% of amount in excess of £5m
Above £15M	Negotiate	Negotiate <sup>1</sup>

15. The grant recipient and BIS agree that they will not bring any claims or proceedings against any individual partners, members, directors or employees of the accountant. 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.

16. Any claims, whether in contract, negligence or otherwise, must be formally commenced within 4 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 and in any event no later than 6 years after the relevant report was issued (or, if no report was issued, when the accountant accepted the engagement in writing). This expressly overrides any statutory provision which would otherwise apply.

17. This engagement is separate from and unrelated to the accountant's audit work on the financial statements of the grant recipient for the purposes of any applicable statutory or regulatory or other auditing framework and nothing herein creates obligations or liabilities regarding the accountant's audit work, which would not otherwise exist.

<sup>1</sup> BIS will negotiate the comparatively rare claims above £15m on an individual basis and accountants should contact the BIS advice helpline [employerownershipenquiries@bis.gsi.gov.uk](mailto:employerownershipenquiries@bis.gsi.gov.uk) in advance of agreeing their engagement letter with their client to discuss such cases.

## **F. Fees**

18. The accountant's fees, together with VAT and out-of-pocket expenses, will be agreed with and billed to the grant recipient. BIS is not liable to pay the accountant's fees.

## **G. Quality of service**

19. The accountant will investigate all complaints. BIS or the grant recipient have the right to take any complaint to the ICAEW. BIS or the grant recipient may obtain an explanation of the mechanisms that operate in respect of a complaint to the ICAEW at [www.icaew.co.uk/complaints](http://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.

## **H. Providing services to other parties**

20. The accountant will not be prevented or restricted by virtue of the accountant's relationship with the grant recipient and BIS, including anything in these Standard Terms, from providing services to other clients. The accountant's standard internal procedures are designed to ensure that confidential information communicated to the accountant during the course of an assignment will be maintained confidentially.

## **I. Applicable law and jurisdiction**

21. This agreement shall be governed by, and interpreted and construed in accordance with English law.

22. The grant recipient, BIS and the accountant irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) 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.

## **J. Alteration to terms**

23. 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 (unless based on fraud) between the parties in respect of the scope of the accountant's work and the accountant's report or the obligations of any of the parties relating thereto (whether oral or written) and (save to the extent that the grant recipient and the accountant agree additional engagement terms between themselves) represents the entire agreement and understanding between the parties. Any such additional terms will not affect BIS' rights under these terms of engagement.

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