



European Structural Funds Programmes 2007-13

Reporting Accountant Terms of Engagement

The following are the Terms of Engagement on which the Project Sponsor agrees to engage a Reporting Accountant to certify expenditure, income, and to prepare an Accountant's Report in accordance with the "Welsh European Funding Office European structural funds programmes 2007-2013: Instructions for Reporting Accountants".

An agreement between the Project Sponsor and the Reporting Accountant is formed on the terms contained in these Terms of Engagement when the Project Sponsor and the Reporting Accountant sign and submit to the Wales European Funding Office (WEFO) these Terms of Engagement.

The provisions of these Terms of Engagement are made for the benefit of WEFO, as well as the Project Sponsor, and accordingly, WEFO may in their own right enforce any of the provisions of these Terms of Engagement in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

Please note that the Terms of Engagement must be signed by both the Project Sponsor and the Reporting Accountant and submitted to WEFO within six months of the Approved Expenditure Start Date (or earlier if the first audit is due within the first six months). See paragraph 10 of these Instructions for further details.

Definitions:

The following terms, which are used in these Terms of Engagement, are defined as follows:

the **Project Sponsor** - means the organisation that is in receipt of structural fund support from the Welsh European Funding Office.

the **Reporting Accountant** - means the accountant who is engaged by the Project Sponsor to certify expenditure, income, and to prepare an Accountant's Report in accordance with the "Welsh European Funding Office European structural funds programmes 2007-2013: Instructions for Reporting Accountants".

Grant Conditions - mean the terms and conditions of grant as contained in the grant offer letter.

Accountant's Report(s) - mean the document(s) prepared by the Reporting Accountant on behalf of the Project Sponsor for submission to WEFO in accordance with the "Welsh European Funding Office European structural funds programmes 2007-2013: Instructions for Reporting Accountants"

1 Introduction

1.1 The Project Sponsor is required to submit to WEFO reports that are prepared and signed by a Reporting Accountant to certify expenditure and income, and which are prepared in accordance with the “Welsh European Funding Office European structural funds programmes 2007-2013: Instructions for Reporting Accountants”. These Terms of Engagement set out the basis on which the Reporting Accountant will prepare and sign the Accountant’s Report.

2 The Grant Recipient’s Responsibilities

2.1 The Project Sponsor is responsible for producing the claim for payment; maintaining proper records; complying with the terms of any legislation or regulatory requirements and WEFO’s Grant Conditions; and providing relevant information to WEFO on a basis in accordance with the requirements of the Grant Conditions. The Project Sponsor is responsible for ensuring that the non-financial records can be reconciled to the financial records.

2.2 The Project Sponsor shall make available to the Reporting Accountant all records, correspondence, information and explanations that the Reporting Accountant considers necessary to enable the Reporting Accountant to perform his work.

2.3 The Project Sponsor and WEFO accept that the ability of the Reporting Accountant to perform his work effectively depends upon the Project Sponsor providing full and free access to all financial and other records. The Project Sponsor shall ensure that any such records held by a third party are made available to the Reporting Accountant.

2.4 The Reporting Accountant accepts that, whether or not the Project Sponsor meets its obligations, the Reporting Accountant remains under an obligation to WEFO to perform his/her work with reasonable skill and care. The failure by the Project Sponsor to meet its obligations may cause the Reporting Accountant to qualify his/her Accountant’s Report or be unable to provide an Accountant’s Report. The Reporting Accountant shall qualify his/her Accountant’s Report if he/she is of the opinion that not all information has been provided by the Project Sponsor.

3 Scope of the Reporting Accountant’s Work

3.1 The Project Sponsor shall provide the Reporting Accountant with such information, explanations and documentation that the Reporting Accountant considers necessary to carry out his/her responsibilities. The Reporting Accountant shall seek written representations from the Project Sponsor in relation to matters for which independent corroboration is not available. The Reporting Accountant shall also seek confirmation that any significant matters of which the Reporting Accountant should be aware have been brought to the Reporting Accountant’s attention.

3.2 The Reporting Accountant shall perform the following work in relation to reports required by WEFO:

3.2.1 The Reporting Accountant shall carry out the work specified in the “Welsh European Funding Office European structural funds programmes 2007-2013: Instructions for Reporting Accountants” and shall produce an Accountant’s Report in the form set out in those Instructions.

3.3 The Reporting Accountant shall not subject the information provided by the Project Sponsor to checking or verification except to the extent expressly stated. Whilst the Reporting Accountant will perform his/her work with reasonable skill and care, the Reporting Accountant's work should not be relied upon to disclose all misstatements, fraud or errors that might exist.

4 Form of the Accountant's Report

4.1 The Accountant's Report shall be prepared on the following basis:

4.1.1 The Accountant's Report shall be presented in the format contained in Annex D of the "Welsh European Funding Office European structural funds programmes 2007-2013: Instructions for Reporting Accountants";

4.1.2 The Accountant's Report shall be prepared solely for the confidential use of the Project Sponsor and WEFO, and solely for the purpose of submission to WEFO in connection with WEFO's requirements in relation to the 2007-2013 structural funds. The Accountant's Report shall not be relied upon by the Project Sponsor, or WEFO for any other purpose except as provided in 4.1.3 below;

4.1.3 WEFO shall only disclose the Accountant's Report to others who may have statutory rights of access to the Accountant's Report, the European Commission and the Wales Audit Office. WEFO shall also have the right to disclose the Accountant's Report to other departments within the Welsh Assembly Government if it is considered necessary. All parties note that there may be actual or potential liability to the European Commission that may arise out of the eligibility and/or use of monies by the Project Sponsor;

4.1.4 Neither the Project Sponsor nor WEFO may rely on any oral or draft reports the Reporting Accountant provides. The Reporting Accountant accepts responsibility to the Project Sponsor and WEFO for the Reporting Accountant's final signed Accountant's Report only;

4.1.5 The Accountant's Report must not be recited or referred to in whole or in part in any other document (including, without limitation, any publication issued by WEFO) without the prior written approval of the Reporting Accountant;

4.1.6 Except to the extent required by court order, law or regulation or to assist in the resolution of any court proceedings the Accountant's Report 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 WEFO's publications);

5 Liability Provisions

5.1 The Reporting Accountant shall prepare his/her Accountant's Report with reasonable skill and care and shall be liable to the Project Sponsor and WEFO 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 Reporting Accountant shall not be so 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 Reporting Accountant, except where, on the basis of the enquiries normally undertaken by Reporting Accountants within the scope set out in these Terms of Engagement, it would have been reasonable for the Reporting Accountant to discover such defects;

Version: 2 / March 2011 – Applicable for all claims examined that contain expenditure from 1 April 2011

5.1.2 The Reporting 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;

5.1.3 Subject to the previous paragraph (5.1.2), the total aggregate liability of the Reporting Accountant whether in contract, tort (including negligence) or otherwise, to WEFO and the Project Sponsor 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 grant which is the subject of the Accountants Report;

5.2 Any claim or action founded on tort or contract must be formally commenced within 6 years of the date that the cause of action accrued. That is, in the case of tort, 6 years from the date of the alleged negligence; in the case of contract, 6 years from the date of the alleged breach of contract.

5.3 Appointment under these Terms of Engagement is separate from, and unrelated to, the Reporting Accountant's audit work on the financial statements of the Project Sponsor for the purposes of the Companies Act 1985 (or its successor) or other legislation and nothing herein creates obligations or liabilities regarding the Reporting Accountant's statutory audit work, which would not otherwise exist.

6 Fees

6.1 The Reporting Accountant's fees, together with VAT and out of pocket expenses, shall be billed to the Project Sponsor. In no circumstances will WEFO be liable to pay the Reporting Accountant's fees.

7 Quality of Service

7.1 The Reporting Accountant shall investigate all complaints made to it in writing by the Project Sponsor and WEFO within 60 days of receiving the complaint. WEFO and/or the Project Sponsor shall have the right to take any complaint to the Institute of Chartered Accountants in England and Wales ("the ICAEW") if the complaint cannot be resolved by the Reporting Accountant to either parties satisfaction. WEFO and the Project Sponsor 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. To contact the ICAEW write to the Professional Standards Office, Silbury Court, 412-416 Silbury Boulevard, Central Milton Keynes, MK9 2AF.

8 Providing Services to Other Parties

8.1 The Reporting Accountant shall not be prevented or restricted by virtue of the Reporting Accountant's relationship with the Project Sponsor and WEFO, including anything in these Terms of Engagement, from providing services to other clients. The Reporting Accountant shall ensure that confidential information communicated to the Reporting Accountant during the course of the Accountant's Report preparation shall be maintained confidentially.

9 Applicable Law and Jurisdiction

9.1 The agreement that shall be formed on the terms contained in these Terms of Engagement when the Project Sponsor and the Reporting Accountant signs and submits to the Grant Paying Body these Terms of Engagement shall be governed by, and interpreted and construed in accordance with English and Welsh law.

9.2 The Project Sponsor, WEFO and the Reporting Accountant irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise 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 made by the Project Sponsor, WEFO and the Reporting Accountant in respect of the scope of the Reporting Accountant's work, the Accountant's Report or the obligations of any of those named within these Terms of Engagement (whether oral or written) and represents the entire understanding between the parties.

Project Sponsor:

Project Name:

Signed:

Dated:

Reporting Accountant:

Signed:

Dated: