



## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

TECHNICAL RELEASE 02/16AAF (REVISED)

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## GLOSSARY OF TERMS

TERMS	MEANING
Independent Accountant	The accountant that is required to report on the Regulatory Accounts. The independent accountant may also be the auditor of the regulated entity's statutory accounts.
IFRS	International Financial Reporting Standards, as adopted by the European Union.
RAGs	Regulatory Accounting Guidelines issued by, or agreed with, individual regulators. RAGs specify how Regulatory Accounts are to be prepared by the Regulated Entities. In certain industries, RAGs may be supplemented by more detailed framework documentation which is not prepared by, or agreed with, the Regulator
Regulated Activities	Those activities of the Regulated Entities covered by the powers of the Regulators, usually defined in the Regulated Entities' regulatory licence.
Regulated Entities	Those entities whose activities are covered by the powers of the Regulators (as defined above) and who are required to provide Regulatory Accounts and/or Regulatory Information that is required to be reported upon by Independent Accountants.
Regulators/Regulatory Bodies	Government appointed regulatory bodies that oversee the activities of Regulated Entities. For the purposes of this document, these are: <ul style="list-style-type: none"> <li>• Ofgem (Office of Gas and Electricity Markets)</li> <li>• Ofwat (The Water Services Regulation Authority)</li> <li>• CAA (Civil Aviation Authority)</li> <li>• ORR (Office of Rail and Road)</li> <li>• URegNI (Utility Regulator, Northern Ireland)</li> <li>• Ofcom (Office of Communications).</li> </ul>
Regulatory Accounts	Accounts prepared under bases and principles and incorporating information specified by, or agreed with, the Regulators.
Regulatory Information	Information provided to the Regulators by the Regulated Entities in connection with their regulated operations.
Regulatory License	The instrument of appointment of the Regulated Entity.
Regulatory reports/Reporting	Reports made by Regulated Entities and/or accountants to Regulators.
Regulatory Return	A return of Regulatory Information (which can include Regulatory Accounts) provided to the Regulator by the Regulated Entities. Certain items within the Return are required to be reported upon by Independent Accountants as part of their regulatory reporting.
Third Party	Any party, other than the Regulator, who has access to Regulatory Accounts, Regulatory Returns or Regulatory Information.
UK GAAP	United Kingdom Generally Accepted Accounting Practice.

## SECTION 1: INTRODUCTION

1. This guidance, ICAEW Technical Release 02/16AAF (Revised) is issued by the Audit and Assurance Faculty of ICAEW in June 2019 to assist Independent Accountants when asked to provide reports to Regulators of Regulated Entities and in applying ICAEW Technical Release 10/12AAF *Reporting to third parties to this reporting*. ICAEW Technical Release 02/16AAF (Revised) updates ICAEW Technical Release 02/16AAF, issued in January 2016. ICAEW Technical Release 02/16AAF updated ICAEW Technical Release Audit 05/03 *Reporting to regulators of regulated entities*, originally issued in 2003.
2. This guidance specifically excludes reporting to other regulatory bodies, for example the Financial Conduct Authority and the Prudential Regulation Authority.
3. Changes since the last version comprise:
  - Revisions to the report on the Regulatory Accounts to align with International Standards on Auditing (ISAs) (UK).
4. Audit 05/03 was originally issued following the formation of a working group comprising of representatives from the accountancy profession and the ICAEW, and consultation with the Regulators. The Regulated Entities were included in the consultation process.
5. This guidance aims to promote consistency in the practices adopted in respect of Regulatory Reporting by Independent Accountants, taking into consideration the requirements of Regulators.

### Background

6. Regulated Entities are required to submit a large volume of information to Regulators, much of which is financial in nature.
7. The exact reporting requirements can vary significantly between industries and are determined and set out in regulatory licences and in related guidance and instructions issued by the Regulators. In some cases, elements of this information are required to be reported upon by Independent Accountants, often being the Regulated Entities' statutory auditors.
8. This guidance is for the use of Independent Accountants to assist them where they are conducting work which involves reporting on Regulatory Information which is addressed to Regulators and is required to be produced by the Regulated Entity under its Licence or otherwise by the Regulator. However, this guidance should not be regarded as a substitute for the specific legal and professional advice which firms may need to take on particular matters or engagements.

## SECTION 2: DUTY OF CARE AND ENGAGEMENT CONTRACTS

9. This section considers the issue of reliance by the Regulators on the work of Independent Accountants reporting on Regulatory Information and provides guidance on this matter. It also considers the question of the potential for reliance by others on Regulatory Reports, and the steps which may be taken to clarify the scope of the Independent Accountants' work and responsibility to such third parties.

### Who might rely on the accountants' work?

10. ICAEW Technical Release 10/12AAF *Reporting to third parties* provides the following guidance:

#### Extract from ICAEW Technical Release 10/12AAF

- When professional accountants know that their report has been requested by a third party and that the third party will rely on the report, there is a risk, in the absence of an effective disclaimer, that the professional accountants owe the third party a duty to take reasonable care in preparing and providing the report. If the professional accountants do owe the third party such a duty, they could be liable to that third party if they were negligent and the third party suffered loss in reliance on the report.
- It is vital, therefore, for professional accountants to understand who the third party is, why it requires the report and the extent of loss which the third party could suffer in reliance on the report. If, for example, the third party runs a scheme for compensating the client's customers in the event of the client's insolvency, the professional accountants' risk is much greater than if, for example, the third party's only role is to perform marketing for a particular service sector.
- The professional accountants' understanding of the risks involved in providing a report underpins the decisions they make about whether to accept the engagement and on what terms. Depending upon the circumstances professional accountants either:
  - a) accept that they owe a duty of care to the third party and enter into an engagement contract with the third party, including provisions limiting liability if appropriate; or
  - b) proceed with an engagement for their client but before allowing the third party access to their report, require the third party to acknowledge in writing that the professional accountants owe the third party no duty of care; or
  - c) proceed with an engagement for their client but disclaim or limit any liability or duty to the third party by notice in their report; or
  - d) do not accept the engagement.
- If professional accountants regard a report as high risk, they agree to provide the report only if the third party is a party to the engagement contract or the third party has acknowledged in writing that the professional accountants owe no duty of care to the third party. If professional accountants regard a report as low risk, typically because the third party could suffer little or no loss in reliance on the report, then they may decide to provide the report without contracting with the third party. In this case a notice can be included in the report disclaiming or limiting the accountants' liability to the third party. In addition to that notice, it may be appropriate for the professional accountants to write to the third party, in advance of the third party receiving the report, notifying the third party of the basis on which the report will be provided. Also, if a third party writes to the professional accountants in an attempt to indicate reliance on a report, the professional accountants consider whether it is reasonable to accept such reliance. Where it is not, a disclaimer is given in writing.
- Professional accountants are advised not to allow their reports to be provided to a third party unless the basis and extent of their liability to the third party is clear and agreed.

Accountants refer to the guidance in ICAEW Technical Releases 04/06AAF *Assurance engagements: management of risk and liability* and 09/15BL *Managing the professional liability of accountants* and consider the consequences of The Contracts (Rights of Third Parties) Act 1999 – see the guidance in ICAEW Technical Release Audit 4/00.

11. There are a number of parties who might be interested in the contents of information published or otherwise supplied by Regulated Entities to their Regulatory Bodies. As well as the Regulatory Body itself, these might include others in the same industry, potential entrants to the market, academics, journalists, analysts, consumer bodies and consumers/members of the public at large. Independent Accountants do not accept that they owe a duty of care or have any other legal responsibility to any person in respect of their report on Regulatory Information except those who have engaged the Independent Accountants to perform services under a written engagement contract or with whom the Independent Accountants have otherwise agreed in writing to accept such a responsibility.
12. Regulatory Accounts and Regulatory Returns are required by an individual Regulator, who specifies or agrees what they should contain and who uses that information as part of its overall role in regulating the regulated entity. In these circumstances, Independent Accountants only accept that they owe a responsibility/duty of care to the Regulated Entity and the Regulator if either:
  - i) both the Regulated Entity and the Regulator are parties to the written engagement contract with the Independent Accountants (“a tri-partite engagement contract”). The tri-partite engagement contract contains appropriate terms clarifying and limiting the scope and extent of the Independent Accountants’ responsibilities and liability; or
  - ii) the Regulated Entity alone is a party to a written engagement contract with the Independent Accountants (“a bi-partite engagement contract”) which makes provision for the Independent Accountants to accept separately a responsibility also to the Regulator, provided that the Regulator and the Independent Accountants can agree in writing the basis of this responsibility (“written notice”) AND the Regulator and the Independent Accountants actually agree, in writing, the basis on which this responsibility/duty of care is extended to the Regulator.

The bi-partite engagement contract contains appropriate terms clarifying and limiting the scope and extent of the Independent Accountants’ responsibilities and liability, and includes a mechanism enabling Independent Accountants to extend their responsibilities to the Regulator through the written notice on the basis that the Independent Accountants’ liability is capped, in aggregate, at a level no greater than the amount which would have been payable by them to the Regulated Entity under the bi-partite engagement contract. It will be a matter for the Regulator and the Regulated Entity to agree how the aggregate liability will be shared and recorded in the bi-partite engagement contract and the written notice. Should such an agreement not be reached, the Independent Accountants will consider capping their liability in aggregate.

The written notice between the Independent Accountants and the Regulator will confirm that the Independent Accountants accept a responsibility to the Regulator for the Independent Accountants’ report (even though the Regulator is a not an addressee of the bi-partite engagement contract) provided that the Regulator agrees, in writing, that this will be on the same terms as the bi-partite engagement contract, a copy of which will be attached to the written notice, as if the Regulator had been an original addressee of the bi-partite engagement contract. An example of a written notice between the Independent Accountants and the Regulator is set out as Appendix E.

13. If the Regulator will not agree the basis on which the Independent Accountants are willing to accept a duty of care to the Regulator, either through (a) a tri-partite engagement contract, or (b) a bi-partite engagement contract supplemented by the written notice, the Independent Accountants do not accept a duty of care to the Regulator and will make that clear in their report. In these circumstances the Independent Accountants disapply in their bi-partite engagement letter any rights that the Regulator might otherwise have acquired under the

Contracts (Rights of Third Parties) Act 1999 and send a copy of the bi-partite engagement contract to the Regulator.

14. Independent Accountants do not accept a responsibility/duty of care to other parties who may have an interest in, or who may ultimately use, the Regulatory Accounts, Regulatory Returns or other Regulatory Information reported upon by the Independent Accountants unless the Independent Accountants have identified the other party and agreed with the other party, in writing, the basis on which they accept this duty of care. Where a report is made by Independent Accountants to a Regulated Entity and a Regulator under a tri-partite engagement contract, that report will include a specific disclaimer of any liability or duty to any Third Party. Where a report is made by the Independent Accountants to a Regulated Entity and/or a Regulator under a bi-partite engagement contract, whether or not supplemented by written notice, that report will include a specific disclaimer of any liability or duty to any other person other than those to whom the Independent Accountants have addressed their report. The report is addressed to the Regulator as well as to the Company without any disclaimer of responsibility to the Regulator only where the Regulator has signed a tri-partite engagement contract or there is a bi-partite engagement contract supplemented by written notice signed by the Regulator. In other cases the report may be addressed to the Company and the Regulator (to meet the requirements of the Regulatory Licence) but includes a disclaimer under which responsibility is accepted to the Company only and co-addressing to the Regulator is expressed to be only to meet the requirements of the Regulatory Licence.
15. Where the Regulator has indicated to the Independent Accountants that they would like a Third Party to be able to rely on the Independent Accountants' report and the Independent Accountants are in agreement with this, the Independent Accountants include in their report a clear statement that the Third Party can only rely on the report after becoming a party to the engagement contract for that report or agree with the Third Party a written notice specifying the basis on which the Independent Accountants extend their duty of care to the Third Party.

### Guidance on the content of engagement contracts

16. ICAEW Technical Release 10/12AAF includes the following guidance on engagement contracts:

#### Extract from ICAEW Technical Release 10/12AAF

Engagement contracts include the following:

- a clear unambiguous description of the scope of work to be performed and the form of report to be provided using defined terms where appropriate to avoid misunderstandings;
- a description of the client's obligations and the client's responsibility for the information on which the professional accountants report;
- clarification that the engagement is separate from the statutory audit and that the professional accountants have no duty of care to the third party in relation to the statutory audit;
- an appropriate liability cap<sup>1</sup>, agreed having regard to the nature of the work being performed, the level of fee charged and other relevant factors. Any limitation of liability must be negotiated and agreed with the client, and must be fair and reasonable in compliance with the Unfair Contract Terms Act 1977<sup>2</sup>; and
- details of the addressee for the report, limitations as to the purpose for which the report is prepared and restrictions on who is entitled to see and rely upon the report and on the distribution of it;

<sup>1</sup> Professional accountants consider whether the liability cap is reasonable given the specific circumstances of the engagement.

<sup>2</sup> See the guidance in ICAEW Technical Release 09/15BL *Managing the professional liability of accountants*.

- a copy of the form of report to be provided.

### Tri-partite engagement contracts

17. The above guidance from ICAEW Technical Release 10/12AAF is incorporated into the tri-partite engagement contract, and is applied to both the Regulator and the Regulated Entity. In addition, in the circumstances covered by this guidance, engagement contracts signed by the Regulator, the Regulated Entity and the Independent Accountants include the following:
- i) an acknowledgement of a duty of care by the Independent Accountants both to the Regulated Entity and to the Regulator;
  - ii) an explicit denial of liability by the Independent Accountants to any other party other than the Regulator and the Regulated Entity whose information is being reported on. This denial should also be incorporated into the Independent Accountants' report (see paragraph 33 i);
  - iii) an acknowledgement from the Regulator and the Regulated Entity that:
    - a) wherever the complete Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report is published or otherwise made available, the Independent Accountants' report will also be published or otherwise made available;
    - b) wherever substantial extracts<sup>3</sup> from the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report are published or otherwise made available, and reference is made to the fact that they are audited or otherwise examined by Independent Accountants, there will be explicit statements: a) that the information published is only an extract; and b) about the limitation of scope of the Independent Accountants' report and the duty of care owed by the Independent Accountants; and c) referring to where the full set of Regulatory Accounts or Regulatory Information can be found or otherwise obtained;
    - c) wherever any other information is referenced from the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report, there will be an explicit reference by the Regulator to the source of that information and the limitation of scope of the Independent Accountants' report and the duty of care owed by the Independent Accountants;
  - iv) clarification that the Independent Accountants' opinion on the Regulatory Accounts is separate from their opinion on the statutory accounts of the Company, which are prepared for a different purpose;
  - v) clarification, where relevant, that the Regulatory Accounts or other Regulatory Information is prepared by disaggregating balances recorded in the general ledgers and other accounting records of the Company maintained in accordance with the Companies Act 2006 and used, in accordance with that Act, for the preparation of the Company's statutory financial statements;
  - vi) a statement, where appropriate, that no additional tests will be performed of the transactions and balances which are recorded in the general ledgers of the Regulated Entity other than those carried out in performing the audit of the statutory financial statements that include the Regulated Entity;
  - vii) a statement, where appropriate, clarifying what work is done in respect of any other information accompanying the Regulatory Accounts or other Regulatory Information, and confirmation if no audit opinion is expressed on this;
  - viii) clarification about the obligations, if any, of the Independent Accountants to attend tri-partite meetings with the Regulator, including frequency and timing, subject matter,

<sup>3</sup> For example, reproduction of primary statements as a whole.



arrangements for minutes and if appropriate the form of hold harmless letters to precede such meetings;

- ix) clarification of how any liability cap will be split between the Regulated Entity and the Regulator;
  - x) a statement that the nature and format of the Regulatory Accounts or other Regulatory Information, RAGs and Regulatory Returns are determined by the individual Regulators, and that it is not appropriate for the Independent Accountants to assess whether the information being reported upon is suitable or appropriate for the Regulator's purpose. Independent Accountants do not agree to provide any implicit or explicit affirmation that the information being reported upon is suitable for the Regulator's purpose;
  - xi) confirmation that there are differences between IFRS or UK GAAP and the basis of any information supplied to the Regulators. The engagement contract and the Independent Accountants' report will include a statement that financial information other than that prepared on the basis of IFRS or UK GAAP does not necessarily represent a true and fair view of the financial performance or financial position of a company as shown in financial statements prepared in accordance with the Companies Act 2006;
  - xii) an example of the type of audit report/opinion that the Independent Accountants would expect to provide if the results of the audit work are satisfactory. This will be based on the example report set out in Appendix B, amended as appropriate for the particular circumstances of the engagement; and
  - xiii) a statement that nothing in the tri-partite engagement contract is intended to, nor should it, affect or in any way alter the relationship or the rights and obligations between the Regulated Entity and the Regulator as set out in the Regulatory Licence.
18. An example of a tri-partite engagement contract is shown at Appendix C. This should be tailored as necessary for the circumstances of each particular engagement.

### **Bi-partite engagement contracts supplemented by a written notice**

19. The guidance from ICAEW Technical Release 10/12AAF is also incorporated into bi-partite engagement contracts where the Regulator has agreed to sign a written notice, and is applied to both the Regulator and the Regulated Entity. In addition, in the circumstances covered by this guidance, bi-partite engagement contracts signed by the Regulated Entity and the Independent Accountants include the following:
- i) an acknowledgement of a duty of care by the Independent Accountants to the Regulated Entity and an agreement to extend the duty of care to the Regulator provided that it agrees appropriate terms with the Independent Accountants in the form of a written notice;
  - ii) an explicit denial of liability by the Independent Accountants to any persons to whom they have not agreed, in writing, to accept responsibility. This denial should also be incorporated into the Independent Accountants' report (see paragraph 33 i);
  - iii) an acknowledgement from the Regulated Entity (and from the Regulator where the Regulator has agreed to sign a written notice<sup>4</sup>) that:
    - a) wherever the complete Regulatory Information covered by the Independent Accountants' report is published or otherwise made available, the Independent Accountant's report will also be published or otherwise made available; and
    - b) wherever substantial extracts<sup>5</sup> from the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report are published or otherwise made available, and reference is made to the fact that they are audited or otherwise examined by Independent Accountants, there will be explicit

<sup>4</sup> See Appendix E, example of a written notice.

<sup>5</sup> For example, reproduction of primary statements as a whole.

- statements: a) that the information published is only an extract; and b) about the limitation of scope of the Independent Accountants' report and the duty of care owed by the Independent Accountants; and c) referring to where the full set of Regulatory Accounts or Regulatory Information can be found or otherwise obtained;
- c) wherever any other information is referenced from the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report, there will be an explicit reference by the Regulator to the source of that information and the limitation of scope of the Independent Accountants' report and the duty of care owed by the Independent Accountants;
  - iv) clarification that the Independent Accountants' opinion on the Regulatory Accounts is separate from their opinion on the statutory accounts of the Company, which are prepared for a different purpose;
  - v) clarification, where relevant, that the Regulatory Accounts are/other Regulatory Information is prepared by disaggregating balances recorded in the general ledgers and other accounting records of the Company maintained in accordance with the Companies Act 2006 and used, in accordance with that Act, for the preparation of the Company's statutory financial statements;
  - vi) a statement, where appropriate, that no additional tests will be performed of the transactions and balances which are recorded in the general ledgers of the Regulated Entity other than those carried out in performing the audit of the statutory financial statements that include the Regulated Entity;
  - vii) a statement, where appropriate, clarifying what work is done in respect of any other information accompanying the Regulatory Accounts or other Regulatory Information, and confirmation if no audit opinion is expressed on this;
  - viii) clarification about the obligations, if any, of the Independent Accountants to attend tripartite meetings with the Regulator, including frequency and timing, subject matter, arrangements for minutes and if appropriate the form of hold harmless letters to precede such meetings;
  - ix) clarification of how any liability cap will be split between the Regulated Entity and the Regulator;
  - x) a statement that the nature and format of the Regulatory Accounts or other Regulatory Information, RAGs and Regulatory Returns are determined by the individual Regulators, and that it is not appropriate for the Independent Accountants to assess whether the information being reported upon is suitable or appropriate for the Regulator's purpose. Independent Accountants do not agree to provide any implicit or explicit affirmation that the information being reported upon is suitable for the Regulator's purpose;
  - xi) confirmation that there are differences between IFRS or UK GAAP and the basis of any information supplied to the Regulators. The engagement contract and the Independent Accountants' report will include a statement that financial information other than that prepared on the basis of IFRS or UK GAAP does not necessarily represent a true and fair view of the financial performance or financial position of a company as shown in financial statements prepared in accordance with the Companies Act 2006;
  - xii) an example of the type of audit report/opinion that the Independent Accountants would expect to provide if the results of the audit work are satisfactory. This will be based on the example report set out in Appendix B, amended as appropriate for the particular circumstances of the engagement; and
  - xiii) a statement that nothing in the bi-partite engagement contract is intended to, nor should it, affect or in any way alter the relationship or the rights and obligations between the Regulated Entity and the Regulator as set out in the Regulatory Licence.

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20. An example of a bi-partite engagement contract is shown at Appendix D. This should be tailored as necessary for the circumstances of each particular engagement.

### **Bi-partite engagement contracts not supplemented by a written notice**

21. If the Regulator will not agree engagement terms, either on a tri-partite basis or on a bi-partite basis supplemented by written notice, the Independent Accountants will agree a bi-partite engagement contract with the Regulated Entity incorporating the relevant aspects of paragraph 19 (that is excluding irrelevant aspects, such as items (viii), (ix) and (x), and will expressly deny any duty of care to the Regulator in the engagement contract and their report.

### SECTION 3: FORM OF REPORT

22. This section provides guidance on the form of report that is issued by Independent Accountants reporting on Regulatory Accounts and other Regulatory Information.

#### The Regulatory Licence

23. As noted in Section 1 of this guidance, the Regulatory Licence prescribes the Regulatory Information that it requires the Regulated Entity to report to the Regulator.
24. The Regulated Entity is usually required, under the terms of its Regulatory Licence, to procure an Independent Accountants' report, addressed to the Regulated Entity and/or the Regulator, supporting certain of the Regulatory Information submitted by the Regulated Entity to the Regulator.
25. Where a report on Regulatory Information is to be addressed to the Regulator and a duty of care is acknowledged to the Regulator, Independent Accountants agree either a tri-partite engagement contract with the Regulator and the Regulated Entity or a bi-partite engagement contract with the Regulated Entity supplemented by written notice with the Regulator, in accordance with the guidance set out in Section 2 (Duty of care and engagement contracts) of this guidance.

#### Regulatory Accounts

26. ISA (UK) 800 (Special Considerations—Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks) sets out the requirements when financial statements are prepared in accordance with a special purpose framework that is designed to meet the financial information needs of specific users, as is the case for Regulatory Accounts which are not prepared in accordance with the Companies Act 2006 nor necessarily in accordance with IFRS or UK GAAP.
27. When forming an opinion and reporting on special purpose financial statements, the requirements in ISA (UK) 700 (Forming an Opinion and Reporting on Financial Statements) apply to reports issued by Independent Accountants and the reports on the Regulatory Accounts should include the following matters:
- a) a title that clearly indicates it is the report of an Independent Accountant;
  - b) addressed, as appropriate, based on the circumstances of the engagement;
  - c) an 'Opinion' section as the first section of the Independent Accountant's report;
  - d) a 'Basis for opinion' section directly following the 'Opinion' section;
  - e) report, where applicable, on going concern;
  - f) report, where applicable, on other information accompanying the Regulatory Accounts;
  - g) a section describing those charged with governance's responsibilities for the preparation of the financial statements;
  - h) a section describing the responsibilities of the Independent Accountant;
  - i) a section addressing other reporting responsibilities of the Independent Accountant;
  - j) the signature of the Independent Accountant;
  - k) the name of the location of the jurisdiction where the Independent Accountant practices; and
  - l) the date of the report.
28. The report on special purpose financial statements is required to include an Emphasis of Matter paragraph alerting users of the Independent Accountant's report that the Regulatory Accounts are prepared in accordance with a special purpose framework and that, as a result, the Regulatory Accounts may not be suitable for another purpose.

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29. The use of a standard format for Independent Accountants' reports on financial statements assists the reader to follow the report's contents. The section headings indicate to the reader the nature of the matters contained in the section concerned: for example, where a modified opinion is expressed under ISA (UK) 705 (Modifications to the Opinion in the Independent Auditor's Report), the 'Basis for opinion' section is renamed to 'Basis for qualified/adverse/disclaimer of opinion' and the appropriate heading 'Qualified opinion/adverse opinion/disclaimer of opinion' is used.
30. Independent Accountants draft each section of their report on financial statements to reflect the requirements which apply to the particular engagement. However, the use of common language in Independent Accountants' reports assists the reader's understanding.
31. Where the entity is required by its regulatory licence, or voluntarily chooses, to adopt the UK Corporate Governance Code, Independent Accountants would not be required to follow the requirements of ISA (UK) 701 (Communicating Key Audit Matters in the Independent Auditor's Report) for the Regulatory Accounts as these are special purpose financial statements, although this additional reporting would be required for any general purpose financial statements, such as statutory financial statements prepared under the Companies Act 2006.
32. Independent Accountants will also refer to ISA (UK) 706 (Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report).
33. The guidance drawn from ISAs (UK) 700, 706 and 800 is incorporated into the form of report issued by Independent Accountants. In addition, opinions expressed by Independent Accountants on Regulatory Accounts include the following:
  - i) a statement clarifying to whom the Independent Accountants accept a responsibility, and to whom they do not<sup>6</sup>;
  - ii) an emphasis of matter paragraph:
    - setting out the basis of the preparation of the Regulatory Accounts, for example in accordance with the RAGs and stating that the nature, form and content of Regulatory Accounts are determined by the Regulator, and that it is not appropriate for the auditors/ Independent Accountants or the directors to assess whether the nature of the information being reported upon is suitable or appropriate for the Regulator's purposes; and
    - containing a statement that the Regulatory Accounts are separate from the statutory financial statements of the Company and have not been prepared on the basis of IFRS or UK GAAP, and that financial information other than that prepared on the basis of IFRS or UK GAAP does not necessarily represent a true and fair view of the financial position of a company.
34. Independent Accountants make clear, in their report, the Regulatory Information on which they are providing assurance, and that on which they are not. Where the Regulatory Information is part of a wider report or Regulatory Return, those additional matters being considered in connection with the Independent Accountants' report are clearly identified.
35. The Independent Accountants' report on Regulatory Accounts will be based on the example unmodified report set out at Appendix B, changed as appropriate for the particular circumstances of the engagement. Where changes are made, Independent Accountants will use existing guidance (for example ICAEW Technical Release 10/12AAF and ISA (UK) 700) in making those changes. Where such changes result in a departure from ISAs (UK), the Independent Accountant will follow the guidance in ISA (UK) 705 which will be reflected in the Independent Accountants' Report on the Regulatory Accounts.
36. An example of such a departure would arise if the Regulatory Accounts are an integral part of a broader Regulatory Return. If the Independent Accountants did not read the other

<sup>6</sup> ICAEW has taken the advice of Leading Counsel in respect of appropriate wording to do this. The suggested wording is that in the last section of the example report in Appendix B.

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

information contained in the Regulatory Return for apparent misstatements therein, or any material inconsistency with the audited Regulatory Accounts as required under ISA (UK) 720 (The Auditor's Responsibilities Relating to Other Information), then non-compliance with ISA (UK) 720 will be referred to in the 'Other information' section of the report.

### **Other Regulatory Information/Regulatory Returns**

37. When reporting on other Regulatory Information, Independent Accountants follow the guidance set out in ICAEW Technical Release 10/12AAF, ISAs (UK) 700, 706, 800 and, where applicable, 705 and this guidance.

## SECTION 4: MATERIALITY

38. This section considers the assessment of materiality in respect of work performed, and reports issued, by Independent Accountants reporting on Regulatory Accounts and other Regulatory Information, and provides guidance on this matter.

### General guidance

39. Materiality is considered in ISA (UK) 320 (Materiality in Planning and Performing an Audit) and ISA (UK) 450 (Evaluation of Misstatements Identified During the Audit). ISA (UK) 320 explains that although there is no definition of materiality:
- Misstatements, including omissions, are considered to be material if they, individually or in the aggregate, could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements;
  - Judgments about materiality are made in light of surrounding circumstances, and are affected by the size or nature of a misstatement, or a combination of both; and
  - Judgments about matters that are material to users of the financial statements are based on a consideration of the common financial information needs of users as a group. The possible effect of misstatements on specific individual users, whose needs may vary widely, is not considered.
40. Materiality is a matter of professional judgement for the Independent Accountants/auditors, based on their understanding of the circumstances of the engagement and communications with the addressees of their report.

### Regulatory Accounts

41. There is a growing trend, amongst Regulators, to draft licence conditions that require the Regulated Entity to include a number of different analyses of their business segments and/or operations within the Regulatory Accounts. In providing their report, Independent Accountants assess materiality in the context of the Regulatory Accounts as a whole, taking together the component analyses/disclosures in the Regulatory Accounts, rather than each component analysis/disclosure separately.
42. Where the Regulator is an addressee to the Independent Accountants' report, the Regulator may specify, with supporting reasons, particular factors that it considers to be material in the context of the Regulatory Accounts and the Independent Accountants' report. These factors are specified in the engagement contract, discussed in Section 2 of this guidance, and incorporated into the Independent Accountants' assessment of materiality. Independent Accountants plan their work to gain reasonable assurance that the Regulatory Accounts are free from material misstatement, whether caused by fraud or other error. Where, as a consequence of considering the Regulator's specified matters/factors, the Independent Accountants are required to perform additional procedures to provide the level of assurance required, they assess and agree with the parties to the engagement contract the scope of their work and the likely impact on audit fees for performing this work.
43. Although Independent Accountants consider the individual factors that the Regulator has asked them to consider in assessing materiality for the Regulatory Accounts, they only express an opinion on the Regulatory Accounts as a whole, and not on those individual factors.
44. Where the Regulator requires specific factors to be reported upon by the Independent Accountants, the Independent Accountants agree a list of procedures ('Agreed Upon Procedures') that they will perform for the Regulator. These procedures are specified within the engagement contract with the Regulator. The Independent Accountants report the findings of the procedures separately from the Regulatory Accounts opinion, by way of a factual report to the Regulator. The Independent Accountants do not express an opinion on the results of the Agreed Upon Procedures, nor the appropriateness of these procedures for

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

the purposes of the Regulator. The engagement contract and report for the 'Agreed Upon Procedures' include a statement that the Regulator needs to make its own assessment of the appropriateness of the Agreed Upon Procedures and the reported findings.

45. Where Agreed Upon Procedures are required in addition to an opinion on the Regulatory Accounts, Independent Accountants may choose not to complete their work nor express their opinion on the Regulatory Accounts until:
- i) the Agreed Upon Procedures that have been specified by the Regulator have been completed and reported upon; and
  - ii) the Regulator has provided assurance to the Independent Accountants that nothing has come to the attention of the Regulator from that report (or otherwise) that indicates that there are any matters that the Regulator believes the Independent Accountants should take into account in arriving at their opinion on the Regulatory Accounts. If such matters do exist, the Independent Accountants will consider, in arriving at their opinion on the Regulatory Accounts, the matters noted by the Regulator and/or agree additional Agreed Upon Procedures with the Regulator.

### **Other Regulatory Information/Regulatory Returns**

46. When reporting on Regulatory Information, the Independent Accountants follow the principles set out in ISAs (UK) 320 and 450, as appropriate.



## SECTION 5: WORKING WITH INDEPENDENT EXPERTS

47. This section considers the use of other experts in respect of work performed, and reports issued, by Independent Accountants reporting on Regulatory Accounts and other Regulatory Information, and provides guidance on this matter.

### Background

48. The provision of opinions on Regulatory Information may involve work with, or reliance upon, other independent experts, for example there may be reliance upon technical/engineering experts to determine whether the cost of projects should be capitalised or expensed. In addition, other independent experts may work with, or place reliance upon the Independent Accountants' work or report in discharging their own reporting responsibilities.

### Independent Accountants rely on other independent experts

49. Guidance in respect of the use of auditor's experts is contained within ISA (UK) 620 (Using the Work of an Auditor's Expert), which states that 'The auditor has sole responsibility for the audit opinion expressed, and that responsibility is not reduced by the auditor's use of the work of an auditor's expert' [paragraph 3] and 'If using the work of an auditor's expert, [the auditor shall] determine whether that work is adequate for the auditor's purposes' [paragraph 5(b)].
50. Where the Independent Accountants have performed audit procedures and expressed an unmodified audit opinion, auditors are required not to refer to the work of an auditor's expert in an auditor's report unless required by law or regulation to do so. Where such a reference is required because such reference is relevant to an understanding of the reason for the modification, the auditor is required to indicate that such reference does not reduce the auditor's responsibility for that opinion.
51. Where the Independent Accountants have performed Agreed Upon Procedures and the report provided does not include an audit opinion, it is expected that the use and/or findings of the expert would be referred to in that report, unless such reference is clearly not required. Such Agreed Upon Procedures and report would include, for example, Agreed Upon Procedures that the Independent Accountants may agree with the Regulator in relation to the Regulated Entity's compliance with Regulatory Accounting Guidelines which may include steps such as obtaining the opinion of the Regulated Entity's appointed technical consultants (sometimes referred to as the reporter) for example, as to the appropriateness of capital expenditure outlay and tendering procedures.
52. The Independent Accountants would need the consent of the expert prior to making reference to, and/or including extracts from the expert's report in the Independent Accountants' report.

### Independent experts rely on work performed by the Independent Accountants

53. The Independent Accountants may be requested by a Third Party to perform certain procedures in connection with that Third Party's own regulatory reporting. For example, the Third Party (who may itself be an independent expert) may ask the Independent Accountants to verify that certain financial information is correctly extracted from a company's accounting records when reporting on information to be included in Regulatory Returns.
54. In such circumstances, the Independent Accountants obtain permission from the Regulated Entity prior to agreeing to do the work, and agree a tri-partite engagement contract with the Regulated Entity and the independent expert in accordance with the guidance set out in ICAEW Technical Release 10/12AAF and Section 2 of this guidance.
55. The form of report issued to the independent expert should be prepared in accordance with the guidance set out in ISA (UK) 700 and Section 3 of this guidance.

## APPENDIX A: REGULATORY ACCOUNTS

There is no precise definition of Regulatory Accounts, either in law or in practice, although they are commonly referred to by Regulatory Bodies, Regulated Entities and accountants and within RAGs and the Regulated Entities' licence arrangements.

Regulatory Accounts are analogous to financial statements prepared under the Companies Act, but are usually prepared under some variation of, or other basis to, a fair presentation financial reporting framework, such as IFRS or UK GAAP<sup>7</sup>. For such Regulatory Accounts a 'prepared, in all material respects, in accordance with' opinion is used. Financial information other than that prepared on the basis of a fair presentation financial reporting framework, such as IFRS or UK GAAP, does not necessarily represent a true and fair view of the financial performance or financial position of a company as shown in financial statements prepared in accordance with the Companies Act 2006.

When the Regulatory Accounts are prepared in accordance with a fair presentation financial reporting framework, such as IFRS or UK GAAP, a 'present fairly, in all material respects' or 'give a true and fair view' opinion is used.

Therefore the decision as to whether the opinion refers to 'present fairly' or 'true and fair', or 'prepared in accordance with' is driven solely by the nature of the financial reporting framework used to prepare the Regulatory Accounts. Both types of opinion are for audits, conducted in accordance with auditing standards, which provide reasonable assurance that the Regulatory Accounts are free from material misstatement, whether due to fraud or error, and involve obtaining sufficient and appropriate audit evidence to provide a basis for the opinion.

The opinion in the example report in Appendix B assumes that the financial reporting framework for the Regulatory Accounts is not a fair presentation financial reporting framework. Where the Regulatory Accounts are prepared in accordance with a fair presentation financial reporting framework, the opinion will need to be amended.

### Regulatory Accounts typically include:

- a profit and loss account or income statement;
- a balance sheet or statement of financial position;
- detailed/segmental analyses of operations, costs and income, as defined in the Regulatory licence; and
- a reconciliation between the results and net assets reported within the Regulatory Accounts and those reported within the statutory financial statements prepared in accordance with the Companies Act 2006.

Regulatory Returns usually incorporate Regulatory Accounts but may also include other financial information required by the Regulator. Independent Accountants are usually expected to report upon certain identified elements of the additional information contained within the Regulatory Return only.

### Regulatory Accounts do not include other items included within Regulatory Returns, such as:

- the reports of other experts;
- management commentary on the accounting information; or
- other types of Regulatory Information required to comply with the Regulatory Licence.

<sup>7</sup> Except as specified in the RAGs.

## APPENDIX B: EXAMPLE OF AN UNMODIFIED AUDIT REPORT FOR REGULATORY ACCOUNTS<sup>8</sup>

(This example report:

- assumes that the financial reporting framework used for the Regulatory Accounts is some variation of, or other basis to, a fair presentation financial reporting framework, such as IFRS or UK GAAP; and
- is to be tailored as appropriate for the particular circumstances of each engagement.)

### Independent auditor's report to the Director General, [Regulator] ("the Regulator") and the directors of ABC Limited<sup>9</sup>

[Report on the audit of the regulatory accounts]

#### Opinion

We have audited the Regulatory Accounts of ABC Limited ("the Company") for the year ended [date] which comprise the income statement, the statement of changes in equity, the balance sheet, [the cash flow statement] and the related notes to the Regulatory Accounts. The financial reporting framework that has been applied in their preparation is conditions [ ], [ ] and [ ] of the Company's Regulatory Licence, Regulatory Accounting Guidelines [ ], [ ] and [ ], and the accounting policies set out in note x.

In our opinion the Regulatory Accounts are prepared, in all material respects, in accordance with conditions [ ], [ ] and [ ] of the Company's Regulatory Licence, Regulatory Accounting Guidelines [ ], [ ] and [ ], and the accounting policies set out in note x.

#### Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)), including ISA (UK) 800 and having regard to the guidance contained in ICAEW Technical Release 02/16AAF (Revised) *Reporting to regulators on regulatory accounts*. Our responsibilities under those standards are further described in the auditor's responsibilities for the audit of the Regulatory Accounts section of our report. We are independent of the Company in accordance with the ethical requirements that are relevant to our audit of the Regulatory Accounts in the UK, including the Financial Reporting Council's (FRC's) Ethical Standard [as applied to [listed] public interest entities], and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

#### Emphasis of matter – basis of accounting

We draw attention to the fact that the Regulatory Accounts have been prepared in accordance with a special purpose framework, conditions [ ], [ ] and [ ] of the Company's Regulatory Licence, Regulatory Accounting Guidelines [ ], [ ] and [ ] ("the RAGs") issued by the Regulator, the accounting policies set out in the statement of accounting policies [and in the case of the regulatory historical cost accounting statements, under the historical cost convention]. The nature, form and content of Regulatory Accounts are determined by the Regulator. It is not appropriate for us to assess whether the nature of the information being reported upon is suitable or appropriate for the Regulator's purposes. Accordingly we make no such assessment.

<sup>8</sup> For further guidance, refer to the ICAEW audit report helpsheet, *Preparing a non-statutory audit report*.

<sup>9</sup> Any changes to this form of report should be made in accordance with ISA (UK) 700 – see Section 3. The report is addressed to the Regulator as well as to the Company without any disclaimer of responsibility to the Regulator only where the Regulator has signed a tri-partite engagement contract or there is a bi-partite engagement contract supplemented by written notice signed by the Regulator. In other cases the report may be addressed to the Company and the Regulator (to meet the requirements of the Regulatory Licence) but includes a disclaimer under which responsibility is accepted to the Company only and co-addressing to the Regulator is expressed to be only to meet the requirements of the Regulatory Licence. Refer to paragraph 14 for further guidance.

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

The Regulatory Accounts are separate from the statutory financial statements of the Company and have not been prepared under the basis of [International Financial Reporting Standards as adopted by the European Union (“IFRS”) / United Kingdom Generally Accepted Accounting Practice (“UK GAAP”)]. Financial information other than that prepared on the basis of [IFRS/UK GAAP] does not necessarily represent a true and fair view of the financial performance or financial position of a company as shown in statutory financial statements prepared in accordance with the Companies Act 2006. [Where required, insert further matters to emphasise, for example: Furthermore, the regulatory historical cost accounting statements on pages [xx] and [xx] have been drawn up in accordance with Regulatory Accounting Guideline [ ] in that infrastructure renewals accounting as applied in previous years should continue to be applied and accordingly, that the relevant sections of FRS 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland be disappplied. The effect of this departure from UK GAAP and a reconciliation of the balance sheet drawn up on this basis to the balance sheet drawn up under the Companies Act 2006 is given on page [x].]

Our opinion is not modified in respect of this matter.

### Conclusions relating to going concern

We have nothing to report in respect of the following matters in relation to which the ISAs (UK) require us to report to you where:

- the directors’ use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the Company’s ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

### [Other information<sup>10</sup>

The directors are responsible for the other information. The other information comprises the information included in the annual report, other than the Regulatory Accounts and our auditor’s report thereon. Our opinion on the Regulatory Accounts does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

In connection with our audit of the Regulatory Accounts, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the Regulatory Accounts or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in this regard.]

### Responsibilities of the Directors

As explained more fully in the Directors’ Responsibility Statement [set out on page x], the directors are responsible for the preparation of the Regulatory Accounts and for such internal control as the directors determine is necessary to enable the preparation of Regulatory Accounts that are free from material misstatement, whether due to fraud or error.

In preparing the Regulatory Accounts, the directors are responsible for assessing the Company’s ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Company or to cease operations, or have no realistic alternative but to do so.

<sup>10</sup> Include where other information accompanies the Regulatory Accounts.

## Auditor's responsibilities for the audit of the Regulatory Accounts

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the FRC's website at: [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities). This description forms part of our auditor's report.<sup>11</sup>

### [Report on Other Legal and Regulatory Requirements]

#### [Opinion on other matters prescribed by condition [x]]

Under the terms of our contract we have assumed responsibility to provide those additional opinions required by condition [x] in relation to the accounting records. In our opinion:

- proper accounting records have been kept by the Company as required by paragraph x of condition [x]; and
- the Regulatory Accounts are in agreement with the accounting records and returns retained for the purpose of preparing the Regulatory Accounts.]

### Use of our report

This report is made, on terms that have been agreed<sup>12</sup>, solely to the Company and the Regulator in order to meet [the requirements of the Regulatory Licence<sup>13</sup>]. Our audit work has been undertaken so that we might state to the Company and the Regulator those matters that we have agreed to state to them in our report, in order (a) to assist the Company to [meet its obligation under the Regulatory Licence to procure such a report] and (b) to facilitate the carrying out by the Regulator of its regulatory functions, and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company and the Regulator, for our audit work, for this report or for the opinions we have formed.

Our opinion on the Regulatory Accounts is separate from our opinion on the statutory financial statements of the Company for the year ended [ ] on which we reported on [ ], which are prepared for a different purpose. Our audit report in relation to the statutory financial statements of the Company (our "Statutory audit") was made solely to the Company's members, as a body, in accordance with Chapter 3 of Part 16 of the Companies Act 2006. Our Statutory audit work was undertaken so that we might state to the Company's members those matters we are required to state to them in a statutory audit report and for no other purpose. In these circumstances, to the fullest extent permitted by law, we do not accept or assume responsibility for any other purpose or to any other person to whom our Statutory audit report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

[The engagement partner on the audit resulting in this independent auditor's report is [name].]

[Name of auditor]

<sup>11</sup> There are three choices in relation to the more detailed description of the auditors' responsibilities:

- to include within the audit report directly;
- to include within an appendix to the audit report; or
- to include a reference to a more detailed description on the FRC's website.

For this example, the latter approach has been taken. If the full description of responsibilities is included, where the financial statements are not prepared in accordance with a fair presentation framework, the bullet point about evaluating the overall presentation is not appropriate.

<sup>12</sup> This requires an engagement letter in a satisfactory form to be in place.

<sup>13</sup> Or other reference. If the appropriate reference is to a Regulatory Licence that licence will need to be defined appropriately in the reference or in some other suitable place.

**REPORTING TO REGULATORS ON REGULATORY ACCOUNTS**

[Chartered Accountants and Statutory Auditor]

[Address]

[Date]

## APPENDIX C: EXAMPLE TRI-PARTITE ENGAGEMENT CONTRACT

(to be tailored as appropriate for the particular circumstances of each engagement)

### Private and Confidential

The Directors

[Name and address of Regulated Entity]

For the attention of [ ]

The Director General

[Name and address of Regulator]

For the attention of [ ]

[Date]

**[Name of Regulated Entity] (“the Company”)**

**Audit of the regulatory financial statements for the year ended [DATE]**

Dear Directors,

### Introduction

This letter (including the attached Appendices and the Terms and Conditions) sets out our understanding of the basis on which we act as auditors reporting on the regulatory financial statements (“the Regulatory Accounts”) as specified in [LICENCE CONDITION OR OTHER REFERENCE] of the Instrument of Appointment of the Company as a [TYPE OF BUSINESS] under the [APPLICABLE LEGISLATION] (“the Regulatory Licence”) and the Regulatory Accounting Guidelines (“RAGs”) [agreed with/] issued by the Director General of [IDENTITY OF REGULATOR], [NAME OF REGULATOR] (“the Regulator”). We also set out the respective areas of responsibility of the directors of the Company (“the Directors”), the Regulator and ourselves, in respect of the audit of the Regulatory Accounts (the “Services”). This letter (with all its attachments) applies only to the audit report on the Regulatory Accounts and the scope of our work will be limited accordingly. If any additional work or report is required, separate engagement terms and conditions will need to be agreed.

This letter and the attached terms and conditions together comprise the entire contract (“the Contract”) for the provision of the Services [to the exclusion of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations unless made fraudulently] and shall supersede all previous contracts, letters of engagement, undertakings, agreements and correspondence regarding the Services.

### Responsibilities of the Directors and the Auditors

The Directors are required to ensure that the Company complies with all of the terms of its Regulatory Licence [or other reference].

The Directors are required to prepare Regulatory Accounts in accordance with the Company’s Regulatory Licence [or other reference] and the RAGs [agreed with/] issued by the Regulator, a copy of which are attached as Appendix [ ]. The Directors are also required to:

- [OTHER LICENCE CONDITIONS ON WHICH THE DIRECTORS ARE REQUIRED TO GIVE A FINANCE-BASED REPORT PER THE REGULATORY LICENCE, for example]:
- [Confirm that, in their opinion, the Company has sufficient financial and management resources for the next twelve months];
- [Confirm that, in their opinion, the Company has sufficient rights and assets which would enable a special administrator to manage the affairs, business and property of the Company];

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

- [Report to the Director General of [NAME OF REGULATOR] changes in the Company's activities which may be material in relation to the Company's ability to finance its regulated activities];
- [Undertake the transactions entered into by the business consisting of the carrying out of the regulated activity ("the appointed business"), with or for the benefit of any group companies or related companies ("associated companies") or activities of the appointed business, at arm's length]; and
- [Keep proper accounting records which comply with [LICENCE CONDITION OR OTHER REFERENCE]].

We refer to the above as "the Specific Obligations".

Other than reporting on whether or not proper accounting records have been kept by the Company as required by Condition [ ] of the Regulatory Licence [or other reference], it is not our responsibility in providing the Services to report on the Specific Obligations or on any other obligations of the Company or the Directors under the Regulatory Licence [or other reference].

The Directors are also responsible for ensuring that the Company maintains accounting records which disclose with reasonable accuracy, at any time, the financial position of the Company, and for preparing Regulatory Accounts which are properly prepared in accordance with the Regulatory Licence. The Directors are responsible for such internal control as they determine necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error. They are also responsible for making available to us, as and when required, all of the Company's accounting records, all other relevant records, including minutes of all directors', management and shareholders' meetings, and such information and explanations which we consider necessary for the performance of our duties as auditors.

It is our responsibility to form an independent opinion, based on our audit, on the Regulatory Accounts and to report our opinion to the Company and the Regulator.

Our report will be addressed to the Company and the Regulator and will state whether, in our opinion, the Regulatory Accounts have been properly prepared in accordance with conditions [ ], [ ] and [ ] of that Licence [or other reference].

Our report will be made in accordance with the Contract, solely to the Company and the Regulator in order to meet the requirements of the Regulatory Licence [or other reference]. Our audit work will be undertaken so that we might state to the Company and the Regulator those matters we have agreed in the Contract to state to them in our report in order to (a) assist the Company to [meet its obligations under the Regulatory Licence to procure such a report] and (b) to facilitate the carrying out by the Regulator of its regulatory functions, and for no other purpose. To the fullest extent permitted by law, we will not accept or assume responsibility to anyone other than the Company and the Regulator for our audit work, for our report, or for the opinions we will form. Our report will contain a disclaimer of liability to other parties to this effect.

The Contract does not confer benefits on any parties who are not parties to it and the application of the Contracts (Rights of Third Parties) Act 1999 is excluded.

In arriving at our opinion, and in accordance with the Regulatory Licence (condition [REFERENCE]) [or other reference], we will consider the following matters, and report on any in respect of which we are not satisfied:

- whether appropriate accounting records have been kept by the Company and proper returns adequate for our audit have been received from operating locations not visited by us;
- whether the Regulatory Accounts are in agreement with the accounting records and returns retained for the purpose of preparing the Regulatory Accounts; and
- whether we have obtained all the information and explanations which we consider necessary for the purposes of our audit.

Our responsibilities also include considering whether other information in documents containing the Regulatory Accounts is consistent with those Regulatory Accounts.



## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

The Regulator and the Company acknowledge and agree that:

- wherever the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report are published or otherwise made available in full, our audit report will also be published or otherwise made available in full as part of that communication;
- wherever substantial extracts<sup>14</sup> from the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report are published or otherwise made available, and reference is made to the fact that they are audited or otherwise examined by an Independent Accountants, there will be explicit statements by the Regulator: a) that the information published is only an extract; and b) about the limitation of scope of the Independent Accountants' report and the duty of care owed by the Independent Accountants; and c) referring to where the full set of Regulatory Accounts can be found or otherwise obtained; and
- wherever any other information is referenced from the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report, there will be an explicit reference by the Regulator to the source of that information and the limitation of scope of the Independent Accountants' report and the duty of care owed by the Independent Accountant.

### Relationship between the Regulator and the Company

For the avoidance of doubt, nothing in this Contract is intended to nor does it affect or in any way alter the relationship or the rights and obligations between the Company and the Regulator as set out in the Regulatory Licence [and all relevant legislation].

### Scope of our audit

Our audit will be performed with regard to the guidance contained in ICAEW Technical Release 02/16AAF (Revised) *Reporting to regulators on regulatory accounts*.

Our audit will be conducted in accordance with International Standards on Auditing (UK) issued by the Financial Reporting Council. Our audit will include such tests of transactions and of the existence, ownership and valuation of assets and liabilities as we consider necessary. We shall obtain an understanding of the accounting and internal financial control systems to the extent necessary in order to assess their adequacy as a basis for the preparation of the Regulatory Accounts and to establish whether appropriate accounting records have been maintained by the Company.

We shall expect to obtain such appropriate evidence as we consider sufficient to enable us to draw reasonable conclusions therefrom. The nature and extent of our procedures will vary according to our assessment of the Company's accounting system and, where we wish to place reliance on it, the internal financial control system and may cover any aspect of the business operations.

[The Regulatory Accounts are prepared by disaggregating balances recorded in the general ledgers and other accounting records of the [NAME OF STATUTORY ENTITY] maintained in accordance with the Companies Act 2006 and used, in accordance with that Act, for the preparation of [NAME OF STATUTORY ENTITY]'s statutory financial statements.]

[No additional tests will be performed of the transactions and balances which are recorded in the general ledgers of [NAME OF STATUTORY ENTITY] other than those carried out in performing the audit of the statutory financial statements that include the Company.]

Our audit includes assessing the significant estimates and judgements made by the Directors in the preparation of the Regulatory Accounts and whether the accounting policies are appropriate to the Company's circumstances, consistently applied and adequately disclosed.

[We will read the [SPECIFY INFORMATION] ("Other Information") contained within the Regulatory Accounts, including any supplementary schedules on which we do not express an audit opinion,

<sup>14</sup> For example, reproduction of primary statements as a whole.

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

and consider the implications for our report if we become aware of any apparent misstatements or material inconsistencies with the Regulatory Accounts. We will not perform any audit procedures nor provide any other assurance on the Other Information. ]

We will plan our work to gain reasonable assurance that the Regulatory Accounts are free from material error, whether caused by fraud or other misstatement.

The concept of materiality affects our audit planning and our consideration of matters arising from our audit. We take into account both qualitative and quantitative factors when assessing materiality. We will only express an opinion on the Regulatory Accounts as a whole and not on individual factors/components within Regulatory Accounts.

Where the Regulator requires specific factors to be reported upon by us, this should be addressed through the powers vested in the Regulator through the Regulatory Licence [or other reference]. For such reporting, we will agree a list of procedures ('Agreed Upon Procedures') that we will perform for the Regulator. These procedures will be specified in a separate engagement contract between us and the Regulator [and will be shown to the Company]. We will report the findings of the Agreed Upon Procedures separately from the Regulatory Accounts opinion, by way of a factual report to the Regulator, in which we will not express an opinion on the results of the Agreed Upon Procedures, nor the appropriateness of those procedures for the purposes of the Regulator. As with the form and content of Regulatory Accounts, the Regulator will need to make its own assessment of the appropriateness of the Agreed Upon Procedures and the reported findings.

Where Agreed Upon Procedures are required in addition to an opinion on the Regulatory Accounts, we may choose not to complete our work nor express an opinion on the Regulatory Accounts until:

- i) the Agreed Upon Procedures that have been specified by the Regulator have been completed and reported upon; and
- ii) the Regulator has provided a written notice to us confirming that nothing has come to the attention of the Regulator from that report (or otherwise) that indicates that there are any matters which the Regulator believes that we should take into account in arriving at our opinion on the Regulatory Accounts. If such matters do exist we will consider, in arriving at our opinion on the Regulatory Accounts, the matters noted by the Regulator and/or agree additional Agreed Upon Procedures with the Regulator.

The Services are separate from our audit work on the statutory financial statements of the Company which is carried out in accordance with our statutory obligations under the Companies Act 2006. Our audit report on those statutory financial statements is intended for the sole benefit of the Company's shareholders as a group, to whom it is addressed, and not for any other purpose. Our audit of the Company's statutory financial statements are not planned or conducted in contemplation of the requirements of anyone other than such shareholders and, consequently, our audit work is not intended to address or reflect matters in which anyone other than such shareholders may be interested.

We do not and will not, by virtue of this report or otherwise in connection with this engagement, assume any responsibility whether in contract, negligence or otherwise in relation to our audits of the Company's statutory financial statements required by the Companies Act 2006; we and our employees shall have no liability whether in contract, tort (including negligence) or otherwise to any parties other than the Company and its members in relation to our audit of the Company's statutory financial statements.

The nature and format of the Regulatory Accounts are determined by the requirements of the Regulator. It is not appropriate for us to assess, and accordingly we will not make any assessment on, whether the nature of the information being reported upon is suitable or appropriate for the Regulator's purpose. It is a matter for the Regulator to consider whether the information being reported upon is appropriate for its own purposes and we will not give any implicit or explicit affirmation that the information being reported upon is suitable for the Regulator's purpose.

The Regulator and the Company accept that there [may be/are] differences between International Financial Reporting Standards ("IFRS") or United Kingdom Generally Accepted Accounting

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

Principles (“UK GAAP”) and the basis of information provided in the Regulatory Accounts. Financial information, other than that prepared on the basis of IFRS or UK GAAP, does not necessarily represent a true and fair view of the financial performance or financial position of a Company.

### Internal audit

In developing our audit plan, we will liaise with the Company’s internal auditors to ensure that our work is properly co-ordinated with theirs. It is our policy to rely upon internal audit work whenever possible, whilst ensuring that adequate audit coverage is achieved of all significant areas.

### Meetings with the Regulator

We are willing to attend meetings with the Regulator to discuss the Services, if requested to do so, provided that we can agree appropriate terms on which such meetings are held. For the avoidance of doubt appropriate terms will include meeting only on a tri-partite basis in the absence of specific consent of the Company allowing us to meet with the Regulator [and its advisors].

### Management representations

The information used by the Directors in preparing the Regulatory Accounts will invariably include facts or judgements which are not themselves recorded in the accounting records. As part of our normal audit procedures, we shall request appropriate directors or senior officials/management of the Company to provide written confirmation each year of such facts or judgements and any other oral representations which we have received during the course of the audit on matters having a material effect on the Regulatory Accounts. We will also ask the Directors to confirm in that letter that all important and relevant information has been brought to our attention. In connection with representations and the supply of information to us generally, we draw your attention to section 501 of the Companies Act 2006 under which it is an offence for an officer of the company to mislead the auditors.

### Detection of fraud, error and non-compliance with laws and regulations

The responsibility for safeguarding the assets of the Company and for the prevention and detection of fraud, error and non-compliance with law or regulations rests with the Directors. However, we shall endeavour to plan our audit so that we have a reasonable expectation of detecting material misstatements in the Regulatory Accounts or accounting records (including any material misstatements resulting from fraud, error or non-compliance with law or regulations), but our examination should not be relied upon to disclose all such material misstatements or frauds, errors or instances of non-compliance as may exist.

### Timetable

We expect to commence our work on [DATE] and would normally expect to issue our report by [DATE].

Completion of our work will depend upon receiving, without undue delay, full co-operation from all relevant officials of the Company and their disclosure to us of all the accounting records of the Company and all other records and related information (including certain representations) that we may need for the purpose of our work.

### Other requirements

In order to assist us with the examination of the Regulatory Accounts, we shall request early sight of all documents or statements which are due to be issued with those Regulatory Accounts.

Once we have issued our report we have no further direct responsibility in relation to the Regulatory Accounts for that financial year.

## Preparation of Regulatory Accounts

Assistance with the preparation of Regulatory Accounts does not form a part of the audit function, but we shall discuss the Company's accounting principles with the management and/or the Directors and we may propose adjusting entries for their consideration.

## Other services

We shall not be treated as having notice, for the purposes of our regulatory audit responsibilities, of information provided to members of our firm other than those engaged on the audit (for example information provided in connection with accounting, taxation and other services).

## Fiduciary responsibilities

Because our audit work under the terms of this engagement is directed at forming an opinion on the Company's Regulatory Accounts our audit procedures will not normally extend to assets or documents of title in respect of assets that are in the Company's possession but owned by others.

## Terms and conditions

The attached Terms and Conditions set out the duties of all parties in respect of the Services. The Terms and Conditions amongst other things:

- i) limit our liability to a maximum aggregate amount of £[X]. This limitation shall be allocated between the Company and the Regulator. [It is agreed that such allocation will be entirely a matter for the addressees of this letter, who shall be under no obligation to inform [Name of Auditor] of it, provided always that if (for whatever reason) no such allocation is agreed, neither the Company nor the Regulator shall dispute the validity, enforceability or operation of the limit of liability on the grounds that no such allocation was agreed]<sup>15</sup>; and
- ii) limit the period within which a claim may be brought

[NAME OF AUDITOR] alone will be responsible for the performance of the engagement contract formed by this letter. You therefore agree that you will not bring any claim in respect of or in connection with this engagement whether in contract, tort (including negligence), breach of statutory duty or otherwise against any partner or employee of [NAME OF AUDITOR]. The foregoing exclusion does not apply to any liability that cannot be excluded under the laws of England and Wales.

## Fees [Detail]

The fee for the work covered by this engagement letter will be agreed with, and paid by, the Company.

## Safeguarding service

It is our desire to provide you at all times with a high quality service to meet your needs. If at any time you would like to discuss with us how our service to you could be improved or if you are dissatisfied with any aspect of our services, please raise the matter immediately with the partner responsible for that aspect of our services to you. If, for any reason, you would prefer to discuss these matters with someone other than that partner, please contact [ ] at [ ]. In this way we are able to ensure that your concerns are dealt with carefully and promptly. We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. This will not affect your right to complain to ICAEW.

<sup>15</sup> This paragraph may be replaced by a specific allocation of the aggregate liability between the Company and the Regulator where the Company and the Regulator have reached such agreement, independently of the Independent Accountants, and wish to incorporate this into the engagement contract.

**Acknowledgement and acceptance**

Please acknowledge your acceptance of the terms of our engagement under the Contract by signing the confirmation below and returning a copy of this letter and the attached Terms and Conditions to us at the above address, whereupon the Contract will take effect from the date of the commencement by us of the Services.

Once it has been agreed, this letter will remain effective, from one audit appointment to another, until it is replaced.

If you have any questions regarding this Contract, please do not hesitate to contact us.

Yours faithfully,

[Name of Auditor]

I have read the above letter and accept the terms and conditions set out therein.

Signed:

-----  
(Name and position)  
for and on behalf of [Name of Company]

-----  
(Date)

-----  
(Name and position)  
for and on behalf of [Name of Regulator]

-----  
(Date)

## APPENDIX D: EXAMPLE BI-PARTITE ENGAGEMENT CONTRACT

(to be tailored for the particular circumstances of each engagement)

### Private and Confidential

The Directors

[Name and address of Regulated Entity]

For the attention of [ ]

[Date]

**[Name of Regulated Entity] (“the Company”)**

**Audit of the regulatory financial statements for the year ended [DATE]**

Dear Directors,

### Introduction

This letter (including the attached Appendices and the Terms and Conditions) sets out our understanding of the basis on which we act as auditors reporting on the regulatory financial statements (“the Regulatory Accounts”) as specified in [LICENCE CONDITION OR OTHER REFERENCE] of the Instrument of Appointment of the Company as a [TYPE OF BUSINESS] under the [APPLICABLE LEGISLATION] (“the Regulatory Licence”) and the Regulatory Accounting Guidelines (“RAGs”) [agreed with/issued] by the Director General of [IDENTITY OF REGULATOR], [NAME OF REGULATOR] (“the Regulator”). We also set out the respective areas of responsibility of the directors of the Company (“the Directors”) and ourselves, in respect of the audit of the Regulatory Accounts (the “Services”). This letter (with all its attachments) applies only to the audit report on the Regulatory Accounts and the scope of our work will be limited accordingly. If any additional work or report is required, separate engagement terms and conditions will need to be agreed.

This letter and the attached Terms and Conditions together comprise the entire contract (“the Contract”) for the provision of the Services [to the exclusion of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations unless made fraudulently] and shall supersede all previous contracts, letters of engagement, undertakings, agreements and correspondence regarding the Services.

The Regulator is not a party to the Contract. On condition that the Regulator accepts in writing a notice in the form appended (“the Regulator’s Contract”), we will accept duties and responsibilities to the Regulator in respect of our audit work, our audit report and our audit opinion on the Regulatory Accounts. Any such agreement will be on the basis that, amongst other things, the Company and the Regulator agree that our aggregate liability to the Company and the Regulator is limited to the maximum amount which would have been payable to the Company alone in respect of any breach of our obligations to the Company. References to rights and obligations between the Regulator and the auditors in relation to the Services and the Agreed upon Procedures are included in the Contract for the purpose only of the Regulator’s Contract and are not intended to create rights or obligations between the Regulator and the Company.

### Responsibilities of the Directors and the Auditors

The Directors are required to ensure that the Company complies with all of the terms of its Regulatory Licence [or other reference].

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

The Directors are required to prepare Regulatory Accounts in accordance with the Company's Regulatory Licence [or other reference] and the RAGs [agreed with/] issued by the Regulator, a copy of which are attached as Appendix [ ]. The Directors are also required to:

- [OTHER LICENCE CONDITIONS ON WHICH THE DIRECTORS ARE REQUIRED TO GIVE A FINANCE-BASED REPORT PER THE REGULATORY LICENCE, for example]:
- [Confirm that, in their opinion, the Company has sufficient financial and management resources for the next twelve months];
- [Confirm that, in their opinion, the Company has sufficient rights and assets which would enable a special administrator to manage the affairs, business and property of the Company];
- [Report to the Director General of [NAME OF REGULATOR] changes in the Company's activities which may be material in relation to the Company's ability to finance its regulated activities];
- [Undertake the transactions entered into by the business consisting of the carrying out of the regulated activity ("the appointed business"), with or for the benefit of any group companies or related companies ("associated companies") or activities of the appointed business, at arm's length]; and
- [Keep proper accounting records which comply with [LICENCE CONDITION OR OTHER REFERENCE]].

We refer to the above as "the Specific Obligations".

Other than reporting on whether or not proper accounting records have been kept by the Company as required by Condition [ ] of the Regulatory Licence [or other reference], it is not our responsibility in providing the Services to report on the Specific Obligations or on any other obligations of the Company or the Directors under the Regulatory Licence [or other reference].

The Directors are also responsible for ensuring that the Company maintains accounting records which disclose with reasonable accuracy, at any time, the financial position of the Company, and for preparing Regulatory Accounts which have been properly prepared in accordance with the Regulatory Licence. The Directors are responsible for such internal control as they determine necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error. They are also responsible for making available to us, as and when required, all of the Company's accounting records, all other relevant records, including minutes of all directors', management and shareholders' meetings, and such information and explanations which we consider necessary for the performance of our duties as auditors.

It is our responsibility to form an independent opinion, based on our audit, on the Regulatory Accounts and to report our opinion to the Company and (in order to meet the requirements of the Regulatory Licence) to the Regulator.

Our report will be made in accordance with the Contract, solely to the Company and the Regulator in accordance with the Regulatory Licence [or other reference]. Our audit work will be undertaken so that we might state to the Company and the Regulator those matters we have agreed in the Contract to state to them in our report in order to (a) assist the Company to [meet its obligations under the Regulatory Licence to procure such a report] and (b) to facilitate the carrying out by the Regulator of its regulatory functions, and for no other purpose. To the fullest extent permitted by law, we will not accept or assume responsibility to anyone other than the Company for our audit work, for our report, or for the opinions we will form. Our report will contain a disclaimer of liability to all other parties but we will confirm acceptance in our report of responsibility in respect of our audit work to the Regulator also if the Regulator has agreed to the Regulator's Contract by signing the written notice appended.

Our report will be addressed to the Company and the Regulator to meet the requirements of the Regulatory Licence and will state whether, in our opinion, the Regulatory Accounts have been properly prepared in accordance with conditions [ ], [ ] and [ ] of that licence [or other reference].

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

The Contract does not confer benefits on any parties who are not parties to it and the application of the Contracts (Rights of Third Parties) Act 1999 is excluded.

In arriving at our opinion, and in accordance with the Regulatory Licence (condition [REFERENCE]) [or other reference], we will consider the following matters, and report on any in respect of which we are not satisfied:

- whether appropriate accounting records have been kept by the Company and proper returns adequate for our audit have been received from operating locations not visited by us;
- whether the Regulatory Accounts are in agreement with the accounting records and returns retained for the purpose of preparing the Regulatory Accounts; and
- whether we have obtained all the information and explanations which we consider necessary for the purposes of our audit.

Our responsibilities also include:

- providing in our report a description of the Directors' responsibilities for the Regulatory Accounts where the Regulatory Accounts or accompanying information do not include such a description; and
- considering whether other information in documents containing the Regulatory Accounts is consistent with those Regulatory Accounts.

The Company and (where the Regulator signs the written notice appended) the Regulator acknowledge and agree that:

- wherever the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report are published or otherwise made available in full, our audit report will also be published or otherwise made available in full as part of that communication;
- wherever substantial extracts from the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report are published or otherwise made available, and reference is made to the fact that they are audited or otherwise examined by an Independent Accountant, there will be explicit statements by the Regulator: a) that the information published is only an extract; and b) about the limitation of scope of the Independent Accountants' report and the duty of care owed by the Independent Accountants; and c) referring to where the full set of Regulatory Accounts can be found or otherwise obtained; and
- wherever any other information is referenced from the Regulatory Accounts or other Regulatory Information covered by the Independent Accountants' report, there will be an explicit reference by the Regulator to the source of that information and the limitation of scope of the Independent Accountants' report and the duty of care owed by the Independent Accountant.

Where the Regulator does not sign a written notice in the form appended, the Company will procure that these events take place in the circumstances identified.

### Relationship between the Regulator and the Company

For the avoidance of doubt, nothing in this Contract is intended to nor does it affect or in any way alter the relationship or the rights and obligations between the Company and the Regulator as set out in the Regulatory Licence [and all relevant legislation].

### Scope of our audit

Our audit will be performed with regard to the guidance contained in ICAEW Technical Release 02/16AAF (Revised) *Reporting to regulators on regulatory accounts*.

Our audit will be conducted in accordance with International Standards on Auditing (UK) issued by the Financial Reporting Council. Our audit will include such tests of transactions and of the existence, ownership and valuation of assets and liabilities as we consider necessary. We shall



## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

obtain an understanding of the accounting and internal financial control systems to the extent necessary in order to assess their adequacy as a basis for the preparation of the Regulatory Accounts and to establish whether appropriate accounting records have been maintained by the Company.

We shall expect to obtain such appropriate evidence as we consider sufficient to enable us to draw reasonable conclusions therefrom. The nature and extent of our procedures will vary according to our assessment of the Company's accounting system and, where we wish to place reliance on it, the internal financial control system and may cover any aspect of the business operations.

[The Regulatory Accounts are prepared by disaggregating balances recorded in the general ledgers and other accounting records of the [NAME OF STATUTORY ENTITY] maintained in accordance with the Companies Act 2006 and used, in accordance with that Act, for the preparation of [NAME OF STATUTORY ENTITY]'s statutory financial statements.]

[No additional tests will be performed of the transactions and balances which are recorded in the general ledgers of [NAME OF STATUTORY ENTITY] other than those carried out in performing the audit of the statutory financial statements that include the Company.]

Our audit includes assessing the significant estimates and judgements made by the Directors in the preparation of the Regulatory Accounts and whether the accounting policies are appropriate to the Company's circumstances, consistently applied and adequately disclosed.

[We will read the [SPECIFY INFORMATION] ("Other Information") contained within the Regulatory Accounts, including any supplementary schedules on which we do not express an audit opinion, and consider the implications for our report if we become aware of any apparent misstatements or material inconsistencies with the Regulatory Accounts. We will not perform any audit procedures nor provide any other assurance on the Other Information. ]

We will plan our work to gain reasonable assurance that the Regulatory Accounts are free from material error, whether caused by fraud or other misstatement.

The concept of materiality affects our audit planning and our consideration of matters arising from our audit. We take into account both qualitative and quantitative factors when assessing materiality. We will only express an opinion on the Regulatory Accounts as a whole and not on individual factors within Regulatory Accounts.

Where the Regulator requires specific factors to be reported upon by us, this should be addressed through the powers vested in the Regulator through the Regulatory Licence [or other reference]. For such reporting, we will agree a list of procedures ('Agreed Upon Procedures') that we will perform for the Regulator. These procedures will be specified in a separate engagement contract between us [and] the Regulator and [will be shown to] the Company. We will report the findings of the Agreed Upon Procedures separately from the Regulatory Accounts opinion, by way of a factual report to the Regulator, in which we will not express an opinion on the results of the Agreed Upon Procedures, nor the appropriateness of those procedures for the purposes of the Regulator. As with the form and content of Regulatory Accounts, the Regulator will need to make its own assessment of the appropriateness of the Agreed Upon Procedures and the reported findings.

Where Agreed Upon Procedures are required in addition to an opinion on the Regulatory Accounts, we may choose not to complete our work nor express an opinion on the Regulatory Accounts until:

- i) the Agreed Upon Procedures that have been specified by the Regulator have been completed and reported upon; and
- ii) the Regulator has provided a written notice to us confirming that nothing has come to the attention of the Regulator from that report (or otherwise) that indicates that there are any matters which the Regulator believes that we should take into account in arriving at our opinion on the Regulatory Accounts. If such matters do exist we will consider, in arriving at our opinion on the Regulatory Accounts, the matters noted by the Regulator and/or agree additional Agreed Upon Procedures with the Regulator.]

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

The Services are separate from our audit work on the statutory financial statements of the Company which is carried out in accordance with our statutory obligations under the Companies Act 2006. Our audit report on those statutory financial statements is intended for the sole benefit of the Company's shareholders as a group, to whom it is addressed, and not for any other purpose. Our audits of the Company's statutory financial statements are not planned or conducted in contemplation of the requirements of anyone other than such shareholders and, consequently, our audit work is not intended to address or reflect matters in which anyone other than such shareholders may be interested.

We do not and will not, by virtue of this report or otherwise in connection with this engagement, assume any responsibility whether in contract, tort (including negligence) or otherwise in relation to our audits of the Company's statutory financial statements required by the Companies Act 2006; we and our employees shall have no liability whether in contract, tort (including negligence) or otherwise to any parties other than the Company and its members in relation to our audits of the Company's statutory financial statements.

The nature and format of the Regulatory Accounts are determined by the requirements of the Regulator. It is not appropriate for us to assess, and accordingly we will not make any assessment on, whether the nature of the information being reported upon is suitable or appropriate for the Regulator's purpose, whether or not the Regulator signs the written notice in the form appended. It is a matter for the Regulator to consider whether the information being reported upon is appropriate for its own purposes and we will not give any implicit or explicit affirmation that the information being reported upon is suitable for the Regulator's purpose.

There [may be/are] differences between International Financial Reporting Standards as adopted in the European Union ("IFRS") or United Kingdom Generally Accepted Accounting Principles ("UK GAAP") and the basis of information provided in the Regulatory Accounts. Financial information, other than that prepared on the basis of IFRS or UK GAAP, does not necessarily represent a true and fair view of the financial performance or financial position of a Company.

### Internal audit

In developing our audit plan, we will liaise with the Company's internal auditors to ensure that our work is properly co-ordinated with theirs. It is our policy to rely upon internal audit work whenever possible, whilst ensuring that adequate audit coverage is achieved of all significant areas.

### Meetings with the Regulator

We are willing to attend meetings with the Regulator to discuss the Services, if requested to do so, provided that we can agree appropriate terms on which such meetings are held. For the avoidance of doubt appropriate terms will include meeting only on a tri-partite basis in the absence of specific consent of the Company allowing us to meet with the Regulator [and its advisors].

### Management representations

The information used by the Directors in preparing the Regulatory Accounts will invariably include facts or judgements which are not themselves recorded in the accounting records. As part of our normal audit procedures, we shall request appropriate directors or senior officials/management of the Company to provide written confirmation each year of such facts or judgements and any other oral representations which we have received during the course of the audit on matters having a material effect on the Regulatory Accounts. We will also ask the Directors to confirm in that letter that all important and relevant information has been brought to our attention. In connection with representations and the supply of information to us generally, we draw your attention to section 501 of the Companies Act 2006 under which it is an offence for an officer of the Company to mislead the auditors.

### Detection of fraud, error and non-compliance with laws and regulations

The responsibility for safeguarding the assets of the Company and for the prevention and detection of fraud, error and non-compliance with law or regulations rests with the Directors. However, we shall endeavour to plan our audit so that we have a reasonable expectation of detecting material

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

misstatements in the Regulatory Accounts or accounting records (including any material misstatements resulting from fraud, error or non-compliance with law or regulations), but our examination should not be relied upon to disclose all such material misstatements or frauds, errors or instances of non-compliance as may exist.

### Timetable

We expect to commence our work on [DATE] and would normally expect to issue our report by [DATE].

Completion of our work will depend upon receiving, without undue delay, full co-operation from all relevant officials of the Company and their disclosure to us of all the accounting records of the Company and all other records and related information (including certain representations) that we may need for the purpose of our work.

### Other requirements

In order to assist us with the examination of the Regulatory Accounts, we shall request early sight of all documents or statements which are due to be issued with those Regulatory Accounts.

Once we have issued our report we have no further direct responsibility in relation to the Regulatory Accounts for that financial year.

### Preparation of Regulatory Accounts

Assistance with the preparation of Regulatory Accounts does not form a part of the audit function, but we shall discuss the Company's accounting principles with the management and/or the Directors and we may propose adjusting entries for their consideration.

### Other services

We shall not be treated as having notice, for the purposes of our regulatory audit responsibilities, of information provided to members of our firm other than those engaged on the audit (for example information provided in connection with accounting, taxation and other services).

### Fiduciary responsibilities

Because our audit work under the terms of this engagement is directed at forming an opinion on the Company's Regulatory Accounts our audit procedures will not normally extend to assets or documents of title in respect of assets that are in the Company's possession but owned by others.

### Terms and conditions

The attached Terms and Conditions set out the duties of all parties in respect of the Services. The Terms and Conditions amongst other things:

- i) limit our liability to a maximum aggregate amount of £[X]. Where the Regulator accepts in writing a notice in the form appended (and on that basis we accept duties and responsibilities to the Regulator), this limitation shall be allocated between the Company and the Regulator. [In such circumstances such allocation will be entirely a matter for the Company and the Regulator, who shall be under no obligation to inform [Name of Auditor] of it, provided always that if (for whatever reason) no such allocation is agreed, neither the Company nor the Regulator shall dispute the validity, enforceability or operation of the limit of liability on the grounds that no such allocation was agreed]<sup>16</sup>; and
- ii) limit the period within which a claim may be brought.

[NAME OF AUDITOR] alone will be responsible for the performance of the engagement contract formed by this letter. You therefore agree that you will not bring any claim in respect of or in

<sup>16</sup> This paragraph may be replaced by a specific allocation of the aggregate liability between the Company and the Regulator where the Company and the Regulator have reached such agreement, independently of the Independent Accountants, and wish to incorporate this into the engagement contract.

## REPORTING TO REGULATORS ON REGULATORY ACCOUNTS

connection with this engagement whether in contract, tort (including negligence), breach of statutory duty or otherwise against any partner or employee of [NAME OF AUDITOR]. The foregoing exclusion does not apply to any liability that cannot be excluded under the laws of England and Wales.

### Fees

[Details]

The fee for the work covered by this engagement letter will be agreed with, and paid by, the Company.

### Safeguarding service

It is our desire to provide you at all times with a high quality service to meet your needs. If at any time you would like to discuss with us how our service to you could be improved or if you are dissatisfied with any aspect of our services, please raise the matter immediately with the partner responsible for that aspect of our services to you. If, for any reason, you would prefer to discuss these matters with someone other than that partner, please contact [ ] at [ ]. In this way we are able to ensure that your concerns are dealt with carefully and promptly. We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. This will not affect your right to complain to ICAEW.

### Acknowledgement and acceptance

Please acknowledge your acceptance of the terms of our engagement under the Contract by signing the confirmation below and returning a copy of this letter and the attached Terms and Conditions to us at the above address, whereupon the Contract will take effect from the date of the commencement by us of the Services.

Once it has been agreed, this letter will remain effective, from one audit appointment to another, until it is replaced.

If you have any questions regarding this Contract, please do not hesitate to contact us.

Yours faithfully,

[Name of Auditor]

I have read the above letter and accept the terms and conditions set out therein.

-----  
(Name and position)  
for and on behalf of [Name of Company]

-----  
(Date)

**APPENDIX E: EXAMPLE WRITTEN NOTICE FROM THE INDEPENDENT ACCOUNTANTS TO THE REGULATOR FOR BI-PARTITE ENGAGEMENT ARRANGEMENTS**

(to be tailored for the particular circumstances of each engagement)

**Private and Confidential**

The Director General

[Name and address of Regulator]

For the attention of [ ]

[Date]

**[Name of Regulated Entity] (“the Company”)**

**Audit of the regulatory financial statements for the year ended [DATE]**

Dear Sir / Madam,

We refer to our engagement letter with the Company dated [DATE] (“the Contract”) relating to our audit of the Company’s regulatory financial statements for the year ended [DATE] (“the Regulatory Accounts”). A copy of the Contract is attached as Appendix 1 to this letter.

In the Contract we set out the basis on which we will act as auditors reporting on the Regulatory Accounts of the Company, together with the respective areas of responsibility of the directors of the Company and ourselves in respect of that audit and the scope of our audit. We also set out in the Contract the agreed extent of our liability to the Company in respect of our work. We confirm in the Contract that we will address our report on the Regulatory Accounts to the Company and, in order to meet the requirements of the Regulatory Licence, to you as well but we clarify that in our report we will deny liability in respect of our audit work and our report to any party other than the Company.

You have confirmed your interest in our audit of the Regulatory Accounts in your capacity as the Company’s Regulator and your interest in the scope of our engagement agreed with the Company. You have asked us to accept responsibility for our audit work and our report to you as well as to the Company so that there is no denial of responsibility to you in our report. This letter (“the Regulator’s Contract”) sets out the basis on which we are willing to accept such a responsibility, in return for your agreement to the terms of this letter including the following:

1. Our duties and responsibilities to you and your obligations to us will be those set out in the Contract as if incorporated into this letter. This sets out, amongst other things, terms relating to the disclosure of the Regulatory Accounts and other Regulatory Information covered by the Independent Accountants’ Report.
2. Our aggregate liability to you will be strictly limited to £[ ]<sup>17</sup> in the event of any breach of our obligations to you under the Regulator’s Contract.
3. You do not wish to acquire rights against us in respect of use of the audit report for any purposes other than as the Company’s Regulator and accept the disclaimer of liability to any Third Party (being a person other than the Company or the Regulator) as set out in the Contract.
4. You accept that the nature and format of the Regulatory Accounts are determined by your requirements and that it will be for you to consider whether the information on which we report as auditors is suitable or appropriate for your needs and purposes.

<sup>17</sup> Independent Accountants will agree a figure by which their maximum aggregate liability to the Company and the Regulator is no greater than the amount which would have been payable by them to the Company under the Contract. For further guidance, see paragraph 12(ii).

**REPORTING TO REGULATORS ON REGULATORY ACCOUNTS**

5. You will not be bound by any amendment to the Contract, whether written, oral or arising from the Contract, which is not formally accepted by you in writing.

Please acknowledge your acceptance of the terms and conditions of this letter by signing the confirmation below and returning a copy of it and the Contract to us at the above address.

Yours faithfully,

[Independent Accountants]

I have read the above letter and confirm acceptance of its terms and conditions on behalf of  
[NAME OF REGULATOR]

Signed \_\_\_\_\_

Name and position \_\_\_\_\_

[Cc: The Directors, [Name of Company]] Enclosure: Copy of the Contract.

There are over 1.7m chartered accountants and students around the world – talented, ethical and committed professionals who use their expertise to ensure we have a successful and sustainable future.

Over 150,000 of these are ICAEW Chartered Accountants. We train, develop and support each one of them so that they have the knowledge and values to help build local and global economies that are sustainable, accountable and fair.

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