

Statement of Terms and Conditions of Employment

Contract of Indefinite Duration

The attached proforma *Statement of Terms and Conditions of Employment* provides a framework for employers of ACCA students in Ireland to develop their own employment and training contracts. It identifies which aspects of an employment contract must be expressed in writing under Irish law and proposes other terms and conditions which employers may deem appropriate to their businesses.

ACCA's proforma *Statement* represents express contractual terms of employment. Employment also invariably involves unexpressed expectations or implied terms. HR professionals refer to these unexpressed terms as the psychological contract between employers and their staff. The psychological contract assumes that:

- all parties to the contract are treated fairly and honestly
- a certain level of security is provided in return for loyalty
- recognition is given to the past and future contributions of employees to aid job and career progression.

Employers, who recognise the personal and professional aspirations of ACCA students by providing study support and practical training, are rightly concerned that they get a good rate of return on their training investments in the form of employee productivity, motivation and loyalty. However, ACCA advises employers that any employment contracts drawn up should balance the needs of both parties.

ACCA can provide information and guidance on various options for examination and practical training. **ACCA regrets that it is not in a position to provide any legal advice.** ACCA's pro forma Statements are intended to be used as a point of reference only. Employers should always take independent legal advice to ensure that the terms of the contract are appropriate to their circumstances. However, it is hoped that the provision of a Proforma Statement will reduce considerably the costs of such advice.

August 2011

SAMPLE STANDARD STATEMENT OF TERMS AND CONDITIONS OF EMPLOYMENT OF ACCA STUDENTS (Contract of Indefinite Duration)

Please note that:

1. This document has been prepared by ACCA as a guide to assist employers of ACCA students in Ireland. It should not be relied on as an exhaustive statement of the law, and ACCA makes no representation as to whether this document complies with all relevant laws. In addition, the document does not address many of those parts of the employment relationship where the employee's rights are protected by law, for example the right to minimum notice periods, not to be unfairly dismissed, maternity rights, equal opportunities rights and the recent legislation regarding maximum working hours. Independent legal advice must be taken regarding each individual case, including advice on whether a fixed term or rolling contract is appropriate and whether the clauses in the document are appropriate in the circumstances. No responsibility for any loss or consequential loss occasioned to any person acting or refraining from action as a result of this document can be accepted by ACCA. Thank you for your co-operation.
2. Pursuant to section 3 of the Terms of Employment (Information) Acts, 1994 - 2001 every employee is entitled to receive from his employer a written statement giving particulars of the major terms of his employment within two calendar months of the beginning of his employment. Those paragraphs in the attached draft which are required by this legislation are marked with an asterisk.

STANDARD STATEMENT OF TERMS AND CONDITIONS OF EMPLOYMENT FOR ACCA STUDENTS (Contract of Indefinite Duration)

Pursuant to the Terms of Employment (Information) Acts, 1994 - 2001
and The Unfair Dismissals Acts, 1977 - 2007

*Name of Student: []

*Name of Employer: [] (“the Employer”)

***1 DURATION OF EMPLOYMENT**

- 1.1 Your employment commenced on [] and shall continue unless terminated in accordance with the provisions of this Agreement.
- 1.2 Without prejudice to clause 1.3 below, either party may terminate your employment at any time on giving [] months notice in writing to the other party. Furthermore, the Employer may terminate your employment at any time without notice or payment in lieu of notice in the event of gross misconduct on your part.

Probationary Period

- 1.3 The first [] month period of your employment shall be regarded as a probationary period, during which time your progress will be closely monitored and the disciplinary procedure, sick pay and pension provisions (if applicable) will not apply to you. During the probationary period:
- a) you may give the Employer not less than [] weeks notice in writing to terminate your employment;
 - b) the Employer may give you not less than [] weeks notice in writing to terminate your employment.

***2 JOB TITLE**

You shall be employed as [].

*3 **DUTIES**

- 3.1 You are required to undertake the duties as set out in your Job Description attached hereto [**please attach**].
- 3.2 You may from time to time be required to undertake such other duties as the Employer may reasonably require.
- 3.3 You will be responsible to [].
- 3.4 During your employment by the Employer you must not engage in any business activity or act as an employee of any other organisation or person without the Employer's written permission.

*4 **PLACE OF EMPLOYMENT**

- 4.1 Your place of employment shall be at [] or such other place(s) as the Employer may require.
- 4.2 You may be required to travel within Ireland and overseas on the Employer's business.
- 4.3 During the period you will be working in [specify country outside Ireland] your salary will be paid in [specify currency] and you will be entitled to [specify any additional benefits during this period] and, upon your return to the Ireland, [specify any terms and conditions relating to the employee's return to the Ireland].

*5 **REMUNERATION**

- 5.1 Your salary amounts to €[] per annum less deductions for income tax, PRSI and other levies required by law. Your entitlement to salary accrues on a daily basis payable monthly in arrears on the last day of the month.
- 5.2 You hereby agree that the Employer is authorised to deduct any sums due to it from you from your salary or any other sums due to you in respect of your employment or its termination.

6. **TRAINING POLICY**

6.1 The following terms and conditions apply to all students studying for the ACCA examinations. **[Delete as appropriate throughout this paragraph]**

6.2 The Employer recommends that you attend day release/link/revision courses run by [] for the ACCA examinations.

or

The Employer will allow you the freedom to choose how and where you wish to study for the ACCA's examinations.

6.3 You are required to attend all courses that you are enrolled on, sit examinations set on these courses, and to attend all examinations that you have entered. You are personally responsible for ensuring that the relevant examination applications reach ACCA by the closing date given on the application form. Any failure to do so must be notified in writing, with reasons, to the Employer within [] days.

6.4 Where you are required to undertake link exams, these must be completed on the specified dates. Link exams should be completed in the Employer's office under invigilated exam conditions on the due date. If this is not possible due to client work, rearrangements must be agreed no later than [] days in advance.

6.5 Where you are required to undertake link exams, you are expected to achieve the pass marks in all exams. Failure to do so may result in the re-sit of the link exam paper.

6.6 If you encounter difficulties with your studies, you must discuss the problem as soon as possible with your course tutor and the Employer so that the problem can be resolved. The Employer may require you to defer an examination attempt if a satisfactory standard is not maintained.

6.7 Following an unsuccessful attempt at an examination, you are required to discuss the results and your performance with the Employer, prior to agreeing if and when the next attempt should be made.

Financial support

- 6.8 The Employer expressly reserves the right to recover from you all costs and fees incurred by the Employer in accordance with its Financial Support Policy as set out in paragraph 6.9 below within the previous [] month(s)/year(s) **[delete as appropriate]** if you subsequently give notice to terminate your employment with the Employer prior to the expiry date of this Agreement or have been dismissed either with or without notice pursuant to the Employer's Disciplinary and Dismissal Procedure.
- 6.9 Without prejudice to the foregoing, the following terms shall apply **[delete as appropriate throughout the following sub-paragraph]** : -

Student registration fee/annual student's subscription

- a) The initial student registration fee will be paid by the Employer/you.
- b) The annual student's subscription will be paid for by the Employer/you.

Examination/Exemption Fees [Note: specify which examination/exemption fees are being referred to].

[delete as appropriate]

- a) All examination entry fees will be paid for by the Employer/you.
- or**
- b) The Employer will pay the examination entry fee for your first attempt at an examination paper. You will pay the examination entry fee for any subsequent attempt at an examination paper. The Employer will reimburse the examination fee borne by you if the examination attempt is then successful.
- or**

- c) The Employer will pay the examination entry fee for your first attempt at an examination paper. You will pay/The Employer will contribute [] % towards the examination entry fee incurred in respect of any subsequent attempt at an examination paper.

or

- d) The Employer will pay the examination entry fee for your first attempt at an examination paper. The Employer may, at its absolute discretion, pay the examination entry fee in respect of a subsequent attempt at an examination paper, and the said fees will be taken into account at the following salary review.

Course fees/college fees/books/study materials

[delete as appropriate]

- a) All reasonable approved course fees/college fees/books/study materials in respect of your first attempt at an examination paper will be paid for by the Employer/you.
- b) The Employer/You will pay the reasonable approved course fees/college fees/books/study materials for your first/second attempt(s) at an examination paper.
- c) You will pay the course fees/college fees/books/study materials for a subsequent attempt at an examination paper. The Employer will reimburse the reasonable approved course fees/college fees/books/study materials borne by you if this subsequent examination attempt is then successful.
- d) You will pay/The Employer will contribute [] % towards the cost of reasonable approved course fees/college fees/books/study materials incurred in respect of any subsequent attempt at an examination paper.
- e) The Employer may, at its absolute discretion, pay all reasonable approved course fees/college fees/books/study materials in respect of a subsequent attempt at an examination paper, and the said costs will be taken into account at your next salary review.

Travel and accommodation costs

[delete as appropriate]

The Employer will pay all reasonable approved travel and accommodation costs including attending the approved courses and examinations associated with your first/second attempt(s) at an examination paper, only to the extent that the cost exceeds the normal costs of travelling between home and the Employer's office.

General

During any academic year you are entitled to a maximum of € [] financial support as set out in the above paragraphs 6.8 and 6.9.

Study leave

- 6.10 The Employer expressly reserves the right to recover from you all salary paid to you as paid study leave in accordance with its Study Leave Policy as set out in paragraph 6.11 below within the previous [] month(s)/year(s) **[delete as appropriate]** if you have since given notice to cease employment with the Employer prior to the expiry of this Agreement or have been dismissed either with or without notice pursuant to the Employer's Disciplinary and Dismissal Procedure.
- 6.11 Without prejudice to the foregoing, the following terms and conditions shall apply: -

First Attempt

The Employer will grant paid study leave to sit examinations and to attend a structured study and revision course in respect of your first attempt at an examination paper. Dates when study leave is taken must be agreed in advance.

Referred Attempt

- a) The Employer will grant paid study leave for [insert period of time] for each examination to sit examinations and to attend an approved revision course in respect of a referred attempt at an examination paper. Dates when study leave is taken must be agreed in advance.

or

The Employer will grant paid study leave for [insert period of time] for each examination to sit referred attempts at examinations. Dates when study leave is taken must be agreed in advance.

Subsequent attempts

- a) The Employer will not grant paid study leave to sit examinations or to attend a structured study and revision course in respect of a subsequent attempt at an examination paper.

or

- b) If you fail an examination and the Employer is satisfied that you were adequately prepared for it, the Employer may, in its absolute discretion, grant paid study leave for a subsequent attempt. Dates when study leave is taken must be agreed in advance.

General

During the academic year period you are entitled to a maximum of [] days/weeks paid study leave. Dates when study leave is taken must be agreed in advance.

Practical experience requirements

- 6.12 The Employer will ensure that you obtain practical experience covering a wide range of clients. This will introduce you to a variety of accounting matters and enable you to use appropriate techniques.
- 6.13 You are required to maintain a Trainee Development Matrix (TDM), or any other training record specified by ACCA, in accordance with the guidance notes for completion issued by ACCA.
- 6.14 Your progress towards ACCA membership will be reviewed at least once every twelve months, largely on the basis of your TDM, or any other training record specified by ACCA. The review will include the review and sign off of ACCA Performance Objectives

- 6.15 You must make your TDM, or any other training record specified by ACCA, available to the Employer and to ACCA when requested.

*7 **HOURS OF WORK AND OVERTIME**

Your normal working hours are as follows:

Monday to Friday: [] to [] with [] hour(s) off for lunch.

You are required to work such hours as are necessary to complete satisfactorily your duties. Accordingly overtime is to be worked as and when required.

There are no overtime payments/You will be paid [] per hour/given time off in lieu for each hour of overtime worked provided advance authorisation is obtained from []. **[delete as appropriate]**.

8 **TIMEKEEPING**

You are required to attend the office as specified under paragraph 7. If unable to do so you are required to notify [] immediately.

- *9 **PENSIONS** [Note : employers who do not have pension schemes in place are obliged to enter into a contract with a PRSA provider and to notify employees of their right to contribute to PRSAs. Employers are not obliged to contributed to PRSAs.]

[The Employer does not operate a pension scheme. However, the Employer has a contract with [name of PRSA provider]. You may contribute to this PRSA arrangement if you so wish. Contributions will be deducted from your salary at your request. The Employer [does/does not] contribute to this arrangement.]

or

The Employer operates a contributory pension scheme membership of which will commence after [insert period] service. Details can be obtained from [insert].

*10 **COLLECTIVE AGREEMENTS**

[Particulars should be given of any Collective Agreements which directly affect the Terms and Conditions of Employment including, where the Employer is not a party, the persons by whom they were made.]

or

[If there are no Collective Agreements which directly affect the Terms and Conditions of Employment, state here that this is so.]

***11 HOLIDAYS AND HOLIDAY PAY**

- 11.1 The Holiday Year runs from 1 January to 31 December.
- 11.2 From the commencement of your employment your paid holiday entitlement will be at the rate of [insert] days per calendar year plus statutory public holidays [and bank holidays]. Your holiday entitlement accrues on a daily basis..
- 11.3 Should you leave the employment of the Employer before earning the holiday entitlement you have taken, a deduction will be made from your final salary payment equivalent to the amount of time so taken.
- 11.4 Holidays not taken by 31 December may not be carried forward to the following Holiday Year without the Employer's written permission. Payment will not be made for holidays not taken.
- 11.5 Holidays may only be taken at times convenient to the Employer as previously arranged by reasonable notice.
- 11.6 If you leave the Employer with some holiday entitlement under 11.2 above not taken in the current Holiday Year, you will be paid on your last day of employment in addition to any other sums due to you, a sum representing pay for the number of days not taken. However, you will forfeit outstanding holiday entitlement if you fail to give proper notice of termination of your employment.

***12 ABSENCE DUE TO SICKNESS OR INJURY**

- 12.1 If you cannot attend work because of sickness or injury you must, unless there is some good reason on the contrary, advise your manager of the reason for non-attendance, by 9.30am on the first working day of absence. Failure to do so may result in sickness pay not being paid.
- 12.2 Sickness or injury absence exceeding [] days must be covered by a Doctor's Certificate and thereafter certificates must be submitted on a weekly basis.
- 12.3 All sickness or injury absence will be entered on your employment record.

- 12.4 During sickness you will receive sick pay from the Employer at your normal rate of pay for a total of [] weeks sickness followed by a further [] weeks sickness at half the normal pay in any period of 52 weeks. Payment thereafter will be at the Employer's discretion. There will be deducted from sickness pay an amount equal to social welfare benefits which you are eligible to receive from the State. [Note: sick pay is not mandatory under Irish law.]
- 12.5 Two or more periods of sickness absence (each exceeding 3 days) which are separated by [] or fewer days will be treated as one period of sickness absence.
- 12.6 The Employer reserves the right to require you to undergo a medical examination at its request. The Employer will pay the cost of any such examination and all information given in connection with it and any report upon it shall be fully disclosed to the Employer.

***13 GRIEVANCE PROCEDURE**

- 13.1 If you have a grievance relating to your employment, not being the subject of a disciplinary procedure, you should first raise the matter with []. Where practicable this should be done face to face. [] will endeavour to deal with the grievance and inform you of the action he/she intends to take within five working days.
- 13.2 If you disagree with the decision taken by [] or the grievance concerns the same person you may appeal to [] who will hear your grievance and will investigate the matter. [] will notify you of his/her decision within ten working days after meeting you. This decision will be final and a copy of it recorded on your personnel file. There is no further right of appeal.
- 13.3 At any grievance hearing, if you reasonably request it, you may be accompanied by a work colleague chosen by you.
- 13.4 At all stages of this procedure, you may be asked to outline your grievance in writing.

***14 DISCIPLINARY AND DISMISSAL PROCEDURE**

The Employer's disciplinary and dismissal procedure, which is non-contractual, is attached as an Appendix.

15 **CONFIDENTIALITY**

- 15.1 You shall not use or disclose to any third person either during or at any time after the period of your employment with the Employer, save during the course of your employment, any documents, confidential facts or information or trade secrets relating to the business or affairs of the Employer which come to your knowledge during such period, nor shall you make or keep any copies of documents or extracts therefrom.
- 15.2 You will not upon termination of your employment take with you or retain any records of any kind pertaining to the Employer's clients or any other information or documentation pertaining to the Employer, whether in hard copy or electronic form, or any papers, charts, bulletins, reports, drawings, blueprints, or models of any kind or any copies or extract therefrom. Any and all such items shall be deemed at all times to belong to the Employer and shall be surrendered to the Employer on demand. The Employer shall be entitled to withhold any salary or other sum due to you until such time as any such demand is met to its satisfaction.
- 15.3 Nothing contained in this clause shall limit, in any way, any legal or equitable rights which the Employer would have in the absence of this clause concerning the matters referred to in paragraphs 15.1 and 15.2 above.

16 **NON SOLICITATION, NON-DEALING AND NON COMPETITION**

- 16.1 You hereby undertake to the Employer that during your employment and for a period of [] months after the termination of your employment howsoever arising, you will not, directly or indirectly, whether on your account or on behalf of any person, firm, company or organisation: -
- a) employ, engage, solicit or entice or endeavour to solicit or entice away from the Employer any person who was employed or engaged by the Employer, at or above the level of [administrative staff] with whom you worked at any time during the period of [] months prior to the termination of your employment, whether or not such person would commit any breach of contract by reason of ceasing their employment/engagement with the Employer; or

- b) solicit or entice or endeavour to solicit or entice the custom or business of any person, firm, company or organisation who is or was a client of the Employer at any time in the [] months preceding the date of termination of your employment and with whom you dealt with, directly or indirectly, during the course of your employment with the Employer; or
- c) deal with any person, firm, company or organisation who is or was a client of the Employer at any time in the [] months preceding the date of termination of your employment and with whom you dealt with, directly or indirectly, during the course of your employment with the Employer; or
- d) in [INSERT GEOGRAPHICAL SCOPE OF RESTRICTION], be concerned, interested, employed or engaged in any business which deals with any person, firm, company or organisation referred to in sub-paragraphs b) and c) above.

16.2 You acknowledge that while it is the intention of the parties to this contract that the restrictions set out in this clause 16 are considered by the parties to be no greater than is necessary for the protection of the interests of the Employer, nevertheless, in the event that any of the said restrictions being adjudged to be invalid or unenforceable by any court of competent jurisdiction, but would be adjudged fair and reasonable if any part of the wording thereof were amended, modified, deleted or reduced in scope, then this clause 16 will apply with such amendments, modifications, deletions and reductions in scope as may be necessary to to make them valid and effective.

17 **THE EFFECT OF ENDING THE EMPLOYMENT**

The ending of your employment will not affect any rights the Employer has against you arising from any breach of this Agreement which occurred before or after your employment ended.

18. ENTIRE AGREEMENT

18.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, arrangements, and understandings in relation to your employment by the Employer. You hereby confirm that you are not entering into this Agreement in reliance upon any representations or warranties not expressly set out herein.

19. DATA PROTECTION

- 19.1 The Employer collects and uses employee personal data for a variety of personnel administration and employee, work and general business management purposes. For example, the Employer needs to process such data: (a) in connection with the performance of your employment contract, for instance, to enable the Employer to observe or provide you with your rights, benefits, and entitlements as an employee and other employment conditions agreed upon (such as determining and paying wages, health care, pensions, leave, termination, and other contractual benefits, to the extent that any of these apply to you); (b) to ensure and enable compliance with our legal obligations, such as in connection with observing equal opportunities and other similar legislation and making income tax and PRSI withholdings; (c) to improve and maintain effective employee administration; (d) to report and carry out workforce analysis; (e) to facilitate the management of work and employees; (f) to operate performance and salary reviews and appraisals in connection with possible promotions or appointments to other positions within the Employer (g) to operate the Employer's IT and communications systems; (h) to enable salary, pay roll and other similar processing; (i) to execute and perform financial agreements between us; and (j) handle any legal or other claims arising out of your employment.
- 19.2 The Employer may, from time to time, disclose your personal data in connection with the above purposes to its associated companies, and may also disclose such data to third parties that provide products or services to the Employer (such as financial services providers who administer employee benefits schemes and information technology systems support providers). Although some of these recipients will be located in Europe, others may be located, or may have relevant operations located in, the United States and elsewhere, where data protection laws may not necessarily be as protective of your rights as they are within Europe. The Employer will not disclose your personal data for any other purpose incompatible with the purposes outlined above, unless it is required or authorized by law, authorized by you, or in your own vital interest (e.g., in the case of a medical emergency). By signing this Agreement you acknowledge and agree to the Employer's use of your personal data in accordance with the above and as may be notified from time to time by the Employer to you during your employment.
- 19.3 The foregoing provisions are in accordance with your rights, and the Employer's obligations, pursuant to the provisions of the Data Protection Act, 1988 and 2003.

20. AMENDMENTS

20.1 Any amendments or additions to the provisions hereof shall be confirmed in writing by the Employer to you and agreed and unless so confirmed and agreed shall not be binding on the parties hereto.

I have read and accepted all the foregoing terms, in particular paragraphs 15 and 16, and accept that these terms are reasonable and protect a legitimate business interest, as the Employer works in a market in which confidentiality is of the utmost importance and in which employees are made aware of a high level of confidential information concerning the Employer's business and its relations with its clients, which it needs to protect.

SIGNED: (on behalf of the Employer)

DATE

SIGNED: (Employee)

DATE

DISCIPLINARY AND DISMISSAL PROCEDURE

This procedure provides for warnings to be given for failure to meet the Employer's standard of job performance, conduct (whether during working hours or not) and attendance, or breach of any of the Terms and Conditions of Employment.

1. Only [] may effect dismissal and suspensions. Suspension (on full pay) may be effected where the Employer pending an investigation into an act of misconduct on your part.

2. The Employer has the right to terminate your employment as follows:
 - a) by giving you notice of termination in writing in accordance with your contract of employment if, in its sole discretion, it decides that you lack the capability to progress to membership of ACCA. Lack of capability will be demonstrated by any of the following:
 - i) poor performance at work, provided you have received two prior written warnings and reasonable time for improvement;
 - ii) failing any or all of the ACCA examinations twice; or
 - iii) failing all or any of the ACCA examinations once when you have also shown poor performance at work and provided you have received one prior written warning and reasonable time for improvement.
 - b) by giving you notice of termination in writing in accordance with your contract of employment for poor attendance or if you have committed misconduct falling short of gross misconduct, provided you have received two prior written warnings and reasonable time for improvement (or one written warning and reasonable time for improvement in cases involving poor attendance or misconduct which is more serious but still falls short of gross misconduct)
 - c) by summary dismissal (i.e. without notice or payment in lieu of notice) if you have committed gross misconduct.

The foregoing reasons for dismissal are non-exhaustive. Also, the Employer has the right to dismiss without warnings in appropriate cases and to implement

other sanctions which it deems appropriate including transfer to another job or area permanently or temporarily, demotion or withdrawal of benefits or privileges.

3. The following are non-exhaustive examples of gross misconduct justifying summary dismissal:
- a) theft of the Employer's or another employee's property;
 - b) drunkenness or intoxication with drugs on the Employer's premises or on a site at which the Employer operates;
 - c) fighting on the Employer's premises or on a site at which the Employer operates;
 - d) breach of confidentiality concerning the Employer's confidential information;
 - e) wilful damage to the Employer's property;
 - f) refusal to obey the reasonable orders of a superior;
 - g) failure to attend for work without reasonable cause;
 - h) conduct likely to bring the Employer into disrepute;
 - i) an order of ACCA's Disciplinary Committee removing you from the student register (subject, if applicable, to an affirmation of that order by the Appeal Committee);
 - k) a serious breach or repeated breaches of ACCA's Rules of Professional Conduct.

4. Disciplinary Meetings

Where the Employer believes the disciplinary procedure should be invoked, you will be written to and advised of the complaint against you. The letter will give at least 48 hours' notice of any disciplinary meeting at which, you may be accompanied by a work colleague.

At the meeting the complaint will be put to you and you will have the opportunity to state your case.

5. Right of Appeal against Decision to Dismiss or to take Disciplinary Action

- a) You have a right to appeal against a decision to dismiss or any form of disciplinary action. Written notification of an appeal against a decision to dismiss must be given to [] no later than five working days after you receive notification of the decision to dismiss or take disciplinary action.
- b) The appeal will be heard by [] who will endeavour to meet with you as soon as possible and in any event within seven days of receipt of your written notification of the appeal. Their decision will be final.