

28 Service Provider's Records and Audit *[Authority Policy Clause]*

28.1 Records of Expenditure and Income

The Service Provider shall:

- 28.1.1 at all times maintain a full record of particulars of the costs of performing the Services, including those relating to design, implementation, transition, maintenance, management, operation and finance;
- 28.1.2 at all times maintain a full record of particulars of the income of performing the Services, Third Party Services and related to third party trading;
- 28.1.3 when requested by the Authority, provide a written summary of any of the costs or income figures referred to in clause 28.1.1 and 28.1.2, including details of any funds held by the Service Provider specially to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Service Provider of its obligations under this Agreement; and
- 28.1.4 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause.

28.2 Books of Account

Compliance with clause 28.1 shall require the Service Provider to keep (and where appropriate to procure that the Sub-Contractors shall keep) books of account in accordance with best accountancy practice with respect to this Agreement showing in detail:

- 28.2.1 Central Overheads;
- 28.2.2 payments made to Sub-Contractors;
- 28.2.3 Capital Expenditure and Revenue Expenditure and income (including, amongst other matters, assets purchased, leased or licensed by the Service Provider, and an asset register (including previous and pending expenditure to maintain the assets));
- 28.2.4 such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of clause **Error! Reference source not found.** (Special Projects) and clause (Change in Law) and the Change Protocol,

and the Service Provider shall have (and procure that the Sub-Contractors shall have) the books of account evidencing the items in clauses 28.2.1 to 28.2.4 available for inspection by the Authority (and any expert) upon

reasonable notice, and (without prejudice to the requirements contained in clause 29 (Open Book Accounting) shall present a written report of these to the Authority as and when requested.

28.3 **Maintenance of Records**

The Service Provider shall maintain or procure that the following are maintained:-

- 28.3.1 a full record of all incidents relating to health, safety and security which occur during the term of this Agreement; and
- 28.3.2 full records of all maintenance procedures carried out during the Contract Period;
- 28.3.3 reports and management information in relation to the performance and management of the Services in accordance with the requirements in the Output Specifications and the Monitoring Procedure,

and the Service Provider shall have the items referred to in clauses 28.3.1 and 28.3.3 above available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested.

28.4 **Reports and Accounts**

The Service Provider shall:

- 28.4.1 provide to the Authority copies of its annual report and accounts (prepared in accordance with UK GAAP (or as otherwise updated from time to time)) within twenty (20) Business Days of publication;
- 28.4.2 promptly upon the occurrence of a material breach under any Key Sub-Contract notify the Authority of such material breach; and
- 28.4.3 use all reasonable endeavours to assist the Authority in its preparation of any report required by a Relevant Authority or HM Treasury, from time to time; and
- 28.4.4 provide data and use all reasonable endeavours to assist the Authority in providing information relating to the Services for the purposes of benchmarking to the Chartered Institute of Public Finance Accountants or the London Authorities Performance Systems or other relevant benchmark clubs as required by the Authority.

28.5 **Internal Control Environment [*Authority Policy Clause*]**

- 28.5.1 The Service Provider shall comply with relevant governance standards (to be nominated by the Authority and to be agreed to by the Service Provider (acting reasonably)) and the Service Provider shall provide written confirmation to the Authority of such compliance within five (5) Business Days of a request by the Authority.

28.5.2 The Service Provider shall operate a sound system of internal control, this includes (amongst other matters) appropriate risk management processes, control systems, accounting records and governance arrangements (**Internal Control**). The Service Provider shall give the Authority's Chief Internal Auditor assurances regarding the adequacy of the Service Provider's Internal Control environment by:

- (a) establishing its own internal audit function;
- (b) consultation with the Authority prior to finalising its Annual Internal Audit Plan;
- (c) submitting its Annual Internal Audit Plan, in a form agreed with the Authority, to the Authority no later than the end of April in each Contract Year;
- (d) submitting internal audit reports relating to the relevant quarter to the Authority within fifteen (15) Business Days of the agreed Quarterly Date;
- (e) within five (5) Business Days of production of any limited or no assurance internal audit report submit such limited or no assurance internal audit reports relating to the Service Provider's Annual Internal Audit Plan to the Authority; and
- (f) undertaking yearly internal audits of all IPR used in the performance of the Services so as to ensure that the provisions of Part 7 (IPR and Data) are being complied with.

28.5.3 Where the Authority has any concerns with regard to the sufficiency, accuracy or otherwise of the audit reports submitted pursuant to this clause 28.5 (Internal Control Environment), the Authority shall be entitled to raise such concerns with the Service Provider who shall use all reasonable endeavours to resolve or rectify the issue including the submission of further audit reports.

28.5.4 If:

- (a) the Service Provider has an internal audit service, but the Authority's internal audit service is unable to rely on the audits and work carried out by the Service Provider's internal audit service after first taking the steps set out in 28.5.3 above; or
 - (b) the Service Provider does not have an internal audit service,
- the Authority's internal audit service shall carry out a risk based audit programme in relation to the Services. The Service Provider shall cooperate with the Authority in relation to such audit programme in accordance with clause 4.5 **Error! Reference source not found.** (Co-operation). The Service Provider shall reimburse

the Authority in relation to the costs of undertaking the audit programme.

28.6 Auditor

28.6.1 The Authority or its appointed Auditor may, upon no less than two (2) Business Days notice where the Authority has concerns in respect of the Services, and ten (10) Business Days notice in all other circumstances, conduct audits of the Services for the following purposes:

- (a) to verify the accuracy of the Periodic Service Payment (and proposed or actual variations to the Periodic Service Payment in accordance with this Agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of the Authority Data;
- (c) to review the Service Provider's compliance with the DPA, the FOIA in accordance with clauses 36 **Error! Reference source not found.**(Data Protection) and 40 (Freedom of Information) and any other Legislation applicable to the Services;
- (d) to review the Service Provider's compliance with its obligations under clauses 4 (the Services) and 25 **Error! Reference source not found.** (Performance Monitoring);
- (e) to review any records created during the design and development of the Services;
- (f) to review any books of account kept by the Service Provider in connection with the provision of the Services and/or maintained in accordance with the provisions of clauses 28.2 and 28.3;
- (g) to carry out the audit and certification of the Authority's accounts;
- (h) to carry out an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (i) to verify the accuracy and completeness of any management information delivered or required by this Agreement (including information maintained in accordance with the provisions of clauses 28.2 and 28.3);
- (j) to inspect any Authority Assets, including the Authority's IPRs, equipment, facilities and maintenance and Assets, for the purposes of ensuring that the Authority's Assets and

Assets are secure and that the Rolling Inventory or any other register of assets is up to date;

- (k) to ensure that the Service Provider is complying with the Authority Policies and where relevant (in accordance with the provisions of clause 55.4 **Error! Reference source not found.**(Laws, Policies and Related Matters)) the Service Provider Policies and any British or equivalent European standards;
- (l) to review the Service Provider's compliance with its obligations under clause 37.10**Error! Reference source not found.** (Malicious Software); and
- (m) any other audit that may be required by any Relevant Authority.

28.6.2 Subject to the Authority's obligations of confidentiality, the Service Provider shall upon request provide the Authority (and/or its agents or representatives) within two (2) Business Days (unless agreed otherwise by the parties acting reasonably) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information reasonably requested by the Authority within the permitted scope of the audit;
- (b) reasonable access to any Service Provider's Premises and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- (c) reasonable access to the Service Provider's systems; and
- (d) reasonable access to Staff.

28.6.3 The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Services against the applicable Service Performance Levels at a level of detail sufficient for the Authority to verify compliance with the Service Performance Levels.

28.6.4 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 28 (Service Provider's Records and Audit), unless the audit identifies a material error or discrepancy in the provision of information provided by the Service Provider under this clause 28 (Service Provider's Records and Audit) in which case the Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

28.6.5 If an audit identifies that:

- (a) the Service Provider has failed to perform its obligations under this Agreement in any material manner, the Service Provider shall prepare a remedial plan within ten (10) Business Days for the Authority to approve. Such approval not to be unreasonably withheld. If the Service Provider's failure relates to a failure to provide any information to the Authority about the Periodic Service Payment, proposed Periodic Service Payment or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Authority has overpaid the Periodic Service Payment, the Service Provider shall pay to the Authority the amount overpaid (including interest at the Prescribed Rate) within twenty (20) Business Days. The Authority may deduct the relevant amount from Periodic Service Payment if the Service Provider fails to make this payment; and
- (c) the Authority has underpaid the Periodic Service Payment, the Authority shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Authority in accordance with the provisions of clause 26**Error! Reference source not found.** (Payment).

28.6.6 The Service Provider shall permit records referred to in this clause 28 to be examined and copied from time to time by the Authority's auditor and inspectors and their representatives and other representatives of the Authority for the purposes of carrying out any audit permitted by this clause 28.6 (Auditor).

28.7 **Retention**

The records referred to in this clause 28 shall be retained in accordance with the relevant Authority Policy and in any case for a period of at least six (6) years after the Service Provider's obligations under this Agreement have come to an end.

28.8 **Information on Termination or Expiry**

28.8.1 Upon termination or expiry of this Agreement and in the event that the Authority wishes to enter into another contract for the provision of the Services, the Service Provider shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Authority to provide information relating to the Service Provider's costs of providing the Services.

28.8.2 Where a request is made pursuant to clause 28.8.1 for the Service Provider's cost information, in the event that the Authority is reprocurring the Services and the Service Provider is party to such procurement exercise, the Service Provider shall be entitled to make representations to the Authority as to whether such information should be disclosed to any third parties which the Authority shall pay due regard to.

28.9 Confidentiality of Information

- 28.9.1 All information referred to in this clause 28 is subject to the obligations set out in clause 39 **Error! Reference source not found.**(Information and Confidentiality) and clause 40 (Freedom of Information).
- 28.9.2 For the purposes of the examination and certification of the Authority's accounts and/or any examination of the economy, efficiency and effectiveness with which the Authority has used its resources, the Audit Commission (or other relevant body or any auditor appointed by the Authority pursuant to Legislation or in accordance with best practice prevailing from time to time in the public sector) internal or external auditor may examine such documents premises, systems and Staff as he may reasonably require which are owned, held or otherwise within the control or employ of the Service Provider or Sub-Contractors (who shall procure that any person acting on its behalf who has such documents and/or other information shall also provide access) and may require the Service Provider to produce such oral or written explanation as he considers necessary.

29 Open Book Accounting [*Authority Policy Clause*]

- 29.1 Without prejudice to the provisions of clause 28.2 (Books of Account) and Schedule 14 (Change Protocol) the Authority shall be entitled to request once in each Contract Year that the Service Provider provide to the Authority a Certificate of Expenditure and Income within fifteen (15) Business Days of such request. The Certificate of Expenditure and Income shall be prepared in accordance with generally accepted accounting principles (UK GAAP) and Good Industry Practice such as that provided by the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Green Book. The Service Provider shall arrange for the Certificate of Expenditure and Income to be audited by the Service Provider's external auditor as soon as practicable after submission to the Authority and a copy of the audited version of the Certificate of Expenditure and Income shall be promptly provided to the Authority following receipt by the Service Provider.
- 29.2 The Certificate of Expenditure and Income shall include a representation of the Financial Model setting out the Service Provider's actual expenditure, income and profits in providing the Services and the Third Party Services over the preceding Contract Year including the following details:
- 29.2.1 actual Capital Expenditure, including capital replacement costs;
- 29.2.2 actual operating expenditure relating to the provision of the Services and Third Party Services with an analysis showing the costs of Staff, consumables, sub-contracted and bought in services;
- 29.2.3 all interest expenses and other third party financing costs incurred in relation to the Services and Third Party Services;

- 29.2.4 details of the overhead recoveries that have been made in relation to the Services and Third Party Services;
 - 29.2.5 the profit which the Service Provider or Sub-Contractor has achieved in the provision of the Services and Third Party Services including any Profit Element forming any part of the overhead recoveries disclosed by reason of clause 29.2.4 above or any part of sub-contracted or bought in services from Key Sub-Contractors or Affiliates;
 - 29.2.6 income from charges to the Authority and any Third Party in relation to provision of these services;
 - 29.2.7 such other records as the Authority may reasonably require in order to monitor and verify the Service Provider's performance and the payments made pursuant to Schedule 4 (Payment and Performance Mechanism); and
 - 29.2.8 such other items as the Authority may reasonably require in order to conduct cost audits for verification of cost expenditure or estimate expenditure for the purposes of the Agreement;
- 29.3 Following receipt of the Certificate of Expenditure and Income the Service Provider shall provide to the Authority such additional information as it may reasonably request so that the Authority can verify the accuracy of the Certificate of Expenditure and Income. The Authority shall have the right to appoint an independent third party auditor who shall enter into a confidentiality undertaking as set out in Schedule 37 (Form of Confidentiality Undertaking) in order to verify the Certificate of Expenditure and Income.
- 29.4 The auditor appointed pursuant to clause 29.3 shall be paid for by the Authority unless the Certificate of Expenditure and Income prepared by the Service Provider is found to be manifestly inaccurate, incomplete or misleading in which case the Service Provider shall be solely responsible for paying the auditor's costs.
- 29.5 The Service Provider shall allow the Authority, or its auditor and its authorised agents the right of reasonable access to (and, the right to take copies of) the books of account and other source data in whichever form held of the information identified in any Financial Model or such other information as may be necessary or reasonably desirable for the purpose of verifying the Certificate of Expenditure and Income or for the purpose of monitoring and calculating the Service Provider's profit margins and applying the provisions of the Payment Mechanism.
- 29.6 The Certificate of Expenditure and Income may be used by the Authority for verification of cost expenditure or estimated expenditure in particular but without limitation for the purpose of calculating the effect of a Change, introduction of Special Projects or Qualifying Change in Law or compensation payable on Termination.