

## SCHEDULE 15

### AUDIT

#### 1. INTRODUCTION

##### 1.1 Background

This Schedule provides for (i) audit of the Contractor, the Subcontractors and their respective activities in relation to this Agreement by the Authority (**Authority Audit Rights**) and (ii) an internal audit programme to be implemented by the Contractor (**Internal Audit Requirements**).

##### 1.2 Effect of Audit

The exercise of the Authority Audit Rights and any associated reports and courses of action arising from the exercise of the Authority Audit Rights shall not prejudice or constitute a waiver or exclusion of any:

- (i) obligation or liability of the Contractor; and/or
- (ii) right or remedy of the Authority,

under or in relation to this Agreement.

#### 2. AUTHORITY AUDIT RIGHTS AND RESPONSIBILITIES

##### 2.1 Contractor Responsibility

The Contractor shall, and shall procure that each Subcontractor shall, comply with the obligations of the Contractor under this Schedule 15 and provide all further reasonable assistance to enable each Authority Audit Agent to exercise the Authority Audit Rights.

##### 2.2 Authority Audit Agents

The **Authority Audit Agents** shall include:

- (i) internal and external auditors of the Authority or a Commissioning Body;
- (ii) statutory or regulatory auditors of the Authority or a Commissioning Body;
- (iii) the Comptroller and the Auditor General and his representatives, and/or any appointed representatives of the National Audit Office;
- (iv) any person formally appointed by the Authority or a Commissioning Body to carry out audit or similar review functions, provided that he:
  - (A) enters into reasonable confidentiality arrangements with the Authority in relation to Confidential Information of the Contractor;
  - (B) satisfies any reasonable security clearance requirements of the Contractor; and

- (C) does not have sufficient share in any one or more of the Contractor's primary lines of business in the United Kingdom so as to constitute a significant competitive threat to the Contractor;
- (v) any Relevant Authority; and
- (vi) successors to any person specified in (i) to (v) (inclusive) above.

### **2.3 Audit Access**

- (a) For the purposes of this Agreement, the term 'access' shall include access by the Authority Audit Agents to:
  - (i) information (including operational and financial information) used by the Contractor as a basis for:
    - (A) the Charges and/or any other amounts payable by the Authority under this Agreement (including any proposed or actual variations to the Charges and payments); and
    - (B) the provision of the Services including the Quality Assurance Arrangements;
  - (ii) hard and (if available) soft copies of all records and/or documentation including:
    - (A) relevant shared network data; and
    - (B) electronic mail data and handwritten notes (including data from the Contractor's archives) of the Contractor Personnel or any person who is a former Contractor Personnel,and access to review, duplicate and remove copies of these records and documents;
  - (iii) all books of account and financial records kept by the Contractor in connection with the provision of the Services;
  - (iv) verify the accuracy and completeness of any management information (including operational and financial information) in the possession of the Contractor;
  - (v) all Contractor Premises, Contractor Personnel (including IT personnel) and all other property, accommodation and facilities used by the Contractor;
  - (vi) all Project Data and/or Software Materials used by the Contractor and/or its Subcontractors in performing or facilitating the Services;
  - (vii) all of the equipment in the possession or control of the Contractor and/or any Subcontractor;
  - (viii) all oral and written information required by the Authority Audit Agents for the purposes of the audit;
  - (ix) all documentation, designs or models required to be developed by the Contractor under this Agreement; and

- (x) all other information, equipment, document management systems, personnel, software, materials (including meeting notes) and locations as reasonably required within the scope of an audit,

in each case (as applicable) in its original, unaltered form and to evidentiary standards acceptable to the Authority.

- (b) The Authority Audit Agents shall have the right to obtain and use all items referred to in paragraphs 2.3(a)(i) to (x) above in the manner determined by the Authority, including by copying, reformatting or reconfiguring any information or data or using forensic imaging and forensic data capturing and processing technologies.
- (c) The Contractor shall, and shall procure that each Contractor Personnel shall, give to each Authority Audit Agent all necessary assistance in connection with the exercise of the Authority Audit Rights.
- (d) The Contractor shall procure access by each Authority Audit Agent to the equivalent information set out in paragraph 2.3(a) with respect to each Subcontractor.
- (e) The Contractor shall ensure that any information or data transferred to the Authority, a Commissioning Body or an Authority Audit Agent in accordance with this Schedule 15 shall be encrypted as required by the Authority.

#### **2.4 Purpose of Audits**

- (a) Each Authority Audit Agent may exercise the Authority Audit Rights and the Contractor shall grant access to each Authority Audit Agent:
  - (i) to conduct internal and statutory audits of the Authority or a Commissioning Body;
  - (ii) to prepare, examine and/or certify the annual and interim reports and accounts of the Authority or a Commissioning Body;
  - (iii) to verify the accuracy of the Charges and/or any other amounts payable by the Authority or a Commissioning Body under this Agreement (including any proposed or actual variations to the Charges and payments), including reviewing the payment mechanism referred to in Schedule 11 (Payment Mechanism) and its application;
  - (iv) to verify the Contractor's compliance with the terms of this Agreement and all Applicable Law;
  - (v) to review, verify and quality assess any reports and management information provided pursuant to this Agreement;
  - (vi) to verify the integrity, confidentiality and security of the data being processed, stored and/or accessed by the Contractor and/or its Subcontractors pursuant to this Agreement;
  - (vii) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes, provided that the Authority, a Commissioning Body and an Authority Audit Agent will be under no obligation to inform the Contractor of the purpose or objective of its investigations;

- (viii) to obtain all necessary information to fulfil the obligations of the Authority or a Commissioning Body to supply information for parliamentary, ministerial, judicial or administrative purposes;
  - (ix) to inform any statute driven examination of the economy, efficiency and effectiveness of the Authority or a Commissioning Body and the use of its resources;
  - (x) to assist, perform or satisfy any other audit that may be required by any Relevant Authority; and/or
  - (xi) to verify the technical or financial aspects of any Change pursuant to the Change Protocol.
- (b) If an audit identifies that:
- (i) the Contractor has failed to perform its obligations in any material respect, the Authority shall be entitled to initiate the Remedial Plan Process set out in Clause 10.4(d) and if the Contractor's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Contractor's costs, the Remedial Plan shall include a requirement for the provision of that information;
  - (ii) the Authority has overpaid any Charges, the Contractor shall pay to the Authority the amount overpaid within 20 Business Days after the date of the report referred to in paragraph 2.8 and the Authority may deduct the relevant amount from the Charges if the Contractor fails to make this payment; or
  - (iii) the Authority has underpaid any Charges, the Authority shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Contractor in relation to invoicing within 20 Business Days after the date of the report referred to in paragraph 2.8.

## **2.5 Notification of Audit**

- (a) Except in the case of an Emergency Audit, the Authority or relevant Commissioning Body shall provide at least 10 Business Days' notice of any audit it intends to carry out, specifying each location to be audited, the anticipated time of arrival and the name and title of each attendee, together with the organisation he represents.
- (b) Following notification of an audit, the Contractor shall provide the Authority Audit Agents with audit access (as set out in paragraph 2.3 and for any of the purposes set out in paragraph 2.4(a)) as the Authority, relevant Commissioning Body and/or Authority Audit Agent requests.
- (c) The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

## **2.6 Emergency Audit**

The Contractor shall provide each Authority Audit Agent with immediate audit access (as set out in paragraph 2.3 and for any of the purposes set out in paragraph 2.4(a)) for each Emergency Audit in the following circumstances:

- (i) the audit is required for reasons of actual or suspected impropriety or fraud;

- (ii) there are reasonable grounds to suspect that the Contractor may be in default under this Agreement;
- (iii) circumstances have arisen, or are believed to have arisen, which would give the Authority the right to terminate this Agreement;
- (iv) there are reasonable grounds to suspect that a security breach has occurred in relation to the Services and/or this Agreement; and/or
- (v) the Authority wishes to carry out occasional unannounced security testing or inspections to establish compliance with its security requirements under this Agreement including those set out in Schedule 18 (Information Assurance) and Schedule 19 (ICT).

## **2.7 Comptroller and Auditor General**

Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and Auditor General and/or his representatives from:

- (i) carrying out an audit, examination or investigation of the Contractor and/or any Subcontractor for the purposes of and pursuant to the National Audit Act 1983, the Government Resources and Accounts Act 2000, the Exchequer and Audit Act 1921 and/or any other Applicable Law; and
- (ii) examining all documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Subcontractor, and any oral or written explanations as he considers necessary.

## **2.8 Response to Audits**

- (a) Following an audit, the Authority may provide to the Contractor, within a reasonable time after that audit, a report indicating:
  - (i) without prejudice to any of its other rights or remedies under this Agreement, any specific issues of non-compliance with this Agreement which the Contractor is required to rectify (which the Contractor agrees may not be a complete list of all areas of non-compliance); and
  - (ii) any issues not concerning non-compliance but which the Authority may (without commitment by the Authority) wishes to consider further with the Contractor,

in each case as identified as a result of the conducted audit.

- (b) If the Contractor disputes an audit report provided in accordance with paragraph 2.8(a), the Contractor shall, within 10 Business Days after receiving the relevant report, provide details of the basis for that dispute together with documentation to support the Contractor's position to the Authority. If the matter cannot be resolved, it shall be dealt with in accordance with the Dispute Resolution Procedure (involving, where appropriate and possible, the applicable Authority Audit Agents).
- (c) Any matters raised by the Authority pursuant to paragraph 2.8(a)(ii) shall be dealt with by the parties through the Change Protocol.

## **2.9 Audit Costs**

- (a) Subject to paragraph 2.9(b), each party shall pay the costs and expenses incurred by it in complying with its obligations under this Schedule 15.
- (b) If an audit identifies:
  - (i) a default by the Contractor; or
  - (ii) a miscalculation by the Contractor of the Charges or any other amounts payable by the Authority under this Agreement,

the Contractor shall pay the Authority for all of the reasonable costs and expenses of the Authority or the relevant Commissioning Body.

### **3. INTERNAL AUDIT REQUIREMENTS**

The Contractor shall, during the Contract Period:

- (i) make arrangements for the provision and operation of an internal audit service that is compliant with Public Sector Internal Audit Standards and for ensuring that it operates appropriate internal and external audit arrangements; and
- (ii) report progress against its internal audit programme, together with any significant findings, to the Authority (who may request additional audit work or further reports) as required.

### **4. INDEMNITY**

The Contractor shall be responsible for, and shall release and indemnify the Authority and each Commissioning Body on demand from and against, all liability suffered by the Authority or the relevant Commissioning Body as a result of the exercise of the Authority Audit Rights including as a result of the exercise of its rights under paragraph 2.4 and the content or disclosure of any report referred to in paragraph 2.8.