

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 27: CUSTODY OF FINANCIAL MODEL

DBFOM CONTRACT

CONCESSION CONTRACT

DBFM CONTRACT

DBF CONTRACT

OMF CONTRACT

INTRODUCTION

The financial model is a spreadsheet setting out projections of the PPP Co's finances for the term of the project. It is used to calculate amounts under the PPP contract, including payments from the Authority. Those payments can change in some cases, and the financial model can be used to calculate the changes.

The text below provides for the safe-keeping of a disk/appropriate electronic format containing the financial model, so that it can be used when required under the contract. Some PPP contracts merely append a printout of the model as a schedule to the contract. This will record the numbers, but not the formulae, which are important if the model has to change. Another possible approach would be for each part to retain its own file of the model data, authenticated by the advanced electronic signatures of each party under the Electronic Commerce Act 2000.

Care must be taken to ensure that any changes to the financial model (part of the project agreement/contract) secure value for money for the Exchequer and that appropriate financial advice is sought on the matter, e.g. from NDFA.

CORE CONTRACT DRAFTING

27. CUSTODY OF FINANCIAL MODEL

27.1 Custody Arrangements

- (a) Immediately following the Effective Date, two copies of the Financial Model and two copies of the Financial Model CD-ROM shall be lodged by the PPP Co (after verification of the identity of the Financial Model on behalf of the Authority) with the Custody Holder to be held in custody upon the terms set out in the Custody Agreement which shall include a right of access for the Authority. The Custody Holder and the terms of the Custody Agreement shall be subject to the prior Approval of the Authority. The parties shall agree a substitute custodian in the event that such person ceases to act as custodian.
- (b) The PPP Co shall promptly lodge with the Custody Holder (or the substitute custodian) [●]copies of any revisions to the Financial Model in accordance with the terms of this

Agreement, to be held in custody upon the terms set out in the Custody Agreement.

27.2 Costs

The cost of these custody arrangements shall be met by the PPP Co.

27.3 Revision of the Financial Model

If, pursuant to Clause 36.6 (Compensation), [Clause 34 – Schedule A] (Variations), Part 11 (Refinancing) of [Clause 43 – Schedule] and/or Schedule [●] (Change in Law) [*Part 1 at* [Clause 35 – Schedule]], the Financial Model is adjusted in accordance with Part 10 of [Clause 27 – Schedule] (Payment Mechanism), the PPP Co and the Authority shall execute a supplement to this Agreement which shall replace the Financial Model with the revised Financial Model in the Agreed Form; on that date the revised Financial Model shall become the Financial Model for the purposes of this Agreement and the replaced Financial Model shall cease to be so regarded.

27.4 Authority's Right to Audit the Financial Model

The Authority shall have a right to audit the Financial Model from time to time, including without limitation, in the event the Financial Model is being revised in accordance with Clause 27.3 (Revision of the Financial Model).

[CLAUSE 27 - SCHEDULE]

PART 10

Unitary Charge Adjustment

1. Where, in terms of the Agreement, an alteration of the Unitary Charge is expressly directed to be made pursuant to Part 10 of [Clause 27 – Schedule] , the Unitary Charge shall be adjusted in the Financial Model to ensure that:
 - 1.1 The minimum Senior Loan Life Cover Ratio as calculated in the Financial Model as a result of the relevant adjustment is maintained at the level of such ratio in the Base Case in effect immediately before the relevant re-running of the Financial Model;
 - 1.2 The minimum Senior Annual Debt Service Cover Ratio as calculated in the Financial Model as a result of the relevant adjustment is maintained at the same level of such ratio in the Financial Model in effect immediately before the relevant re-running of the Financial Model;
 - 1.3 The Base Case Equity IRR as calculated in the Financial Model as a result of the relevant adjustment is maintained at the same level of such return in the Financial Model in effect immediately before the relevant re-running of the Financial Model.
2. On each and every occasion that the Financial Model is adjusted pursuant to this Part 10 of [Clause 27 – Schedule] there shall be delivered to the Authority a printed copy of the Financial Model (and associated workbook) as rerun as a result of the relevant adjustment together with one copy on computer disc (complete with all formulae and data) together also with a certificate in terms acceptable to the Authority (acting reasonably) from the auditors of such Financial Model.

Comment: This sets out how the financial model is to be used for adjusting the unitary charge (the payment made by the Authority to the PPP Co) when the contract provides for a change to the unitary charge.

KEY DEFINITIONS – USED IN CLAUSE 27 CORE CONTRACT DRAFTING

“Custody Agreement” means the agreement for custody of the Financial Model CD-ROM dated on or about the Commencement Date between the PPP Co, the Authority and the Custody Holder.

“Custody Holder” means a firm which is registered with 1994 ISO 9002 Registration (specific to records management).

“Financial Model” means the assumptions and methodologies that have been agreed between the parties as at the Commencement Date to compute various amounts (such amounts which, as at the date hereof, are more particularly contained in the spreadsheet set out in Schedule [●] (Financial Model)) arising in connection with this Agreement, as may be revised and substituted from time to time following an adjustment carried out pursuant to the terms of Part 10 of [Clause 27 – Schedule] (Payment Mechanism).

“Financial Model CD-ROM” means the compact discs containing the Financial Model and which are to be lodged with the Custody Holder on the terms set out in the Custody Agreement.

CROSS REFERENCES

This clause is referred to in the following clause of the Compendium:

- Clause 3 (Effectiveness of this Agreement)

There are no references to this clause in the Risk Matrix.