

## IN FAVOR OF: Narrow Audit Clauses

*Jessica Eterno, Senior Counsel*

**SUPPORTING ARGUMENT:** A **narrowly tailored audit clause** in a commercial contract is advantageous for the party seeking to limit the parameters of audits performed during the term of the contractual relationship (typically the audited party).

By defining audit rights narrowly, the parties establish clearly defined parameters for the audit process and scope that help to eliminate any disputes at the point in time when an audit is requested. The narrow audit clause provides a clear understanding of: (1) the process to request, run and conclude an audit; (2) the types of data, records, and systems in scope for the audit; (3) responsibilities for costs associated with the audit; and (4) consequences for non-compliance with both the audit process or the activities being audited.

This approach protects confidentiality, promotes audit efficiency, and ensures data relevancy for both parties. The audited party retains control over access to its data and can focus its efforts on retrieving data directly tied to the audited service or product which minimizes operational disruptions and safeguards it from inadvertent disclosure of unrelated information. For the auditing party, this targeted approach ensures access to the precise records needed to assess compliance with usage rights, eliminating the need to sort through an indiscriminate volume of unrelated data.

The result is a more streamlined and purpose-driven audit process. A narrow audit clause safeguards confidentiality while upholding accountability and fostering a cooperative, cost-effective approach to compliance. Ultimately, this strengthens the commercial relationship through clarity, efficiency, and foreseeability.

### POINTS OF DISCUSSION

- **Clarity in Scope:** Establishes clear boundaries around the audit process – ranging from notice requirements and audit frequency to identification of in-scope data and systems to consequences for non-compliance.
- **Efficiency:** Enables proactive organization of data, records and systems in preparation for an audit enabling quick and thorough responses to audit requests by the audited party and focused review of those responses for compliance by the auditing party.
- **Mutual Understanding:** Creates defined boundaries and clear expectations which helps to eliminate disputes and foster cooperative engagement by the parties in the audit process.
- **Risk Mitigation:** Restricts access to unrelated data and systems by the auditing party enhancing protection of unrelated confidential information belonging to the audited party and reducing risks of unintended information disclosure to the auditing party.
- **Cost Efficiency:** Controls audit-related expenses and reduces operational burdens on the audited party by narrowing depth and frequency of audits.

