

24.3.4 efficiency of the Service Provider in performing the Services under this Contract;

and the Service Provider shall give all reasonable assistance to the Authority or its nominee in conducting such inspection, including making available documents and staff for interview.

25 SET-OFF

25.1 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Authority or any member of the Authority Group arising out of or attributable to this Contract or any other contract entered into by the Authority (or any other member of the Authority Group) and the Service Provider under the Agreement, may be deducted:

25.1.1 by the Authority from monies due or which may become due to the Service Provider under this Contract; or

25.1.2 by the Authority or another member of the Authority Group from monies due or which may become due to the Service Provider under any other contract entered into by any of them with the Service Provider under the Agreement

or, in either case, the Authority and/or other member of the Authority Group (as the case may be) may recover such amount as a debt.

26 INDEMNITY AND LIMITATION OF LIABILITY

26.1 Subject to the other Clauses in this Clause 26, the Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless each of the Authority and all other members of the Authority Group (including their respective employees, sub-contractors and agents) ("**the Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a consequence of any breach or negligent performance of the Contract by the Service Provider (or any of the Service Provider Personnel) (including in each case any non-performance or delay in performance of the Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Service Provider (or any of its employees, agents or sub-contractors).

26.2 The Service Provider is not responsible for and shall not indemnify the Authority for any Losses to the extent that such Losses are caused by any Authority Event or by any other breach or negligent performance of any of its obligations under the Contract by the Authority or any other member of the Authority Group including by any of their respective employees, agents or sub-contractors.

26.3 The Service Provider accepts unlimited liability for:

26.3.1 death or personal injury caused by the negligence of the Service Provider;

26.3.2 fraud or fraudulent misrepresentation committed by the Service Provider;

26.3.3 infringement or alleged infringement of third party intellectual property and/or any breach of the provisions of Clause 28 (The Authority's Data) and Clause 29 (Intellectual Property Rights);

- 26.3.4 any breach of Clause 30 (Protection of Personal Data) and Clause 31 (Confidentiality, Announcements and Transparency);
- 26.3.5 Losses arising under any indemnity in Clause 14 (Service Provider Personnel) and Clause 37 (Transfer of Employees on Expiry or Termination);
- 26.3.6 Service Credits to which the Authority is entitled;
- 26.3.7 any other liability to the extent which it cannot be lawfully excluded.
- 26.4 Subject to Clause 26.3, the Service Provider's liability (whether in contract (including under any indemnity), in tort (including negligence), under statute or otherwise under or in connection with this Contract or the provision of the Services) shall;
- 26.4.1 in respect of Losses within the scope of the Insurance maintained by the Service Provider pursuant to any of Clauses 27.1.1, 27.1.2 or 27.1.3 not exceed, per incident or series of connected incidents, the level of the insurance cover required to be taken out pursuant to the relevant Clause 27.1.1, 27.1.2 or 27.1.3, as the case may be; and
- 26.4.2 in respect of Losses within the scope of the Insurance maintained by the Service Provider pursuant Clause 27.1.4 not exceed the level of the insurance cover required to be taken out pursuant to Clause 27.1.4 per incident or series of connected incidents, and in the aggregate per annum.
- 26.5 Subject to Clause 26.3 and (in so far as it applies) Clause 26.4, the Service Provider's liability to the Authority (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) arising out of any act or omission of the Service Provider, its agents or subcontractors howsoever caused arising out of or in connection with this Contract shall not exceed for Events which occur in any Year, the sum referred to in Clause 26.6. For the purpose of this clause and Clause 26.6:
- 26.5.1 a "Year" means each period of 13 Periods commencing on the Contract Commencement Date or an anniversary of the Contract Commencement Date (as the case may be), except in the case of the final Year, which will commence on the anniversary of the Contract Commencement Date immediately preceding the Expiry Date and end on the Expiry Date; and
- 26.5.2 an "Event" means any act, event, omission or circumstance.
- 26.6 The sum referred to in Clause 26.5 is 125% of the Charges payable by the Authority pursuant to the Contract in respect of the Year during which the Event occurs ("the Cap"), except that:
- 26.6.1 if it is necessary to establish the amount of the Cap for a Year before the end of that Year then the Cap will be provisionally deemed to be a sum which is equal to:-
- 26.6.1.1.1 in the case of the first Year, 125% of the amount which the Authority, acting reasonably, forecasts as the Charges which are expected to be payable by it under the Contract in respect of that Year; and
- 26.6.1.1.2 in the case of any other Year, the Cap which applied for the preceding Year

and there will be a reconciliation based on the actual Cap for that Year once that is ascertained and an additional payment paid by the Service Provider or a reimbursement made by the Authority to correct any over or under payment made on the basis of the provisional Cap;

26.6.2 where this Contract terminates before the end of the Initial Term (or where applicable before the end of any Extension Years added in accordance with Clause 2), the Cap will be calculated on the basis of the Charges which the Authority, acting reasonably, forecasts it would have paid for the relevant Year(s) had the early termination not occurred; and

26.6.3 for the purpose of this Clause, an Event occurring after the Expiry Date will be regarded as having occurred in the final Year.

26.6.4 references in this Clause 26.6 to Charges means Charges which would have been payable by the Authority but for any breach by the Service provider of its obligations under this Contract and not taking into account any Service Credits to which the Authority is entitled.

26.7 Except in relation to court awards, settlements, legal costs and the amount of fines recoverable by the Authority under or by virtue of Clause 30 (Protection of Personal Data) and/or Clause 32 (Freedom of Information and Transparency), each Party shall (without limiting any other duty it may have to mitigate its losses) take all reasonable steps to mitigate any Losses incurred or which might be incurred as a result of a default or breach of this Contract by the other Party including, without limitation, where it has the benefit of an indemnity under this Contract.

27 INSURANCE

27.1 The Service Provider will at its sole cost maintain employer's liability and motor insurance cover (in terms approved by the Authority) in respect of the following to cover the Services ("the Insurances") as required by law and insurance cover in the sum of not less than (i) £5 million per claim in respect of the insurance described in Clauses 27.1.1, 27.1.2, and 27.1.3 and (ii) £5 million per incident and in the aggregate per annum in respect of the insurance described in Clause 27.1.4 and will ensure that the Authority's interest is noted on each and every policy or that any public liability, product liability or employer's liability insurance includes an indemnity to principal clause:

27.1.1 public liability to cover injury and loss to third parties;

27.1.2 insurance to cover the loss or damage to any item related to the Services;

27.1.3 product liability; and

27.1.4 professional indemnity or, where professional indemnity insurance is not available, a "financial loss" extension to the public liability insurance referred to in Clause 27.1 or, if applicable, the product liability insurance referred to in Clause 27.1.3. Any professional indemnity insurance or "financial loss" extension shall be renewed for a period of 6 years (or such other period as the Authority may stipulate) following the expiry or termination of the Contract.

27.2 The insurance cover will be maintained with a reputable insurer.

- 27.3 The Service Provider will produce evidence to the Authority on reasonable request of the insurance policies set out in Clause 27.1 and payment of all premiums due on each policy.
- 27.4 The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 27.1 being or becoming void, voidable or unenforceable.
- 27.5 In the event that any of the Insurances are cancelled or not renewed, the Service Provider shall immediately notify the Authority and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Authority.

28 THE AUTHORITY'S DATA

- 28.1 The Service Provider acknowledges the Authority's ownership of Intellectual Property Rights which may subsist in the Authority's data. The Service Provider shall not delete or remove any copyright notices contained within or relating to the Authority's data.
- 28.2 The Service Provider shall ensure every Document produced or amended by the Service Provider in connection with this Contract displays an appropriate copyright statement correctly reflecting its status in accordance with the following requirements:
- 28.2.1 All new and updated Documents must be marked as "Copyright TfL" by including the following copyright statements, including the relevant year in which the document was created;
- 28.2.2 On the front page:
- "Copyright © [2015] [Drafting Note: Year in which document created to be inserted.] Transport for London. All rights reserved. This information is confidential. You may not reproduce, adapt or disclose this information, or any part of this information, for any purpose without TfL's written permission. TfL makes no warranties or representations, and expressly disclaims all liability, concerning this information."*;
- 28.2.3 On the footer / bottom of every subsequent page:
- "Copyright © [2015] [Drafting Note: Year in which document created to be inserted.] Transport for London. All rights reserved. This information is confidential."*
- 28.3 The Service Provider and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the Authority's data and to prevent any corruption or loss of the Authority's data.

29 INTELLECTUAL PROPERTY RIGHTS

29.1 NOT USED

- 29.2 The Service Provider shall provide the Authority with copies of all materials relied upon or referred to in the creation of the Products together with a