



## **25. Confidentiality and Announcements**

- 25.1 Subject to Clause 26, the Service Provider will keep confidential:
- 25.1.1 the terms of this Agreement and all Call-Off Contracts; and
  - 25.1.2 any and all Confidential Information that it may acquire in relation to the Authority.
- 25.2 The Service Provider will not use the Authority's Confidential Information for any purpose other than to perform its obligations under this Agreement and any Call-Off Contract. The Service Provider will ensure that its officers and employees comply with the provisions of Clause 25.1.
- 25.3 The obligations on the Service Provider set out in Clause 25.1 will not apply to any Confidential Information which:
- 25.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 25); or
  - 25.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
  - 25.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agent and sub-contractors.
- 25.4 The Service Provider shall keep secure all materials containing any information in relation to the Agreement or to any Call-Off Contract and its performance.
- 25.5 The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or any Call-Off Contract or that it is providing the Services to the Authority or in relation to any matter under or arising from the Agreement or any Call-Off Contract unless specifically granted permission to do so in writing by the Authority. The Authority shall have the right to approve any announcement before it is made.
- 25.6 The provisions of this Clause 25 will survive any termination of this Agreement or Call-Off Contract for a period of 6 years from termination.





## **26. Freedom of Information and Transparency**

### **26.1 For the purposes of this Clause 26:**

**26.1.1 “FOI Legislation”** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry for Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

**26.1.2 “Information”** means information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority; and

**26.1.3 “Information Access Request”** means a request for any Information under the FOI Legislation.

### **26.2 The Service Provider acknowledges that the Authority:**

**26.2.1** is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and

**26.2.2** may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

### **26.3 Without prejudice to the generality of Clause 26.2, the Service Provider shall and shall procure that its sub-contractors (if any) shall:**

**26.3.1** transfer to the Procurement Manager (or such other person as may be notified by the Authority to the Service Provider) each Information Access Request relevant to this Agreement or a Call-Off Contract, the Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Access Request; and

**26.3.2** in relation to Information held by the Service Provider on behalf of the Authority, provide the Authority with details about and/or copies of all such Information that the Authority requests and such details and/or copies shall be provided within five (5) Business Days of a request from the Authority (or such other period as the Authority may reasonably specify), and in such forms as the Authority may reasonably specify.



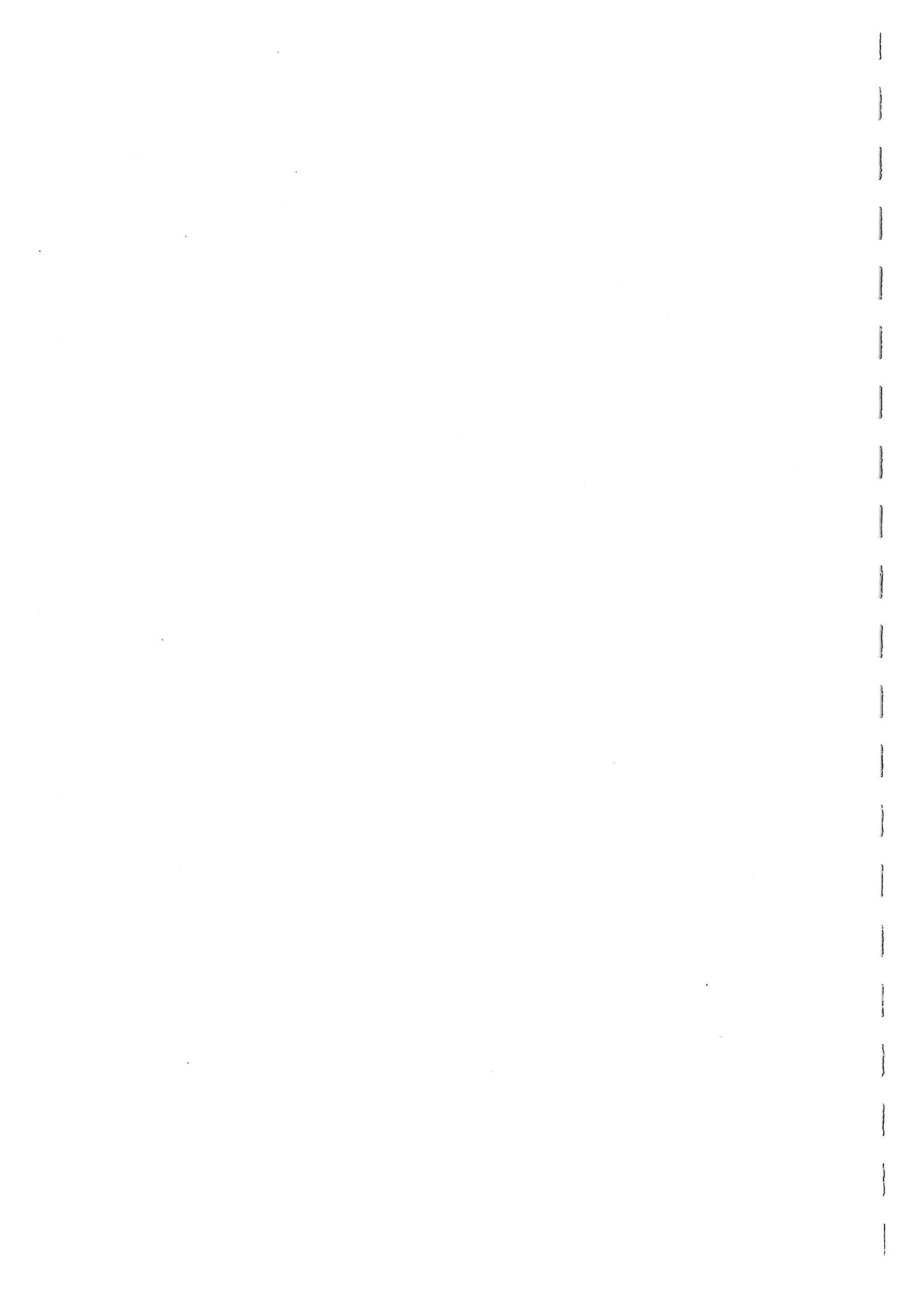


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- 26.4 The Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 26.5 The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.
- 26.6 The Service Provider acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 25.1 and Clause 26, the Service Provider hereby gives its consent for the Authority to publish the Contract Information to the general public.
- 26.7 The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Authority may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 26.8 The Authority may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 26.6. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

**27. Dispute Resolution**

- 27.1 The Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or any relevant Call-Off Contract (“Dispute”) before resorting to litigation.
- 27.2 If the Dispute is not settled through discussion between the Procurement Manager and a representative of the Service Provider within a period of seven (7) Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) (“Senior Personnel”) of each of the Parties for resolution.
- 27.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, the Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a mediator. Either Party may give notice to the





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other Party ("Notice") to commence such process and the Notice shall identify one or more proposed mediators.

- 27.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("CEDR") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 27.5 Where a dispute is referred to mediation under Clause 27.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 27.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 27.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 41.
- 27.8 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with the Call-Off Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 27.
- 27.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 27 and Clause 27 shall not apply in respect of any circumstances where such remedies are sought.

**28. Breach and Termination of Agreement**

28.1 Without prejudice to the Authority's right to terminate at common law, the Contracting Authority may terminate this Agreement and the Contracting Authority or the Authority may terminate any current Call-Off Contract immediately upon giving notice to the Service Provider if:

- 28.1.1 in addition and without prejudice to Clauses 28.1.2 to 28.1.6 (inclusive), the Service Provider has committed any material or persistent breach of this Agreement (in the case of the Contracting Authority) or Call-Off Contract (in the case of the Contracting Authority and or the Authority) and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as





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specified in writing by the Authority) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied; or

- 28.1.2 the Service Provider is subject to an Insolvency Event; or
  - 28.1.3 in the event that there is a change of ownership referred to in clause 11.3 or the Service Provider is in breach of Clause 11.3; or
  - 28.1.4 the Authority is not satisfied on the issue of any conflict of interest in accordance with Clause 12; or
  - 28.1.5 the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010; or
  - 28.1.6 the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015.
- 28.2 Without prejudice to any of the Contracting Authority's and/or the Authority's other rights, powers or remedies (whether under this Agreement or otherwise) if the Service Provider is in breach of any of its warranties and/or obligations under Clause 8 and/or any of its other obligations in respect of the Services under this Agreement or Call-Off Contract, the Service Provider shall, if required to do so by the Contracting Authority's and/or Authority, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause 28.2 shall prevent the Contracting Authority and/or Authority from procuring the provision of any Services or any remedial action in respect of any Services from an alternative service provider and, where the Contracting Authority and/or Authority so procures any Services or any remedial action, the Contracting Authority and/or Authority shall be entitled to recover from the Service Provider all additional cost, loss and expense incurred by the Contracting Authority and/or Authority and attributable to the Contracting Authority and/or Authority procuring such Services or remedial action from such alternative contractor.
- 28.3 Neither Party shall be deemed to be in breach of the relevant Call-Off Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the relevant Call-Off Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the relevant Call-Off Contract ("**the Affected Party**") then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate the Call-Off Contract





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immediately upon giving notice to the Affected Party. If the Call-Off Contract is terminated in accordance with this Clause 28.3 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.

28.4 Without prejudice to the Contracting Authority's right to terminate this Agreement or Contracting Authority and/or Authority to terminate the relevant Call-Off Contract under Clause 28.1 or to terminate at common law, the Authority may terminate this Agreement or the Contracting Authority and/or Authority relevant the Call-Off Contract at any time without cause subject to giving the Service Provider written notice of the period specified in Schedule 1, provided that this Clause 28.4 may be disapplied by notice to that effect in Schedule 1.

28.5 To the extent that the Contracting Authority has a right to terminate this Agreement or the Contracting Authority and/or Authority the relevant Call-Off Contract under this Clause 28 then, as an alternative to termination, the Authority may by giving notice to the Service Provider require the Service Provider to provide part only of the Services with effect from the date specified in the Authority's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the Contracting Authority's and/or the Authority's opinion a proportionate adjustment would not be reasonable in such manner as the Contracting Authority and/or Authority may determine.

**29. Consequences of Termination or Expiry**

29.1 Notwithstanding the provisions of Clause 25, wherever the Authority chooses to put out to tender for a replacement service provider some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as the Authority may require for the purposes of such tender. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may require.

29.2 The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.

29.3 Upon expiry or termination of this Agreement or relevant Call-Off Contract (howsoever caused):

29.3.1 the Service Provider shall, at no further cost to the Authority:

