

matter under or arising from the Agreement or any Contract unless specifically granted permission to do so in writing by the Authority. The Authority shall have the right to approve any announcement and the content of such announcement before it is made.

- 25.6 The provisions of this Clause 25 will survive any termination of this Agreement or Contract for a period of 6 years from termination.
- 25.7 Without prejudice to Clause 26 (Freedom Of Information and Transparency) and to the requirements of the Public Contracts Regulations 2015, the confidentiality obligations of the Service Provider set out in Clauses 25.1 and 25.3 shall apply mutatis mutandis to the Authority, and without limiting the generality of the foregoing, the Service Provider's rates, media pricing and methodologies (including methodologies relating to media planning, staffing plans, and strategic recommendations) shall be deemed the "Confidential Information" of the Service Provider, provided always that such information may be subject to disclosure under clause 26.

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 Contract, the Services or any member of the Authority 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 three (3) 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.
- 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 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 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 40.
- 27.8 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with the 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 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 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 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 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 Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the relevant 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 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 Contract immediately upon giving notice to the Affected Party. If the 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 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 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 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.
- 28.6 The Service Provider may terminate any current Contract immediately upon giving notice to the Authority if:
- 28.6.1 the Authority which is a party to such Contract has committed any material breach of this Agreement or such Contract 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 may be reasonably agreed between the Parties in writing) from the date of written notice to the Authority giving details of the breach and requiring it to be remedied; or
- 28.6.2 the Authority is subject to an Insolvency Event.

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 and shall also comply with all requirements as are set out at Schedule 9. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may require. Notwithstanding the foregoing, the Service Provider shall not be required to disclose information pursuant to this Clause 29.1 which: is Confidential Information of the Service Provider (as defined in Clause 25.7 above).

- 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 Contract (howsoever caused):
- 29.3.1 the Service Provider shall, at no further cost to the Authority:
- 29.3.1.1 take all such steps as shall be necessary to agree with the Authority a plan for the orderly handover of Services to the Authority (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to the Authority and to effect such handover and for the avoidance of doubt the physical costs of such handover shall be borne by the Service Provider;
- 29.3.1.2 forward to the Authority all or part (as requested) of any material which has been conceived, developed, promoted or acquired by the Service Provider during the continuance of this Agreement. If any such material is in the hands of a third party, the Service Provider shall ensure that such material is returned to the Authority forthwith; and
- 29.3.1.3 on receipt of the Authority's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
- 29.3.2 the Authority shall (subject to Clauses 19, 29.1 and 29.4 and the provisions of any security for due performance supplied by the Service Provider) pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with the relevant Contract up to the date of termination or expiry calculated so far as is possible in accordance with the rules set out in the Contract or otherwise reasonably determined by the Authority.
- 29.4 On termination of this Agreement and any relevant Contract under Clause 28.1 or a cessation of any Services under Clause 28.4 (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for the Authority to terminate under Clause 28.1), the Authority may enter into any agreement with any third party or parties as the Authority thinks fit to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure reasonably incurred by the Authority in having such services carried out and all other costs and damages reasonably incurred by the Authority in consequence of such termination. The Authority may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.

- 29.5 Notwithstanding sub-clause 29.3.1.2, 29.3.1.3 and CA9.1 of Schedule 2, the Service Provider shall not be required to delete or return data if: (a) it is required by applicable law/regulation to retain such data; (b) it is required to retain such data under Clause 18.1; (c) the Authority has no ownership rights in such data or materials; and/or (d) such data is contained in electronic backups made in the normal course of the Service Provider's business, provided that such backups are kept confidential in accordance with the terms of this Agreement.

30 DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT

- 30.1 In the event that a court makes a Declaration of Ineffectiveness, the Authority shall promptly notify the Service Provider. The Parties agree that the provisions of Clause 29 and Clauses 30.1 to 30.5 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 29 and Clauses 30.1 to 30.5 (inclusive) or the Cessation Plan, the provisions of Clauses 30.1 to 30.5 (inclusive) and the Cessation Plan shall prevail.
- 30.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness.
- 30.3 As from the date of receipt by the Service Provider of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 30.3.1 an orderly and efficient cessation of the Services or (at the Authority's request) a transition of the Services to the Authority or such other entity as the Authority may specify; and
 - 30.3.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,
- in accordance with the provisions of Clauses 30.1 to 30.5 (inclusive) and to give effect to the terms of the Declaration of Ineffectiveness.
- 30.4 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 30.5 The Authority shall pay the Services Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Authority. Provided that the Authority shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity as a

result of the early termination of this Agreement pursuant to Clauses 30.1 to 30.5 (inclusive).

- 30.6 Without prejudice to the Authority's rights of termination implied into the Contract by regulation 73(3) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25, in the event of a Public Procurement Termination Event, the Authority shall promptly notify the Service Provider and the Parties agree that this Clause 30.6 to 30.10 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of Clause 29 and these Clauses 30.6 to 30.10 or the Cessation Plan, the provisions of these Clauses 30.6 to 30.10 and the Cessation Plan shall prevail.
- 30.7 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event.
- 30.8 As from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 30.8.1 an orderly and efficient cessation or (at the Authority's election) a transition to the Authority or such other entity as the Authority may specify of: (i) the Services; or (at Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Event; and
- 30.8.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,
- in accordance with the provisions of this Clause 30.6 to 30.10 (inclusive) and to give effect to the terms of the Public Procurement Termination Event.
- 30.9 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 30.10 The Authority shall pay the Service Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Authority, provided that the Authority shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to this Clause 30.6 to 30.10 (inclusive).

31 SURVIVAL

The provisions of Clauses 1, 6, 7, 8, 11.2.2, 11.2.3, 13.1.1, 13.1.2, 13.1.5, 13.2, 16, 18-22 (inclusive), 23.2, 23.5, 25-27 (inclusive), 29-32 (inclusive), 34-

44 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement or relevant Contract shall do so.

32 RIGHTS OF THIRD PARTIES

- 32.1 Save that any member of the Authority Group has the right to enforce the terms of this Agreement or any relevant Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of this Agreement or any relevant Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.
- 32.2 Notwithstanding Clause 32.1, the Parties are entitled to vary or rescind this Agreement or any relevant Contract without the consent of any or all members of the Authority Group.

33 CONTRACT VARIATION

Save where the Authority may require an amendment to the Services, this Agreement or any relevant Contract may only be varied or amended with the written agreement of both Parties. The details of any variations or amendments shall be set out in such form as the Authority may dictate, including that a variation to a Contract may be in the form of a Contact Report provided that the Authority has so requested, and which may be substantially in the form set out in Schedule 7 and shall not be binding upon the Parties unless completed in accordance with such form of variation.

34 NOVATION

- 34.1 The Contracting Authority may novate or otherwise transfer this Agreement and the Contracting Authority and/or Authority any relevant Contracts (in whole or in part).
- 34.2 Within ten (10) Business Days of a written request from the Contracting Authority and/or Authority, the Service Provider shall at its expense execute such agreement as the Contracting Authority and/or Authority may reasonably require to give effect to any such transfer all or part of its rights and obligations under this Agreement and any relevant Contract to one or more persons nominated by the Contracting Authority and/or Authority.
- 34.3 Subject to Clause 11, this Agreement is personal to the Service Provider who shall not assign the benefit or delegate the burden of this Agreement or otherwise transfer any right or obligation under this Agreement without the prior written consent of the Contracting Authority.

35 NON-WAIVER OF RIGHTS

No waiver of any of the provisions of this Agreement or any relevant Contract is effective unless it is expressly stated to be a waiver and communicated to

the other Party in writing in accordance with the provisions of Clause 37. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

36 ILLEGALITY AND SEVERABILITY

If any provision of this Agreement (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Authority and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

37 NOTICES

Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand or post addressed to the recipient at its registered office, the address stated in Schedule 1 or any other address notified to the other party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

if delivered by hand, at the time of delivery; or

if delivered by post, two (2) Business Days after being posted or in the case of Airmail 14 Business days after being posted.

38 ENTIRE AGREEMENT

38.1 Subject to Clause 38.2:

38.1.1 this Agreement and any relevant Contract and all documents referred to in this Agreement and any relevant Contract, contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement and such documents and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into this Agreement by a statement which it does not contain; and

38.1.2 and without prejudice to the Service Provider's obligations under this Agreement, the Service Provider is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of this

Agreement or any incorrect or incomplete information howsoever obtained.

- 38.2 Nothing in this Clause 38 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

39 RELATIONSHIP OF THE PARTIES

Nothing in this Agreement or any Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement and any Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

40 FURTHER ASSURANCE

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement and any relevant Contract.

41 GOVERNING LAW

The Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 27, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement provided that the Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.