

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 perpetual, irrevocable, royalty-free and transferable licence free of charge to use the Product together with such materials in connection with the use of the Products.

29.3 The Service Provider grants to the Authority an irrevocable non-exclusive, worldwide, royalty free licence for the duration of the Term to use, copy, translate and amend all Intellectual Property Rights in any software, Documentation, spreadsheets, data or other materials provided to the Authority by or on behalf of the Service Provider in the course of providing the Services (or otherwise in accordance with the terms of this Contract) for any reasonable purpose associated with the proper enjoyment by the Authority of the Services and the exercise by the Authority of its rights under the Contract. Such right will include the right for the Authority to grant sub licences to any member of the Authority Group and/or any Successor Operator(s) and the providers of services to any of them from time to time on terms no wider than the terms granted to the Authority from time to time under this provision provided that:-

29.3.1 without limiting Clause 29.4, this Clause shall not apply in relation to any COTS Product to the extent that the acquisition by the Authority of its own licence in respect of that COTS Product is listed as a Transition Dependency; and

29.3.2 any sub-licence to a Successor Operator shall be for the purpose and to the extent required for the implementation of the Handover Plan and not for the purpose of the provision of services by the Successor Operator following the end of the Term.

29.4 To the extent that the Service Provider has utilised a COTS Product in the performance of the Services, without limiting any other obligation of the Service Provider under Clause 36 (Handback of Services) or Schedule 11 (Handback of Service) the Service Provider:-

- 29.4.1 shall as and when requested by the Authority from time to time provide to the Authority a copy of that COTS Product as configured by the Service Provider for the purposes of the Contract (including of all Data held within the COTS Product for the purpose of the performance of the Services or the Service Provider's other obligations under this Contract); and
- 29.4.2 hereby grants to the Authority a perpetual, irrevocable, royalty-free and transferable licence free of charge to use that configuration (it being acknowledged that the Authority will be responsible for obtaining any required licence(s) of the underlying COTS Product required for the Authority's continued use of the same after the end of the Term).
- 29.5 The Service Provider shall have no right (save where expressly permitted under the Contract or with the Authority's prior written consent) to use any trademarks, trade names, logos or other Intellectual Property Rights of the Authority.
- 29.6 The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used by the Service Provider in connection with the Contract (other than the Intellectual Property Rights made available by the Authority to the Service Provider pursuant to the Contract) have been paid and are included within the Charges.
- 29.7 The Service Provider shall:
- 29.7.1 promptly notify the Authority upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Right which affects or may affect the provision or receipt of the Services or if any claim or demand is made or action brought for infringement or alleged infringement of any Intellectual Property Right; and
- 29.7.2 indemnify, keep indemnified and hold harmless the Authority from and against all actions, claims, demands, costs, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by the Authority by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use by the Authority of the Products (or any of them) or any of the items licensed in accordance with Clauses 29.3 or 29.4 or anything arising from the provision of the Services and from and against all costs and damages of any kind which the Authority may incur in or in connection with any actual or threatened proceedings before any court or arbitrator.
- 29.8 The Authority shall, at the request of the Service Provider, give the Service Provider all reasonable assistance for the purpose of the Service Provider contesting any such claim, demand, or action referred to in Clause 29.7.1 and the Service Provider shall:
- 29.8.1 reimburse the Authority for all costs and expenses (including legal costs) incurred in doing so;
- 29.8.2 conduct at its own expense all litigation and/or negotiations (if any) arising from such claim, demand or action; and
- 29.8.3 consult with the Authority in respect of the conduct of any claim, demand or action and keep the Authority regularly and fully informed as to the progress of such claim, demand or action.

29.9 If a claim or demand is made or action brought to which Clause 29.7 applies or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may (without prejudice to 29.7), after consultation with the Authority, at its own expense and within a reasonable time and subject to all other applicable provisions of this Contract (including those relating to Change), modify or substitute any or all of the Products so as to avoid the infringement or the alleged infringement, provided that the terms of the Contract shall apply mutatis mutandis to such modified or substituted Products and such Products are accepted by the Authority.

29.10 The Authority shall:

29.10.1 promptly notify the Service Provider upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Right resulting from the use of any Authority Assets by the Service Provider in the performance of the Services as permitted by and in accordance with the terms of this Contract which affects or may affect the provision of the Services or if any claim or demand is made or action brought for infringement or alleged infringement of any Intellectual Property Right in respect of any use of the Authority Assets by the Service Provider in the performance of the Services as permitted by and in accordance with the terms of this Contract; and

29.10.2 indemnify, keep indemnified and hold harmless the Service Provider from and against all actions, claims, demands, costs, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by the Service Provider by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use by the Service Provider of the Authority Assets (or any of them) as permitted by and in accordance with the terms of this Contract and from and against all costs and damages of any kind which the Service Provider may incur in or in connection with any actual or threatened proceedings before any court or arbitrator

29.11 The Service Provider shall, at the request of the Authority, give the Authority all reasonable assistance for the purpose of the Authority contesting any such claim, demand, or action referred to in Clause 29.10.1 and the Authority shall:

29.11.1 reimburse the Service Provider for all costs and expenses (including legal costs) incurred in doing so;

29.11.2 conduct at its own expense all litigation and/or negotiations (if any) arising from such claim, demand or action; and

29.11.3 consult with the Service Provider in respect of the conduct of any claim, demand or action and keep the Service Provider regularly and fully informed as to the progress of such claim, demand or action.

29.12 If a claim or demand is made or action brought to which Clause 29.10 applies or in the reasonable opinion of the Service Provider is likely to be made or brought, the Authority may (without prejudice to Clause 29.10), after consultation with the Service Provider, at its own expense and within a reasonable time and subject to all other applicable provisions of this Contract (including those relating to Change), modify or substitute any or all of the Authority Assets so as to avoid the infringement or the alleged infringement,