

46.2

The Company 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 Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 46.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

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Survival

47.1

The provisions of Clauses 4 (Records and Audit), 8.11 (Set-Off), [13 (*Environmental Claims*)], 17 (Supplier Personnel), 19 (Responsible Procurement), 20 (Failure to Perform), 21 (Intellectual Property Rights), 22 (Termination and Suspension), 24 (Indemnity and Insurance), 26 (Confidentiality), 30 (Severance), 31 (Publicity), 32 (Corrupt Gifts and Payments of Commission), 34 (No Waiver), 35 (Entire Contract), 36 (Notices and Service of Process), 37 (Dispute Resolution), 40 (Governing Law and Jurisdiction), 41 (Contracts (Rights of Third Parties) Act 1999), 45 (Freedom of Information), 46 (Data Transparency), 47 (Survival), 48.1 and 48.5 (Transport for London Group) will survive the termination or expiry of this Contract and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision of this Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

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Transport for London Group

48.1

Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the Contract under Clause 22.1, Clause 22.2(a) or at common law, the Company may terminate the Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 48.1.
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 48.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 22.1 and this Clause 48.1 or the Cessation Plan, the provisions of this Clause 48.1 and the Cessation Plan prevail.
- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.

(d) As from the date of receipt by the Supplier 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 Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:

- (i) an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and
- (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 48.1 and to give effect to the terms of the Declaration of Ineffectiveness.

(e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.

(f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Contract in accordance with this Clause 48.1.

48.2 Crime and Disorder Act 1998

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 (as amended by the Police and Justice Act 2006 and the Policing and Crime Act 2009) to:

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- (b) where appropriate, identify actions to reduce levels of crime and disorder; and
- (c) without prejudice to any other obligation imposed on the Company, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, in its area.:

- (i) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
- (ii) the misuse of drugs, alcohol and other substances; and
- (iii) re-offending,

and in the performance of the Contract, the Supplier shall assist and co-operate with the Company and relevant members of the TfL Group and shall use reasonable endeavours to procure that its subcontractors assist and co-operate, with the Company and relevant members of the TfL Group to enable TfL to satisfy its duty.

48.3

The Company's business

The Supplier acknowledges that it:

- (a) has sufficient information about the Company and the Services;
- (b) is aware of the Company's processes and business;
- (c) has made all appropriate and necessary enquiries to enable it to carry out the Services in accordance with the Contract;
- (d) is aware of the purposes for which the Services are required; and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under the Contract due to any misinterpretation or misunderstanding by it of any fact relating to the Services.

48.4

Best value

The Supplier acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such the Company is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The Supplier shall assist the Company to discharge TfL's duty where possible, and in doing so, shall carry out any review of Services reasonably requested by the Company from time to time. The Supplier shall negotiate in good faith (acting reasonably) with the Company any changes to the Contract in order for the Company to achieve best value.

48.5

Data Protection

- (a) The Supplier shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the Company ("**Company Personal Data**"), the Supplier shall only carry out such processing in order to carry out the Services and at all times in accordance with any instructions from the Company.
- (b) When the Supplier receives a written request from the Company for information about, or a copy of, Company Personal Data, the Supplier shall supply such information or data to the Company within such time and in such a form as is specified in the request (such time

to be reasonable) or if no period of time is specified in the request, then the Company shall supply the information or data within fourteen (14) days from the date of the request.

- (c) The Company shall remain solely responsible for determining the purposes and manner in which Company Personal Data is to be processed. The Supplier shall not share any Company Personal Data with any subcontractor or third party unless there is a written agreement in place which requires the subcontractor or third party to:

- (i) only process Company Personal Data in accordance with the Company's instructions to the Supplier; and
- (ii) comply with the same data protection requirements that the Supplier is required to comply with under the Contract.

48.6 Conflict of Interest

- (a) The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- (b) The Supplier shall undertake ongoing and regular checks for any conflict of interest throughout the duration of the Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the Services under the Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Contract.

48.7 Equality and Diversity

48.7.1 Without limiting the generality of any other provision of the Contract, the Supplier:

- (a) shall not unlawfully discriminate;
- (b) shall procure that its employees and agents do not unlawfully discriminate; and
- (c) shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Services,

within the meaning and scope of the Equality Act 2006, the Equality Act 2010 and any other relevant enactments in force from time to time in relation to discrimination in employment.

48.7.2

The Supplier acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to:

- (a) eliminate unlawful discrimination on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (all "**Protected Characteristics**") and marriage and civil partnership;
- (b) advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a Protected Characteristic and persons who do not.

In performing the Contract the Supplier shall assist and cooperate with the Company where possible in satisfying this duty.

48.7.3

The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Contract comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.

48.7.4

To the extent that the Company is required to assist or co-operate with TfL in compliance with its duties under the Equality Act 2010 (Specific Duties) Regulations 2011, the Supplier shall assist and co-operate with the Company where possible.

48.8 Work Related Road Risk

48.8.1

For the purposes of Clauses 48.8.2 to 48.8.9 (inclusive) of this Contract, the following expressions shall have the following meanings:

"Bronze Accreditation"

the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:
www.fors-online.org.uk

"Car-derived Vans"

a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

“Collision Report”	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
“Delivery and Servicing Vehicle”	a Lorry, a Van or a Car-derived Van;
“Driver”	any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Services;
“DVLA”	Driver and Vehicle Licensing Agency;
“FORS”	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
“FORS Standard”	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk
“Gold Accreditation”	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“Lorry”	a vehicle with an MAM exceeding 3,500 kilograms;
“MAM”	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Side Guards”	guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive

89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

“Silver Accreditation”

the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk

“Van”

a vehicle with a MAM not exceeding 3,500 kilograms.

Fleet Operator Recognition Scheme Accreditation

48.8.2 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, it shall within 90 days of the Commencement Date:

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Company, is an acceptable substitute to FORS (the “Alternative Scheme”); and
- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Supplier has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Equipment on Vehicles

48.8.3 The Supplier shall ensure that every Lorry, which it uses to provide the Services, shall:

- (a) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the Lorry will not perform the function for which it was built if Side Guards are fitted;
- (b) have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;

- (c) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- (d) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

Driver Licence Checks

48.8.4

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that:

- (a) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- (b) each of its Drivers engaged in the provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Supplier's risk scale, provided that the Supplier's risk scale has been Approved in writing by the Company within the last 12 months:
 - (i) 0 – 3 points on the driving licence – annual checks;
 - (ii) 4 – 8 points on the driving licence – six monthly checks;
 - (iii) 9 – 11 points on the driving licence – quarterly checks; or
 - (iv) 12 or more points on the driving licence – monthly checks.

Driver Training

48.8.5

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the term of the Contract.

Collision Reporting

48.8.6

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, the Supplier shall:

- (a) ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- (b) within 15 days of the Commencement Date, provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report within five working days of a written request from the Company.

Self Certification of Compliance

- 48.8.7** Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Supplier shall make a written report to the Company detailing its compliance with Clauses 48.8.3, 48.8.4 and 48.8.5 of this Contract (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Supplier Regarding Subcontractors

- 48.8.8** The Supplier shall ensure that those of its subcontractors who operate Delivery and Servicing Vehicles to provide the Services shall:

- (a) comply with Clause 48.8.2; and
- (b) where its subcontractors operate the following vehicles to provide the Services shall comply with the corresponding provisions of this Contract:
 - (i) For Lorries – Clauses 48.8.3, 48.8.4, 48.8.5 and 48.8.6; and
 - (ii) For Vans – Clauses 48.8.4, 48.8.5, and 48.8.6,

as if those subcontractors were a party to this Contract.

Failure to Comply with Work Related Road Risk Obligations

- 48.8.9** Without limiting the effect of any other clause of this Contract relating to termination, if the Supplier fails to comply with any of Clauses 48.8.2, 48.8.3, 48.8.4, 48.8.5, 48.8.6, 48.8.7 and/or 48.8.8:
- (a) the Supplier has committed a material breach of this Contract; and
 - (b) the Company may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Company for any purpose (including but not limited to deliveries).

49 CompeteFor

49.1 Without prejudice to Clause 27, the Supplier will, on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Company may direct from time to time) ("**CompeteFor**") to make available to other suppliers all appropriate opportunities, arising in connection with the Contract, to supply goods, works or services to the Supplier.

49.2 The Supplier will use all reasonable endeavours to ensure that its subcontractors (for the purposes of this Clause, the "**Supplier's Subcontractors**") use CompeteFor, on a non-exclusive basis, to make available to other subcontractors all appropriate opportunities, arising in connection with the Contract, to supply goods, works and services to the Supplier's Subcontractors.

49.3 The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Contract, made available to other suppliers via CompeteFor, whether by the Supplier or the Supplier's Subcontractors, as required by this Clause 49.3, and will report this information on a quarterly basis by way of email to the Company's Representative.