

(g) The notice details for the Contractor / Contractor's Representative under Clause 38 are:	Mead House, Station Road Nursing, Southampton SO16 0AH
(h) Email to be used for notices and communications pursuant to Clause 38:	Brian. <u>Sequeira@tube.tfl.gov.uk</u> and Steven.Taylor@tube.tfl.gov.uk
(i) E-tendering system to be used for notices and communications pursuant to Clause 38.3:	https://eprocurement.tfl.gov.uk/epps/home.do
(j) If the E-tendering system is to be used, it shall be used for the purposes of the following types of notices and communications:	Issuing mini tender documents
(k) The E-tendering system to be used for the purposes of Clause 38.3 is:	https://eprocurement.tfl.gov.uk/epps/home.do
(l) Parent Company Guarantee to be provided by the Contractor:	Yes
(m) Performance Bond to be provided by the Contractor:	Yes
(n) The Defects Liability Period is:	Twelve (12) months following the issuance of the Contract Completion Certificate.
(o) The Contract Programme shall, for the purposes of Clause 3, be in the following form:	
(p) The Key Personnel pursuant to Clause 4 are:	Craig Watt Dyer and Butler Limited
(q) The Contractor's total aggregate liability for the purpose of Clause 29.6 is:	Shall be agreed on a Contract by Contract basis and recorded within the Additional/Special Instructions within each Form of Order.
(r) Liquidated Damages for failure to meet the Contract Completion Date: The amount of	The liquidated damages amount can be

liquidated damages payable [per day/week] under Clause 11.1.1 is:	specified at call-off stage.
(s) Liquidated Damages for disruption to the Underground Network: The amount of liquidated damages payable [per day/week] under Clause 11.1.2 is:	The liquidated damages amount can be specified at call-off stage.
(t) <i>The maximum amount of liquidated damages payable under Clause 11 in the aggregate (expressed as a percentage of the Contract Price) is:</i>	The liquidated damages amount can be specified at call-off stage.
(u) The Interest Rate pursuant to Clause 45 is:	8%
(v) The Parent Company Guarantor is:	Dyer and Butler Holdings Limited
(w) <i>The amount of the Performance Bond under Clause 21.1 is:</i>	Shall be agreed on a Contract by Contract basis and recorded within the Additional Comments/Special Instructions section within each Form of Order

SECTION 3

CONDITIONS OF CONTRACT

1. Definitions and Interpretation

1.1. Definitions

In this Agreement and each Contract the following words and expressions shall have the following meanings:

“Acceptance” means a written acceptance by the Company of the Proposal submitted by the Contractor in the form set out in Part D to Schedule 2 issued by the Company to the Contractor.

“Agreement” means this agreement as described in Clause 1.2 of the Form of Agreement (including any Schedules, annexes or attachments) as may be amended from time to time in accordance with its terms.

“Applicable Laws” means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity), at any time or from time to time in force in the United Kingdom and which are or may become applicable to this Agreement and each Contract, any agreement or document referred to in this Agreement and each Contract, or the Works.

“Asset” means:

- (a) any real property and any equipment owned, controlled or otherwise held by the Company in respect of which the Company has an interest of whatsoever nature or any part thereof; and
- (b) the Equipment or any part thereof.

“CDM Regulations” means the Construction (Design and Management) Regulations 2015 including any approved code of practice, as may be amended, supplemented or replaced from time to time and any guidance requirements issued by the Health and Safety Executive.

“Beyond Economic Repair” means (i) a situation where the projected cost of a repair of a repairable or replaceable component in an Asset exceeds sixty per cent (60%) of the replacement cost of that Asset or (ii) a situation where the repair or replacement of an Asset

offers limited additional operational life such that having regard to the cost involved in such repair or replacement does not represent good value for money.

“Cessation Plan” means a plan agreed between the Parties or determined by the Company in accordance with Clause 53.1 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event.

“Company” means the entity named as such in the Form of Agreement and its legal successors in title and assigns.

“Company’s Representative” means the person appointed by the Company and named as such in the Framework Particulars or, for the purpose of an individual Contract, as otherwise identified in the applicable Contract.

“Competent Authority” means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of any of them) of the United Kingdom or of the European Union or any supranational body which has rulemaking power or whose directives, decisions, instructions, rulings, laws or regulations are directly enforceable against either of the Parties in connection with the performance of this Agreement or any Contract.

“Completion” means in respect of any Works that the Works comply fully with the Contract Completion Criteria as evidenced by and occurring upon the issue by the Company’s Representative of a Contract Completion Certificate for such Works.

“Conditions of Contract” means the Conditions of Contract incorporated in Section 3 of this Agreement, including the Schedules and other documents or parts of other documents expressly referred to in them.

“Confidential Information” means any information given orally or in writing which is a trade or business secret or method; technical know how; personal data which relates to a living individual who can be identified from that information; information relating to any crime, breach of statutory duty or criminal investigations; information relating to the protection of prominent persons, national security, counter-terrorism or other information relating to the provision of police services for any national or international purpose; information relating to the Company’s obligations in accordance with sections 118 to 121 of the Railways Act 1993; confidential financial information including but not limited to taxation information and returns to shareholders; and any other information that a party would reasonably expect to be able to protect by virtue of business confidentiality provisions.

“Consequential Loss” means in relation to a breach of this Agreement or any Contract or other circumstances in which a party is entitled to recover any costs, expenses or liabilities suffered or incurred, loss of profit, loss of revenue, loss of contract, loss of goodwill and/or other financial

loss resulting from such breach and whether or not the party committing the breach knew, or ought to have known, that such loss would be likely to be suffered as a result of such breach.

"Contract" means an agreement for the provision of Works by the Contractor to the Company or any member of the TfL Group agreed in accordance with Clause 3 of the Form of Agreement.

"Contract Commencement Date" means the date stated in the Order.

"Contract Completion Certificate" means the certificate to be given by the Company to the Contractor in accordance with Clause 10.1 in the form set out in Schedule 3.

"Contract Completion Criteria" means:

- (a) the Works meet in all material respects the requirements of the Specification;
- (b) all notified defects which would have prevented the Company from using the Works and others from doing their Works have been corrected;
- (c) the Contractor has provided to the Company's Representative the health and safety file containing all information in respect of the Works, materials and workmanship, as-built information and quality and assurance documentation and the Company's Representative has approved the same;
- (d) the Works comply with all Applicable Laws and Standards;
- (e) the Works satisfy such other criteria for completion stated in the Contract;
- (f) the Contractor has provided to the Company's Representative the health and safety file containing all information in respect of the Works, materials and workmanship, as-built information and quality and assurance documentation and the Company's Representative has approved the same.

"Contract Completion Date" means the date by which the Works are to be performed as specified as such in each Order or such other date as may be agreed between the Parties in accordance with the terms of each Contract.

"Contract Information" means (i) each Contract and this Agreement in its entirety (including from time to time agreed changes to this Agreement or any Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 19.1 which shall consist of the Contractor's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

"Contract Price" means the amount stated under the heading "Contract Price" in the relevant Order.

“Contract Programme” means the programme set out in each Contract or, where no programme is so included or the included programme has subsequently been revised (and such revisions have been accepted by the Company’s Representative), the latest programme accepted by the Company’s Representative pursuant to Clause 3. The latest programme accepted by the Company’s Representative supersedes previous Contract Programmes.

“Contract Register” has the meaning given to that term in Clause 9.1.

“Contract Specification” means the specification appended to the relevant Contract.

“Contractor Personnel” means all employees, agents or consultants of the Contractor and the Contractor’s subcontractors from time to time.

“Contract Reference Number” means the number shown on the front page of this Agreement.

“Contractual Documentation” means all documentation and information agreed to be delivered by the Contractor in accordance with each Contract including without limitation records, reports, documents, papers, unpatented designs, drawings, data specifications, manufacturing or work processes, testing procedures, relevant computer data and all other technical business and similar information originated by or on behalf of the Contractor in accordance with each Contract.

“Contract Variation Procedure” means the contract variation procedure set out in Schedule 5.

“Contractor” means the entity named as such in the Form of Agreement.

“Contractor’s Representative” means the person appointed by the Contractor and named as such in the Framework Particulars.

“Declaration of Ineffectiveness” means a declaration of ineffectiveness in relation to the Contract made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations 2015 (as amended) or Regulation 113(2) or Regulation 118(3) of the Utilities Contracts Regulations 2016 (as amended).

“Defects Liability Period” means in respect of the Works the period identified as such in the Framework Particulars during which period the Contractor is responsible for making good defects and damage in accordance with Clause 14.

“Designed Portion” means the portion of the Works to be designed by the Contractor as stated in the relevant Order.

“Dispute” has the meaning given to the term in Clause 34.

“Documentation” means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied

by or on behalf of the Contractor in the performance of the Contract and whether in paper form or stored electronically.

“Environmental Claim” means receipt by the Company in connection with any pollution or contamination of the environment of:

- (a) any written claim, demand, suit or notice from a third party, including a Regulatory Authority (**“Regulatory Authority”** means any government entity or other public or quasi public authority or privatised utility having responsibility for any matters concerning the environment, or Environmental Law) or any order of the court of competent jurisdiction in connection with an alleged breach of Environmental Law; or
- (b) any charge or condition imposed by any Regulatory Authority or any notice served by any Regulatory Authority requiring Remediation (including any written indication from any Regulatory Authority that a requirement to carry out Remediation will be imposed on the Company unless the Company agrees to carry out Remediation voluntarily).

“Environmental Law” means all and any laws, including common law, legislation, codes of practice, notices, judgments, decrees, regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise), as may be enacted, adopted, amended or supplemented, concerning the protection of human health, or the environment or the conditions of the work place.

“Equipment” means the equipment, rolling stock, plant, premises or other assets (or any part of the same) that are the subject matter of the Works.

“Escalation Procedure” means the procedure of that name in Schedule 12.

“Ethical Sourcing Policy” has the meaning given to the term in Clause 50.3.

“Excepted Liabilities” means the liability of the Contractor for:

- (a) any Liquidated Damages payable;
- (b) any abatements for performance levied in accordance with this Agreement or any Contract;
- (c) losses, expenses, liabilities, claims, demands, actions, costs or charges against which the Contractor is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance);
- (d) losses caused by fraudulent acts or acts of a criminal nature;
- (e) losses caused by death or personal injury to any person; and
- (f) Losses caused by the Contractor committing a Prohibited Act or Safety Breach.

“Existing Contracts” means any and all contracts, whether current, expired or terminated, pursuant to which works have been provided by the Contractor (in the capacity of contractor or subcontractor) to the Company and/or any other member of the TfL Group.

“Fault” means a circumstance, condition, defect, event or flaw that adversely affects any Asset in the performance of its functions.

“Force Majeure Event” means any of the following (or any circumstances arising as a consequence of any of the following) if and only to the extent that such event or circumstances is or are not caused by, and their effects are beyond the reasonable control of, a party affected by such an event or circumstances and which have an adverse effect on the party affected by such an event or circumstances and such party’s ability to perform its obligations under this Agreement or any Contract and is not an event or circumstances (i) whose effect the party affected by such an event is otherwise required to avoid or provide against (other than by way of insurance) under this Agreement or any Contract or (ii) which the party affected by such an event could reasonably have avoided or provided against:

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the Underground Network and/or Sites;
- (d) lightning, earthquake or, subject to (f) below, extraordinary storm;
- (e) fire;
- (f) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (g) tunnel collapse;
- (h) compliance with the provision of sections 118 to 12 of the Railways Act 1993;
- (i) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;