Structural Maintenance

Services Contract

between

TRANSPORT FOR LONDON or TfL
as Company

and

Lanes Group PLC
as Supplier

For the supply of structural maintenance and related services across TfL

[Lot 2 – Drainage]

Contract Reference Number TfL - 00466

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THIS CONTRACT is made on 10 March 2017

BETWEEN:

(1) **TRANSPORT FOR LONDON or TfL**, (the "Company" which expression shall include its successors, transferees and assignees), a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL; and

(2) **Lanes Group PLC** (the "Supplier"), a company registered in England and Wales under number [•] and having its registered office at [•].

(each a "Party" and together the "Parties")

BACKGROUND

(A) The Supplier carries on the business of providing the Services.

(B) The Company has agreed to buy and the Supplier has agreed to provide the Services on the terms and conditions set out in this Contract.

(C) This Contract may be utilised by the Company or any other member of the TfL Group.

THIS DEED WITNESSES as follows:

PART 1: INTERPRETATION

1. **Definitions and Interpretation**

1.1 In this Contract, the following definitions shall have the following meanings:

"Accounting Period" means the Company's accounting period as notified from time to time by the Company to the Supplier each such period being of between twenty-five (25) and thirty-two (32) days and one of thirteen (13) periods during the Company's financial year.

"Activity Plan" means the plan in Annex 1 of Appendix 2 of Schedule 1 as at the Contract Commencement Date and as amended from time to time in accordance with that Schedule, against which actual performance of the Planned Services is measured.

"Additional Services" means services which are requested by the Company to be provided by the Supplier in accordance with the terms of this Contract in addition to those set out in the Specification.

"Affected Party" means the Party affected by a Force Majeure Event.

"Affiliate" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded.

"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 Contract, any agreement or document referred to in this Contract, or for the performance of the Services.

"Application for Payment" has the meaning given to that term in Clause 20.1

"Asset" means:

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

(B) the Equipment or any part thereof.

"Asset Management System" means either of the Company's asset management systems Ellipse or Maximo that are used for the planning, recording and management of maintenance work further details of which may be described in the Specification or provided by the Company to the Supplier from time to time and any updates to the applicable system from time to time.

"BAFO" means 'best and final offer'.

"Beyond Economic Repair" means (i) a situation where the projected cost of 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.

"Business Continuity Plan" means a plan detailing arrangements for an organisation's continued operations in the event of a disruption, within a predetermined time, whether due to a major or minor incident as set out in Appendix 2 of Schedule 17 (Mobilisation Requirements).

"Cessation Plan" means a plan agreed between the Parties or determined by the Company in accordance with Clause 80.1 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event.

"Change of Control" when applied to any person, shall be treated as occurring if any other person, or any other persons who together at the date of this Contract, Control such person subsequently ceases or together cease to Control it or if after the date of this Contract any person, or persons together, which did not have Control of that person at the date of this Contract but at any time thereafter acquire(s) Control of that person.

"Company Party" means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Company acting in the course of his office or employment or appointment (as appropriate), but excluding the Supplier and any Supplier Parties.

"Company's Representative" means the person appointed by the Company and named as such in Schedule 1.

"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 Contract.

"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 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 but does not include the amounts for which the Supplier is liable under Clause 22 (Liquidated Damages).

"Contract" means this contract made between the Company and the Supplier.

"Contract Approval Form" or "CPAF" has the meaning given to such terms in Clause 20.3.

"Contract Commencement Date" means the date specified as such in Schedule 1.

"Contract Information" means (i) this Contract in its entirety (including from time to time agreed changes to this Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 20 which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

"Contract Mobilisation and Transition Plan" means the plan of that name as further described in Schedule 17 (Mobilisation Requirements), as the same is updated and amended from time to time in accordance with this Contract.

"Contract Reference Number" means the number shown on the front page of this Contract.

"Contract Register" has the meaning given to it by Clause 15.1.

"Contractual Documentation" means all documentation and information agreed to be delivered by the Supplier in accordance with this 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 Supplier in accordance with this Contract.

"Contract Variation Procedure" means the procedure set out in Schedule 6.

"Control" means, in relation to a body corporate, the ability of a person (or any persons acting together) to ensure that the activities and business of that body corporate are conducted in accordance with the wishes of that person (or those persons), and a person (or persons) shall be deemed to have Control of a body corporate (amongst other things) if, directly or indirectly, that person possesses or is entitled (or those persons possess or are entitled) to acquire: (i) the majority of the issued share capital in that body corporate; or (ii) the majority of the voting rights in that body corporate; or (iii) the right to receive the majority of the income of that body corporate on any distribution by it of all of its income or the majority of its assets on a winding-up; or (iv) the right to appoint a majority of the directors to the board of that body corporate, and "Controlling" and "Controller" shall be construed accordingly.

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to this 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)(a) or Regulation 118(3) of the Utilities Contracts Regulations 2016 (as amended).

"Defect" means any defect in the Services, or anything installed in the Services attributable to:

(A) defective design;

(B) defective workmanship or defective materials (which, for the avoidance of doubt, shall exclude asbestos), plant or machinery used in such construction having regard to Good Industry Practice and to appropriate British standards and codes of practice current at the date of carrying out the Services;

(C) the use of materials in the Services that (whether or not defective in themselves) prove to be defective in the use to which they are put in the Services; or

(D) defective installation of anything as part of the Services.

"Defect Liability Period" means the period of twelve (12) months following the completion of the Services.

"Demobilisation Plan" means the plan of that name as further described in schedule 14(Obligations on Handover), as the same is updated and amended from time to time in accordance with this Contract.

"Demobilisation Services" means all or any part of the services that the Supplier is required to perform in accordance with and pursuant to schedule 14(Obligations on Handover) and including, without limitation, pursuant to the Demobilisation Plan.

"Disclosed Data" means information relating to the provision of the Services disclosed to the Supplier and its shareholders and advisers before the date of this Contract including:

(A) the PQQ and the ITT;

(B) Pre-construction pack and appendices; and

(C) Asset location plans.

"Dispute" has the meaning given to that term in Clause 69.1.

"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 Supplier in the performance of this Contract and whether in paper form or stored electronically.

"Emergency" means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services.

"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 Services.

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

"Ethical Trading Initiative (ETI) Base Code" means the ETI Base Code referred to in Clause 39 (Responsible Procurement) and set out in schedule 15 (Ethical Trading Initiative Base Code) of the Contract.

"Excepted Liabilities" means the liability of the Supplier for:

(A) any abatements for performance or financial deductions made under the Performance Regime levied in accordance with this Contract;

(B) the Supplier's liability under Clause 22 (Liquidated Damages);

(C) any costs of the Supplier of performing its obligations under this Contract, including but not being limited to the costs of re-performing the Services as required by Clause 23.3;

(D) any compensation on termination amounts pursuant to Clause 49.2;

(E) any taxes, whether payable under any Applicable Laws or pursuant to this Contract;

(F) Losses against which the Supplier is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach of or failure to maintain such insurance);

(G) Losses caused by fraudulent acts, including fraudulent misrepresentation or acts of a criminal nature;

(H) Losses caused by the Supplier committing a Prohibited Act or Safety Breach;

(I) loss of or damage to any property (including the Underground Network and Sites and any other property belonging to the Company or for which it is responsible);

(J) claims made against the Company by third parties (whether under contract, tort, breach of statutory duty or otherwise);

(K) any Losses against which the Company is indemnified under Clause 35 (TUPE);

(L) any Losses against which the Company is indemnified under Clause 41.10 (Intellectual Property Rights);

(M) death or personal injury caused by the Supplier's negligence or that of its personnel; and

(N) any interest due as a result of any late payments of any of the Excepted Liabilities.

"Existing Contracts" means any and all contracts, whether current, expired or terminated, pursuant to which goods or services have been supplied or provided by the Supplier (in the capacity of contractor or subcontractor) to the Company or any member of the TfL Group.

"Expiry Date" means the date specified as such in Schedule 1, as may be extended pursuant to the provisions of Clause 2.2.

"Extension Period" has the meaning given to it in Clause 2.2.

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

"Final Warning Notice" has the meaning given to it in Clause 48.3.

"First Agreed Plan" has the meaning given to it in paragraph 1.1 of Appendix 2 of Schedule 1 (Detailed Terms).

"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 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 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, civil unrest, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;

(B) 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.

"Free Issue Materials" means materials, apparatus and components supplied by the Company to the Supplier without charge and intended for use by the Supplier exclusively in the provision of Services under this Contract.

"GLA Act" means the Greater London Authority Act 1999 relating to the formation of the Greater London Authority.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time from a skilled, competent and experienced contractor seeking in good faith to comply with all its contractual obligations and all Applicable Laws (whether or not binding on the Company),

and engaged in the same type of undertaking and under the same or similar circumstances as those envisaged by this Contract.

"Greater London" has the meaning ascribed to it in the GLA Act.

"Guarantor" means the guarantor specified as such in Schedule 1.

"Improvement Suggestion" has the meaning given to that term in paragraph [4] of Schedule 12 (Supplier Performance).

"Infrastructure Manager" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

"Intellectual Property Rights" means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, trade-marks, service marks, trade and business names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character.

"Interest Rate" means the percentage above the base rate from time to time of the Bank of England as specified in Schedule 1.

"ITT" means the invitation to tender published by the Company in respect of the Services.

"Key Performance Indicator" or "KPI" means any or all, as the case may be, of the indicators set out in paragraph 2 of Schedule 12 (Supplier Performance).

"Key Personnel" means Supplier Personnel identified as such in Schedule 1 and any changes to the same that are made in accordance with Clause 36.

"London Living Wage" means the basic hourly wage (before tax, other deduction and any increase for overtime) as may be revised from time to time by the Mayor or any other relevant Competent Authority.

"Losses" means any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Company, its employees or agents (which, for the avoidance of doubt, shall include a Replacement Employer).

"LUL" means London Underground Limited, company number 01900907.

"Mayor" means the person from time to time holding the office of Mayor of London as established by the GLA Act.

"Mobilisation Period" means the period commencing on the Contract Commencement Date and ending on the date falling three (3) months thereafter or such other period as the Parties agree pursuant to Schedule 17 (Mobilisation Requirements).

"Mobilisation Services" means all or any part of the services that the Supplier is required to perform in accordance with and pursuant to Schedule 17 (Mobilisation Requirements) and the Contract Mobilisation and Transition Plan.

"Necessary Consents" means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Supplier's obligations under this Contract, including those required in order to comply with Applicable Laws, Standards or as a result of the rights of any third party.

"Notice to Proceed" has the meaning given to that term in Clause 52.2(B).

"Notified Sum" has the meaning given to that term in Clause 20.6.

"Occasion of Tax Non-Compliance" means:

(A) any tax return of the Supplier submitted to a relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

(1) a relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(2) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a relevant Tax Authority under the DOTAS or any equivalent of similar regime; and/or

(B) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Commencement Date or to a penalty for civil fraud or evasion.

"Operator" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway or a person who secures the provision of such services through appropriate contractual arrangements.

"Performance Regime" means the performance measurement mechanism stated in Schedule 12 (Supplier Performance).

"Persistent Breach" means a breach for which a Final Warning Notice has been issued, which has continued for more than ten (10) Working Days or recurred in three (3) or more months within the six (6) month period after the date on which such Final Warning Notice is served on the Supplier.

"Planned Services" means routine or planned services set out in Schedule 3 (Specification) such as planned performance, support services, planned maintenance and preventative maintenance.

"PQQ" means the pre-qualification questionnaire issued by the Company in respect of the Services.

"Prescribed Period" has the meaning given to that term in Clause 20.

"Programme" means the programme of work set out in Schedule 4 as superseded by the latest programme approved by the Company in accordance with Clause 7 for the provision of the Services.

"Prohibited Act" means:

(A) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:

(1) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Company; or

(2) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Company; or

(B) entering into this Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to its knowledge unless, before this Contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or

(C) committing an offence:

(1) under the Bribery Act 2010;

(2) under legislation creating offences in respect of fraudulent acts; or

(3) at common law in respect of fraudulent acts,

in relation to this Contract or any other contract with the Company; or

(D) defrauding or attempting to defraud the Company.

"Public Procurement Termination Event" means:

(A) the Contract has been subject to any substantial modification which would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 or Regulation 88(8) of the Utilities Contracts Regulations 2016; or