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Memorandum

30 January 2024

To Lloyds Bank plc as Intercreditor Agent

Cc Ove Arup & Partners Ltd as Funders' Technical Adviser

From Linklaters LLP as Funders' Legal Adviser

Matter M25 Relevant Technology Variation

Relevant Technology Variation

1 Introduction

- 1.1** We act as legal advisers to the Secured Creditors under and as defined in the Common Terms Agreement dated 31 July 2018 between, among others, Connect Plus (M25) Limited ("**Connect Plus**") and Lloyds Bank plc as Intercreditor Agent (the "**Common Terms Agreement**").
- 1.2** We have been asked by Connect Plus to provide the Secured Creditors with a brief overview of the proposed amendments to the DBFO contract dated 20 May 2009 (as amended) between Connect Plus and The Secretary of State for Transport (the "**DBFO Contract**") and the O&M agreement dated 20 May 2009 (as amended) between Connect Plus, Balfour Beatty Civil Engineering Limited, Egis Road Operating UK Limited and Atkins Limited (the "**O&M Agreement**") which are intended to introduce services (the "**RT Services**") in respect of the inspection and maintenance (including the reactive correction of defects) of highways technology assets on the M25 motorway and associated trunk road network (the "**Relevant Technology**" or "**RT**").
- 1.3** This memorandum is exclusively for the benefit of the Secured Creditors. It is not intended to be, and should not be construed as, a legal opinion and is not intended to act as any form of recommendation to the Secured Creditors as to whether or not they should approve the Ordinary STID Proposal (as described below).
- 1.4** Unless otherwise defined, capitalised terms have the meanings given to them in the DBFO Contract.

2 Executive Summary

- 2.1** The Relevant Technology comprises technology assets in place on the M25 motorway, such as CCTV cameras, emergency roadside telephones, environmental and meteorological sensor stations, traffic messaging signs, road traffic signals and traffic detector equipment. Previously,

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the inspection and maintenance of the Relevant Technology was provided by Telent Technology Services Limited (“**Telent**”). We understand that National Highways (“**NH**”) and Connect Plus now intend to include the services formerly provided by Telent in respect of the Relevant Technology within the scope of the DBFO Contract, with effect from 1 April 2024 (at which point Telent’s obligations in respect of the Relevant Technology will cease). We also understand that the Operator has agreed to a full pass-through of the operational impact of the RT Services under the O&M Agreement. Please refer to the Funders’ Technical Adviser’s report (the “**FTA Report**”) for further detail and analysis of the financial and technical aspects of the proposed amendments to the DBFO Contract and the O&M Agreement.

- 2.2** It is proposed that the amendments to the DBFO Contract and the O&M Agreement be implemented through an Ordinary STID Proposal (see paragraph 4 below for our commentary on the Ordinary STID Proposal). Pursuant to the Ordinary STID Proposal, Connect Plus is seeking consent from the Instructing Group (as defined in the STID) to enter into (a) a deed of variation with NH in relation to the DBFO Contract (the “**DBFO Contract Deed of Variation**”) and (b) a deed of variation with the Operator in relation to the O&M Agreement (the “**O&M Agreement Deed of Variation**” and together with the DBFO Contract Deed of Variation, the “**Deeds of Variation**”).

3 Overview of Relevant Technology Variation

- 3.1** In order to introduce the RT Services into the scope of the DBFO Contract, Connect Plus and NH are proposing to amend the main body of the DBFO Contract and introduce a new schedule 35 (*RT Services*) into the DBFO Contract (the “**Primary Amendments**”). In addition, Connect Plus and NH are proposing to amend schedules 3 (*Land Matters*), 8 (*Review Procedures*), 9 (*Service*), 12 (*Technology*), 14 (*Asset Management*), 15 (*Information*), 18 (*Contract and Performance Management*), 22 (*Liaison*), 25 (*Payments*), 26 (*Change*), 28 (*Insurance*) and 29 (*Compensation and Termination*) to the DBFO Contract reflecting a number of consequential / tidy-up changes in connection with the Primary Amendments.
- 3.2** The proposed form of schedule 35 (*RT Services*) contains the majority of Connect Plus’ specific obligations in respect of the RT Services. In summary, the RT Services comprise of:
- 3.2.1** the RT Cyclic Services, which includes the routine inspection and maintenance of the Relevant Technology (see part 2 (*RT Cyclic Services*) of schedule 35 (*RT Services*));
 - 3.2.2** the RT Reactive Services, which includes the reactive rectification of defects in respect of the Relevant Technology (see part 3 (*RT Reactive Services*) of schedule 35 (*RT Services*)); and
 - 3.2.3** the RT Management Services, which includes management services, principally reporting on performance, in respect of the Relevant Technology (see part 4 (*RT Management Services*) of schedule 35 (*RT Services*)).
- 3.3** The proposed amendments provide for a twelve-month interim services period from the later of the date of the Deeds of Variation and 1 April 2023. During the interim services period, Connect Plus will benefit from (among other things):
- 3.3.1** lower service requirement standards;
 - 3.3.2** a dispensation from the application of the performance management provisions under the DBFO Contract (instead, Connect Plus will be subject to a trial performance

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management process which we understand is intended to assist NH and Connect Plus in agreeing on a performance management framework which will set out the performance management parameters for Connect Plus' performance of the RT Services following the expiry of the interim services period); and

3.3.3 the fact that no act or omission of Connect Plus in its performance of the RT Interim Services can cause:

- (i) a breach of the RT Services or a termination of the RT Services;
- (ii) any adjustment to the gross monthly payments or services payments; or
- (iii) a breach of the DBFO Contract (other than in respect of the RT Interim Services).

3.4 We note that the amendments to the DBFO Contract include certain protections for Connect Plus which we understand were key requirements for Connect Plus in agreeing to provide the RT Services. In particular, we note the inclusion of the following key provisions:

3.4.1 any failure to provide the RT Services by Connect Plus will not expose Connect Plus to wider collateral impacts under the DBFO Contract (beyond the RT Services) (for example, any failure to provide the RT Services will not result in Connect Plus being issued with penalty performance points or warning notices, nor any services terminations in respect of the wider services under the DBFO Contract) (see clause 1.3.32 of the DBFO Contract);

3.4.2 deductions from payments due to Connect Plus under the DBFO Contract are expressly excluded in respect of Connect Plus' performance of the RT Services (see clause 1.3.32 of the DBFO Contract);

3.4.3 Connect Plus is excluded from liability for certain events that would otherwise have triggered payment deductions under the DBFO Contract where any such event is caused by performing or failing to perform the RT Services (this includes specified excluded events including as lane closure, failures to meet the carriageway condition criteria, high priority defects and traffic monitoring defects) (see clause 1.3.32 and the definition of "RT Excluded Events" in the DBFO Contract);

3.4.4 the limitation of Connect Plus' liability in respect of the RT Services to £10,000,000 (save for standard exclusions such as liability in respect of death or personal injury or wilful default by Connect Plus) (see clause 69B of the DBFO Contract); and

3.4.5 the Required Insurances which Connect Plus must maintain in accordance with the DBFO Contract have been amended to capture the introduction of Relevant Technology and the RT Services into the scope of DBFO Contract (see part 1 (*Required Insurances*) of schedule 28 (*Insurance*) to the DBFO Contract).

3.5 In exchange for the provision of the RT Services, the gross monthly amount payable to Connect Plus in accordance with schedule 25 (*Payments*) will be increased to include monthly lump sums for the performance of the RT Cyclic Services, RT Reactive Services and RT Management Services (as further described in the FTA Report). We note that the fixed monthly payment with respect to RT Reactive Services will only cover a capped number of monthly instructions for the rectification of defects, in excess of which, Connect Plus will be able to recover additional costs from NH as Passthrough Costs. Similarly, Connect Plus will be able to recover as Passthrough Costs certain specialist activities (for example, activities relating to weather stations, additional

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traffic management and ramp metering). We note that the renewal and/or replacement of any components or parts of the Relevant Technology is not included within Connect Plus' responsibilities in respect of the RT Services.

- 3.6** We understand that the amendments are intended to provide for the performance by Connect Plus of the RT Services under the DBFO Contract for a period of approximately seventeen years. Accordingly, the amendments contain a scope review mechanism (which will occur seven years following execution of the DBFO Contract Deed of Variation) with respect to the RT Services, which allows for the arrangement to be adjusted if it is not operating as intended or becomes materially different from what was initially envisaged.
- 3.7** We understand that Connect Plus has agreed a full pass-through of the operational impact of the RT Services with the Operator under the O&M Agreement. Connect Plus is therefore seeking consent from the Instructing Group to enter into the O&M Agreement Deed of Variation pursuant to which the main body of the O&M Agreement and a number of schedules (which correspond with the schedules of the DBFO Contract listed in paragraph 3.1) will be amended, and a new Schedule 35 (*RT Services*) will be introduced.
- 3.8** We have reviewed the DBFO Contract Deed of Variation and the O&M Agreement Deed of Variation and provided our comments to Connect Plus' legal adviser, Ashurst LLP, and note that those comments have been reflected in the final drafts received by us from Ashurst LLP on 23 January 2024. Accordingly, we can confirm that the Deeds of Variation appear to reflect our understanding of the commercial agreement reached by the parties as set out above and more particularly described in the FTA Report.
- 3.9** For further detail and analysis of the financial and technical aspects of the proposed amendments to the DBFO Contract and the O&M Agreement, please refer to the FTA Report.

4 Ordinary STID Proposal

- 4.1** In accordance with clauses 12.2.1 and 12.2.2 (*Amendment of Relevant Documents*) of the Common Terms Agreement, Connect Plus must obtain consent from the Secured Creditors before it may enter into the Deeds of Variation (the "**Relevant Documents**").
- 4.2** In accordance with schedule 5 (*Voting and Decision Making*) of the STID, Connect Plus' entry into the Relevant Documents must be approved by the Secured Creditors pursuant to an Ordinary STID Proposal.
- 4.3** The Secured Creditors will have a period of 15 Business Days from the date falling one Business Day after receipt of the Ordinary STID Proposal in which to vote. The Ordinary STID Proposal will then be passed if it is approved by:
- (a) EIB (to the extent that any amount remains outstanding under the EIB Facility); and
 - (b) Participating Qualifying Secured Creditors (including, among others, the Bondholders) with an aggregate Exposure of at least 66.67 per cent. of the Voting Qualifying Debt (each as defined in the STID).
- 4.4** We confirm that the consents necessary to allow Connect Plus to enter into the Relevant Documents require an Ordinary STID Proposal. Additionally, we note that we have reviewed the draft Ordinary STID Proposal and provided our comments to Ashurst and note that those comments have been reflected in the final draft.