

**Schedule 6 – Amendments to the Gantry Land Agreement to Lease**

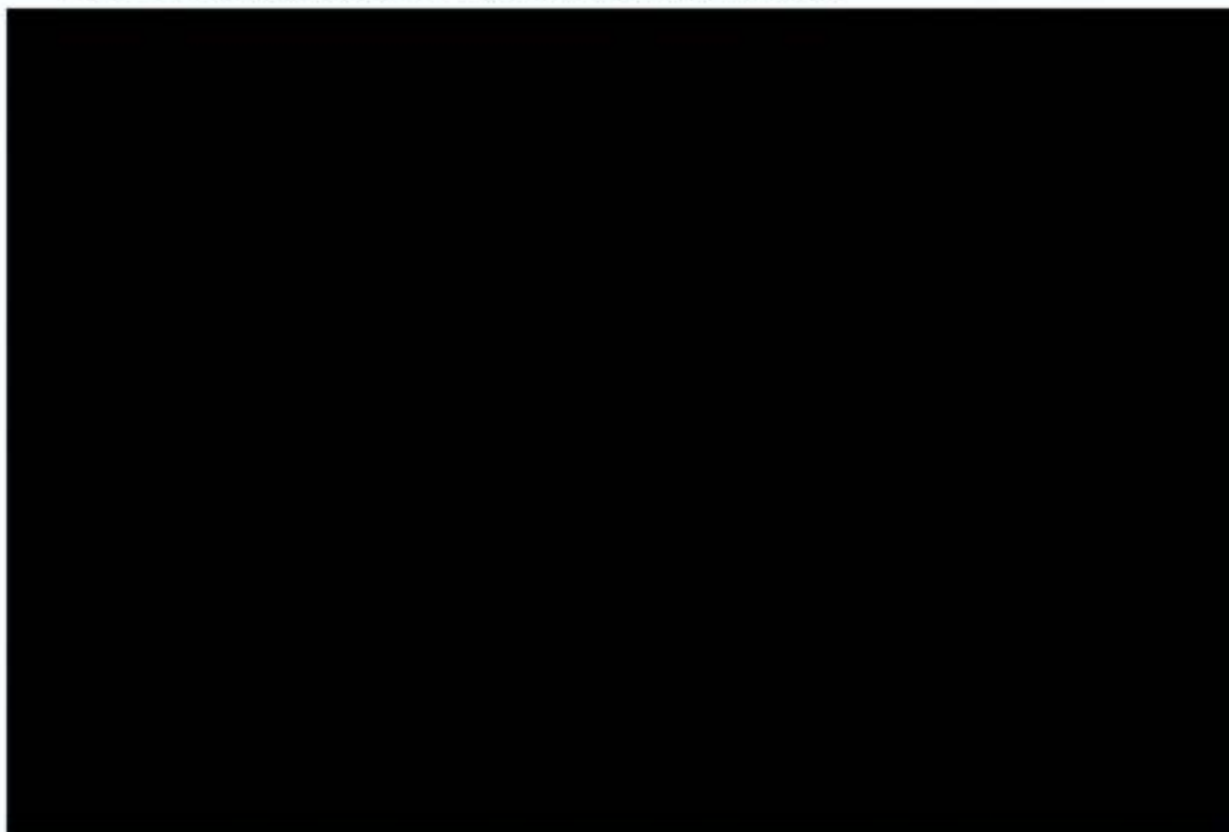
## Schedule 6 – Amendments to the Gantry Land Agreement to Lease

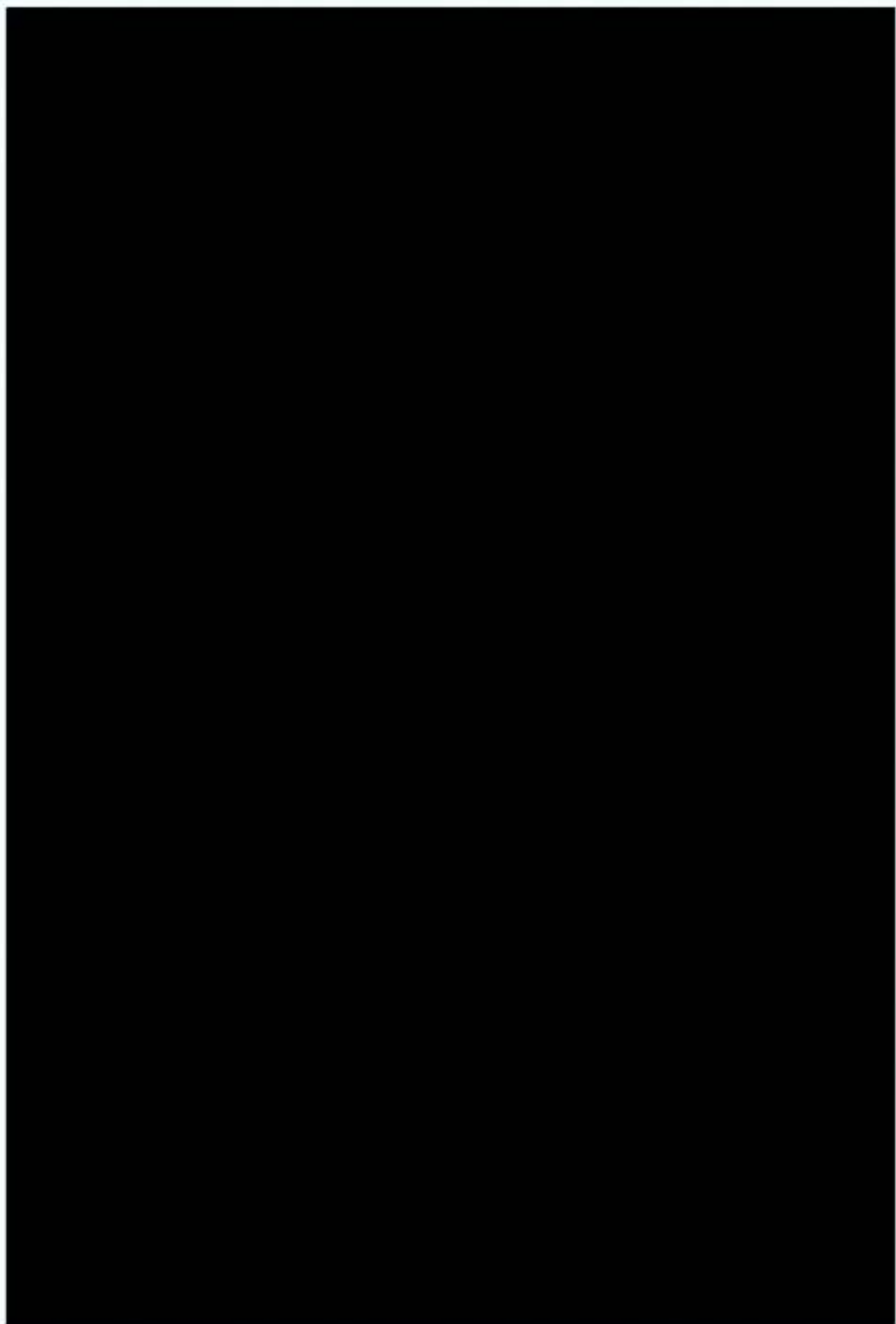
### PART A – Amendments with effect from the Satisfaction Date

The Gantry Land Agreement to Lease and the Gantry Land Lease are amended with effect from the Satisfaction Date as follows:

- (a) the section headed 'Parties' is deleted and replaced with:  
*\*Parties Transport for New South Wales of 231 Elizabeth Street, Sydney New South Wales (Transport)*  
*WSO Co Pty Limited, ACN 102 757 924 of 101 Wallgrove Rd, Eastern Creek, NSW 2766 (Company)\**
- (b) all references to "Land and Property Information New South Wales" are deleted and replaced with "NSW Land Registry";
- (c) all references to "RMS" are deleted and replaced with "Transport";
- (d) the Gantry Land Lease, as set out in Annexure A, is amended as follows:
  - (i) on the cover page, "ROADS AND MARITIME SERVICES" is deleted and replaced with "TRANSPORT FOR NSW, ABN 18 804 239 602"
  - (ii) in clause 1.1 (Definitions), the definition of "Lessor" is deleted and replaced with the following:  
*"Lessor" means Transport for NSW."*

### PART B – Amendments with effect from the Further Amendment Date







**PART C: Amendments with effect from the Date of Integration Completion**

The Gantry Land Agreement to Lease and the Gantry Land Lease are amended with effect from the Date of Integration Completion as follows:

- (a) in the section headed 'Recitals' the following new recital H is inserted:

*"H. The parties have agreed to undertake the Integration Project and in accordance with the M7-M12 Integration Project Deed and subject to the terms of this Deed, Transport has agreed to grant the Gantry Land Lease No. 2 and the 2048 Gantry Land Lease to the Company."*

- (b) the following new definitions are inserted into clause 1.1:

*"2048 Gantry Land Lease means the lease to be granted by Transport to the Company in accordance with clause 8B of this Deed and will be substantially on the same terms and conditions as the draft deed of lease contained at Annexure D.*

*2048 Gantry Land Lease Commencement Date means 1 July 2048.*

*2048 Gantry Land Lease Termination Date means the last day of the "Term" (defined in the Project Deed and as determined under clause 28 of the Project Deed).*

*Gantry Land Lease No. 2 means the lease to be granted by Transport to the Company in accordance with clause 8A of this Deed which will be substantially on the same terms and conditions as the draft deed of lease contained at Annexure C.*

**Gantry Land Lease No. 2 Commencement Date** has the same meaning as in the Gantry Land Lease No. 2.

**Gantry Land Lease No. 2 Termination Date** means the last day of the "Term" (defined in the Project Deed and as determined under clause 28 of the Project Deed).

**Gantry Land No. 2** means the real property to be the subject of the Gantry Land Lease No. 2 as determined in accordance with clauses 7A and 8A of this Deed.

**M7-M12 Integration Project Deed** means the deed entitled "M7-M12 Integration Project Deed" between, among others, Transport, the Company and Westlink dated February 2023.

**M7-M12 Interchange** means the interchange of the M7 motorway and M12 motorway and includes the entry ramp from Elizabeth Drive to the M12 motorway.

**M7 Widening** means the widening of the M7 motorway from the Richmond Road overpass to the M5 interchange.

**NSW Land Registry** means the registry that operates the land and titles registry in New South Wales."

- (c) clause 1.3 is deleted and replaced with:

**"1.3 Expressions used in the Project Deed and M7-M12 Integration Project Deed**

Any word, expression, reference or term used in this Deed which is defined in the Project Deed or the M7-M12 Integration Project Deed and is not specifically defined in this Deed will, unless the context otherwise requires, have in this Deed the same meaning as in the Project Deed or the M7-M12 Integration Project Deed as the context requires."

- (d) insert a new clause 7A after clause 7.3 as follows:

**"7A Survey of Gantry Land Lease No. 2**

**7.1A Registrable Form**

- (a) Transport and the Company acknowledge and agree that the purpose of this clause 7A and clause 8A is to give effect to a further lease (being the Gantry Land Lease No. 2) that is intended to cover the real property in connection with the gantries associated with the widening of the M7 Motorway and the M7-M12 Interchange contemplated by the M7-M12 Integration Project Deed, it being acknowledged that the Gantry Land Lease was granted previously.
- (b) Transport and the Company acknowledge and agree that the Gantry Land Lease No. 2 cannot be registered under the Real Property Act 1900 (NSW) in its present form.

**7.2A "As Built" Engineering Survey**

- (a) Subject to clause 7.2A(c), the Company agrees to (before the date which is 12 months after Integration Completion):
- (i) carry out an "as built" engineering survey of:
- A. the works and areas of land comprising the Gantry Land or the Motorway (showing the Gantry Land), any rock anchors (including the areas referred to in clause 7.2A(b)(i)) constructed on the Project Site; and
- B. the works and structures comprising any Easements referred to in clause 9.2; and

as a consequence, must prepare and deliver to Transport:

- C. "work as executed" drawings and an electronic copy of them in "dxf" format (or such other format as may be agreed by the Parties); and
- D. a 3-dimensional computer model that conforms with clauses 3.1, 3.2 and 3.5 of TINSW QA Specification G73 Detail Survey (or such other format as may be agreed between the parties),

of the parts of the Motorway comprising Gantry Land No. 2 created by the Retained Works ("**Additional Gantry Elements**"), any rock anchors and the Easements (if any) referred to in clause 9.2 and ensure that (2) hard copies and (2) electronic copies of such "work as executed" drawings and the computer model to Transport;

- (ii) take reasonable action to ensure that the "work as executed" drawings and the computer model referred to in clause 7.2A(a)(i) specify in sufficient detail:
  - A. all stratum heights, widths and depths of the Additional Gantry Elements referenced to the Geocentric Datum of Australia 2020 ("**GDA**") and the Australian Height Datum 71 ("**AHD**");
  - B. the three-dimensional co-ordinates referenced to GDA and AHD defining the boundaries of the Additional Gantry Elements which will be the land determined having regard to the matters contemplated in clause 7.2A(b);
  - C. the three-dimensional co-ordinates referenced to GDA and AHD the length and rake and the heads of all rock anchors;
  - D. the three-dimensional co-ordinates referenced to GDA and AHD defining the boundaries for the Easements (if any) referred to in clause 9.2;
  - E. the two-dimensional co-ordinates referenced to GDA and AHD defining the proposed boundaries of the Maintenance Sites required in relation to the Gantry Land No. 2;
  - F. the three-dimensional co-ordinates referenced to GDA and AHD defining the interface boundaries between the Motorway and the M2, M4, M5 and M12 Motorways; and
  - G. the two-dimensional co-ordinates referenced to GDA and AHD of all Service Works:
    - 1) to the extent the relevant Services has been re-located during construction of the M7 Widening Works; or
    - 2) where the relevant Service remains in its original position, to the extent to which the location of the relevant Service is identified in undertaking the M7 Widening Works;
- (iii) take reasonable action to ensure that the "work as executed" drawings and the computer model referred to in clause 7.2A(a)(i):
  - A. are prepared in accordance with the Scope of Works and Technical Criteria and the Brief of Survey Requirements set out in Annexure B; and
  - B. are certified by a Registered Surveyor;

- 1) *to be complete and accurate;*
  - 2) *to have been prepared in accordance with and to meet the requirements of this clause 7.2A; and*
  - 3) *to be adequate for the determination of all boundaries and otherwise to contain all necessary information to enable Transport to fulfil its obligations under clause 7.3A; and*
- (iv) *for the avoidance of doubt, the obligation of the Company under this clause 7.2A to carry out an "as built" engineering survey does not include the preparation of cadastral drawings or surveys or, the provision of information relating to titles or title surveys, all of which must be undertaken under clause 7.3A.*
- (b) *The parties acknowledge and agree that the Gantry Land No. 2:*
- (i) *will only comprise:*
    - A. *the areas of land and air space of such part of the Motorway containing the gantries which will be limited to:*
      - 1) *1.0 metres in height above each gantry;*
      - 2) *1.0 metres in depth below each gantry (where applicable); and*
      - 3) *1.0 metres in width from each of the outer edges of each gantry;*
    - B. *the agreed area of land comprising the part of the Motorway created by the M7 Widening Works, other than the areas on which the gantries are located; and*
  - (ii) *will not comprise:*
    - A. *the Public Transport Corridor Stratum;*
    - B. *Local Road Works;*
    - C. *the works that interface with the M2, M4 and M5 Motorways to the extent such works form part of any of those Motorways; and*
    - D. *any remote signposts and traffic signals.*
- (c) *The Company agrees to commence the "as built" engineering survey of those areas of the Gantry Land No. 2 and the Easements (if any) referred to in clause 9.2 and otherwise complete the "as built" engineering survey and deliver all documentation and computer models required pursuant to clause 7.2A(a) for the balance of the Gantry Land No. 2 constructed on the Construction Site and the Easements referred to in clause 9.2 within 12 months of Integration Completion.*

### **7.3A Property Survey**

- (a) *Commencing upon the receipt of all documentation and computer models required pursuant to clause 7.2A(a) of this Deed and pursuant to clause 7.2A(a) of the Motorway Stratum Agreement to Lease and subject to clause 7.3A(b), Transport must use best endeavours to:*
- (i) *prepare and cause to be registered such documents as are necessary to create the Easements (if any) referred to in clause 9.2;*

- (ii) *prepare and cause to be registered plans of consolidation or subdivision in relation to the Gantry Land No. 2 to reduce, to the extent practically possible, the number of titles comprising the Gantry Land No. 2;*
- (iii) *consult with the Company in relation to the preparation of the plans of consolidation or subdivision;*
- (iv) *answer all requisitions raised by the NSW Land Registry and liaise with the NSW Land Registry with a view to the plans of consolidation or subdivision being registered;*
- (v) *obtain a copy of each registered plan of consolidation or subdivision as soon as practicable after that plan is registered under the Real Property Act 1900 (NSW); and*
- (vi) *ensure it is the registered proprietor of the Gantry Land No. 2 free of all encumbrances, covenants, easements or rights (other than those Easements contemplated pursuant to clause 9) which would materially prejudice the Company's ability to exercise its rights or perform its obligations under the M7-M12 Integration Project Deed,*

*before the date which is 18 months after the parties have complied with all their obligations under this clause 7.2A(a) of this Deed and the parties have complied with all their obligations under clause 7.2A(a) of the Motorway Stratum Agreement to Lease, having regard though to the need and the time it may take for the parties to obtain all necessary approvals and consents from all relevant third parties to the plans of consolidation and subdivision, which the parties agree to use best endeavours to obtain.*

- (b) *The Company agrees to promptly provide to Transport at the Company's cost such further information and documentation regarding the Motorway, any rock anchors or the Easements (if any) referred to in clause 9.2 as may reasonably be required to prepare all documents and plans referred to in clause 7.3A(a)(i) and (ii).*
  - (c) *Transport is not required to provide the Gantry Land Lease No. 2 to the Company in registrable form in accordance with clause 8.5A until:*
    - (i) *the plans of consolidation or subdivision referred to in clause 7.3A(a) have been registered under the Real Property Act 1900 (NSW); and*
    - (ii) *certificates of title for the Gantry Land No. 2 have been issued by NSW Land Registry.*
  - (d) *Transport and the Company agree to do all things reasonably required to enable the Gantry Land Lease No. 2 to be completed and registered.*
  - (e) *The parties agree to share equally the costs associated with the activities referred to in clause 7.3A(a)."*
- (e) *insert a new clause 8A after clause 8.5 as follows:*

***"8A. Gantry Land Lease No. 2***

***8.1A Commencement of Gantry Land Lease No. 2***

*Subject to clauses 7A and 8.2A, on the Date of Integration Completion, Transport must grant to the Company and the Company must accept from Transport the Gantry Land Lease No. 2, commencing on the Gantry Land Lease No. 2 Commencement Date, and upon and subject to the terms, covenants and conditions set out in the draft deed of lease comprising Annexure C (subject to clause 8.5A(b)) and subject to any pre-existing interests in the Gantry Land Lease No. 2 (which must not have any adverse effect on the design, construction, use, operation, maintenance, patronage or capacity of the Motorway, or on the Company's ability to levy or*



collect tolls) or any Easements to be created in the Gantry Land No. 2 pursuant to clause 9 of this Deed or clause 9 of the Motorway Stratum Agreement to Lease.

#### **8.2A Obligations Pending Registrable Gantry Land Lease No. 2**

Between the Gantry Land Lease No. 2 Commencement Date and the date on which the gantry Land Lease No. 2 is in registrable form, the respective rights and obligations of Transport and the Company will be (subject to clause 8.6A) as set in the draft deed of lease comprising Annexure C and each of Transport and the Company will be bound by the provisions of the draft lease comprising Annexure C from and including the Gantry Land Lease No. 2 Commencement Date, even though Transport or the Company may not have executed the Gantry Land No. 2 or it may not have been completed in accordance with clause 8.4A(a) or registered in accordance with clause 8.5A.

#### **8.3A Survival of obligations**

The commencement of the Gantry Land Lease No. 2 will not relieve or discharge either Transport or the Company from the performance of any of their respective obligations under this Deed which remain to be performed at the Gantry Land Lease No. 2 Commencement Date.

#### **8.4A Insertion of details by Transport**

Following the completion of the matters referred to in clause 7.3A, Transport must either insert, or authorise the insertion of, the following in the Gantry Land Lease No. 2:

- (a) the Gantry Land Lease No. 2 Commencement Date and the Gantry Land Lease No. 2 Termination Date;
- (b) the then current title reference(s) for the Gantry Land No. 2 to be demised by the Gantry Land Lease No. 2; and
- (c) such other necessary formal matters as may be reasonably required to give effect thereto.

#### **8.5A Engrossment of Gantry Land Lease No. 2**

- (a) Transport and the Company must execute the Gantry Land Lease No. 2 in the following manner:
  - (i) Transport must give the Gantry Land Lease No. 2 and a duplicate of it to the Company as soon as practicable after the completion of the documentation contemplated by clause 7.3A and 8.4A;
  - (ii) the Company or its solicitors must return the Gantry Land Lease No. 2 and the duplicate of it duly executed by the Company within 10 Business Days of receiving it;
  - (iii) Transport must, within 10 Business Days of receiving the Gantry Land Lease No. 2 and the duplicate of it from the Company, execute and then return the Gantry Land Lease No. 2 and the duplicate of it to the Company;
  - (iv) Transport must produce certificates of title for the Gantry Land No. 2 to the NSW Land Registry when the Company requests it to allow the Company to register the Gantry Land Lease No. 2; and
  - (v) the Company must have the Gantry Land Lease No. 2 and the duplicate of it stamped and registered (at the Company's cost) and must give to Transport the stamped duplicate of the Gantry Lease No. 2 within 10 Business Days of it being stamped as well as a copy of the registered Gantry Land Lease No. 2 certified as true and correct by the Registrar General within 10 Business Days of it being registered.

(b) *Transport reserves the right to make any necessary alterations to the Gantry Land Lease No. 2 in form or layout to comply with any present or future requirements of the NSW Land Registry or any other appropriate authority.*

(f) insert a new clause 8B as follows:

**\*8B. 2048 Gantry Land Lease**

**8.1B Commencement of 2048 Gantry Land Lease**

*Subject to clauses 7 and 8.2B, on the 2048 Gantry Land Lease Commencement Date, Transport must grant to the Company and the Company must accept from Transport the 2048 Gantry Land Lease, commencing on the 2048 Gantry Land Lease Commencement Date, and upon and subject to the terms, covenants and conditions set out in the draft deed of lease comprising Annexure D and subject to any pre-existing interests in the Gantry Land (which must not have any adverse effect on the design, construction, use, operation, maintenance, patronage or capacity of the Motorway, or on the Company's ability to levy or collect tolls) or any Easements to be created in the Gantry Land pursuant to clause 9 of this Deed or clause 9 of the Motorway Stratum Agreement to Lease.*

**8.2B Obligations Pending Registrable 2048 Gantry Land Lease**

*Between the 2048 Gantry Land Lease Commencement Date and the date on which the 2048 Gantry Land Lease is in registrable form, the respective rights and obligations of Transport and the Company will be (subject to clause 8.6B) as set in the draft deed of lease comprising Annexure D and each of Transport and the Company will be bound by the provisions of the draft lease comprising Annexure D from and including the 2048 Gantry Land Lease Commencement Date, even though Transport or the Company may not have executed the 2048 Gantry Land Lease or it may not have been completed in accordance with clause 8.4B(a) or registered in accordance with clause 8.5B.*

**8.3B Survival of obligations**

*The commencement of the 2048 Gantry Land Lease will not relieve or discharge either Transport or the Company from the performance of any of their respective obligations under this Deed which remain to be performed at the 2048 Gantry Land Lease Commencement Date.*

**8.4B Insertion of details by Transport**

*Following the completion of the matters referred to in clause 7.3, Transport must either insert, or authorise the insertion of, the following in the 2048 Gantry Land Lease:*

- (a) *the 2048 Gantry Land Lease Commencement Date and the 2048 Gantry Land Lease Termination Date;*
- (b) *the then current title reference(s) for the Gantry Land to be demised by the 2048 Gantry Land Lease; and*
- (c) *such other necessary formal matters as may be reasonably required to give effect thereto.*

**8.5B Engrossment of 2048 Gantry Land Lease**

- (a) *Transport and the Company must execute the 2048 Gantry Land Lease in the following manner:*
  - (i) *Transport must give the 2048 Gantry Land Lease and a duplicate of it to the Company as soon as practicable after the completion of the documentation contemplated by clause 7.3 and 8.4B;*

- (ii) *The Company or its solicitors must return the 2048 Gantry Land Lease and the duplicate of it duly executed by the Company within 10 Business Days of receiving it;*
  - (iii) *Transport must, within 10 Business Days of receiving the 2048 Gantry Land Lease and the duplicate of it from the Company, execute and then return the 2048 Gantry Land Lease and the duplicate of it to the Company;*
  - (iv) *Transport must produce certificates of title for the Gantry Land to the NSW Land Registry when the Company requests it to allow the Company to register the 2048 Gantry Land Lease; and*
  - (v) *The Company must have the 2048 Gantry Land Lease and the duplicate of it stamped and registered (at the Company's cost) and must give to Transport the stamped duplicate of the 2048 Gantry Lease within 10 Business Days of it being stamped as well as a copy of the registered 2048 Gantry Land Lease certified as true and correct by the Registrar General within 10 Business Days of it being registered.*
- (b) *Transport reserves the right to make any necessary alterations to the 2048 Gantry Land Lease in form or layout to comply with any present or future requirements of the NSW Land Registry or any other appropriate authority."*
- (g) clause 9 is amended to the extent that the words "and Gantry Land No. 2" are inserted immediately after the words "Gantry Land" wherever those words appear in the clause;
- (h) Schedule 1 (Easements) is amended as follows:
  - (i) the words "and Gantry Land No. 2" are inserted immediately after the words "Gantry Land" wherever those words appear in the Schedule.
- (i) the Gantry Land Lease, as set out in Annexure A, is amended as follows:
  - (i) in clause 1.1 (Definitions), the definition of "Termination Date" is deleted and replaced with the following:

*"Termination Date means the earlier to occur of:*

    - (a) *30 June 2048; and*
    - (b) *the date on which this Lease is terminated pursuant to clause 2.5."*
  - (ii) clause 2.4 (Yielding up) is deleted and replaced with the following:

**"2.4 Yielding up**

*If this Lease is determined in accordance with clause 2.5, the Lessee must peaceably yield up the Gantry Land to the Lessor in the state of repair and in the operating condition required by the Project Deed."*
- (j) the document at Attachment 1 is inserted as Annexure C; and
- (k) the document at Attachment 2 is inserted as Annexure D.

Attachment 1

Gantry Land Lease No. 2

THIS PAGE AND THE FOLLOWING [0] PAGES IS THE ANNEXURE A TO THE GANTRY  
LAND LEASE BETWEEN

TRANSPORT FOR NSW, ABN 18 804 239 602

AND

WSO CO PTY LIMITED, ACN 102 757 924

DATED | |

---

## **1 Definitions and interpretation**

### **1.1 Definitions**

Words and expressions not defined in this Lease will have the same meaning as the words and expressions defined in the Project Deed except to the extent that the context otherwise requires and except that:

**2048 Motorway Stratum Lease** means the lease so entitled between the Lessor and Lessee dated the date of this Lease.

**Claim** includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, this Lease;
- (b) arising out of, or in any way in connection with the Project or either of the Lessor's or Lessee's conduct prior to the date of this Lease; or
- (c) otherwise at law or in equity including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution, including restitution based on unjust enrichment

**Commencement Date** means the Date of Integration Completion.

**Easements** means those easements, restrictions on use, covenants, agreements or other similar interests together with any other leases, sub-leases, licences, rights or privileges which benefit or burden the Gantry Land No. 2 and are in existence as of the date of this Lease or which are to be created pursuant to clause 8 of the 2048 Motorway Stratum Lease.

**Gantry Land No. 2** means the land details of which are set out in Schedule 1 annexed to this Lease.

**Gantry Land Agreement to Lease** means the deed entitled "Gantry Land Deed Agreement to Lease" dated 13 February 2003 between the Lessor and the Lessee, as amended on the Amendment Date.

**Lease** means this deed.

**Lessee** means WSO Co Pty Limited, ACN 102 757 924.

**Lessee's Employees** means the contractors, sub-contractors, servants, agents, and workmen of the Lessee and each of their employees and invitees.

**Lessor** means Transport for NSW.

**Lessor's Employees** means the authorised officers, agents, employees, invitees and sub-contractors of the Lessor and their employees and invitees.

**Motorway Stratum** means the land details of which are set out in Schedule 1 annexed to the Motorway Stratum Lease.

**Motorway Stratum Agreement to Lease** means the deed entitled "Motorway Stratum Deed of Agreement to Lease" dated 13 February 2003 between the Lessor and WestLink, from time to time, including the amendments provided for in the M7-M12 Integration Project Deed.

**Motorway Stratum Lease No. 2** means the lease so entitled between the Lessor and Lessee dated the date of this Lease.

**Non-toll Business** means the use of the Gantry Land No. 2 by the Lessee (or any person authorised by it) for any business or revenue generating activity other than the collection of tolls in accordance with the Project Deed (including permitting others to have access to the Gantry Land No. 2 for the purpose of installing and operating Services or service centres).

**Project Deed** means the deed titled "Western Sydney Orbital Project Deed" dated 13 February 2003 between the Lessor, the Lessee and WestLink, as amended from time to time, including the amendments provided for in the M7-M12 Integration Project Deed.

**Rent** means in respect of any Rent Period the amount of \$1.00 per year. **Rent Period** means each of the following:

- (a) the period commencing on the Commencement Date and terminating on the next 30 June;
- (b) each subsequent period of 12 months wholly within the Term; and
- (c) the period from 1 July during the last year of the Term to the Termination Date.

**Term** means the period beginning on the Commencement Date and ending on the Termination Date.

**Termination Date** means the last day of the "Term" (defined in the Project Deed and as determined under clause 28 of the Project Deed).

**WestLink** means WestLink Motorway Limited ABN 63 096 512 300.

## 1.2 Governing law

This Lease is governed by and must be construed in accordance with the laws of New South Wales.

## 1.3 Interpretation

In this Lease:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) the expression "person" includes an individual, body politic, a corporation, a statutory or other authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) the expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";
- (d) a reference to any party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;

- (e) a reference to this Lease or to any other deed, agreement, document or instrument includes, respectively, this Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment or any statutory provision substituted for it and all ordinances, by-laws, regulations, rules and other statutory instruments (however described) issued under it;
- (g) subject to clause 2.3 of the Project Deed, a reference in this Lease to any act or omission of the Lessor includes any demand, determination, direction, instruction, order, rejection, request or requirement made or given by the Lessor;
- (h) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (i) a reference to a clause, Schedule or Exhibit is a reference to a clause, Schedule or Exhibit of or to this Lease;
- (j) a reference to this Lease or any other Project Document includes all schedules, annexures or exhibits to this Lease or the Project Document;
- (k) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (l) a reference to a court or tribunal is to an Australian court or tribunal;
- (m) a reference to "\$" or "dollar" is to Australian currency; and
- (n) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

#### **1.4 Exclusion of implied covenants and powers**

The covenants and powers implied by section 84, section 84A, section 85, section 132, section 133, section 133A and section 133B of the *Conveyancing Act, 1919* (NSW) do not apply to this Lease.

#### **1.5 Lessee's obligations**

No representation or approval given by any officer or employee of the Lessor in respect of the Lessee's obligations under this Lease lessens or otherwise affects the Lessee's obligations under this Lease and does not give rise to any waiver, variation or estoppel.

#### **1.6 Severability of provisions**

If at any time any provision of this Lease is or becomes illegal invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Lease; or
- (b) the legality, validity or unenforceability under the law of any other jurisdiction of that or any other provision of this Lease.



---

## **2 Lease**

### **2.1 Grant of Lease and easements and rights**

The Lessor leases the Gantry Land No. 2 together with the benefit and the burden of any Easements to the Lessee for the period commencing on the Commencement Date and ending on the Termination Date, on the terms and conditions set out in this Lease.

### **2.2 Rent**

- (a) The Lessee must pay the Rent to the Lessor:
  - (i) annually in arrears, within 20 Business Days of the completion of each Rent Period;
  - (ii) without demand from the Lessor;
  - (iii) free of any set-off or counterclaim; and
  - (iv) without any deduction whatsoever.
- (b) If any gantry or any part of the Motorway constructed on the Gantry Land No. 2 is damaged or destroyed the Rent will not abate and the Lessee will comply with its reinstatement obligation under clause 22.8 of and to the extent required by the Project Deed.

### **2.3 Rates and Taxes**

Subject to clause 20.1(b) of the Project Deed, the Lessee will be liable for and must pay all land-based rates, Taxes and charges in respect of the Gantry Land No. 2 as from the Commencement Date in accordance with the terms of the Project Deed.

### **2.4 Yielding up**

The Lessee must peaceably yield up the Gantry Land No. 2 to the Lessor on the Termination Date in the state of repair and in the operating condition required by the Project Deed.

### **2.5 Determination on termination of the Project Deed**

- (a) Notwithstanding any other provisions of this Lease as to the period of the Term, the tenancy created by this Lease will automatically and simultaneously be determined upon the termination of the Project Deed without the necessity of notice and the tenancy created herein and all interests derived or dependent thereupon will be determined for all time. For the avoidance of doubt, the parties expressly acknowledge and agree that, upon the termination of the Project Deed, this Lease is intended to and will expire by effluxion of time despite any Law.
- (b) The Lessor must not terminate this Lease unless the Project Deed has been or is simultaneously terminated.

---

## **3 Project Deed**

This Lease is subject to the terms and conditions of the Project Deed. If there is any inconsistency between the terms of this Lease and the terms of the Project Deed, the Project Deed will prevail.

The Lessor and the Lessee agree that to the extent that each of them relies on its respective rights pursuant to the Project Deed, nothing in this Lease will in any way operate as a bar to the exercise by the Lessor and the Lessee of their rights under the Project Deed.

---

#### **4 Exclusive possession**

Subject to this Lease and the Project Deed, the Lessor gives the Lessee exclusive possession of the Gantry Land No. 2.

---

#### **5 Use**

The Lessee will not, without the consent in writing of the Lessor use, permit or suffer to be used any part of the Gantry Land No. 2 for any purpose other than as a tollway and ancillary uses (including for any Non-toll Business approved by the Lessor) and in accordance with the Project Deed.

Subject to the Project Deed, the Lessor makes no express or implied warranty:

- (a) that the Gantry Land No. 2 is now or will remain suitable or adequate for all or any of the purposes contemplated in the Project Deed; or
  - (b) as to the climatic and physical conditions and characteristics of the Gantry Land No. 2,
- and save as aforesaid all warranties (if any) as to the matters referred to in paragraphs (a) and (b) implied by law are to the extent permitted by law hereby expressly negated.
- 

#### **6 Maintenance and repair**

- (a) The Lessee undertakes to maintain and repair the Motorway and the Third Party Works in accordance with clause 15 of the Project Deed.
- (b) In consideration of the payment of \$10.00 by the Lessee to the Lessor, the receipt and sufficiency of which is acknowledged by the Lessor, the Lessor hereby grants to the Lessee and the Lessee's Employees the non-exclusive right of access to and use of the Maintenance Site (the "Access and Use Rights"), for the Term, and for the purposes set out in and otherwise in accordance with, and subject to the terms and conditions of, this clause 6.
- (c) Subject to the Project Deed, this Lease and Appendices 11, 21 and 31 to the Scope of Works and Technical Criteria, the Lessor authorises the Lessee, the Lessee's Employees and the Lessee's permitted sublessees, together with all necessary vehicles, equipment, materials and appliances, to enter upon, remain upon, and use the Maintenance Site to carry out, in accordance with the Project Deed, the Lessee's rights and obligations under the Project Deed in connection with the maintenance of the Motorway and the maintenance and repair of the Third Party Works (the "Permitted Use") and for no other purpose unless the Lessor otherwise agrees in writing.
- (d) The Lessee acknowledges and agrees that the Access and Use Rights:
  - (i) are not exclusive to the Lessee;
  - (ii) will at all times be subject to those rights of access to any part of the Maintenance Site which any Authority (including the Lessor) may wish to exercise in the lawful exercise of its statutory functions;
  - (iii) do not create or confer upon the Lessee any estate or proprietary interest in the Maintenance Site whether at law or in equity and that those rights are merely personal rights between the Lessor and the Lessee in relation to the Maintenance Site; and

- (iv) may be revoked by the Lessor at any time after the termination or earlier determination of the Lease whereupon the Lessee must desist immediately from entering on to and/or using the Maintenance Site.

---

## **7 Lessor's inspection**

The Lessor, the Lessor's Employees and any person authorised by the Lessor may at any time during the Term enter the Gantry Land No. 2 during business hours or on reasonable notice and otherwise in accordance with the Project Deed to determine whether the Lessee is complying with this Lease and the Project Deed or, subject to and in accordance with the Project Deed, to exercise any right or perform any obligation which the Lessor has under any Project Document.

---

## **8 No claim**

Subject to the Project Deed, the Lessee may not make any Claim or requisition or rescind or terminate this Lease or the Project Deed because the Lessor wishes to grant any Easement or any Easement is granted in accordance with the Motorway Stratum Agreement to Lease, the Motorway Stratum Lease No. 2, the 2048 Motorway Stratum Lease or the Gantry Land Agreement to Lease.

---

## **9 Lessee accepts risk**

Subject to the Project Deed, the Lessee agrees that the Lessee's use and occupation of the Gantry Land No. 2 during the Term of this Lease will at all times be at the risk of the Lessee. Subject to the Project Deed, the Lessee releases the Lessor from all Claims which arise directly or indirectly from any accident, damage or injury which occurs to or on the Gantry Land No. 2 as a consequence of the Lessee's use and occupation of the Gantry Land No. 2. This release does not apply to the extent any Claim is caused by the negligent or intentional act or omission of the Lessor.

---

## **10 Assignment**

### **10.1 Assignment by the Lessee**

The Lessee must not:

- (a) assign or otherwise deal with its interest in or obligations under this Lease; or
- (b) sub-lease or licence the Gantry Land No. 2,

except in accordance with clause 31 of the Project Deed.

### **10.2 Security Interests**

The Lessee must not give any Security Interest over its interest in this Lease to secure its obligations to any person except as permitted pursuant to the Debt Financing Documents or clause 31 of the Project Deed or otherwise with the prior written consent of the Lessor.

---

## **11 Dispute resolution**

The Lessor and the Lessee must deal with any dispute in respect of this Lease in accordance with clause 26 of the Project Deed.

---

## 12 GST

### 12.1 Definitions and interpretation

"GST", "GST law" and other terms used in this clause 12 (except "Recipient") have the meanings ascribed to those terms by *the A New Tax System (Goods and Services Tax) Act 1999* or any replacement or other relevant legislation and regulations, except that "GST law" also includes any applicable rulings. Any reference to GST payable by the Supplier (as that term is defined in clause 12.2) includes any GST payable by the representative member of any GST group of which that Supplier is a member. Any references to an Input Tax Credit to which a party is entitled includes an Input Tax Credit for an acquisition made by that party but to which the representative member of any GST group of which that party is a member is entitled.

### 12.2 GST payable

- (a) Notwithstanding any other provision of this Lease, any amount payable for a supply made under or in connection with this Lease which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of an acquisition to which that cost, expense or other amount relates.
- (b) If GST becomes payable on any supply made by a party ("Supplier") under or in connection with this Lease:
  - (i) any amount payable or consideration to be provided under any other provision of this Lease for that supply ("Agreed Amount") is exclusive of GST;
  - (ii) an amount ("GST Amount") will be payable by the party in receipt of that supply (the "Recipient"), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable upon delivery by the Supplier of a tax invoice; and
  - (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount or GST Amount for that supply is to be provided under this Lease.
- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Lease (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the GST Amount it receives from the Recipient under clause 12.2(b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.
- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all Parties. The expert will act as an expert and not as an arbitrator and will taken into account the terms of this Lease, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination. The Parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

---

## 13 General

### 13.1 Notices

Any communication under or in connection with this Lease:

- (a) must be in writing;
- (b) must be addressed as shown below:

**Lessor**

Address: [ # ]

Attention: [ # ]

**Lessee**

Address : [ # ]

Facsimile: [ # ]

Attention: [ # ]

(or as otherwise notified in writing by that party to the other party from time to time);

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 13.1(b); and
- (e) will be deemed to be received by the addressee:
  - (i) (in the case of prepaid post) on the second business day after the date of posting;
  - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which the fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety unless that local time is a non-business day, or is after 5.00pm on a business day, in which case that communication will be deemed to have been received at 9.00am on the next business day; and
  - (iii) (in the case of delivery by hand) on delivery at the address of the recipient as provided in clause 13.1(b), unless that delivery is made on a non-business day, or after 5.00pm on a business day in which case that communication will be deemed to have been received at 9.00 am on the next business day.

and where "business day" means a day (not being a Saturday or Sunday) on which banks are generally open for business in the place of receipt of that communication.

### 13.2 Costs

- (a) The Lessee must, within 28 days from the date of notice from the Lessor requesting payment, pay all stamp duties, fees, fines, penalties for late payment (other than due to the default of the Lessor) and charges of or incidental to the stamping of this Lease.

- (b) Each party must bear its own costs, charges and expenses of or incidental to the negotiation, preparation, execution and completion of this Lease.

### **13.3 Interest**

If party does not pay an amount payable by it to the other party under this Lease by the date that it is due, the first mentioned party must pay interest on that amount on demand by the other party. Interest is:

- (a) payable from the due date until the date the payment is made by the first mentioned party before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money payable becomes merged;
- (b) calculated on daily balances at the rate of BBSY + 2% per annum; and
- (c) capitalised monthly.

### **13.4 Moratorium legislation**

To the fullest extent permitted by Law, the provisions of all Law which at any time operate directly or indirectly to lessen or affect in favour of the Lessee any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise by the Lessor of any right, power or remedy under this Deed or otherwise, are expressly waived.

### **13.5 No agency**

The Lessee must not (in connection with the Gantry Land No. 2, the Maintenance Site or otherwise) directly or indirectly hold out nor permit to be held out to any person any statement, act, deed, matter or thing indicating that the Gantry Land No. 2, the Maintenance Site or the business conducted or operated that the Gantry Land No. 2 or the Maintenance Site (or any part of them ) are being carried on or managed or supervised by the Lessor, and the Lessee must not, except as expressly permitted under the Project Deed, act as or represent itself to be the servant or agent of the Lessor.

### **13.6 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Lease by a party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Lease.
- (b) Unless expressly provided otherwise, any waiver or consent given by a party under this Lease will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver by a party of a breach of any term of this Lease will operate as a waiver of another breach of that term or of a breach of any other term of this Lease.

### **13.7 Variation**

No provision of this Lease may be varied or waived except in writing. This Lease may only be varied by a document signed by or on behalf of each of the Lessor and the Lessee.

### **13.8 Time for determining rights and obligations**

For the purpose of determining the rights and obligations of the parties, this Lease will be construed as if it had been executed on the Commencement Date.

**Executed as a deed**

## Schedule 1      Gantry Land No. 2

[To be completed by inserting the details of the Gantry Land No. 2 determined in accordance with the Gantry Land Agreement to Lease.]



Executed as a deed.

Signed, sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602)  
by its duly authorised delegate in the presence of.

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised delegate (print)

\_\_\_\_\_  
Position of authorised delegate (print)

Signed sealed and delivered by  
as attorney for WSO Co Pty Limited ACN 102  
757 924 under power of attorney dated  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
By executing this Deed the attorney states  
that the attorney has received no notice of  
revocation of the power of attorney

\_\_\_\_\_  
Name of witness in full

**Attachment 2      2048 Gantry Land Lease**

THIS PAGE AND THE FOLLOWING [#] PAGES IS THE ANNEXURE A TO THE GANTRY  
LAND LEASE BETWEEN

TRANSPORT FOR NSW, ABN 18 804 239 602

AND

WSO CO PTY LIMITED, ACN 102 757 924

DATED [ ]

---

## 1 Definitions and interpretation

### 1.1 Definitions

Words and expressions not defined in this Lease will have the same meaning as the words and expressions defined in the Project Deed except to the extent that the context otherwise requires and except that:

**2048 Motorway Stratum Lease** means the lease so entitled between the Lessor and Lessee dated the date of this Lease.

*[Completion Note: If the amendments referred to in Part B of Schedule 6 of the Integration Project Deed have been implemented pursuant to clauses 6.3 and 6.6 of the Integration Project Deed, then those changes (as highlighted in grey), must be made to this document.]*

**[Actual Revenue]** means, in respect of any Rent Period, the aggregate of tolls and charges (exclusive of GST) collected in accordance with clause 17 of the Project Deed during that period.]

**Claim** includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, this Lease;
- (b) arising out of, or in any way in connection with the Project or either of the Lessor's or Lessee's conduct prior to the date of this Lease; or
- (c) otherwise at law or in equity including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution, including restitution based on unjust enrichment

**Commencement Date** means 1 July 2048.

**Easements** means those easements, restrictions on use, covenants, agreements or other similar interests together with any other leases, sub-leases, licences, rights or privileges which benefit or burden the Gantry Land and are in existence as of the date of this Lease or which are to be created pursuant to clause 8 of the 2048 Motorway Stratum Lease.

**Gantry Land** means the land details of which are set out in Schedule 1 annexed to this Lease.

**Gantry Land Agreement to Lease** means the deed entitled "Gantry Land Deed Agreement to Lease" dated 13 February 2003 between the Lessor and the Lessee, as amended from time to time, including the amendments provided for in the M7-M12 Integration Project Deed

**[Incremental Base Revenue]** means, in respect of any Rent Period, the aggregate of tolls and charges (exclusive of GST) specified as Incremental Base Revenue for that period in the [M7] Model Outputs Schedule. ]

**[M7] Model Outputs Schedule** has the same meaning as contained in the Project Deed.]

**Lease** means this deed.

**Lessee** means WSO Co Pty Limited, ACN 102 757 924.

**Lessee's Employees** means the contractors, sub-contractors, servants, agents, and workmen of the Lessee and each of their employees and invitees.

**Lessor** means Transport for NSW.

**Lessor's Employees** means the authorised officers, agents, employees, invitees and sub-contractors of the Lessor and their employees and invitees.

[**M7 Additional Rent** means, in respect of any Rent Period, the amount calculated under paragraph (d) of the definition of Rent.]

**Motorway Stratum** means the land details of which are set out in Schedule 1 annexed to the Motorway Stratum Lease.

**Motorway Stratum Agreement to Lease** means the deed entitled "Motorway Stratum Deed of Agreement to Lease" dated 13 February 2003 between the Lessor and WestLink, as amended from time to time, including the amendments provided for in the M7-M12 Integration Project Deed.

**Non-toll Business** means the use of the Gantry Land by the Lessee (or any person authorised by it) for any business or revenue generating activity other than the collection of tolls in accordance with the Project Deed (including permitting others to have access to the Gantry Land for the purpose of installing and operating Services or service centres).

[**NorthConnex Actual Revenue**, in respect of any Rent Period, has the meaning given to "Actual Toll Revenue" in the NorthConnex Motorway Stratum Lease.]

[**NorthConnex Additional Rent**, in respect of any Rent Period, has the meaning given to "NorthConnex Additional Rent" in the NorthConnex Motorway Stratum Lease.]

[**NorthConnex Base Revenue**, in respect of any Rent Period, has the meaning given to "Base Toll Revenue" in the NorthConnex Motorway Stratum Lease.]

**NorthConnex Motorway Stratum Lease** means the lease of the "Motorway Stratum" (as defined in the NorthConnex Project Deed) granted in accordance with the NorthConnex Project Deed.

**Project Deed** means the deed titled "Western Sydney Orbital Project Deed" dated 13 February 2003 between the Lessor, the Lessee and WestLink, as amended from time to time, including the amendments provided for in the M7-M12 Integration Project Deed.

[**Rent** means the aggregate of:

- (a) the amount of \$1.00;
- (b) in respect of each Non-toll Business, the share of gross revenue derived from the Non-toll Business that is agreed between the Lessor and the Lessee pursuant to clause 17.3 of the Project Deed;
- (c) half of the "Base Rent", which is the amount specified in Schedule 2 annexed to the Motorway Stratum Lease for the relevant Rent Period; and
- (d) the "Additional Rent", which for the relevant Rent Period is the aggregate of:

- (i) 0% of that amount of Actual Revenue that is greater than 100% and less than or equal to 110% of Incremental Base Revenue;
  - (ii) 30% of that amount of Actual Revenue that is greater than 110% and less than or equal to 115% of Incremental Base Revenue; and
  - (iii) 50% of that amount of Actual Revenue that is greater than 115% of Incremental Base Revenue,
- reduced (if necessary) in accordance with clause 2.2(c)(i).]

**[Rent Period** means each of the following:

- (a) the period commencing on the Commencement Date and terminating on the next 30 June;
- (b) each subsequent period of 12 months wholly within the Term; and
- (c) the period from 1 July during the last year of the Term to the Termination Date.]

**Term** means the period beginning on the Commencement Date and ending on the Termination Date.

**Termination Date** means the last day of the "Term" (defined in the Project Deed and as determined under clause 28 of the Project Deed).

**WestLink** means WestLink Motorway Limited ABN 63 096 512 300.

## 1.2 Governing law

This Lease is governed by and must be construed in accordance with the laws of New South Wales.

## 1.3 Interpretation

In this Lease:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) the expression "person" includes an individual, body politic, a corporation, a statutory or other authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (c) the expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";
  - (d) a reference to any party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;
  - (e) a reference to this Lease or to any other deed, agreement, document or instrument includes, respectively, this Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
  - (f) a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment or any statutory provision substituted for it and au

ordinances, by-laws, regulations, rules and other statutory instruments (however described) issued under it;

- (g) subject to clause 2.3 of the Project Deed, a reference in this Lease to any act or omission of the Lessor includes any demand, determination, direction, instruction, order, rejection, request or requirement made or given by the Lessor;
- (h) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (i) a reference to a clause, Schedule or Exhibit is a reference to a clause, Schedule or Exhibit of or to this Lease;
- (j) a reference to this Lease or any other Project Document includes all schedules, annexures or exhibits to this Lease or the Project Document;
- (k) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (l) a reference to a court or tribunal is to an Australian court or tribunal;
- (m) a reference to "S" or "dollar" is to Australian currency; and
- (n) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

#### **1.4 Exclusion of implied covenants and powers**

The covenants and powers implied by section 84, section 84A, section 85, section 132, section 133, section 133A and section 133B of the *Conveyancing Act, 1919* (NSW) do not apply to this Lease.

#### **1.5 Lessee's obligations**

No representation or approval given by any officer or employee of the Lessor in respect of the Lessee's obligations under this Lease lessens or otherwise affects the Lessee's obligations under this Lease and does not give rise to any waiver, variation or estoppel.

#### **1.6 Severability of provisions**

If at any time any provision of this Lease is or becomes illegal invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Lease; or
- (b) the legality, validity or unenforceability under the law of any other jurisdiction of that or any other provision of this Lease.

---

## **2 Lease**

### **2.1 Grant of Lease and easements and rights**

The Lessor leases the Gantry Land together with the benefit and the burden of any Easements to the Lessee for the period commencing on the Commencement Date and ending on the Termination Date, on the terms and conditions set out in this Lease.

## 2.2 Rent

- (a) The Lessee must pay the Rent to the Lessor:
- (i) annually in arrears, within 20 Business Days of the completion of each Rent Period;
  - (ii) without demand from the Lessor;
  - (iii) free of any set-off or counterclaim; and
  - (iv) without any deduction whatsoever.
- (b) If any gantry or any part of the Motorway constructed on the Gantry Land is damaged or destroyed the Rent will not abate and the Lessee will comply with its reinstatement obligations under clause 22.8 of and to the extent required by the Project Deed.
- (c) [In respect of any Rent Period that commences on or after NorthConnex Completion and ends on or prior to termination of the NorthConnex Project Deed:
- (i) if, for that Rent Period, the NorthConnex Actual Revenue is less than the NorthConnex Base Revenue, the M7 Additional Rent must (if necessary) be reduced, subject to clause 2.2(d), by a sufficient amount to ensure that in respect of that Rent Period, the M7 Additional Rent is equal to the Aggregate Additional Revenue, where:  
$$\text{Aggregate Additional Revenue} = \frac{\text{(Actual Revenue plus NorthConnex Actual Revenue)}}{\text{(Incremental Base Revenue plus NorthConnex Base Revenue)}} \text{ less}$$
  - (ii) the Lessee must ensure that it provides to Transport and the NorthConnex Project Company, within 20 Business Days after the end of each Rent Period:
    - a. a copy of the report referred to in clause 16.1(j)(iii) of the Project Deed; and
    - b. such information as is reasonably required,  
to enable the corresponding calculation to be made under clause 2.2(c)(i) of the NorthConnex Motorway Stratum Lease.
- (d) In no circumstances can the M7 Additional Rent calculated in accordance with clause 2.2(c)(i) be less than \$0.]

## 2.3 Rates and Taxes

Subject to clause 20.1(b) of the Project Deed, the Lessee will be liable for and must pay all land-based rates, Taxes and charges in respect of the Gantry Land as from the Commencement Date in accordance with the terms of the Project Deed.



#### **2.4 Yielding up**

The Lessee must peaceably yield up the Gantry Land to the Lessor on the Termination Date in the state of repair and in the operating condition required by the Project Deed.

#### **2.5 Determination on termination of the Project Deed**

- (a) Notwithstanding any other provisions of this Lease as to the period of the Term, the tenancy created by this Lease will automatically and simultaneously be determined upon the termination of the Project Deed without the necessity of notice and the tenancy created herein and all interests derived or dependent thereupon will be determined for all time. For the avoidance of doubt, the parties expressly acknowledge and agree that, upon the termination of the Project Deed, this Lease is intended to and will expire by effluxion of time despite any Law.
- (b) The Lessor must not terminate this Lease unless the Project Deed has been or is simultaneously terminated.

---

### **3 Project Deed**

This Lease is subject to the terms and conditions of the Project Deed. If there is any inconsistency between the terms of this Lease and the terms of the Project Deed, the Project Deed will prevail.

The Lessor and the Lessee agree that to the extent that each of them relies on its respective rights pursuant to the Project Deed, nothing in this Lease will in any way operate as a bar to the exercise by the Lessor and the Lessee of their rights under the Project Deed.

---

### **4 Exclusive possession**

Subject to this Lease and the Project Deed, the Lessor gives the Lessee exclusive possession of the Gantry Land.

---

### **5 Use**

The Lessee will not, without the consent in writing of the Lessor use, permit or suffer to be used any part of the Gantry Land for any purpose other than as a tollway and ancillary uses (including for any Non-toll Business approved by the Lessor) and in accordance with the Project Deed.

Subject to the Project Deed, the Lessor makes no express or implied warranty:

- (a) that the Gantry Land is now or will remain suitable or adequate for all or any of the purposes contemplated in the Project Deed; or
- (b) as to the climatic and physical conditions and characteristics of the Gantry Land,

and save as aforesaid all warranties (if any) as to the matters referred to in paragraphs (a) and (b) implied by law are to the extent permitted by law hereby expressly negated.

---

### **6 Maintenance and repair**

- (a) The Lessee undertakes to maintain and repair the Motorway and the Third Party Works in accordance with clause 15 of the Project Deed.
- (b) In consideration of the payment of \$10.00 by the Lessee to the Lessor, the receipt and sufficiency of which is acknowledged by the Lessor, the Lessor hereby grants to the Lessee and the Lessee's Employees the non-exclusive right of access to and use of the

Maintenance Site (the "Access and Use Rights"), for the Term, and for the purposes set out in and otherwise in accordance with, and subject to the terms and conditions of, this clause 6.

- (c) Subject to the Project Deed, this Lease and Appendices 11, 21 and 31 to the Scope of Works and Technical Criteria, the Lessor authorises the Lessee, the Lessee's Employees and the Lessee's permitted sublessees, together with all necessary vehicles, equipment, materials and appliances, to enter upon, remain upon, and use the Maintenance Site to carry out, in accordance with the Project Deed, the Lessee's rights and obligations under the Project Deed in connection with the maintenance of the Motorway and the maintenance and repair of the Third Party Works (the "Permitted Use") and for no other purpose unless the Lessor otherwise agrees in writing.
- (d) The Lessee acknowledges and agrees that the Access and Use Rights:
  - (i) are not exclusive to the Lessee;
  - (ii) will at all times be subject to those rights of access to any part of the Maintenance Site which any Authority (including the Lessor) may wish to exercise in the lawful exercise of its statutory functions;
  - (iii) do not create or confer upon the Lessee any estate or proprietary interest in the Maintenance Site whether at law or in equity and that those rights are merely personal rights between the Lessor and the Lessee in relation to the Maintenance Site; and
  - (iv) may be revoked by the Lessor at any time after the termination or earlier determination of the Lease whereupon the Lessee must desist immediately from entering on to and/or using the Maintenance Site.

---

## **7 Lessor's inspection**

The Lessor, the Lessor's Employees and any person authorised by the Lessor may at any time during the Term enter the Gantry Land during business hours or on reasonable notice and otherwise in accordance with the Project Deed to determine whether the Lessee is complying with this Lease and the Project Deed or, subject to and in accordance with the Project Deed, to exercise any right or perform any obligation which the Lessor has under any Project Document.

---

## **8 No claim**

Subject to the Project Deed, the Lessee may not make any Claim or requisition or rescind or terminate this Lease or the Project Deed because the Lessor wishes to grant any Easement or any Easement is granted in accordance with the Motorway Stratum Agreement to Lease, the 2048 Motorway Stratum Lease or the Gantry Land Agreement to Lease.

---

## **9 Lessee accepts risk**

Subject to the Project Deed, the Lessee agrees that the Lessee's use and occupation of the Gantry Land during the Term of this Lease will at all times be at the risk of the Lessee. Subject to the Project Deed, the Lessee releases the Lessor from all Claims which arise directly or indirectly from any accident, damage or injury which occurs to or on the Gantry Land as a consequence of the Lessee's use and occupation of the Gantry Land. This release does not apply to the extent any Claim is caused by the negligent or intentional act or omission of the Lessor.

---

## 10 Assignment

### 10.1 Assignment by the Lessee

The Lessee must not:

- (a) assign or otherwise deal with its interest in or obligations under this Lease; or
- (b) sub-lease or licence the Gantry Land,

except in accordance with clause 31 of the Project Deed.

### 10.2 Security Interests

The Lessee must not give any Security Interest over its interest in this Lease to secure its obligations to any person except as permitted pursuant to the Debt Financing Documents or clause 31 of the Project Deed or otherwise with the prior written consent of the Lessor.

---

## 11 Dispute resolution

The Lessor and the Lessee must deal with any dispute in respect of this Lease in accordance with clause 26 of the Project Deed.

---

## 12 GST

### 12.1 Definitions and interpretation

"GST", "GST law" and other terms used in this clause 12 (except "Recipient") have the meanings ascribed to those terms by *the A New Tax System (Goods and Services Tax) Act 1999* or any replacement or other relevant legislation and regulations, except that "GST law" also includes any applicable rulings. Any reference to GST payable by the Supplier (as that term is defined in clause 12.2) includes any GST payable by the representative member of any GST group of which that Supplier is a member. Any references to an Input Tax Credit to which a party is entitled includes an Input Tax Credit for an acquisition made by that party but to which the representative member of any GST group of which that party is a member is entitled.

### 12.2 GST payable

- (a) Notwithstanding any other provision of this Lease, any amount payable for a supply made under or in connection with this Lease which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of an acquisition to which that cost, expense or other amount relates.
- (b) If GST becomes payable on any supply made by a party ("Supplier") under or in connection with this Lease:
  - (i) any amount payable or consideration to be provided under any other provision of this Lease for that supply ("**Agreed Amount**") is exclusive of GST;
  - (ii) an amount ("**GST Amount**") will be payable by the party in receipt of that supply (the "**Recipient**"), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable upon delivery by the Supplier of a tax invoice; and
  - (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later

than the time at which the Agreed Amount or GST Amount for that supply is to be provided under this Lease.

- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Lease (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the GST Amount it receives from the Recipient under clause 12.2(b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.
- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all Parties. The expert will act as an expert and not as an arbitrator and will taken into account the terms of this Lease, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination. The Parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

---

## 13 General

### 13.1 Notices

Any communication under or in connection with this Lease:

- (a) must be in writing;
- (b) must be addressed as shown below:

**Lessor**

Address: [#]

Attention: [#]

**Lessee**

Address : [#]

Facsimile: [#]

Attention: [#]

(or as otherwise notified in writing by that party to the other party from time to time);

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 13.1(b); and
- (e) will be deemed to be received by the addressee:

- (i) (in the case of prepaid post) on the second business day after the date of posting;
- (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which the fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety unless that local time is a non-business day, or is after 5.00pm on a business day, in which case that communication will be deemed to have been received at 9.00am on the next business day; and
- (iii) (in the case of delivery by hand) on delivery at the address of the recipient as provided in clause 13.1(b), unless that delivery is made on a non-business day, or after 5.00pm on a business day in which case that communication will be deemed to have been received at 9.00 am on the next business day,

and where "business day" means a day (not being a Saturday or Sunday) on which banks are generally open for business in the place of receipt of that communication.

### **13.2 Costs**

- (a) The Lessee must, within 28 days from the date of notice from the Lessor requesting payment, pay all stamp duties, fees, fines, penalties for late payment (other than due to the default of the Lessor) and charges of or incidental to the stamping of this Lease.
- (b) Each party must bear its own costs, charges and expenses of or incidental to the negotiation, preparation, execution and completion of this Lease.

### **13.3 Interest**

If party does not pay an amount payable by it to the other party under this Lease by the date that it is due, the first mentioned party must pay interest on that amount on demand by the other party. Interest is:

- (a) payable from the due date until the date the payment is made by the first mentioned party before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money payable becomes merged;
- (b) calculated on daily balances at the rate of BBSY + 2% per annum; and
- (c) capitalised monthly.

### **13.4 Moratorium legislation**

To the fullest extent permitted by Law, the provisions of all Law which at any time operate directly or indirectly to lessen or affect in favour of the Lessee any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise by the Lessor of any right, power or remedy under this Deed or otherwise, are expressly waived.

### **13.5 No agency**

The Lessee must not (in connection with the Gantry Land, the Maintenance Site or otherwise) directly or indirectly hold out nor permit to be held out to any person any statement, act, deed, matter or thing indicating that the Gantry Land, the Maintenance Site or the business conducted or operated that the Gantry Land or the Maintenance Site (or any part of them ) are being carried on or managed or supervised by the Lessor, and the Lessee must not, except as expressly permitted under the Project Deed, act as or represent itself to be the servant or agent of the Lessor.

**13.6 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Lease by a party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Lease.
- (b) Unless expressly provided otherwise, any waiver or consent given by a party under this Lease will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver by a party of a breach of any term of this Lease will operate as a waiver of another breach of that term or of a breach of any other term of this Lease.

**13.7 Variation**

No provision of this Lease may be varied or waived except in writing. This Lease may only be varied by a document signed by or on behalf of each of the Lessor and the Lessee.

**13.8 Time for determining rights and obligations**

For the purpose of determining the rights and obligations of the parties, this Lease will be construed as if it had been executed on the Commencement Date.

**Executed as a deed**

## Schedule 1 Gantry Land

[To be completed by inserting the details of the Gantry Land determined in accordance with the Gantry Land Agreement to Lease.]

Executed as a deed.

Signed, sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602)  
by its duly authorised delegate in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised delegate (print)

\_\_\_\_\_  
Position of authorised delegate (print)

Signed sealed and delivered by  
as attorney for WSO Co Pty Limited ACN 102  
757 924 under power of attorney dated  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
By executing this Deed the attorney states  
that the attorney has received no notice of  
revocation of the power of attorney

\_\_\_\_\_  
Name of witness in full