

Schedule 7 – Amendments to the Motorway Stratum Agreement to Lease

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PART A – Amendments with effect from the Satisfaction Date

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

- (a) the section headed 'Parties' is deleted and replaced with:
- | | |
|-----------------|---|
| <i>*Parties</i> | <i>Transport for New South Wales of 231 Elizabeth Street, Sydney New South Wales (Transport)</i> |
| | <i>WestLink Motorway Limited, ABN 63 096 512 300 of 101 Wallgrove Rd, Eastern Creek, NSW 2766 (Company)</i> |
- (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 Motorway Stratum 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 Motorway Stratum Agreement to Lease and the Motorway Stratum 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 Motorway Stratum Lease No. 2 and the 2048 Motorway Stratum Lease to WSO Co."

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

"2048 Motorway Stratum Lease means the lease to be granted by Transport to WSO Co 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 E.

2048 Motorway Stratum Lease Commencement Date means 1 July 2048.

2048 Motorway Stratum 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).

M7-M12 Integration Project Deed means the deed entitled "M7-M12 Integration Project Deed" between, among others, Transport, the Company and WSO Co 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.

Motorway Stratum Lease No. 2 means the lease to be granted by Transport to WSO Co 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 D.

Motorway Stratum Lease No. 2 Commencement Date has the same meaning as in the Motorway Stratum Lease No. 2.

Motorway Stratum 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).

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

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

Retained Works has the meaning given to it in the M7-M12 Integration Project Deed."

- (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 Motorway Stratum 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 Motorway Stratum Lease No. 2) that is intended to cover the real property in connection with widening of the M7 Motorway and the M7-M12 Interchange contemplated by the M7-M12 Integration Project Deed, it being acknowledged that the Motorway Stratum Lease was granted previously.
- (b) Transport and the Company acknowledge and agree that the Motorway Stratum 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 Motorway, 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 TfNSW QA Specification G73 Detail Survey (or such other format as may be agreed between the parties),

of the parts of the Motorway created by the M7 Widening Works and Retained Works ("**Additional Motorway Elements**"), any rock anchors and the Easements (if any) referred to in clause 9.2 and provide (2) hard copies and (2) electronic copies of such "work as executed" drawings and the computer model to Transport;

(ii) 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 Motorway 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 Motorway 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;
- F. 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; and
- G. 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;

(iii) ensure that the "work as executed" drawings and the computer model referred to in clause 7.2A(a)(i):

- A. *include cross section plans at 20 metre chainage intervals including sectional changes and a long section plan for each carriageway and cross passages between each carriageway;*
- B. *are otherwise prepared in accordance with the Scope of Works and Technical Criteria and the Brief of Survey Requirements set out in Annexure C; and*
- C. *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 Motorway Stratum No. 2:

(i) will only comprise:

- A. *the areas of land and air space of such part of the Motorway comprising the road works (other than entry and exit ramps to Motorway created by the M7 Widening Works but including the parts of the M7-M12 Interchange Works which comprise Retained Works) which will be limited to:*
 - 1) *5.3 metres in height above each carriageway;*
 - 2) *2.0 metres in depth below each carriageway (where applicable);*
 - 3) *2.0 metres in width from each of the outer kerbs or edge of each carriageway (as applicable);*
 - 4) *the inner kerbs or edge of each carriageway (as applicable); and*
 - 5) *where M7 Widening Works interface the existing M7 Motorway Stratum Lease, this lease will adopt the existing lease boundary (as applicable);*
- B. *the areas of land and air space of such part of the Motorway created by the M7 Widening Works comprising those parts of road works that are entry and exit ramps to the Motorway, which will be limited to:*
 - 1) *5.3 metres in height above each ramp carriageway;*

- 2) 2.0 metres in depth below each ramp carriageway (where applicable);
 - 3) 2.0 metres in width from each of the kerbs or edges of each ramp carriageway (as applicable); and
 - 4) where M7 Widening Works interface the existing M7 Motorway Stratum Lease, this lease will adopt the existing lease boundary (as applicable);
- C. the agreed areas of land comprising the part of the Motorway created by the M7 Widening Works, other than the road works;
 - D. the areas of land generally enclosed by a boundary of 1 metre beyond the excavated area of road tunnels, emergency access tunnels, cross-passages and any ventilation tunnel including any excavated area for permanent installations within those tunnels;
 - E. the area enclosed by the walls of the WSO Control Centre; and
 - F. the areas of land comprising the approaches to and exits of the Motorway created by the M7 Widening Works (limited in height, width and depth); and
- (ii) will not comprise:
- A. the Public Transport Corridor Stratum
 - B. Local Road Works;
 - C. the works that interface with the M2, M4, M5 and M12 Motorways to the extent such works form part of any of those Motorways;
 - D. any remote signposts and traffic signals; and
 - E. any shared path (as described in section 1.1(p) of the Scope of Works and Technical Criteria),

and will be generally as shown in the outline plans and drawings which appear in Annexure B, subject to any changes to the area to be leased which are agreed by the parties in writing.

- (c) The Company agrees to commence the "as built" engineering survey of those areas of the Motorway Stratum 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 Motorway Stratum 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 Gantry Land 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 Motorway Stratum No. 2 to reduce, to the extent practically possible, the number of titles comprising the Motorway Stratum 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 Motorway Stratum 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 Gantry Land 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 at its own cost to promptly provide to Transport 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 Motorway Stratum Lease No. 2 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 Motorway Stratum No. 2 have been issued by NSW Land Registry.*
 - (d) *Transport and the Company agree to do all things reasonably required to enable the Motorway Stratum 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 as follows:

"8A. Motorway Stratum Lease No. 2

8.1A Commencement of Motorway Stratum Lease No. 2

Subject to clauses 7A and 8.2A, on the Date of Integration Completion, Transport must grant to WSO Co and WSO Co must accept from Transport the Motorway Stratum Lease No. 2, commencing on the Motorway Stratum 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 D (subject to clause 8.5A(b)) and subject to any pre-existing interests in the Motorway Stratum No. 2 (which must not have any adverse effect on the design, construction, use, operation, maintenance, patronage or capacity of the Motorway, or on WSO Co's ability to levy or collect tolls) or any Easements to be created in the Motorway Stratum No.2 pursuant to clause 9 of this Deed or clause 9 of the Gantry Land Agreement to Lease.

8.2A Obligations Pending Registrable Motorway Stratum Lease No. 2

Between the Motorway Stratum Lease No. 2 Commencement Date and the date on which the Motorway Stratum Lease No. 2 is in registrable form, the respective rights and obligations of Transport and WSO Co will be (subject to clause 8.6A) as set in the draft deed of lease comprising Annexure D and each of Transport and WSO Co will be bound by the provisions of the draft lease comprising Annexure D from and including the Motorway Stratum Lease No. 2 Commencement Date, even though Transport or WSO Co may not have executed the Motorway Stratum Lease 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 Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum Lease No. 2:

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

8.5A Grossment of Motorway Stratum Lease No. 2

- (a) Transport and WSO Co must execute the Motorway Stratum Lease No. 2 in the following manner:
 - (i) Transport must give the Motorway Stratum 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 clause 8.4A;
 - (ii) the Company must procure WSO Co to duly execute the Motorway Stratum Lease No. 2;
 - (iii) the Company or its solicitors must return the Motorway Stratum Lease No. 2 and the duplicate of it duly executed by WSO Co within 10 Business Days of receiving it;
 - (iv) Transport must, within 10 Business Days of receiving the Motorway Stratum Lease No. 2 and the duplicate of it from the Company, execute

and then return the Motorway Stratum Lease No. 2 and the duplicate of it to the Company;

(v) Transport must produce certificates of title for the Motorway Stratum No. 2 to the NSW Land Registry when the Company requests it to allow the Company to register the Motorway Stratum Lease No. 2; and

(vi) the Company must have the Motorway Stratum 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 Motorway Stratum Lease No. 2 within 10 Business Days of it being stamped as well as a copy of the registered Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum Lease**

8.1B Commencement of 2048 Motorway Stratum Lease

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

8.2B Obligations Pending Registrable 2048 Motorway Stratum Lease

Between the 2048 Motorway Stratum Lease Commencement Date and the date on which the 2048 Motorway Stratum Lease is in registrable form, the respective rights and obligations of Transport and WSO Co will be (subject to clause 8.6B) as set in the draft deed of lease comprising Annexure E and each of Transport and WSO Co will be bound by the provisions of the draft lease comprising Annexure E from and including the 2048 Motorway Stratum Lease Commencement Date, even though Transport or WSO Co may not have executed the 2048 Motorway Stratum Lease Commencement Date 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 Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum Lease:

(a) the 2048 Motorway Stratum Lease Commencement Date and the 2048 Motorway Stratum Lease Termination Date;

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

8.5B Engrossment of 2048 Motorway Stratum Lease

- (a) *Transport and WSO Co must execute the 2048 Motorway Stratum Lease in the following manner:*
 - (i) *Transport must give the 2048 Motorway Stratum 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 clause 8.4B;*
 - (ii) *The Company must procure WSO Co to duly execute the 2048 Motorway Stratum Lease;*
 - (iii) *The Company or its solicitors must return the 2048 Motorway Stratum Lease and the duplicate of it duly executed by WSO Co within 10 Business Days of receiving it;*
 - (iv) *Transport must, within 10 Business Days of receiving the 2048 Motorway Stratum Lease and the duplicate of it from the Company, execute and then return the 2048 Motorway Stratum Lease and the duplicate of it to the Company;*
 - (v) *Transport must produce certificates of title for the Motorway Stratum to the NSW Land Registry when the Company requests it to allow the Company to register the 2048 Motorway Stratum Lease; and*
 - (vi) *The Company must have the 2048 Motorway Stratum 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 Motorway Stratum Lease within 10 Business Days of it being stamped as well as a copy of the registered 2048 Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum No. 2" are inserted immediately after the words "Motorway Stratum" wherever those words appear in the clause;*
- (h) *Schedule 1 (Easements) is amended as follows:*
 - (i) *the words "and Motorway Stratum No. 2" are inserted immediately after the words "Motorway Stratum" wherever those words appear in the Schedule.*
- (i) *the Motorway Stratum Lease 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 Motorway Stratum to the Lessor in the state of repair and in the operating condition required by the Project Deed.**

- (j) Annexure B (Outline Plans and Drawings) is amended as follows: ***[Completion Note: Parties to prepare final plans and drawing]***
- (k) the document at Attachment 1 is inserted as Annexure D; and
- (l) the document at Attachment 2 is inserted as Annexure E.

Attachment 1 Motorway Stratum Lease No. 2

THIS PAGE AND THE FOLLOWING [#] PAGES IS THE ANNEXURE A TO THE 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:

"**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 contemplated pursuant to clause 8 which benefit or burden the Motorway Stratum and which are in existence as at the date of this Lease or which are to be created pursuant to clause 8 of this Lease.

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

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

"**Gantry Land Lease No. 2**" means the lease so entitled between the Lessor and WSO Co dated the date of this Lease.

"**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-M12 Integration Project Deed** means the deed titled M7-M12 Integration Project Deed dated [##].

"**Motorway Stratum No. 2**" means the land details of which are set out in Schedule 1 annexed to this 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 the Lessee, 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 Motorway or the Motorway Stratum 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 Motorway or the Motorway Stratum 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).

"**WSO Co**" means WSO Co Pty Limited ACN 102 757 924.

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.
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2. Lease

2.1 Grant of Lease

Subject to clause 4A, the Lessor leases the Motorway Stratum 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 part of the Motorway constructed on the Motorway Stratum No. 2 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.

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 Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum 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. Not used

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 Motorway Stratum 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. Easements and other rights

8.1 Easements and other rights reserved by the Lessor

The Lessor reserves the right at all times to:

- (a) create any Easements benefiting or burdening the Motorway Stratum No. 2 with:

- (i) any of the owners, lessees, tenants or occupiers of the land adjacent to or in the vicinity of the Motorway Stratum No. 2, or
- (ii) any public or other authority; and
- (b) dedicate land of which it is the owner of the fee simple estate for road, rail, or other purposes,

for the purposes of:

- (c) providing public or private access to or egress from the Motorway Stratum No. 2 or the Maintenance Site or other land adjacent to or in the vicinity of that land including the Public Transport Corridor Stratum ("adjacent land");
- (d) providing support of structures erected or to be erected on the Motorway Stratum No. 2, or on the Maintenance Site or on the adjacent land;
- (e) providing support for the structures of the M2, M4 or M5 Motorways or any railway infrastructure;
- (f) providing road or rail transportation or other Services including but not limited to water, drainage, sewerage, gas and other fuels, electricity, telephonic and electronic communications to the Motorway Stratum No. 2, or the Maintenance Site or to the adjacent land;
- (g) providing any statutory easements; and
- (h) satisfying any requirements of the Project Deed or the Scope of Works and Technical Criteria,

upon such terms and conditions as the Lessor thinks fit provided that any such Easement or dedication must not have a material adverse effect on the design, construction, use, operation, maintenance, patronage or capacity of the Motorway or the Maintenance Site or WSO Co's ability to levy or collect tolls.

8.2 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 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 Motorway Stratum 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 Motorway Stratum No. 2 as a consequence of the Lessee's use and occupation of the Motorway Stratum 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 Motorway Stratum 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 take 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 9.00am 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 Laws 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 Motorway Stratum 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 Motorway Stratum No. 2, the Maintenance Site or the business conducted or operated that the Motorway Stratum 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.

14. Limitation of liability

Clauses 36 and 37 of the Project Deed apply to this Deed as if set out in this Deed, mutatis mutandis.

Schedule 1
Motorway Stratum No. 2

[To be completed by inserting the details of the Motorway Stratum No. 2 determined in accordance with the Agreement to Lease including both real property and associated Works for both the M7 Widening and the M7 - M12 Integration and excluding such land as is excluded under the Project Deed.]

Schedule 2
Not used

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

Attachment 2 2048 Motorway Stratum Lease

THIS PAGE AND THE FOLLOWING [#] PAGES IS THE ANNEXURE A TO THE 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 Gantry Land Lease" means the lease so entitled between the Lessor and WSO Co 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 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 contemplated pursuant to clause 8 which benefit or burden the Motorway Stratum and which are in existence as at the date of this Lease or which are to be created pursuant to clause 8 of this Lease.

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

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

"Gantry Land Lease" means the lease so entitled between the Lessor and WSO Co dated the date of this Lease.

"Lease" means this Deed.

"Lessee" means WSO 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 this 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 the Lessee, 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 Motorway or the Motorway Stratum 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 Motorway or the Motorway Stratum 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.

[Completion Note: If the amendments referred to in Part B of Schedule 7 of the Integration Project Deed have been implemented pursuant to clauses 6.4 and 6.6 of the Integration Project Deed, then those changes must be made to this document.]

"**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).

"**WSO Co**" means WSO Co Pty Limited ACN 102 757 924.

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

Subject to clause 4A, the Lessor leases the Motorway Stratum 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.

[Completion Note: If the amendments referred to in Part B of Schedule 7 of the Integration Project Deed have been implemented pursuant to clauses 6.4 and 6.6 of the Integration Project Deed, then those changes must be made to this document.]

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 part of the Motorway constructed on the Motorway Stratum 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.

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 Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum.

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 Motorway Stratum 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 Motorway Stratum 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 Motorway Stratum,

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. Not used

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 Motorway Stratum 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. Easements and other rights

8.1 Easements and other rights reserved by the Lessor

The Lessor reserves the right at all times to:

- (a) create any Easements benefiting or burdening the Motorway Stratum with:
 - (i) any of the owners, lessees, tenants or occupiers of the land adjacent to or in the vicinity of the Motorway Stratum, or
 - (ii) any public or other authority; and
- (b) dedicate land of which it is the owner of the fee simple estate for road, rail, or other purposes,

for the purposes of:

- (c) providing public or private access to or egress from the Motorway Stratum or the Maintenance Site or other land adjacent to or in the vicinity of that land including the Public Transport Corridor Stratum ("**adjacent land**");
- (d) providing support of structures erected or to be erected on the Motorway Stratum, or on the Maintenance Site or on the adjacent land;
- (e) providing support for the structures of the M2, M4 or M5 Motorways or any railway infrastructure;
- (f) providing road or rail transportation or other Services including but not limited to water, drainage, sewerage, gas and other fuels, electricity, telephonic and electronic communications to the Motorway Stratum, or the Maintenance Site or to the adjacent land;
- (g) providing any statutory easements; and
- (h) satisfying any requirements of the Project Deed or the Scope of Works and Technical Criteria,

upon such terms and conditions as the Lessor thinks fit provided that any such Easement or dedication must not have a material adverse effect on the design, construction, use, operation, maintenance, patronage or capacity of the Motorway or the Maintenance Site or WSO Co's ability to levy or collect tolls.

8.2 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 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 Motorway Stratum 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 Motorway Stratum as a consequence of the Lessee's use and occupation of the Motorway Stratum. 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
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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.

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

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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 take 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 9.00am 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 Laws 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 Motorway Stratum, 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 Motorway Stratum, the Maintenance Site or the business conducted or operated that the Motorway Stratum 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.

14. Limitation of liability

Clauses 36 and 37 of the Project Deed apply to this Deed as if set out in this Deed, mutatis mutandis.

Schedule 1
Motorway Stratum

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

Schedule 2
Not used

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