



Government Gazette

of the State of

New South Wales

Number 381–Compulsory Acquisitions

Friday, 13 August 2021

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TRANSPORT ADMINISTRATION ACT 1988
LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

Notice of Compulsory Acquisition of Land

Transport Asset Holding Entity of New South Wales by its delegate declares, with the approval of Her Excellency the Governor, that all of the interests in land described in Schedules 1 to 14 of this notice hereto are acquired by compulsory process under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* as authorised by section 12 of the *Transport Administration Act 1988* for the purposes of the Botany Rail Duplication Project.

David Jurd
Chief Executive Officer
Transport Asset Holding Entity of New South Wales

SCHEDULE 1
(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 2, described hereunder as:

All that piece or parcel of land situated at Mascot in the Local Government Area of Bayside, Parish of Botany, County of Cumberland and State of New South Wales, shown in the document titled “sketch showing proposed lease affecting part Lot 52 in DP1097377” reference 11891316005_01 over part of Lot 52 in DP1097377 and said to be in the possession of Manboom Pty Limited (registered proprietor), oOh!media Fly Pty Limited (registered lessee), Eric Alpha Operator Corporation 2 Pty Limited, Eric Alpha Operator Corporation 4 Pty Limited, Eric Alpha Operator Corporation 3 Pty Limited, Blue Op Partner Pty Limited and Eric Alpha Operator Corporation 1 Pty Limited (caveator).

SCHEDULE 2
(LEASE TERMS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

“**ARTC**” means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

“**Authorised Users**” means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority, includes,

without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

“**Authority**” means the Transport Asset Holding Entity of New South Wales.

“**Bookend Sign**” means the signage structure marked “Sign #3” on the Signage Plan.

“**Botany Line**” means a dedicated freight rail line (operated by ARTC) extending from near Marrickville Station to Port Botany and forming part of the Metropolitan Freight Network.

“**Government Authorities**” means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

“**Land**” means Lot 52 in Deposited Plan 1097377.

“**Law**” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“**Legislative Requirements**” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“**Lessee**” means the registered lessee of the Land as at the date of this lease, being oOh!media Fly Pty Limited pursuant to registered lease AG342626 (as varied), and any other person who is granted, assigned or otherwise acquires a leasehold interest in the Land during the Term.

“**Nominated Sign**” means the signage structure marked “Sign #8” on the Signage Plan, which is the subject of the Signage Works.

“**Occupiers**” includes the Lessee and any other person that has a legal right to access or occupy the Premises as at the date of this lease or any person that has a legal right to access or occupy the Premises as may be granted during the Term, provided that such rights of access or occupation are consistent with this lease.

“**Other Signs**” means the existing advertising signage structures marked “Sign #4”, “Sign #5”, “Sign #6” and “Sign #7” on the Signage Plan.

“**Permitted Use**” means the conduct of the Project Works.

“**Plan**” means the document titled “sketch showing proposed lease affecting part Lot 52 in DP1097377” reference 11891316005_01.

“Planning Approval” means the state significant infrastructure development application no. SSI 9714 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Premises” means the areas shown hatched on the Plan.

“Project” means the duplication of a section of the Botany Line between Mascot and Botany and other ancillary works to be carried out in accordance with the Planning Approval.

“Project Works” means all works and activities carried out on and adjacent to the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of embankments and retaining structures and enabling the construction of new bridges;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) Signage Works;
- (vii) erection of temporary and permanent fencing and/or hoardings;
- (viii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (ix) temporary compound erection and operation;
- (x) temporary site parking facilities;
- (xi) low impact construction works;
- (xii) temporary works;
- (xiii) utility adjustment; and
- (xiv) landscaping works and remediation works.

“Proprietor” means every person who is at any time entitled to the freehold interest in the Premises.

“Signage Plan” means the document titled “sketch plan identifying the location of signs” reference 11891302010B.

“Signage Works” means the decommissioning, dismantling, removal and reinstatement or replacement of the Nominated Sign as set out in clause 8.

“Site Condition Report” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including but not limited to documenting the condition of the Nominated Sign, all existing improvements, roads, fences, gates, paths, hardstand areas, landscaping including gardens, shrubs and trees (as applicable).

“Term” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

4 Commencement of lease

4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

4.2 This lease commences operation on the earlier of:

- (i) the date to be nominated by ARTC by at least one month’s written notice to the Proprietor and any known Occupiers; and
 - (ii) 13 December 2021,
- (the **“Operative Date”**).

4.3 The Authority will prepare or will procure that its Authorised Users prepare the Site Condition Report.

5 Expiry of lease

5.1 This lease expires on the earlier of:

- (i) 3 years from the Operative Date; and
- (ii) the date specified in a notice issued by the Authority to the Proprietor and any known Occupiers advising that the lease is terminated, being a date not less than one month from the date of that notice,

(the **“Expiry Date”**).

5.2 On and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

- 6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 14 with respect to that part of the Premises (**Surrender Notice**).
- 6.2 A Surrender Notice must:
- (i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);
 - (ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and
 - (iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.
- 6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

- 7.1 The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.
- 7.2 The Authority and its Authorised Users must maintain a supply of all water, electricity, gas and like services supplied to the Premises as at the date of this lease (subject to the Proprietor or any Occupiers ensuring due and punctual payment for services utilised for which the Authority is not responsible for payment in accordance with clause 3.2).

8 Signage Works

The Authority must use all reasonable endeavours to perform the Signage Works in accordance with the Planning Approval within the shortest period, which will in any event be no greater than 18 months in duration.

9 Quiet Enjoyment and Rights of Inspection

- 9.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority's obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor and any Occupiers.
- 9.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

10 Risk, release and indemnities

The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority's risk;

- (ii) the Authority releases the Proprietor and any Occupiers to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users; and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor and any Occupiers against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users.

11 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 10 will not apply to the extent that any claim was caused or contributed to by the Proprietor, the Occupiers or their Authorised Users.

12 Exclusive possession

- 12.1 During the Term, the Authority and its Authorised Users are granted exclusive possession of the Premises.
- 12.2 Notwithstanding clause 9.1 and clause 12.1, the Proprietor or any Occupiers may submit a written request to the Authority's nominated Authorised User for access to the Premises during the Term for the purpose of:
 - (i) accessing, operating, maintaining or repairing the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
 - (ii) removal and replacement of the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
 - (iii) constructing, erecting or assembling new advertising signage or other structures, or carrying out investigative works in relation to the potential construction, erection or assemblage of new advertising signage or other structures;
 - (iv) accessing, maintaining or repairing the electricity, telecommunications or other services connecting to the existing advertising signage structures; and
 - (v) cleaning, landscaping and vegetation clearing or management,within or adjacent to the Premises.
- 12.3 In respect of clause 12.2, the Authority's nominated Authorised User may withhold its consent where such a request for access to the Premises by the Proprietor or any Occupiers would, in the Authority's nominated Authorised User's view, interfere with the Project Works or anything in connection with the Project during the Term, or the safety of those persons wishing to access the Premises pursuant to clause 12.2.
- 12.4 Without limiting or otherwise restricting clause 12.3, the Authority's nominated Authorised User will not unreasonably withhold access to the Premises during the Term and must accommodate access at the first feasible opportunity (as determined by the Authority's nominated Authorised User) where access cannot be accommodated at the date and time requested.

- 12.5 Notwithstanding the provisions of this clause 12, the Proprietor (and if applicable, any Occupiers) may request immediate access to the Premises in the case of an emergency and the Authority's nominated Authorised User shall allow such access as soon as is reasonably possible in the circumstances subject to any requirements so as to ensure the safety of those persons wishing to access the Premises pursuant to this clause 12.5.
- 12.6 In this clause 12, the Authority's nominated Authorised User is taken to be ARTC unless otherwise advised to the Proprietor and any known Occupiers.

13 Visual interference

- 13.1 Subject to clause 13.2, the Authority and its Authorised Users are prohibited from carrying out the Project Works, whether carried out within or external to the Premises, in such a way that would wholly or partly visually obscure the Other Signs or the Bookend Sign so as to cause a material adverse effect on the business of the Proprietor or any Occupiers.
- 13.2 Notwithstanding clause 13.1, the carrying out of any Project Works, whether carried out within or external to the Premises, may:
- (i) result in the Other Signs being wholly or partly visually obscured (whether or not such Project Works cause a material adverse effect on the business of the Proprietor or any Occupiers relating to the Other Signs) for a maximum period of 60 days in aggregate during the Term, provided that the Authority and its Authorised Users use their reasonable endeavours to mitigate any adverse effect on the business of the Proprietor or any Occupiers relating to the Other Signs; and
 - (ii) cause temporary visual interference with the Bookend Sign, but any such interference will be minimised to the greatest extent practicable and so as not to cause a material adverse effect on the business of the Proprietor or any Occupiers conducted from and adjacent to the Premises.
- 13.3 For the avoidance of doubt, the period referred to in clause 13.2(i) is the total maximum period of potential visual interference that can be applied concurrently to all visual interference caused to the Other Signs by the Project Works whether carried out within or external to the Premises.

14 Restoration of Areas

- 14.1 Subject to the Planning Approval and the carrying out of the Signage Works, prior to completion of the Project Works, the Authority will, and will ensure that its Authorised Users restore the Premises to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority or its Authorised Users with the consent of the Proprietor and any Occupiers (if applicable). This obligation does not require the Authority or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.
- 14.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender, the relevant part of the Premises) and, subject to clause 14.1, remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

15 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

16 No fetter

The Authority, Proprietor and any Occupiers acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Authority to exercise any of its functions and powers pursuant to any Law.

SCHEDULE 3

(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 4, described hereunder as:

All that piece or parcel of land situated at Mascot in the Local Government Area of Bayside, Parish of Botany, County of Cumberland and State of New South Wales, shown in the document titled "sketch showing proposed lease affecting part Lot 201 in DP777213" reference 11891316007_01 over part of Lot 201 in DP777213 and said to be in the possession of Manboom Pty Limited (registered proprietor) and oOh!media Fly Pty Limited (registered lessee).

SCHEDULE 4

(LEASE TERMS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

"ARTC" means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

"Authorised Users" means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority, includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

"Authority" means the Transport Asset Holding Entity of New South Wales.

"Botany Line" means a dedicated freight rail line (operated by ARTC) extending from near Marrickville Station to Port Botany and forming part of the Metropolitan Freight Network.

"Government Authorities" means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

"Land" means Lot 201 in Deposited Plan 777213.

“Law” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“Legislative Requirements” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“Lessee” means the registered lessee of the Land as at the date of this lease, being oOh!media Fly Pty Limited pursuant to registered lease AG342624 (as varied), and any other person who is granted, assigned or otherwise acquires a leasehold interest in the Land during the Term.

“Occupiers” includes the Lessee and any other person that has a legal right to access or occupy the Premises as at the date of this lease or any person that has a legal right to access or occupy the Premises as may be granted during the Term, provided that such rights of access or occupation are consistent with this lease.

“Permitted Use” means the conduct of the Project Works.

“Plan” means the document titled “sketch showing proposed lease affecting part Lot 201 in DP777213” reference 11891316007_01.

“Planning Approval” means the state significant infrastructure development application no. SSI 9714 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Premises” means the areas shown hatched on the Plan.

“Project” means the duplication of a section of the Botany Line between Mascot and Botany and other ancillary works to be carried out in accordance with the Planning Approval.

“Project Works” means all works and activities carried out on and adjacent to the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of embankments and retaining structures and enabling the construction of new bridges;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;

- (v) property adjustment works;
- (vi) erection of temporary and permanent fencing and/or hoardings;
- (vii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (viii) temporary compound erection and operation;
- (ix) temporary site parking facilities;
- (x) low impact construction works;
- (xi) temporary works;
- (xii) utility adjustment; and
- (xiii) landscaping works and remediation works.

“**Proprietor**” means every person who is at any time entitled to the freehold interest in the Premises.

“**Site Condition Report**” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including but not limited to documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, landscaping including gardens, shrubs and trees (as applicable).

“**Term**” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

4 Commencement of lease

- 4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- 4.2 This lease commences operation on the earlier of:
- (i) the date to be nominated by ARTC by at least one month's written notice to the Proprietor and any known Occupiers; and
 - (ii) 13 December 2021,
- (the "**Operative Date**").
- 4.3 The Authority will prepare or will procure that its Authorised Users prepare the Site Condition Report.

5 Expiry of lease

- 5.1 This lease expires on the earlier of:
- (i) 1 year and 10 months from the Operative Date; and
 - (ii) the date specified in a notice issued by the Authority to the Proprietor and any known Occupiers advising that the lease is terminated, being a date not less than one month from the date of that notice,
- (the "**Expiry Date**").
- 5.2 On and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

- 6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 12 with respect to that part of the Premises (**Surrender Notice**).
- 6.2 A Surrender Notice must:
- (i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);
 - (ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and
 - (iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.
- 6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

- 7.1 The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.
- 7.2 The Authority and its Authorised Users must maintain a supply of all water, electricity, gas and like services supplied to the Premises as at the date of this lease (subject to the Proprietor or any Occupiers ensuring due and punctual payment for services utilised for which the Authority is not responsible for payment in accordance with clause 3.2).

8 Quiet Enjoyment and Rights of Inspection

- 8.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority's obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor and any Occupiers.
- 8.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

9 Risk, release and indemnities

The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority's risk;
- (ii) the Authority releases the Proprietor and any Occupiers to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users; and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor and any Occupiers against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users.

10 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 9 will not apply to the extent that any claim was caused or contributed to by the Proprietor, the Occupiers or their Authorised Users.

11 Exclusive possession

- 11.1 During the Term, the Authority and its Authorised Users are granted exclusive possession of the Premises.

- 11.2 Notwithstanding clause 8.1 and clause 11.1, the Proprietor or any Occupiers may submit a written request to the Authority's nominated Authorised User for access to the Premises during the Term for the purpose of:
- (i) accessing, operating, maintaining or repairing the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
 - (ii) removal and replacement of the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
 - (iii) constructing, erecting or assembling new advertising signage or other structures, or carrying out investigative works in relation to the potential construction, erection or assemblage of new advertising signage or other structures;
 - (iv) accessing, maintaining or repairing the electricity, telecommunications or other services connecting to the existing advertising signage structures; and
 - (v) cleaning, landscaping and vegetation clearing or management,
- within or adjacent to the Premises.
- 11.3 In respect of clause 11.2, the Authority's nominated Authorised User may withhold its consent where such a request for access to the Premises by the Proprietor or any Occupiers would, in the Authority's nominated Authorised User's view, interfere with the Project Works or anything in connection with the Project during the Term, or the safety of those persons wishing to access the Premises pursuant to clause 11.2.
- 11.4 Without limiting or otherwise restricting clause 11.3, the Authority's nominated Authorised User will not unreasonably withhold access to the Premises during the Term and must accommodate access at the first feasible opportunity (as determined by the Authority's nominated Authorised User) where access cannot be accommodated at the date and time requested.
- 11.5 Notwithstanding the provisions of this clause 11, the Proprietor (and if applicable, any Occupiers) may request immediate access to the Premises in the case of an emergency and the Authority's nominated Authorised User shall allow such access as soon as is reasonably possible in the circumstances subject to any requirements so as to ensure the safety of those persons wishing to access the Premises pursuant to this clause 11.5.
- 11.6 In this clause 11, the Authority's nominated Authorised User is taken to be ARTC unless otherwise advised to the Proprietor and any known Occupiers.

12 Restoration of Areas

- 12.1 Prior to completion of the Project Works, the Authority will, and will ensure that its Authorised Users restore the Premises to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority or its Authorised Users with the consent of the Proprietor and any Occupiers (if applicable). This obligation does not require the Authority or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.
- 12.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender,

the relevant part of the Premises) and, subject to clause 12.1, remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

13 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

14 No fetter

The Authority, Proprietor and any Occupiers acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Authority to exercise any of its functions and powers pursuant to any Law.

SCHEDULE 5

(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 6, described hereunder as:

All that piece or parcel of land situated at Mascot in the Local Government Area of Bayside, Parish of Botany, County of Cumberland and State of New South Wales, shown in the document titled "sketch showing proposed lease affecting part Lot 1 in DP1039806" reference 11891316004_01 over part of Lot 1 in DP1039806 and said to be in the possession of Stamford Sydney Airport (2000) Ltd (registered proprietor).

SCHEDULE 6

(LEASE TERMS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

"ARTC" means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

"Authorised Users" means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority, includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

"Authority" means the Transport Asset Holding Entity of New South Wales.

"Botany Line" means a dedicated freight rail line (operated by ARTC) extending from near Marrickville Station to Port Botany and forming part of the Metropolitan Freight Network.

“Easement Beneficiaries” means any person that has a legal interest in the land benefitted by the easement for advertising hoardings 1 wide (DP777213), which burdens the Land, and includes Manboom Pty Limited and oOh!media Fly Pty Limited.

“Government Authorities” means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

“Land” means Lot 1 in Deposited Plan 1039806.

“Law” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“Legislative Requirements” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“Nominated Signs” means the signage structures marked “Sign #10”, “Sign #11” and “Sign #12” on the Signage Plans, which are the subject of the Signage Works.

“Occupiers” includes the Easement Beneficiaries and any other person that has a legal right to access or occupy the Premises as at the date of this lease or any person that has a legal right to access or occupy the Premises as may be granted during the Term, provided that such rights of access or occupation are consistent with this lease.

“Other Signs” means the existing south-facing portion of the advertising signage structure marked “Sign #9” and located above O’Riordan Street on the Signage Plans.

“Permitted Use” means the conduct of the Project Works.

“Plan” means the document titled “sketch showing proposed lease affecting part Lot 1 in DP1039806” reference 11891316004_01.

“Planning Approval” means the state significant infrastructure development application no. SSI 9714 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Premises” means the area shown hatched on the Plan.

“Project” means the duplication of a section of the Botany Line between Mascot and Botany and other ancillary works to be carried out in accordance with the Planning Approval.

“Project Works” means all works and activities carried out on and adjacent to the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of embankments and retaining structures and enabling the construction of new bridges;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) Signage Works;
- (vii) erection of temporary and permanent fencing and/or hoardings;
- (viii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (ix) temporary compound erection and operation;
- (x) temporary site parking facilities;
- (xi) low impact construction works;
- (xii) temporary works;
- (xiii) utility adjustment; and
- (xiv) landscaping works and remediation works.

“Proprietor” means every person who is at any time entitled to the freehold interest in the Premises.

“Signage Plans” means the documents titled “sketch plan identifying the location of signs” references 11891302014B and 11891302007B.

“Signage Works” means the decommissioning, dismantling, removal and reinstatement or replacement of the Nominated Signs as set out in clause 8.

“Site Condition Report” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including but not limited to documenting the condition of the Nominated Signs, all existing improvements, roads, fences, gates, paths, hardstand areas, landscaping including gardens, shrubs and trees (as applicable).

“Term” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

4 Commencement of lease

4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

4.2 This lease commences operation on the earlier of:

(i) the date to be nominated by ARTC by at least one month's written notice to the Proprietor and any known Occupiers; and

(ii) 13 December 2021,

(the "**Operative Date**").

4.3 The Authority will prepare or will procure that its Authorised Users prepare the Site Condition Report.

5 Expiry of lease

5.1 This lease expires on the earlier of:

(i) 1 year and 10 months from the Operative Date; and

(ii) the date specified in a notice issued by the Authority to the Proprietor and any known Occupiers advising that the lease is terminated, being a date not less than one month from the date of that notice,

(the "**Expiry Date**").

5.2 On and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 14 with respect to that part of the Premises (**Surrender Notice**).

6.2 A Surrender Notice must:

(i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);

- (ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and
- (iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.

6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

7.1 The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.

7.2 The Authority and its Authorised Users must maintain a supply of all water, electricity, gas and like services supplied to the Premises as at the date of this lease (subject to the Proprietor or any Occupiers ensuring due and punctual payment for services utilised for which the Authority is not responsible for payment in accordance with clause 3.2).

8 Signage Works

The Authority must use all reasonable endeavours to perform the Signage Works in accordance with the Planning Approval within the shortest period, which will in any event be no greater than 18 months in duration.

9 Quiet Enjoyment and Rights of Inspection

9.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority's obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor and any Occupiers.

9.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

10 Risk, release and indemnities

The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority's risk;
- (ii) the Authority releases the Proprietor and any Occupiers to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users; and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor and any Occupiers against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users.

11 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 10 will not apply to the extent that any claim was caused or contributed to by the Proprietor, the Occupiers or their Authorised Users.

12 Exclusive possession

- 12.1 During the Term, the Authority and its Authorised Users are granted exclusive possession of the Premises.
- 12.2 Notwithstanding clause 9.1 and clause 12.1, the Proprietor or any Occupiers may submit a written request to the Authority's nominated Authorised User for access to the Premises during the Term for the purpose of:
- (i) accessing, operating, maintaining or repairing the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
 - (ii) removal and replacement of the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
 - (iii) constructing, erecting or assembling new advertising signage or other structures, or carrying out investigative works in relation to the potential construction, erection or assemblage of new advertising signage or other structures;
 - (iv) accessing, maintaining or repairing the electricity, telecommunications or other services connecting to the existing advertising signage structures; and
 - (v) cleaning, landscaping and vegetation clearing or management,
- within or adjacent to the Premises.
- 12.3 In respect of clause 12.2, the Authority's nominated Authorised User may withhold its consent where such a request for access to the Premises by the Proprietor or any Occupiers would, in the Authority's nominated Authorised User's view, interfere with the Project Works or anything in connection with the Project during the Term, or the safety of those persons wishing to access the Premises pursuant to clause 12.2.
- 12.4 Without limiting or otherwise restricting clause 12.3, the Authority's nominated Authorised User will not unreasonably withhold access to the Premises during the Term and must accommodate access at the first feasible opportunity (as determined by the Authority's nominated Authorised User) where access cannot be accommodated at the date and time requested.
- 12.5 Notwithstanding the provisions of this clause 12, the Proprietor (and if applicable, any Occupiers) may request immediate access to the Premises in the case of an emergency and the Authority's nominated Authorised User shall allow such access as soon as is reasonably possible in the circumstances subject to any requirements so as to ensure the safety of those persons wishing to access the Premises pursuant to this clause 12.5.
- 12.6 In this clause 12, the Authority's nominated Authorised User is taken to be ARTC unless otherwise advised to the Proprietor and any known Occupiers.

13 Visual interference

- 13.1 Subject to clause 13.2, the Authority and its Authorised Users are prohibited from carrying out the Project Works, whether carried out within or external to the Premises, in such a way that would wholly or partly visually obscure the Other Signs so as to cause a material adverse effect on the business of the Proprietor or any Occupiers.
- 13.2 Notwithstanding clause 13.1, the carrying out of any Project Works, whether carried out within or external to the Premises, may result in the Other Signs being wholly or partly visually obscured (whether or not such Project Works cause a material adverse effect on the business of the Proprietor or any Occupiers relating to the Other Signs) for a maximum period of 21 days in aggregate during the Term, provided that the Authority and its Authorised Users use their reasonable endeavours to mitigate any adverse effect on the business of the Proprietor or any Occupiers relating to the Other Signs.
- 13.3 For the avoidance of doubt, the period referred to in clause 13.2 is the total maximum period of potential visual interference that can be applied concurrently to all visual interference caused to the Other Signs by the Project Works whether carried out within or external to the Premises.

14 Restoration of Areas

- 14.1 Subject to the Planning Approval and the carrying out of the Signage Works, prior to completion of the Project Works, the Authority will, and will ensure that its Authorised Users restore the Premises to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority or its Authorised Users with the consent of the Proprietor and any Occupiers (if applicable). This obligation does not require the Authority or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.
- 14.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender, the relevant part of the Premises) and, subject to clause 14.1, remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

15 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

16 No fetter

The Authority, Proprietor and any Occupiers acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Authority to exercise any of its functions and powers pursuant to any Law.

SCHEDULE 7

(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 8, described hereunder as:

All that piece or parcel of land situated at Mascot in the Local Government Area of Bayside, Parish of Botany, County of Cumberland and State of New South Wales, shown in the document titled "sketch showing proposed lease affecting part Lot 2 in DP1039806" reference 11891316003_01 over part of Lot 2 in DP1039806 and said to be in the possession of APACIG 241 Property Pty Ltd (registered proprietor).

SCHEDULE 8

(LEASE TERMS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

"ARTC" means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

"Authorised Users" means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority, includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

"Authority" means the Transport Asset Holding Entity of New South Wales.

"Botany Line" means a dedicated freight rail line (operated by ARTC) extending from near Marrickville Station to Port Botany and forming part of the Metropolitan Freight Network.

"Easement Beneficiaries" means any person that has a legal interest in the land benefitted by the easement for advertising hoardings 1 wide (DP777213), which burdens the Land, and includes Manboom Pty Limited and oOh!media Fly Pty Limited.

"Government Authorities" means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

"Land" means Lot 2 in Deposited Plan 1039806.

"Law" means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“Legislative Requirements” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“Nominated Sign” means the signage structure marked “Sign #12” on the Signage Plan, which is the subject of the Signage Works.

“Occupiers” includes the Easement Beneficiaries and any other person that has a legal right to access or occupy the Premises as at the date of this lease or any person that has a legal right to access or occupy the Premises as may be granted during the Term, provided that such rights of access or occupation are consistent with this lease.

“Permitted Use” means the conduct of the Project Works.

“Plan” means the document titled “sketch showing proposed lease affecting part Lot 2 in DP1039806” reference 11891316003_01.

“Planning Approval” means the state significant infrastructure development application no. SSI 9714 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Premises” means the area shown hatched on the Plan.

“Project” means the duplication of a section of the Botany Line between Mascot and Botany and other ancillary works to be carried out in accordance with the Planning Approval.

“Project Works” means all works and activities carried out on and adjacent to the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of embankments and retaining structures and enabling the construction of new bridges;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) Signage Works;
- (vii) erection of temporary and permanent fencing and/or hoardings;
- (viii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (ix) temporary compound erection and operation;
- (x) temporary site parking facilities;

- (xi) low impact construction works;
- (xii) temporary works;
- (xiii) utility adjustment; and
- (xiv) landscaping works and remediation works.

“**Proprietor**” means every person who is at any time entitled to the freehold interest in the Premises.

“**Signage Plan**” means the document titled “sketch plan identifying the location of signs” reference 11891302015B.

“**Signage Works**” means the decommissioning, dismantling, removal and reinstatement or replacement of the Nominated Sign as set out in clause 8.

“**Site Condition Report**” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including but not limited to documenting the condition of the Nominated Sign, all existing improvements, roads, fences, gates, paths, hardstand areas, landscaping including gardens, shrubs and trees (as applicable).

“**Term**” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

4 Commencement of lease

4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

- 4.2 This lease commences operation on the earlier of:
- (i) the date to be nominated by ARTC by at least one month's written notice to the Proprietor and any known Occupiers; and
 - (ii) 13 December 2021,
- (the "**Operative Date**").

- 4.3 The Authority will prepare or will procure that its Authorised Users prepare the Site Condition Report.

5 Expiry of lease

- 5.1 This lease expires on the earlier of:
- (i) 1 year and 10 months from the Operative Date; and
 - (ii) the date specified in a notice issued by the Authority to the Proprietor and any known Occupiers advising that the lease is terminated, being a date not less than one month from the date of that notice,
- (the "**Expiry Date**").

- 5.2 On and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

- 6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 13 with respect to that part of the Premises (**Surrender Notice**).
- 6.2 A Surrender Notice must:
- (i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);
 - (ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and
 - (iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.

- 6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

- 7.1 The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.
- 7.2 The Authority and its Authorised Users must maintain a supply of all water, electricity, gas and like services supplied to the Premises as at the date of this lease (subject to the

Proprietor or any Occupiers ensuring due and punctual payment for services utilised for which the Authority is not responsible for payment in accordance with clause 3.2).

8 Signage Works

The Authority must use all reasonable endeavours to perform the Signage Works in accordance with the Planning Approval within the shortest period, which will in any event be no greater than 18 months in duration.

9 Quiet Enjoyment and Rights of Inspection

9.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority's obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor and any Occupiers.

9.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

10 Risk, release and indemnities

The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority's risk;
- (ii) the Authority releases the Proprietor and any Occupiers to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users; and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor and any Occupiers against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users.

11 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 10 will not apply to the extent that any claim was caused or contributed to by the Proprietor, the Occupiers or their Authorised Users.

12 Exclusive possession

12.1 During the Term, the Authority and its Authorised Users are granted exclusive possession of the Premises.

12.2 Notwithstanding clause 9.1 and clause 12.1, the Proprietor or any Occupiers may submit a written request to the Authority's nominated Authorised User for access to the Premises during the Term for the purpose of:

- (i) accessing, operating, maintaining or repairing the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);

- (ii) removal and replacement of the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
 - (iii) constructing, erecting or assembling new advertising signage or other structures, or carrying out investigative works in relation to the potential construction, erection or assemblage of new advertising signage or other structures;
 - (iv) accessing, maintaining or repairing the electricity, telecommunications or other services connecting to the existing advertising signage structures; and
 - (v) cleaning, landscaping and vegetation clearing or management,
- within or adjacent to the Premises.

- 12.3 In respect of clause 12.2, the Authority's nominated Authorised User may withhold its consent where such a request for access to the Premises by the Proprietor or any Occupiers would, in the Authority's nominated Authorised User's view, interfere with the Project Works or anything in connection with the Project during the Term, or the safety of those persons wishing to access the Premises pursuant to clause 12.2.
- 12.4 Without limiting or otherwise restricting clause 12.3, the Authority's nominated Authorised User will not unreasonably withhold access to the Premises during the Term and must accommodate access at the first feasible opportunity (as determined by the Authority's nominated Authorised User) where access cannot be accommodated at the date and time requested.
- 12.5 Notwithstanding the provisions of this clause 12, the Proprietor (and if applicable, any Occupiers) may request immediate access to the Premises in the case of an emergency and the Authority's nominated Authorised User shall allow such access as soon as is reasonably possible in the circumstances subject to any requirements so as to ensure the safety of those persons wishing to access the Premises pursuant to this clause 12.5.
- 12.6 In this clause 12, the Authority's nominated Authorised User is taken to be ARTC unless otherwise advised to the Proprietor and any known Occupiers.

13 Restoration of Areas

- 13.1 Prior to completion of the Project Works and the carrying out of the Signage Works, the Authority will, and will ensure that its Authorised Users restore the Premises to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority or its Authorised Users with the consent of the Proprietor and any Occupiers (if applicable). This obligation does not require the Authority or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.
- 13.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender, the relevant part of the Premises) and, subject to clause 13.1, remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

14 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

15 No fetter

The Authority, Proprietor and any Occupiers acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Authority to exercise any of its functions and powers pursuant to any Law.

SCHEDULE 9

(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 10, described hereunder as:

All that piece or parcel of land situated at Mascot in the Local Government Area of Bayside, Parish of Botany, County of Cumberland and State of New South Wales, shown in the document titled "sketch showing proposed lease affecting part Lot 54 in DP1097375" reference 11891316006_01 over part of Lot 54 in DP1097375 and said to be in the possession of Perpetual Superannuation Limited (registered proprietor), G.O. Carpark Nominees Pty Ltd (registered proprietor) and oOh!media Fly Pty Limited (registered lessee).

SCHEDULE 10

(LEASE TERMS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

"ARTC" means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

"Authorised Users" means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority, includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

"Authority" means the Transport Asset Holding Entity of New South Wales.

"Botany Line" means a dedicated freight rail line (operated by ARTC) extending from near Marrickville Station to Port Botany and forming part of the Metropolitan Freight Network.

"Government Authorities" means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

"Land" means Lot 54 in Deposited Plan 1097375.

“Law” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“Legislative Requirements” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“Lessee” means the registered lessee of the Land as at the date of this lease, being oOh!media Fly Pty Limited pursuant to registered lease AG342627 (as varied), and any other person who is granted, assigned or otherwise acquires a leasehold interest in the Land during the Term.

“Occupiers” includes the Lessee and any other person that has a legal right to access or occupy the Premises as at the date of this lease or any person that has a legal right to access or occupy the Premises as may be granted during the Term, provided that such rights of access or occupation are consistent with this lease.

“Permitted Use” means the conduct of the Project Works.

“Plan” means the document titled “sketch showing proposed lease affecting part Lot 54 in DP1097375” reference 11891316006_01.

“Planning Approval” means the state significant infrastructure development application no. SSI 9714 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Premises” means the area shown hatched on the Plan.

“Project” means the duplication of a section of the Botany Line between Mascot and Botany and other ancillary works to be carried out in accordance with the Planning Approval.

“Project Works” means all works and activities carried out on and adjacent to the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of embankments and retaining structures and enabling the construction of new bridges;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;

- (v) property adjustment works;
- (vi) erection of temporary and permanent fencing and/or hoardings;
- (vii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (viii) temporary compound erection and operation;
- (ix) temporary site parking facilities;
- (x) low impact construction works;
- (xi) temporary works;
- (xii) utility adjustment; and
- (xiii) landscaping works and remediation works.

“**Proprietor**” means every person who is at any time entitled to the freehold interest in the Premises.

“**Site Condition Report**” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including but not limited to documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, landscaping including gardens, shrubs and trees (as applicable).

“**Term**” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

4 Commencement of lease

4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

4.2 This lease commences operation on the earlier of:

(i) the date to be nominated by ARTC by at least one month's written notice to the Proprietor and any known Occupiers; and

(ii) 13 December 2021,

(the "**Operative Date**").

4.3 The Authority will prepare or will procure that its Authorised Users prepare the Site Condition Report.

5 Expiry of lease

5.1 This lease expires on the earlier of:

(i) 3 years from the Operative Date; and

(ii) the date specified in a notice issued by the Authority to the Proprietor and any known Occupiers advising that the lease is terminated, being a date not less than one month from the date of that notice,

(the "**Expiry Date**").

5.2 On and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 13 with respect to that part of the Premises (**Surrender Notice**).

6.2 A Surrender Notice must:

(i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);

(ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and

(iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.

6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

- 7.1 The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.
- 7.2 The Authority and its Authorised Users must maintain all water, electricity, gas and like services supplied to the Premises as at the date of this lease (subject to the Proprietor or any Occupiers ensuring due and punctual payment for services utilised for which the Authority is not responsible for payment in accordance with clause 3.2).

8 Quiet Enjoyment and Rights of Inspection

- 8.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority's obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor and any Occupiers.
- 8.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

9 Risk, release and indemnities

The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority's risk;
- (ii) the Authority releases the Proprietor and any Occupiers to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users; and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor and any Occupiers against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users.

10 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 9 will not apply to the extent that any claim was caused or contributed to by the Proprietor, the Occupiers or their Authorised Users.

11 Exclusive possession

- 11.1 During the Term, the Authority and its Authorised Users are granted exclusive possession of the Premises.
- 11.2 Notwithstanding clause 8.1 and clause 11.1, the Proprietor or any Occupiers may submit a written request to the Authority's nominated Authorised User for access to the Premises during the Term for the purpose of:

- (i) accessing, operating, maintaining or repairing the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
- (ii) removal and replacement of the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
- (iii) constructing, erecting or assembling new advertising signage or other structures, or carrying out investigative works in relation to the potential construction, erection or assemblage of new advertising signage or other structures;
- (iv) accessing, maintaining or repairing the electricity, telecommunications or other services connecting to the existing advertising signage structures; and
- (v) cleaning, landscaping and vegetation clearing or management,

within or adjacent to the Premises.

11.3 In respect of clause 11.2, the Authority's nominated Authorised User may withhold its consent where such a request for access to the Premises by the Proprietor or any Occupiers would, in the Authority's nominated Authorised User's view, interfere with the Project Works or anything in connection with the Project during the Term, or the safety of those persons wishing to access the Premises pursuant to clause 11.2.

11.4 Without limiting or otherwise restricting clause 11.3, the Authority's nominated Authorised User will not unreasonably withhold access to the Premises during the Term and must accommodate access at the first feasible opportunity (as determined by the Authority's nominated Authorised User) where access cannot be accommodated at the date and time requested.

11.5 Notwithstanding the provisions of this clause 11, the Proprietor (and if applicable, any Occupiers) may request immediate access to the Premises in the case of an emergency and the Authority's nominated Authorised User shall allow such access as soon as is reasonably possible in the circumstances subject to any requirements so as to ensure the safety of those persons wishing to access the Premises pursuant to this clause 11.5.

11.6 In this clause 11, the Authority's nominated Authorised User is taken to be ARTC unless otherwise advised to the Proprietor and any known Occupiers.

12 Visual interference

The Authority and its Authorised Users are prohibited from carrying out the Project Works, whether carried out within or external to the Premises, in such a way that would wholly or partly visually obscure any existing advertising structures so as to cause a material adverse effect on the business of the Proprietor or any Occupiers.

13 Restoration of Areas

13.1 Prior to completion of the Project Works, the Authority will, and will ensure that its Authorised Users restore the Premises to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority or its Authorised Users with the consent of the Proprietor and any Occupiers (if applicable).

This obligation does not require the Authority or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.

- 13.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender, the relevant part of the Premises) and, subject to clause 13.1, remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

14 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

15 No fetter

The Authority, Proprietor and any Occupiers acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Authority to exercise any of its functions and powers pursuant to any Law.

SCHEDULE 11

(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 12, described hereunder as:

All that piece or parcel of land situated at Mascot in the Local Government Area of Bayside, Parish of Botany, County of Cumberland and State of New South Wales, shown in the document titled "sketch showing proposed lease affecting part Lot 401 in DP1215182" reference 11891316002_01 over part of Lot 401 in DP1215182 and said to be in the possession of Manboom Pty Limited (registered proprietor) and oOh!media Fly Pty Limited (registered lessee).

SCHEDULE 12

(LEASE TERMS)

1 Definitions and interpretation

- 1.1 The following terms have the following meanings:

"ARTC" means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

"Authorised Users" means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority, includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

"Authority" means the Transport Asset Holding Entity of New South Wales.

“Botany Line” means a dedicated freight rail line (operated by ARTC) extending from near Marrickville Station to Port Botany and forming part of the Metropolitan Freight Network.

“Government Authorities” means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

“Land” means Lot 401 in Deposited Plan 1215182.

“Law” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“Legislative Requirements” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“Lessee” means the registered lessee of part of the Land as at the date of this lease, being oOh!media Fly Pty Limited pursuant to registered lease AG342625 (as varied), and any other person who is granted, assigned or otherwise acquires a leasehold interest in the Land during the Term.

“Occupiers” includes the Lessee and any other person that has a legal right to access or occupy the Premises as at the date of this lease or any person that has a legal right to access or occupy the Premises as may be granted during the Term, provided that such rights of access or occupation are consistent with this lease.

“Permitted Use” means the conduct of the Project Works.

“Plan” means the document titled “sketch showing proposed lease affecting part Lot 401 in DP1215182” reference 11891316002_01.

“Planning Approval” means the state significant infrastructure development application no. SSI 9714 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Premises” means the area shown hatched on the Plan.

“Project” means the duplication of a section of the Botany Line between Mascot and Botany and other ancillary works to be carried out in accordance with the Planning Approval.

“Project Works” means all works and activities carried out on and adjacent to the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of embankments and retaining structures and enabling the construction of new bridges;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) Temporary Truss Removal Works;
- (vii) erection of temporary and permanent fencing and/or hoardings;
- (viii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (ix) temporary compound erection and operation;
- (x) temporary site parking facilities;
- (xi) low impact construction works;
- (xii) temporary works;
- (xiii) utility adjustment; and
- (xiv) landscaping works and remediation works.

“Proprietor” means every person who is at any time entitled to the freehold interest in the Premises.

“Signage Plan” means the document titled “sketch plan identifying the location of signs” reference 11891302007B.

“Site Condition Report” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including but not limited to documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, landscaping including gardens, shrubs and trees (as applicable).

“Temporary Truss Removal Works” means the dismantling, removal, reinstatement or replacement of that part of the structure marked “Sign #9” that is coloured pink on the Signage Plan as set out in clause 8.

“Term” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

4 Commencement of lease

4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

4.2 This lease commences operation on the earlier of:

(i) the date to be nominated by ARTC by at least one month's written notice to the Proprietor and any known Occupiers; and

(ii) 13 December 2021,

(the "**Operative Date**").

4.3 The Authority will prepare or will procure that its Authorised Users prepare the Site Condition Report.

5 Expiry of lease

5.1 This lease expires on the earlier of:

(i) 3 years from the Operative Date; and

(ii) the date specified in a notice issued by the Authority to the Proprietor and any known Occupiers advising that the lease is terminated, being a date not less than one month from the date of that notice,

(the "**Expiry Date**").

5.2 On and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 14 with respect to that part of the Premises (**Surrender Notice**).

6.2 A Surrender Notice must:

(i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);

- (ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and
- (iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.

6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

7.1 The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.

7.2 The Authority and its Authorised Users must maintain all water, electricity, gas and like services supplied to the Premises as at the date of this lease (subject to the Proprietor or any Occupiers ensuring due and punctual payment for services utilised for which the Authority is not responsible for payment in accordance with clause 3.2).

8 Temporary Truss Removal Works

The Authority must use all reasonable endeavours to perform the Temporary Truss Removal Works within the shortest period, which will in any event be no greater than 12 months in duration.

9 Quiet Enjoyment and Rights of Inspection

9.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority's obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor and any Occupiers.

9.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

10 Risk, release and indemnities

The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority's risk;
- (ii) the Authority releases the Proprietor and any Occupiers to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users; and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor and any Occupiers against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation

of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users.

11 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 10 will not apply to the extent that any claim was caused or contributed to by the Proprietor, the Occupiers or their Authorised Users.

12 Exclusive possession

- 12.1 During the Term, the Authority and its Authorised Users are granted exclusive possession of the Premises.
- 12.2 Notwithstanding clause 9.1 and clause 12.1, the Proprietor or any Occupiers may submit a written request to the Authority's nominated Authorised User for access to the Premises during the Term for the purpose of:
- (i) accessing, operating, maintaining or repairing the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
 - (ii) removal and replacement of the existing advertising signage structures (including any existing fixture, fitting, hardware or other equipment);
 - (iii) constructing, erecting or assembling new advertising signage or other structures, or carrying out investigative works in relation to the potential construction, erection or assemblage of new advertising signage or other structures;
 - (iv) accessing, maintaining or repairing the electricity, telecommunications or other services connecting to the existing advertising signage structures; and
 - (v) cleaning, landscaping and vegetation clearing or management,
- within or adjacent to the Premises.
- 12.3 In respect of clause 12.2, the Authority's nominated Authorised User may withhold its consent where such a request for access to the Premises by the Proprietor or any Occupiers would, in the Authority's nominated Authorised User's view, interfere with the Project Works or anything in connection with the Project during the Term, or the safety of those persons wishing to access the Premises pursuant to clause 12.2.
- 12.4 Without limiting or otherwise restricting clause 12.3, the Authority's nominated Authorised User will not unreasonably withhold access to the Premises during the Term and must accommodate access at the first feasible opportunity (as determined by the Authority's nominated Authorised User) where access cannot be accommodated at the date and time requested.
- 12.5 Notwithstanding the provisions of this clause 12, the Proprietor (and if applicable, any Occupiers) may request immediate access to the Premises in the case of an emergency and the Authority's nominated Authorised User shall allow such access as soon as is reasonably possible in the circumstances subject to any requirements so as to ensure the safety of those persons wishing to access the Premises pursuant to this clause 12.5.

12.6 In this clause 12, the Authority's nominated Authorised User is taken to be ARTC unless otherwise advised to the Proprietor and any known Occupiers.

13 Visual interference

The Authority and its Authorised Users are prohibited from carrying out the Project Works, whether carried out within or external to the Premises, in such a way that would wholly or partly visually obscure any existing advertising structures so as to cause a material adverse effect on the business of the Proprietor or any Occupiers.

14 Restoration of Areas

14.1 Prior to completion of the Project Works, the Authority will, and will ensure that its Authorised Users restore the Premises to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority or its Authorised Users with the consent of the Proprietor and any Occupiers (if applicable). This obligation does not require the Authority or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.

14.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender, the relevant part of the Premises) and, subject to clause 14.1, remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

15 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

16 No fetter

The Authority, Proprietor and any Occupiers acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Authority to exercise any of its functions and powers pursuant to any Law.

SCHEDULE 13

(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 14, described hereunder as:

All that piece or parcel of land situated at Mascot in the Local Government Area of Bayside, Parish of Botany, County of Cumberland and State of New South Wales, shown in the document titled "sketch showing proposed lease affecting part Lot 1 in DP127031" reference 11891316008_01 over part of Lot 1 in DP127031 and said to be in the possession of Bayside Council (registered proprietor).

SCHEDULE 14
(LEASE TERMS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

“**ARTC**” means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

“**Authorised Users**” means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority, includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

“**Authority**” means the Transport Asset Holding Entity of New South Wales.

“**Botany Line**” means a dedicated freight rail line (operated by ARTC) extending from near Marrickville Station to Port Botany and forming part of the Metropolitan Freight Network.

“**Consequential Loss**” means loss of profit, loss of financial opportunity, loss of business opportunity, loss of goodwill, whether present or future, fixed or unascertained, actual or contingent, incurred or sustained by the Proprietor as a result of any act or omission of the Authority or its Authorised Users (whether negligent or otherwise).

“**Government Authorities**” means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

“**Law**” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“**Legislative Requirements**” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“**Permitted Use**” means the conduct of the Project Works.

“**Plan**” means the document titled “sketch showing proposed lease affecting part Lot 1 in DP127031” reference 11891316008_01.

“Planning Approval” means the state significant infrastructure development application no. SSI 9714 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Premises” means the area shown hatched on the Plan.

“Project” means the duplication of a section of the Botany Line between Mascot and Botany and other ancillary works to be carried out in accordance with the Planning Approval.

“Project Works” means all works and activities carried out on the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of embankments and retaining structures and enabling the construction of new bridges;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) erection of temporary and permanent fencing and/or hoardings;
- (vii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (viii) temporary compound erection and operation;
- (ix) temporary site parking facilities;
- (x) low impact construction works;
- (xi) temporary works;
- (xii) utility adjustment; and
- (xiii) landscaping works and remediation works.

“Proprietor” means every person who is at any time entitled to the freehold interest in the Premises.

“Site Condition Report” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including but not limited to documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, landscaping including gardens, shrubs and trees (as applicable).

“Term” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and

(iv) 'includes' means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

4 Commencement of lease

4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

4.2 This lease commences operation on the earlier of:

(i) the date to be nominated by ARTC by at least one month's written notice to the Proprietor; and

(ii) 13 December 2021,
(the "**Operative Date**").

4.3 The Authority will prepare or will procure that its Authorised Users prepare the Site Condition Report.

5 Expiry of lease

5.1 This lease expires on the earlier of:

(i) 3 years from the Operative Date; and

(ii) the date specified in a notice issued by the Authority to the Proprietor advising that the lease is terminated, being a date not less than one month from the date of that notice,

(the "**Expiry Date**").

5.2 On and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 12 with respect to that part of the Premises (**Surrender Notice**).

6.2 A Surrender Notice must:

(i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);

- (ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and
- (iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.

6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.

8 Quiet Enjoyment and Rights of Inspection

8.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority's obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor.

8.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

9 Risk, release and indemnities

9.1 The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority's risk;
- (ii) the Authority releases the Proprietor to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users; and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users.

9.2 The Authority has no liability, nor will the Proprietor be entitled to make any claim against the Authority or its Authorised Users in respect of any Consequential Loss.

10 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 9 will not apply to the extent that any claim was caused or contributed to by the Proprietor or its Authorised Users.

11 Exclusive possession

During the Term, the Authority and its Authorised Users are granted exclusive possession of the Premises on the condition that the Authority and its Authorised Users comply with the access requirements for pedestrians detailed in the Planning Approval.

12 Restoration of Areas

12.1 Prior to completion of the Project Works, the Authority will, and will ensure that its Authorised Users restore the Premises to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority with the consent of the Proprietor. This obligation does not require the Authority to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.

12.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender, the relevant part of the Premises) and, subject to clause 12.1, remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

13 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

14 No fetter

The Authority and the Proprietor acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of either of the Authority and the Proprietor to exercise any of its functions and powers pursuant to any Law.

Transport Asset Holding Entity of New South Wales Document Number: 311676-6