

Development Agreement

Sydney Light Rail Project

Transport for NSW

ABN 18 804 239 602

and

Randwick City Council

ABN 77 362 844 121

Execution version

11987344/1230242568v10 dated 29 Sep 2014

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BETWEEN:

Transport for NSW ABN 18 804 239 602 of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood (**TfNSW**)

Randwick City Council ABN 77 362 844 121 of 30 Frances Street, Randwick (**RCC**)

PART A PROVISIONS (DEVELOPMENT AGREEMENT)

RECITALS:

- (A) On 13 December 2012, the NSW Government announced its intention to deliver the Project.
- (B) TfNSW has been selected by the NSW Government as the proponent for the delivery of the Project, including the requirement to deliver a reliable and efficient Light Rail system.
- (C) The Project will partly be constructed, operated and maintained within the local government area administered by RCC.
- (D) TfNSW and RCC:
 - (1) entered into a non-binding memorandum of understanding prior to the date of this Agreement dealing with various matters in relation to the Project; and
 - (2) agree that this Agreement supersedes the MOU.
- (E) TfNSW and RCC are seeking to minimise the impact of the implementation of the Project on the community, businesses and residents in the local government area administered by RCC and have agreed various strategies to minimise such impact, including:
 - (1) seeking to ensure that RCC is “no worse off” as a consequence of the implementation of the Project by compliance with the requirements set out in this Agreement; and
 - (2) future-proofing the impact of the Project on the assets and the Utilities of RCC as contemplated in the Technical Requirements.
- (F) TfNSW wishes to achieve certainty as to the obligations under this Agreement to enable an effective and efficient procurement process for the Project.
- (G) The parties agree that RCC has made a contribution to the Project by providing access to and use of land owned by RCC including the car park area on the Anzac Parade median and portions of footpath along the Light Rail route within the local government area administered by RCC.
- (H) TfNSW and RCC have agreed to work together for the benefit of the Project and to the other matters as set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. PURPOSE AND TERM OF THIS AGREEMENT

1.1 Purpose of this Agreement

- (a) The objectives of the parties in entering into this Agreement include to:
 - (i) facilitate the parties working together for the benefit of the Project;
 - (ii) achieve the best possible outcome for the Project, the relevant stakeholders and those affected by the Project;
 - (iii) achieve key principles that are fundamental to RCC including:
 - (A) seeking to ensure that RCC is "no worse off" as a consequence of the implementation of the Project by compliance with the requirements in this Agreement;
 - (B) ensuring that TfNSW, in carrying out the Project, provides for the future-proofing of specified assets of RCC and the Utilities of RCC that are impacted by the implementation of the Project so that any relocation, protection, modification or removal of those assets or Utilities by TfNSW is undertaken in accordance with the Technical Requirements;
 - (C) achieving a high urban design quality which enhances RCC's public spaces and streetscapes, contributes to the vibrancy and amenity of the commercial centres, integrates with the surrounds and is safe and accessible as contemplated in the Technical Requirements;
 - (D) delivering a Light Rail service which provides a regular public transport service from Circular Quay to the University of New South Wales (Kensington Campus) and Randwick Hospital's Campus (comprising the Sydney Children's Hospital, Prince of Wales Hospital, Royal Hospital for Women and the Prince of Wales Private Hospital), with frequency to suit day to day, usual demand; and
 - (iv) achieve certainty as to the obligations under this Agreement to enable an effective and efficient procurement process for the Project.
- (b) The parties acknowledge and agree that:
 - (i) as at the date of this Agreement, the scope and design of the Project has not been fully developed by TfNSW;
 - (ii) as the design and Planning Approval process for the Project advance and progress, TfNSW must, as part of that design and Planning Approval process, use reasonable endeavours to advocate for the Technical Requirements, consistent with the principles set out in this Agreement;
 - (iii) this Agreement includes various processes and procedures for developing and resolving matters as between TfNSW and RCC in relation to the Project;
 - (iv) the Project design, scope, procurement, timing and delivery may, from time to time, be varied by the NSW Government; and

- (v) the NSW Government may, in its sole discretion, elect to suspend or delay, or to not proceed with, the Project or any part of the Project (as applicable).

1.2 **Term of this Agreement**

This Agreement includes provisions dealing with the procurement, design, construction, testing, commissioning, operation and maintenance phases of the Project. The term of this Agreement commences on the date of this Agreement and will continue until the date on which TfNSW notifies RCC in writing that it has completed all decommissioning activities in relation to the Project and/or no longer requires the Permanent Light Rail Corridor for the Project, or such other date as the parties may agree in writing is the expiry date for this Agreement.

2. **APPLICATION OF PART B PROVISIONS (GENERAL AND INTERPRETATION)**

2.1 **Definitions**

Capitalised terms used in these Part A Provisions (Development Agreement) are as defined in clause 10.1 of the Part B Provisions (General and Interpretation).

2.2 **Interpretation and general provisions**

Clause 10.2 to clause 10.4 (inclusive) and clause 11 to clause 13 (inclusive) of the Part B Provisions (General and Interpretation) apply as if those clauses were incorporated in full in these Part A Provisions (Development Agreement).

3. **ACTIVATION OF PART C PROVISIONS (EARLY AND PREPARATORY WORKS)**

3.1 **Notice of activation**

Except as expressly specified in clause 3.2, the rights and obligations of the parties under the Part C Provisions (Early and Preparatory Works) are not binding on the parties until the date on which TfNSW notifies RCC that it wishes to undertake the Early and Preparatory Works in the form of the Early and Preparatory Works Notice.

3.2 **Activation of Part C Provisions (Early and Preparatory Works)**

On and from the date on which the Early and Preparatory Works Notice is given by TfNSW under clause 3.1, all terms and conditions set out in the Part C Provisions (Early and Preparatory Works) will apply and the parties will be bound by those terms and conditions, without any further action or notice required by either party.

3.3 **Early and Preparatory Works form part of the Works**

If TfNSW:

- (a) does not give RCC an Early and Preparatory Works Notice activating the Part C Provisions (Early and Preparatory Works); and
- (b) gives RCC a Works Notice activating the Part D Provisions (Works),

the Early and Preparatory Works may be carried out by TfNSW as part of the Works and the Part D Provisions (Works) will apply to those Early and Preparatory Works.

4. ACTIVATION OF PART D PROVISIONS (WORKS)

4.1 Notice of activation

Except as expressly specified in clause 4.2, the rights and obligations of the parties under the Part D Provisions (Works) are not binding on the parties until the date on which TfNSW gives RCC a Works Notice.

4.2 Activation of Part D Provisions (Works)

On and from the date on which a Works Notice is given, all terms and conditions set out in the Part D Provisions (Works) will apply and the parties will be bound by those terms and conditions, without any further action or notice required by either party.

5. ROLES OF THE PARTIES

5.1 Role of TfNSW

- (a) TfNSW has been selected by the NSW Government to be the proponent for the Project.
- (b) As the proponent for the Project, TfNSW is responsible for, without limitation:
 - (i) procuring the funding and delivery of the Project, including the procurement, design, construction, testing, commissioning and operation and maintenance of the Project;
 - (ii) making submissions to the NSW Department of Planning and Environment in respect of the Project; and
 - (iii) obtaining all relevant Authorisations in respect of the Project.
- (c) TfNSW acknowledges that any submission it makes to the NSW Department of Planning and Environment in respect of the Project should be made in a manner which is consistent with this Agreement.
- (d) TfNSW acknowledges that, in its dealings and submissions to the NSW Department of Planning and Environment in respect of the Project, it will use reasonable endeavours to advocate for the Technical Requirements, so that the Planning Approval will be as consistent with this Agreement as possible in the circumstances.
- (e) RCC acknowledges that the NSW Government and any of its agencies may, from time to time, determine the procurement structure and strategy for the Project.
- (f) TfNSW acknowledges that, unless specified to the contrary, the cost of complying with the Technical Requirements and the other TfNSW obligations under this Agreement are a Project cost payable by TfNSW.
- (g) TfNSW acknowledges that it must carry out the Works in the local government area administered by RCC in accordance with the Technical Requirements and its other obligations under this Agreement.
- (h) RCC acknowledges that TfNSW:
 - (i) intends to engage one or more third parties to undertake and deliver the Project or parts of the Project, including the design, construction, testing,

commissioning and operation and maintenance of the Project (most likely for a defined concession period);

- (ii) may engage such third parties from time to time in relation to the Project as TfNSW sees fit; and
 - (iii) excluding its obligations under clause 27.2, may subcontract with any such third parties for the purpose of each relevant third party carrying out any obligation of TfNSW or exercising any right of TfNSW under this Agreement.
- (i) TfNSW remains fully responsible to RCC for all of its obligations under this Agreement despite any engagement by TfNSW of any third parties referred to in paragraph (h) and the acts and omissions of a third party engaged by TfNSW in connection with the Project are considered to be the acts and omissions of TfNSW, including any insolvency of such third party to the extent that such insolvency causes a breach of TfNSW's obligations under this Agreement.
 - (j) If an Early and Preparatory Works Notice or Works Notice is given by TfNSW to RCC, TfNSW will take all reasonably practicable steps to ensure that the relevant part of the Works is diligently progressed and undertaken so as to minimise construction impact on the local government area administered by RCC.
 - (k) For the avoidance of doubt, the parties acknowledge and agree that as between them, TfNSW assumes the risk and is solely responsible for:
 - (i) any decision to commence, suspend, delay or cancel the Project (or part of the Project);
 - (ii) the construction, use or operation of the Light Rail; and
 - (iii) the condition of the Permanent Light Rail Corridor and the use or occupation of the Permanent Light Rail Corridor by TfNSW or TfNSW's Employees and Agents,

and RCC has no control or responsibility in relation to these matters.

- (l) RCC acknowledges and agrees that nothing in this Agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any law.

5.2 Role of RCC

- (a) RCC is the owner of the Works Site and has responsibilities as a local council under the *Local Government Act 1993* (NSW) in relation to those areas.
- (b) If RCC is the consent authority in relation to any application for development approval in respect of other projects or developments in and around or impacting on the Project or the Works Site, RCC will:
 - (i) provide TfNSW assistance in dealing with any potential impacts on the Project by reason of such application for development approval; and
 - (ii) provide TfNSW an opportunity to make comments and to have those comments considered in relation to the application for development approval.

- (c) RCC will schedule or reschedule (as applicable) RCC capital works and maintenance to be undertaken in the areas around the Works Site so as to facilitate and assist with the timely completion of the Works and the Project, if reasonable and feasible.
- (d) TfNSW acknowledges and agrees that nothing in this Agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RCC to exercise any of its functions and powers pursuant to any law.
- (e) RCC must comply with the obligations of RCC under the Technical Requirements.

5.3 **Co-operation of the parties**

Without limiting any other provision of this Agreement, the parties agree to, at all times during the term of this Agreement, co-operate with and assist each other to implement the Project and exercise their rights and comply with their obligations under this Agreement in an effective and timely manner, including by providing all relevant information and assistance requested by the other party.

5.4 **Independent Certifier**

The Independent Certifier is responsible for a variety of functions under this Agreement. Except as contemplated under clause 11.3, TfNSW will separately engage the Independent Certifier (at TfNSW's cost) and will ensure that:

- (a) the Independent Certifier is independent of TfNSW;
- (b) the duties of the Independent Certifier are not inconsistent with this Agreement;
- (c) if, in carrying out any of the functions of the Independent Certifier in respect of the Project, the Independent Certifier receives information that would reasonably be considered relevant to the obligations of TfNSW under this Agreement and TfNSW has not already provided RCC with a copy of that information, the Independent Certifier is required to supply that information to RCC as soon as is practicable in the circumstances;
- (d) the independent certifier's deed for the Project contains appropriate provisions so that the Independent Certifier can perform its various functions under this Agreement and in accordance with this clause 5.4; and
- (e) a copy of all certifications or determinations to be issued by the Independent Certifier under this Agreement are provided to both RCC and TfNSW.

6. **DESIGN OF THE PROJECT**

6.1 **Responsibility for design of the Project**

- (a) TfNSW is responsible for the design of the Project.
- (b) The parties each acknowledge that a more detailed design for the Project is intended to be developed and completed by or on behalf of TfNSW after the date of this Agreement and that detailed design will be subject to the design requirements and the process in this Agreement.

6.2 TfNSW design obligations

- (a) TfNSW will, in accordance with its obligations under this Agreement, design the Works in accordance with:
 - (i) the Technical Requirements; and
 - (ii) its other obligations under this Agreement.
- (b) TfNSW acknowledges that:
 - (i) the parties have spent considerable time and resources developing the Technical Requirements;
 - (ii) as at the date of this Agreement, TfNSW is not aware of any reason why it cannot comply with clause 6.2(a); and
 - (iii) unless expressly stated otherwise in this Agreement, the cost of complying with TfNSW's obligations in relation to the Technical Requirements and the other TfNSW obligations under this Agreement are a Project cost payable by TfNSW.
- (c) TfNSW and RCC acknowledge that:
 - (i) where reasonably practicable, the Project will be designed to implement the Urban Design Guidelines in respect of the Public Domain, to the extent not inconsistent with the Planning Approval or the scope of the Project; and
 - (ii) TfNSW is responsible for, and assumes the risk of, the Works costing more or taking longer than anticipated and being designed and constructed in accordance with clause 6.2(a).
- (d) Despite any other provision in this clause 6, TfNSW will not be required to comply with clause 6.2(a) to the extent that such compliance:
 - (i) is inconsistent with or prohibited by:
 - (A) any law or Australian standards;
 - (B) the Planning Approval; or
 - (C) the lawful requirements of any Authority;
 - (ii) is inconsistent with the requirements of the Disability Discrimination Commissioner or the National Rail Safety Regulator;
 - (iii) will materially reduce the operational reliability or efficiency of the Light Rail or will have a material adverse impact on the safety of the Light Rail; or
 - (iv) is not physically feasible to implement. For the avoidance of doubt, the use of the word "feasible" in this clause 6.2(d)(iv) is not limited to the meaning attributed to that word in the Planning Approval.

To give effect to this waiver, the parties must vary this Agreement in accordance with the process set out in paragraphs (e) and (f) (as applicable).

- (e) If TfNSW proposes to vary an obligation contained in paragraph (a), the parties agree that the following process will apply:
 - (i) where the variation arises due to one or more grounds listed in paragraph (d):
 - (A) TfNSW will notify RCC in writing and give reasonable details as to why TfNSW considers that it will be unable to comply with clause 6.2(a);
 - (B) RCC and TfNSW will meet and in good faith discuss and agree a variation to this Agreement which delivers a design outcome that is, as much as is practicable, equivalent to the position under this Agreement before such variation;
 - (C) if the parties are unable to agree on the variation to this Agreement in paragraph (e)(i)(B), the dispute resolution procedure set out in clause 11 will apply; or
 - (ii) if there are any other variations proposed by TfNSW:
 - (A) TfNSW will notify RCC in writing and give reasonable details as to why it seeks the variation, including any possible alternatives; and
 - (B) RCC will consider the proposal in good faith and acting reasonably but is otherwise under no obligation to agree to the variation.
- (f) The parties must vary this Agreement in writing to give effect to any waiver of compliance with clause 6.2(a).
- (g) For the avoidance of doubt, the parties acknowledge that the process in this clause 6.2 is intended to apply as and when the design for the Project is progressed by TfNSW and the circumstances in clause 6.2(d) arise from time to time.

6.3 **RCC role in development of Design Documentation**

TfNSW will:

- (a) involve RCC in the development of the Design Documentation by consulting and collaborating regularly with RCC throughout the design process;
- (b) without limiting clause 6.3(a), TfNSW will meet regularly with RCC throughout the design process; and
- (c) use reasonable endeavours to address and have regard to matters and concerns raised by RCC to TfNSW in relation to the development of the Design Documentation.

6.4 **RCC review of Design Documentation**

- (a) TfNSW will give RCC the opportunity to review, to comment on and to monitor the development of the Design Documentation as and when the Design Documentation is prepared by, or on behalf of, TfNSW to the extent:
 - (i) the Design Documentation is relevant to the local government area administered by RCC; and
 - (ii) required to verify compliance with this Agreement.

- (b) TfNSW will:
 - (i) submit the relevant Design Documentation to RCC in a manner and at a rate which will give RCC a reasonable opportunity to review the submitted Design Documentation;
 - (ii) give RCC 10 Business Days to review the submitted Design Documentation;
 - (iii) if requested by RCC, make available the appropriate design or other suitably qualified personnel to explain the Design Documentation or provide such information regarding the Design Documentation as RCC reasonably requests; and
 - (iv) give RCC an opportunity to attend any design presentation workshops being delivered on the status and detail of the Design Documentation or any discreet design element.
- (c) RCC may within the period referred to in paragraph (b)(ii):
 - (i) provide comments in writing to the urban domain reference group in respect of the Design Documentation; and/or
 - (ii) notify TfNSW if the Design Documentation does not, in RCC's opinion, comply with clause 6.2(a), giving reasons why RCC considers that the Design Documentation does not so comply.
- (d) If RCC gives TfNSW a notice under paragraph (c)(ii):
 - (i) TfNSW must forward the notification of RCC (and the reasons of RCC) to the Independent Certifier;
 - (ii) TfNSW will procure that the Independent Certifier reviews the comments of RCC under paragraph (c)(ii) and determine whether there are non-compliances with clause 6.2(a);
 - (iii) TfNSW will procure that, if the Independent Certifier determines there are non-compliances with clause 6.2(a), the Independent Certifier will require that the Design Documentation be amended to deal with the non-compliances; and
 - (iv) the amended Design Documentation will be re-submitted by TfNSW to RCC when that amended design document is made available to TfNSW and the process in this clause 6.4 will be re-applied to the amended Design Documentation.
- (e) TfNSW will not use any Design Documentation for construction purposes until expiration of the design review periods under paragraph (b)(ii).

6.5 **Prototype of Stop**

- (a) The parties acknowledge that a prototype Light Rail stop is being constructed by TfNSW, at TfNSW's cost, on behalf of the City of Sydney to demonstrate design and finishes pursuant to the Development Agreement between TfNSW and City of Sydney dated 19 December 2013 (**Prototype Stop**).
- (b) TfNSW will, as soon as practicable after completion of the Prototype Stop, notify RCC and invite RCC to inspect the Prototype Stop.

- (c) Following completion of the inspection by RCC of the Prototype Stop, RCC may provide comments on the Prototype Stop to the urban domain reference group referred to in clause 8.1(c)(i).
- (d) The construction of the Light Rail stops within the local government area administered by RCC must be of a standard consistent with the Prototype Stop, unless otherwise agreed between the parties.

6.6 Public art

RCC will be responsible for any public art intended to be integrated with the Project, including all costs for procurement and maintenance of the public art. In relation to public art, the following principles will apply:

- (a) as at the date of this Agreement, it is RCC's intention to integrate public art with the Project at specific locations;
- (b) the intention of the parties in relation to the integration of public art with the Project as it relates to Light Rail infrastructure in the Permanent Light Rail Corridor, is that such public art will be additive to the Light Rail infrastructure and will not require the Light Rail infrastructure to be altered or designed differently to accommodate the public art;
- (c) RCC will nominate a public art co-ordinator, who has experience in the areas of construction and public art;
- (d) TfNSW will nominate a suitability qualified person to work together with RCC's nominated public art co-ordinator in respect of the proposed integration of public art in the Public Domain and the Permanent Light Rail Corridor;
- (e) TfNSW and RCC will work together to facilitate the provision of public art within a timeframe that is compatible with the Project's program and which does not cause delay to the Project; and
- (f) TfNSW will, at the request of RCC and at RCC's cost:
 - (i) arrange for a competitive process to occur in relation to the proposed works set out in paragraph (f)(ii); and
 - (ii) install footings and connections to lighting, power and communication lines for public art to be installed within the Works Site as agreed between RCC and TfNSW, at agreed locations within the Works Site, provided that such public art, footings and other installation works do not adversely impact on the Project or on safety.

6.7 Hoarding design at construction compounds

TfNSW will consult with RCC prior to the design of hoardings to be used by the Project at construction compounds within the local government area administered by RCC and TfNSW and RCC will work together and co-operate to develop that design. These hoardings will be made of a solid material and will display graphics (at TfNSW's cost).

6.8 No obligation to review

- (a) Except as expressly set out in this Agreement, RCC does not assume or owe any duty of care to TfNSW to review, or in reviewing, any Design Documentation submitted to it or the Prototype Stop for any errors, omissions or compliance with this

Agreement and such review and comment by RCC does not make RCC, or give RCC any responsibility as, a designer of plant, a structure or substance for the purpose of WHS Laws.

- (b) No participation by RCC in the development of, review of, or comments on any Design Documentation submitted by TfNSW or the Prototype Stop will lessen or otherwise affect TfNSW's obligations under this Agreement or constitute an acknowledgement by RCC that TfNSW has complied with its obligations under this Agreement.

6.9 **General hierarchy and order of precedence**

- (a) If more than one standard applies under this Agreement, the following hierarchy will apply:
 - (i) compliance with laws and Australian standards; then
 - (ii) compliance with the Technical Requirements; then
 - (iii) compliance with TfNSW's other obligations under this Agreement.
- (b) If there is an inconsistency between this Agreement (excluding any inconsistency in design requirements, in which case clause 6.2 applies) and the conditions of the Planning Approval, the conditions of the Planning Approval take precedence.
- (c) If:
 - (i) the Minister for Planning and Environment imposes conditions in the Planning Approval which are inconsistent with this Agreement; or
 - (ii) any law or the requirements of any Authority are inconsistent with this Agreement,

the parties must negotiate in good faith to agree any necessary amendments to this Agreement and to agree an alternative which is, as much as is practicable, at least equivalent to the position under this Agreement before such amendments. If the inconsistency relates to a design requirement, clause 6.2 (and not this clause 6.9(c)) applies to that inconsistency.

- (d) If there is any ambiguity, discrepancy or inconsistency between any parts or provisions of this Agreement, the higher standard or quality will prevail, unless the parties otherwise agree in writing.

6.10 **Progress reports and program for the Works**

- (a) TfNSW will give RCC copies of the following:
 - (i) the long term delivery program (including details of the staging of the Works and the anticipated date for handover of the Permanent RCC Assets within an Occupied Work Site);
 - (ii) a summarised delivery phase progress reports; and
 - (iii) an updated summarised delivery program, from time to time as updated,in relation to the Works being carried out in the local government area administered by RCC.

- (b) The TfNSW Representative and the RCC Representative must discuss progress of the Works on a regular basis (no less frequently than once a quarter), so RCC is kept informed of the delivery status of the Project.

6.11 **Managing impacts on businesses**

- (a) TfNSW will engage with RCC and relevant business owners to prepare a local business liaison strategy which will be prepared and distributed in two stages as follows:
 - (i) stage 1 of the business liaison strategy is to be prepared within 3 months of the execution of the project deed with the party selected by TfNSW to design, construct and operate and maintain the Light Rail and notified to local businesses and include the following information:
 - (A) details of the Project's business liaison representatives;
 - (B) details of the community liaison officers at TfNSW;
 - (C) a high level overview of the construction staging program and timeframes for each local business precinct of Kingsford, Kensington and Randwick; and
 - (D) preliminary parking plans for loading zones, accessible parking, taxi ranks and funeral parlour parking, if available; and
 - (ii) stage 2 of the business liaison strategy is to be prepared progressively thereafter and distributed to local businesses and include the following information:
 - (A) access management plans to identify means of maintaining access to businesses during construction and operation of the Project;
 - (B) methods to proactively liaise with businesses through the construction phase;
 - (C) means by which businesses are kept informed of the Project; and
 - (D) co-ordination for special events that are planned by RCC.
- (b) TfNSW and RCC will ensure that relevant details in relation to the local business liaison strategy, such as TfNSW contact details and the enquiries process, are notified to local businesses prior to the commencement of the Works in the vicinity of the relevant business.

7. **PROJECT FUNDING**

7.1 **Responsibility for Project funding**

As between the parties, TfNSW is solely responsible for procuring all funding for the Project.

8. **PROCUREMENT AND ADMINISTRATION**

8.1 **Project governance**

- (a) The NSW Government is responsible for the development and implementation of a governance structure and strategy for the Project.

- (b) As at the date of this Agreement, TfNSW has formed the Project governance structure which includes an advisory board and a number of reference groups.
- (c) RCC has, or will have, membership on the reference groups once those groups are formed as follows:
 - (i) at least one member on the urban domain reference group for the Project, which will generally have the role set out in clause 8.1(h);
 - (ii) at least one member on the utilities reference group for the Project;
 - (iii) at least one member on the delivery phase roundtable for the Project;
 - (iv) at least one member on the business reference group for the Project; and
 - (v) at least one member on the community engagement group for the Project.
- (d) TfNSW will provide to RCC a copy of any minutes of meetings of reference groups of which RCC is a member.
- (e) The NSW Government may, from time to time and in its discretion, change the governance structure and strategy for the Project, including any changes that may be necessary or desirable in respect of the Project procurement process.
- (f) RCC membership on the reference groups or any changed governance structure as contemplated in paragraph (e) will continue until completion of the Works.
- (g) TfNSW will co-operate and work together with RCC to facilitate appropriate RCC membership on relevant Project governance groups, including in circumstances where the current reference groups are altered or abandoned.
- (h) It is expected that the urban domain reference group for the Project will provide independent, high level urban design review for the Project, assistance in achieving a quality design outcome and will:
 - (i) review and advise the TfNSW project team on urban design aspects of the Project; and
 - (ii) advise the TfNSW project team on potential urban design refinements for the Project.

8.2 Procurement of the Project

- (a) TfNSW will liaise with RCC during the implementation of the procurement strategy for the Project for the purpose of keeping RCC informed of the proposed procurement timing and process in relation to the Works.
- (b) If requested by RCC, TfNSW will facilitate a discussion between RCC and other NSW government agencies for the purpose of co-ordinating works being carried on by that NSW government agency which may have a cumulative impact with the Project on the use and amenity of the local government area administered by RCC.
- (c) Without limiting this clause 8.2, TfNSW will give RCC a briefing on the design proposal of the preferred tenderer for the Project prior to entering into a project deed with the preferred tenderer and will give RCC an opportunity to provide comments on the proposal. The briefing will be subject to the probity and confidentiality

requirements of the Project procurement process and will be limited to those aspects of the proposal that are relevant to the obligations of TfNSW under this Agreement.

8.3 **No disposal**

Prior to completion of the Works, RCC agrees not to:

- (a) sell, assign or dispose of any land, or any of RCC's interest in any land, forming part of the Works Site; or
- (b) enter into any other transaction, create or grant any interest or do any other thing which has the effect of granting another person the benefit of, control of or possession of, any land forming part of the Works Site until after completion of the Works in the Works Site,

without the prior written consent of TfNSW (which cannot be unreasonably withheld or delayed).

8.4 **Appointment and role of the TfNSW Representative and RCC Representative**

- (a) TfNSW will appoint the person referred to in Item 2 of Schedule 1 to be the TfNSW Representative for the purposes of this Agreement and will notify RCC in writing of any changes to that appointment as soon as reasonably practicable.
- (b) RCC will appoint the person referred to in Item 3 of Schedule 1 to be the RCC Representative for the purposes of this Agreement and will notify TfNSW in writing of any changes to that appointment as soon as reasonably practicable.
- (c) The parties acknowledge and agree that:
 - (i) the role of the TfNSW Representative and the RCC Representative is to be the sole points of contact for the relevant parties for the purpose of implementing this Agreement and facilitating the objectives of this Agreement and that all correspondence and communication in relation to this Agreement should be undertaken through the TfNSW Representative and the RCC Representative;
 - (ii) the matters within the knowledge of the TfNSW Representative are taken to be within the knowledge of TfNSW and the matters within the knowledge of the RCC Representative are taken to be within the knowledge of RCC;
 - (iii) the TfNSW Representative has the authority to act on behalf of TfNSW in its role under this Agreement but acts at all times as the agent of TfNSW and is subject to the directions of TfNSW; and
 - (iv) the RCC Representative has the authority to act on behalf of RCC in its role under this Agreement but acts at all times as the agent of RCC and is subject to the directions of RCC.

9. INDEMNITY

9.1 Indemnity in relation to Claims

- (a) TfNSW indemnifies RCC, RCC's employees (which for this clause 9 includes contractors on contracts of employment) and the elected representatives of RCC from and against all third party Claims brought against, suffered or incurred by RCC, RCC's employees or its elected representatives to the extent arising out of:
- (i) the use or occupation of the Works Site or an Occupied Works Site by TfNSW or TfNSW's Employees and Agents;
 - (ii) the relocation, removal, modification or protection of RCC's Utilities by TfNSW or TfNSW's Employees and Agents in connection with the Project;
 - (iii) the design (excluding designs supplied by RCC and not varied by TfNSW), manufacture (if applicable), construction, installation, upgrade (if applicable) or relocation of the Permanent RCC Assets by TfNSW or TfNSW's Employees and Agents; or
 - (iv) any negligent act or negligent omission of TfNSW or TfNSW's Employees and Agents in relation to, or as a consequence of, the Project.
- (b) The indemnity in paragraph (a) does not apply to the extent that:
- (i) the matters relevant to the third party Claim were caused by or contributed to by:
 - (A) the use by TfNSW or TfNSW's Employees and Agents of materials nominated by RCC in the Technical Requirements (except to the extent caused by or contributed to by poor design, poor workmanship, errors, omissions or defects and also excludes the growing and planting or the maintenance of new trees (in respect of the maintenance of new trees, until the expiry of the 24 month defects liability period only));
 - (B) any act or omission of RCC in relation to the areas outside of the Works Site or the Permanent Light Rail Corridor, including in respect of the cleaning, use or maintenance of the public domain, any areas handed back to RCC by TfNSW as contemplated under this Agreement or Permanent RCC Assets handed over to RCC under this Agreement;
 - (C) a breach of this Agreement by RCC; or
 - (D) a negligent act or negligent omission of RCC, RCC's employees or its elected representatives; or
 - (ii) the relevant Claim relates to:
 - (A) areas of the public domain and assets of RCC which have not been modified or damaged by TfNSW or TfNSW's Employees and Agents as part of the Project;
 - (B) any locations nominated by RCC in respect of Permanent RCC Assets; or

(C) Utilities not relocated, removed or modified by TfNSW or TfNSW's Employees and Agents.

(c) The indemnity referred to in paragraph (a) expires on the date which is 5 years after the date of completion of the Works.

9.2 **Third party Claims the subject of the indemnity**

TfNSW and RCC agree that, if a third party Claim contemplated under clause 9.1(a) is made against RCC, RCC's employees or the elected representatives of RCC (as applicable):

- (a) RCC will notify TfNSW as soon as is practicable after becoming aware of the Claim;
- (b) RCC will seek to:
 - (i) minimise the costs and expenses incurred and/or the loss suffered in respect of such Claim; and
 - (ii) resolve the Claim as quickly as is practicable in the circumstances;
- (c) RCC will keep TfNSW regularly informed about the progress of the Claim; and
- (d) TfNSW may make a request to RCC to exercise, or RCC may request that TfNSW exercises, at TfNSW's cost, the rights of RCC, RCC's employees or RCC's elected representatives (as applicable) to defend such Claim directly, in which case, if RCC agrees to TfNSW's request (acting reasonably) or the request is made by RCC, RCC will execute all documents and provide all information and materials to TfNSW as is held by RCC and necessary to enable TfNSW to efficiently and effectively defend the Claim.

EXECUTED as an agreement.

SIGNED FOR AND ON BEHALF OF
RANDWICK CITY COUNCIL by its
Mayor and General Manager in the
presence of:



Signature of Mayor

SCOTT NASH

Name (print)



Signature of General Manager

SIMA TRUVERT

Name (print)



Signature of witness

MURRAY MATSON

Name of witness



Signature of witness

MURRAY MATSON

Name of witness

EXECUTED ON BEHALF OF
TRANSPORT FOR NSW by its
authorised delegate in the presence of:



Christopher Deccan Lock
Deputy Director General
Transport Projects Division



Signature of witness

BARBARA FILIPOWSKI

Name of witness

LEVEL 5, 821 PACIFIC HIGHWAY,
CHATSWOOD

Address of witness

PART B PROVISIONS (GENERAL AND INTERPRETATION)

10. INTERPRETATION

10.1 Definitions

The following definitions apply in this Agreement:

Additional Area means:

- (a) any area of land owned by RCC; or
- (b) subject to clause 18.1(g), any area controlled by RCC and which RCC has the right to grant rights of access to TfNSW as contemplated under this Agreement,

in the vicinity of the Works Site but not forming part of the Works Site as at the date of this Agreement.

Agreement means this agreement and includes:

- (a) the Part A Provisions (Development Agreement);
- (b) subject to clause 2, the Part B Provisions (General and Interpretation);
- (c) subject to clause 3, the Part C Provisions (Early and Preparatory Works);
- (d) subject to clause 4, the Part D Provisions (Works); and
- (e) any of its schedules, annexures and exhibits.

Authorisation means:

- (a) an approval, consent, declaration, exemption, notarisation, licence, permit, certificate, waiver or other authorisation, however described, required by any law, including, where the context requires, the Planning Approval; and
- (b) in relation to anything that could be prohibited or restricted by law if an Authority acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Authority means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality (including RCC or TfNSW carrying out any statutory authority or function);
- (b) any other person having a right to impose a requirement, or whose consent is required, under law with respect to any part of the Works or the Utilities; and
- (c) any other person (whether autonomous or not) charged with the administration of a law.

Business Day means a day that is not:

- (a) a Saturday, Sunday or public holiday in New South Wales; or
- (b) 27, 28, 29, 30 and 31 December.

Claim includes any claim, action, demand, proceeding or judgment however arising, whether at law or in equity, and including:

- (a) under, arising out of, or in any way in connection, with this Agreement;
- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Works or either party's conduct prior to the date of this Agreement; or
- (c) otherwise at law including:
 - (i) under or for a breach of statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentations; or
 - (iii) in restitution, including restitution based on unjust enrichment.

Confidentiality Deed Poll means the confidentiality deed poll entered into by RCC prior to the date of this Agreement in relation to the Project.

Confidential Information means all information of a party which is given to another party in relation to this Agreement or the Project and by its nature is confidential and all information which is designated by a party as confidential or the other party knows or ought reasonably to have known is confidential.

Construction Documentation means the Design Documentation which TfNSW has developed, in accordance with clause 6, for the purpose of and to the level required for construction use.

Contamination means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

DDA means Part 4A of the *Anti-Discrimination Act 1977* (NSW) and the *Disability Discrimination Act 1992* (Cth).

Defect means a defect, error or omission in the Permanent RCC Assets or Utilities owned by RCC and relocated or modified by TfNSW and identified under clause 19.1 (to the extent such defect, error or omission prevents the intended use of the Permanent RCC Assets or

Utilities or otherwise results in the Permanent RCC Assets or Utilities not being fit for intended purpose, excluding any minor defects, errors and omissions).

Design Documentation means all design documentation (including all draft and final design standards, design reports, durability reports, drawings, specifications, manuals, designs, models, samples, patterns and calculations) in computer readable and written forms, or stored by any other means, which TfNSW or any other person on behalf of TfNSW creates, or is required to, or must necessarily, create, to deliver the Project, including:

- (a) the Works (but excluding the design of the Early and Preparatory Works) to the extent applicable to the local government area administered by RCC;
- (b) the design of the Permanent RCC Assets and any aspect of the Project that impacts on the Permanent RCC Assets;
- (c) the design of any proposed steps, overhead wiring, barriers or fences forming part of the Project and within the local government area administered by RCC;
- (d) for the purpose of clause 20.1(c), includes any proposed design changes to the Construction Documentation; and
- (e) the Prototype Stop referred to in clause 6.5,

but, for the avoidance of doubt, excludes any aspect of the Project design relating to the Light Rail systems or rolling stock.

DKE means the developed kinematic envelope of Light Rail vehicles.

Early and Preparatory Works means any works or activities required to be undertaken by or on behalf of TfNSW before commencing the balance of the Works, including:

- (a) the investigation and testing of the Works Site and adjacent areas;
- (b) the relocation, removal, augmentation or upgrade of Utilities;
- (c) road works;
- (d) demolition and excavation works; and
- (e) preparation of construction lay-down areas,

and for the avoidance of doubt includes any works notified by TfNSW to RCC under an Early and Preparatory Works Notice.

Early and Preparatory Works Notice means a notice given by TfNSW to RCC under clause 3.1 activating the Part C Provisions (Early and Preparatory Works).

Emergency means an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or war like action) which endangers or threatens to endanger the safety or health of persons, or destroys or damages property (actual or potential).

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;

- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Existing Advertising and Street Furniture Contract means the contract referred to in Part 1 of Schedule 9.

GST has the same meaning as in the GST Law and any other goods and services tax, or any Tax applying to this transaction in a similar way.

GST Law has the same meaning as GST law in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Handover Date means the date determined in accordance with clause 20.5(c)(iv).

Independent Certifier means the independent certifier appointed by TfNSW in respect of the certification of various matters in relation to the Project.

Intellectual Property means all present and future rights conferred by law in or in relation to any copyright, trade-marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields but excluding Moral Rights.

Light Rail means any *light rail system* within the meaning set out in section 104N of the Transport Administration Act.

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world in relation to a work.

MOU means the non-binding memorandum of understanding entered into between TfNSW and RCC prior to the date of this Agreement in relation to the Project.

National Rail Safety Regulator has the same meaning as set out in section 4 of the *Rail Safety National Law (NSW) No 82a*.

NSW Government means the State Government of New South Wales.

Occupied Works Site means a part of the Works Site that is subject to a Works Site Licence as set out in clause 3(a) of Schedule 2.

Overhead Catenary means all overhead electrical supply wires and supporting apparatus necessary or desirable for the operation of the Light Rail, including electrical conductors and insulators, supporting and electrical supply wires, anchor bolts, conduits, tensioning devices and supporting poles and stanchions (if applicable).

Part A Provisions (Development Agreement) means the Recitals and clause 1 to clause 9 (inclusive) of this Agreement.

Part B Provisions (General and Interpretation) means clause 10 to clause 13 (inclusive) of this Agreement.

Part C Provisions (Early and Preparatory Works) means clause 14 to clause 15 (inclusive) of this Agreement.

Part D Provisions (Works) means:

- (a) clause 16 to clause 29 (inclusive) of this Agreement;
- (b) Schedule 1 - Schedule 10 (inclusive); and
- (c) Annexure A and B.

PCBU means a person conducting a business or undertaking within the meaning of the WHS Act.

Permanent RCC Assets means those assets to be owned and controlled by RCC after the progressive dates of completion in accordance with clause 20.5 as set out in Part 1 of Schedule 6.

Permanent RCC Assets Principles means the principles set out in Part 2 of Schedule 6.

Permanent Light Rail Corridor has the meaning as set out in clause 23.1.

Planning Approval means the approval of the Department of Planning and Environment in respect of the Project in accordance with the EP&A Act, as modified from time to time.

Practical Completion means the stage where the relevant part of the Permanent RCC Assets are complete except for minor defects:

- (a) which do not prevent those Permanent RCC Assets from being reasonably capable of being used for their intended purpose; and
- (b) rectification of which will not prejudice the convenient use of those Permanent RCC Assets.

Project means, as at the date of this Agreement:

- (a) the financing, design, construction, manufacture, installation, testing, commissioning, operation and maintenance of a new Light Rail service totalling approximately 12 kilometres in length from Circular Quay to Central Station via George Street and to the suburbs of Randwick and Kingsford and including any decommissioning activities in relation to the Light Rail;
- (b) the design and construction of the Utilities relocations, network alterations, property access works and critical works arising out of the works or activities described in paragraph (a); and
- (c) the construction of minor works and the operation and maintenance of the Light Rail between Lilyfield and Central and between Lilyfield and Dulwich Hill (under construction as at the date of this Agreement).

Project Deliverables means all designs or materials developed or supplied by or on behalf of TfNSW for the Project, excluding any design in relation to the Permanent RCC Assets.

Public Domain means those areas of the public domain within the local government area administered by RCC that are within the Works Site and the transitional areas immediately adjacent to the Works Site, excluding the Permanent Light Rail Corridor.

Rail Safety Law means any applicable law, from time to time, in relation to rail safety, including the Rail Safety National Law (NSW) No.82 and the Rail Safety Regulations.

Rail Safety Regulations means the regulations made under the Rail Safety National Law (NSW) No.82 or the *Rail Safety (Adoption of National Law) Act 2012* (NSW).

RCC Background IP means all Intellectual Property of RCC.

RCC Representative means the person appointed by RCC and notified to TfNSW in accordance with clause 8.4, provided that such person is suitably qualified to carry out the functions of the RCC Representative under this Agreement, which at the date of this Agreement is the person identified in Item 3.

RCC's Employees and Agents means each of RCC's employees, officers, agents, contractors, service suppliers, licensees and invitees (other than TfNSW and TfNSW's Employees and Agents).

Relic means:

- (a) any deposit, object or material evidence:
 - (i) which relates to the settlement of the area that comprises New South Wales, not being an Aboriginal settlement; and
 - (ii) which is 50 or more years old (measured from the time of discovery); or
- (b) an Aboriginal object or an Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974* (NSW).

Security Interest means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person.

Stop means the location at which Light Rail vehicles stop for the purposes of picking up and dropping off Light Rail passengers from time to time.

Technical Requirements means the technical requirements of RCC that have been negotiated and agreed between the parties as set out in Schedule 7, as may be varied in accordance with clause 6.2 or clause 6.9.

TfNSW Project Director means the person appointed by TfNSW as project director for the Project, which at the date of this Agreement is the person identified in Item 1.

TfNSW Representative means the person appointed by TfNSW and notified to RCC in accordance with clause 8.4, provided that such person is suitably qualified to carry out the functions of the TfNSW Representative under this Agreement, which at the date of this Agreement is the person identified in Item 2.

TfNSW's Employees and Agents means each of TfNSW's employees, officers, agents, contractors, service suppliers, licensees, invitees and those persons permitted to be on the Works Site (other than RCC and RCC's Employees and Agents).

Transport Administration Act means the *Transport Administration Act 1988* (NSW).

Urban Design Guidelines means the Randwick City Council Light Rail Urban Design Guidelines as adopted by RCC on 29 April 2014.

Utility means any utility, facility or item of infrastructure in relation to the provision of water, electricity, gas, ethane, fuel, telephone, drainage (including piped, open or subsoil drains), sewerage and electronic communications services.

WHS Act means the *Work Health and Safety Act 2011* (NSW) and includes the *Work Health and Safety Act 2011 (Cth)* when used in the context of a person who is covered by the *Work Health and Safety Act 2011 (Cth)*.

WHS Laws means any applicable law, from time to time, in relation to work, health and safety, including the WHS Act and associated regulations and the Rail Safety Law.

Workers means and includes any person who carries out work for the PCBU in any capacity, for example, employees of the PCBU or labour hire companies, contractors, subcontractors and their employees.

Works means all activities and works to be undertaken and structures and improvements to be developed or constructed on, in or under the Works Site by or on behalf of TfNSW as part of the Project, including for example:

- (a) environmental, geotechnical and other relevant site investigations;
- (b) remediation of Contamination, as required;
- (c) works carried out in connection with the discovery and conservation of heritage items and Relics;
- (d) inspections of the Works Site for any purpose arising out of or in connection with the Project;
- (e) undertaking any early or preparatory works in relation to the Project, including the removal, relocation, modification and protection of Utilities and temporary reinstatement works;
- (f) construction of all relevant aspects of the Project, including the Permanent RCC Assets; and
- (g) testing and commissioning of the Project as required by TfNSW prior to completion of the Works,

and includes the Early and Preparatory Works, as the context requires.

Works Notice means a notice given by TfNSW under clause 4.1 and in the form of notice of Schedule 10.

Works Site means the area described as 'Works Site' on the Plan of the Works Site attached at Annexure A and to the extent that the land is owned by RCC from time to time, as well as any Additional Areas included in the Works Site in accordance with clause 2 of Schedule 2.

Works Site Access Principles Schedule means the schedule setting out the details, requirements and timing for access, use and occupation by TfNSW of the Works Site, which is Schedule 2.

Works Site Licence means a licence granted by RCC to TfNSW of an Occupied Works Site under clause 15.1 or clause 18.1(a) (as applicable).

10.2 Rules for interpreting this Agreement

- (a) Headings are for convenience only and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation made under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated from time to time;
 - (iii) a party to this Agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) a body (including an institute, association or authority), whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers or functions;
 - (vi) anything (including a right, obligation or concept) includes each part of it;
 - (vii) **land** includes any air or water in, on, above or beneath the ground; and
 - (viii) **dollars** or **\$** is to Australian dollars.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word is defined, another part of speech has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) **Including** means 'including without limitation'.
- (h) The words **clauses**, **schedules** and **exhibits** means clauses in, and schedules and exhibits to, this Agreement.
- (i) A reference to an **Item** is to the relevant Item in Schedule 1 of this Agreement.
- (j) A reference to a **Section** is to the relevant section in Schedule 7 of this Agreement.
- (k) In the interpretation of this Agreement, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this Agreement or any provision in it.
- (l) Words defined in the GST Law have the same meaning in clauses about GST.

- (m) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

10.3 **Business Days**

If the day on or by which a party must do something under this Agreement is not a Business Day:

- (a) if the act involves a payment that is due on demand, the party will do it on or by the next Business Day; and
- (b) in any other case, the party will do it on or by the previous Business Day.

10.4 **Ambiguous or inconsistent terms**

- (a) If any party considers that any of the terms of this Agreement are ambiguous or inconsistent, it will notify the other party and provide its interpretation of this Agreement.
- (b) If a party disagrees with a notification given in accordance with paragraph (a), then it will inform the other party and provide details of its interpretation, in which case clause 11 will apply.

11. **DISPUTE RESOLUTION**

11.1 **Notice of dispute**

- (a) If either party considers that there is a dispute between the parties in relation to this Agreement or the Project, that party will notify the other party in writing, such notice to identify the nature and details of the dispute.
- (b) Any determination in respect of a dispute made by the Independent Expert or an expert pursuant to clause 11.3 where the value of the disputed works, remediation, repair, design or other disputed matter is:
 - (i) less than \$1 million, will be binding on the parties; or
 - (ii) more than \$1 million, will not be binding on the parties.
- (c) The parties acknowledge and agree that if:
 - (i) a dispute has been referred to the Secretary of the NSW Department of Planning and Environment (or delegate) pursuant to condition A13 of the Planning Approval; and
 - (ii) if the parties are in dispute regarding the same subject matter as the dispute so referred,

this clause 11 will continue to apply subject to the operation of clause 6.9(b).

11.2 Process for resolution of disputes

Following a notice of dispute being issued by a party under clause 11.1, the parties will seek to resolve the relevant dispute in accordance with the following process:

- (a) the Director, City Services of RCC and the TfNSW Project Director will meet and attempt to resolve the dispute within 20 Business Days of the date of the notice given under clause 11.1; and
- (b) if the dispute is not resolved under paragraph (a), the dispute will be elevated to the General Manager of RCC and the Deputy Director General of TfNSW Transport Projects Division to meet and attempt to resolve the dispute within a further 20 Business Days of the expiry of the same period as referred to in paragraph (a).

11.3 Expert determination

- (a) If there is dispute between the parties and either party considers that the dispute is of a technical nature:
 - (i) the parties must first undertake the process in clause 11.2; and
 - (ii) if the dispute is not resolved by way of the process in clause 11.2, a party may notify the other party requesting that the dispute be dealt with in accordance with this clause 11.3.
- (b) If a notice is given by a party under paragraph (a) and the parties agree that the process in this clause 11.3 will apply to the dispute, the Independent Certifier or another expert (as agreed between the parties, acting reasonably) will be engaged by the parties on reasonable terms and conditions and on terms which require the Independent Certifier or the expert to:
 - (i) initiate such enquiries and investigations as it considers necessary or desirable for the purposes of performing its functions in relation to the resolution of the dispute;
 - (ii) determine whether, in the Independent Certifier's or the expert's opinion, the dispute is of a technical nature that can be determined by the Independent Certifier or the expert; and
 - (iii) if the Independent Certifier or the expert considers that the dispute is of a technical nature under paragraph (b)(ii) that can be determined by the Independent Certifier or the expert, determine and inform the parties of a time for presentation to the Independent Certifier or the expert by the parties of their respective positions. The presentation must be no later than 10 Business Days after the appointment of the Independent Certifier or the expert. The Independent Certifier or the expert may ignore any submission or response not made within this period, unless the parties otherwise agree.
- (c) The Independent Certifier or the expert may request further information from either party. The request must be in writing within a time period required by the Independent Certifier or the expert for the response.
- (d) The Independent Certifier or the expert must:
 - (i) send a copy of the response referred to in paragraph (c) to the other party and give the other party a reasonable opportunity to comment;

- (ii) make its determination or finding in respect of the dispute within 20 Business Days after the presentation referred to in paragraph (b)(iii) and include reasons for the determination or finding;
 - (iii) act as an expert and not an arbitrator;
 - (iv) have no interest or duty which conflicts with its role as an independent expert; and
 - (v) keep confidential all materials and information made available to it in respect of the dispute.
- (e) The fees and expenses of the Independent Certifier or the expert will be paid by the parties equally.
 - (f) Any determination made by the Independent Certifier or the expert will be binding on the parties.

11.4 **Parties to continue to comply**

If a party gives a notice under clause 11.1, the parties will continue to meet their obligations under this Agreement until the dispute is resolved and, following resolution of the dispute, meet their obligations under this Agreement in accordance with the resolution of the dispute.

11.5 **Condition precedent to litigation**

Subject to clause 11.6, a party must not commence legal proceedings in respect of a dispute unless:

- (a) a dispute notice has been given under clause 11.1;
- (b) the period referred to in clause 11.2(b) has expired; and
- (c) in respect of a dispute the subject of clause 11.3, the period in clause 11.3(b)(iii) has expired.

11.6 **Summary or urgent relief**

Nothing in this clause 11 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute.

12. **GST AND OTHER TAXES**

12.1 **Payment of GST**

Subject to clause 12.2, a recipient of a taxable supply under or in connection with this Agreement will:

- (a) pay to the supplier an amount equal to any GST for which the supplier is liable on the supply, without deduction or set-off of any other amount; and
- (b) pay that GST to the supplier:
 - (i) if there is a due date for the consideration (or any part of the consideration) for the taxable supply, either on that date or within 14 days of receiving a tax invoice for the taxable supply (whichever is the later); or

- (ii) if there is no due date, within 14 days of receiving a tax invoice for the taxable supply.

12.2 Non-monetary consideration

If and to the extent that a supply made by a party under or in connection with this Agreement is non-monetary consideration for a taxable supply made by another party:

- (a) the parties will co-operate with each other to determine the GST inclusive market value of each supply in accordance with the Australian Taxation Office's public ruling *GSTR 2001/6: non-monetary consideration* (including any ruling or determination which replaces or revises that ruling);
- (b) the supplier of a taxable supply must issue a tax invoice to the recipient in respect of the supply; and
- (c) to the extent that the GST payable on the taxable supplies made under this Agreement are attributable to the same tax period, the GST payable on each supply shall be set off and to the extent that the GST payable by one party exceeds the GST payable by the other, a net payment will be made between the parties to reflect the difference.

12.3 Tax invoice

Each party making a taxable supply under this Agreement will issue a tax invoice to the other party for each taxable supply.

12.4 Adjustments

Each party will issue an adjustment note to the other party within 14 days of becoming aware of an adjustment event relating to a taxable supply by it under this Agreement.

12.5 Indemnities

- (a) If a party has a Claim under or in connection with this Agreement for a cost on which that party will pay GST, the Claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- (b) If a party has a Claim under or in connection with this Agreement and the amount depends on actual or estimated revenue or which is for a loss of revenue, revenue will be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

13. GENERAL

13.1 Representations and warranties

Each of RCC and TfNSW represents and warrants to each other that:

- (a) it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (b) it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates;
- (c) it holds each Authorisation that is necessary or desirable to:

- (i) enable it to properly execute this Agreement and to carry out the transactions that this Agreement contemplates; and
- (ii) ensure that this Agreement is legal, valid, binding and admissible in evidence, and it is complying with any conditions to which any of these Authorisations are subject;
- (d) this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with their terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping; and
- (e) neither the execution of this Agreement, nor the carrying out by it of the transactions that it contemplates, does or will:
 - (i) contravene any law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property; or
 - (ii) contravene any undertaking or instrument binding on it or any of its property.

13.2 **Assignment and other dealings**

Subject to clause 8.3, each party will not assign, transfer or otherwise deal with, or create a Security Interest over, any of its rights or interests under this Agreement, without the prior written consent of the other party (which consent will not be unreasonably withheld).

13.3 **Notices**

- (a) A notice, consent or other communication under this Agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received 3 Business Days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) A party's address, fax number and attention are those set out for the respective party in Items 4 and 5, or as the party otherwise notifies the sender in writing.

13.4 **Liability for expenses and stamp duty**

- (a) Subject to paragraph (b), each party will pay its own expenses incurred in negotiating and executing this Agreement.
- (b) TfNSW will pay any duty (together with any related fines, penalties or interest) that is payable on or in relation to this Agreement.

13.5 **Variations and Amendment**

Except as expressly stated in this Agreement, this Agreement can only be varied, amended, supplemented, replaced or novated by another document signed by the parties.

13.6 **Confidentiality**

- (a) RCC acknowledges that:
 - (i) it entered into the Confidentiality Deed Poll before the date of this Agreement; and

- (ii) the Confidentiality Deed Poll will terminate on execution of this Agreement.
- (b) The parties will:
- (i) treat as confidential all Confidential Information of the other parties;
 - (ii) not use Confidential Information for any purpose other than for the performance of their obligations or exercising their rights under this Agreement; and
 - (iii) not disclose Confidential Information to any person other than TfNSW's Employees and Agents or RCC's Employees and Agents (as applicable) who need to know the information for the proper performance of their duties in connection with the Project or the local government area administered by RCC or as contemplated under paragraph (b)(ii).
- (c) RCC and TfNSW may disclose Confidential Information:
- (i) to the extent required by law, the reporting requirements of NSW Government or by a lawful requirement of any government or governmental body, authority or agency having authority over TfNSW;
 - (ii) to advisers, consultants and contractors engaged by TfNSW or RCC in relation to the Project;
 - (iii) to any party participating in the procurement process for the Project; and
 - (iv) if required in connection with legal proceedings,
- but in each case, TfNSW and RCC will give notice to the other party of any proposed disclosure.
- (d) The parties will ensure that Confidential Information held in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse.

13.7 Waiver of rights

- (a) A right may only be waived in writing, signed by the party giving the waiver. No other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (b) A waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again.
- (c) The exercise of a right does not prevent any further exercise of that right or of any other right.

13.8 Operation of this Agreement

- (a) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to its subject matter, including the MOU, is replaced by this Agreement and has no further effect.
- (b) Subject to this Agreement, any right that a party may have under this Agreement is in addition to, and does not replace or limit, any other right that the party may have.

- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

13.9 Employees and agents

- (a) If this Agreement prohibits RCC from doing a thing, then RCC will:
 - (i) do everything necessary to ensure that RCC's Employees and Agents do not do that thing; and
 - (ii) not authorise or cause any person to do that thing.
- (b) If this Agreement prohibits TfNSW from doing a thing, then TfNSW will:
 - (i) do everything necessary to ensure that TfNSW's Employees and Agents do not do that thing; and
 - (ii) not authorise or cause any person to do that thing.

13.10 Governing law and jurisdiction

- (a) This Agreement is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

13.11 No partnership or joint venture

This Agreement does not create a partnership, joint venture or fiduciary relationship between the parties.

13.12 Compliance with law and Authorisations

Each party will carry out its obligations and exercise its rights under this Agreement in compliance with all relevant laws and Authorisations.

13.13 Operation of certain clauses

Clauses 9 (Indemnity), 10 (Interpretation), 11 (Dispute Resolution), 13.1 - 13.12 (inclusive) and this clause 13.13 survive the expiry or termination of this Agreement.

PART C PROVISIONS (EARLY AND PREPARATORY WORKS) – SUBJECT TO ACTIVATION UNDER CLAUSE 3 OF THE AGREEMENT

14. APPLICATION OF PART B PROVISIONS (GENERAL AND INTERPRETATION)

14.1 Definitions

Capitalised terms used in these Part C Provisions (Early and Preparatory Works) are as defined in clause 10.1 of the Part B Provisions (General and Interpretation).

14.2 Interpretation and general provisions

Clause 10.2 to clause 10.4 (inclusive) and clause 11 to clause 13 (inclusive) of the Part B Provisions (General and Interpretation) apply as if those clauses were incorporated in full in these Part C Provisions (Early and Preparatory Works).

15. DELIVERY OF THE EARLY AND PREPARATORY WORKS

15.1 Early and Preparatory Works Notice

If TfNSW gives RCC an Early and Preparatory Works Notice, TfNSW may carry out the Early Works and Preparatory Works in accordance with clauses 17 – 19 (inclusive), clauses 20.1 - 20.4, clause 21, clause 22 and clauses 25 - 29 (inclusive) of the Part D Provisions (Works), with the exception that references to "*the Works*" in those incorporated clauses will be read as references to "*the Early and Preparatory Works*".

PART D PROVISIONS (WORKS) – SUBJECT TO ACTIVATION UNDER CLAUSE 4 OF THE AGREEMENT

16. APPLICATION OF PART B PROVISIONS (GENERAL AND INTERPRETATION)

16.1 Definitions

Capitalised terms used in these Part D Provisions (Works) are as defined in clause 10.1 of the Part B Provisions (General and Interpretation).

16.2 Interpretation and general provisions

Clause 10.2 to clause 10.4 (inclusive) and clause 11 to clause 13 (inclusive) of the Part B Provisions (General and Interpretation) apply as if those clauses were incorporated in full in these Part D Provisions (Works).

17. FACILITATION OF THE PROJECT

17.1 Work authorisations and permits

Subject to clause 18.1(g), to the extent that any Authorisations or any other approvals, easements, leases or licences must be obtained from RCC in respect of the Project, RCC will consider and administer the application for those Authorisations or any other approvals, easements, leases or licences in a timely manner.

17.2 Event and function planning by RCC

- (a) The parties each acknowledge that it will be important for the purposes of safety and security to co-ordinate and plan events and functions in the local government area administered by RCC in a manner which is consistent with, and does not impact on, the Project during the construction and the operation and maintenance phases of the Project.
- (b) If RCC proposes to hold any events or functions in and around the Works Site during the construction phase of the Project or in and around the Permanent Light Rail Corridor during the term of this Agreement, the parties will meet and in good faith discuss any event co-ordination requirements of either party.
- (c) Events that are planned by RCC during the construction of the Project will be considered as part of TfNSW's business landowner and engagement management plan. TfNSW will consult with RCC in relation to construction staging around special events and TfNSW must use reasonable endeavours to assist in the co-ordination of the construction of the Project with events planned by RCC, including but not limited to:
 - (i) the Spot Food Festival;
 - (ii) the Kingsford Food Festival;
 - (iii) the White Ribbon Walk;
 - (iv) the Anzac Day and Remembrance Day Commemorations;
 - (v) entry to the City Parade (Army Event); and
 - (vi) any other events agreed by both parties.

- (d) In relation to any events or functions in the vicinity of the Works Site or the Permanent Light Rail Corridor that a third party is entitled to hold, RCC must notify the third party event organiser that in order to maintain safety it should:
 - (i) take into account the existence of the Light Rail in relation to holding the event or function; and
 - (ii) co-ordinate and consult with TfNSW and comply with the reasonable directions of TfNSW regarding the proximity of the event or function to the Light Rail.
- (e) At the request of RCC, TfNSW must provide reasonable assistance to RCC in considering whether paragraph (d) applies to any particular event or function.

17.3 **Interface Agreement**

The parties will enter into an interface agreement as required under any Rail Safety Law in respect of the following:

- (a) for the activities and works of the parties during the construction, testing and commissioning phases of the Project, in the form as agreed between the parties acting in good faith and acting reasonably, amended as required to comply with the Rail Safety Law or as otherwise agreed by the parties; and
- (b) for the activities of the parties during the maintenance and operation phase of the Project, in the form as agreed between the parties and as required to comply with the Rail Safety Law.

17.4 **Parking**

TfNSW acknowledges that RCC's intention is that along Anzac Parade (within the existing kerb lines) on-street parking is to be maximised and that any areas used as bus lanes be, to the extent feasible, available for parking outside of peak hours. TfNSW will support RCC's application to NSW Roads and Maritime Services for the implementation of off-peak parking outcomes.

17.5 **Potential network extensions**

- (a) The parties acknowledge that, prior to the date of this Agreement, they have discussed the possibility of an extension of the Light Rail to the suburb of Maroubra.
- (b) If the NSW Government decides to deliver the extension contemplated by clause 17.5(a) and TfNSW is selected by the NSW Government as the proponent for the delivery of the extension, then:
 - (i) TfNSW will involve RCC in respect of the development of the design for the extension by consulting and collaborating regularly with RCC throughout the design process and by providing relevant design documents to RCC for review; and
 - (ii) to the extent appropriate, the Technical Requirements and other terms of this Agreement will apply to the extension.
- (c) TfNSW acknowledges that it is RCC's desire for any such extension to avoid the need to remove car spaces on Anzac Parade at Maroubra.

18. **LAND AND ACCESS**

18.1 **Access to and use and occupation of the Works Site**

- (a) RCC will grant to TfNSW, and TfNSW accepts the grant of, licences on a progressive basis over various parts of the Works Site in accordance with the Works Site Access Principles Schedule (each a Works Site Licence), for the purpose of undertaking the Works.
- (b) The parties acknowledge and agree that:
 - (i) no licence fee or other consideration is payable by TfNSW in relation to the grant of a Works Site Licence; and
 - (ii) RCC has contributed High Cross Park and the areas referred to in Recital (G) to form part of the Works Site.
- (c) RCC acknowledges and agrees that, consistent with the principles set out in clause 5.1(h), the rights of access, use and occupation by TfNSW under this clause 18.1 may be exercised on behalf of TfNSW by one or more third party contractors. In this respect, TfNSW will require, where appropriate, that any such third party contractor complies with the obligations of TfNSW in respect of such access, use and occupation and will co-ordinate the activities and responsibilities of those contractors.
- (d) Each Works Site Licence will be subject only to the following other rights of access:
 - (i) the RCC's inspection rights under clause 18.3;
 - (ii) the right of RCC to carry out works under clause 18.4; and
 - (iii) any other access rights as agreed between TfNSW and RCC (acting reasonably),and except as required by any relevant law or any relevant Authorisation, TfNSW may otherwise refuse any person or entity access to an Occupied Works Site during the period of a Works Site Licence.
- (e) The parties acknowledge and agree that the third party users of the Works Site as referred to in Part 4 of the Works Site Access Principles Schedule will be identified and dealt with in accordance with Part 4 of the Works Site Access Principles.
- (f) RCC will not do anything on or adjacent to the Works Site which causes or may cause delay to the Works or the Project.
- (g) If RCC controls an area of land, but does not own that land:
 - (i) TfNSW acknowledges that RCC may only be entitled to grant rights of access to TfNSW in respect of that land to the extent RCC is permitted to do so;
 - (ii) the grant of any such access rights may be subject to the conditions of the land owner or relevant legislation (as applicable);
 - (iii) TfNSW will obtain the approval of the land owner on conditions acceptable to both RCC and TfNSW (acting reasonably); and

- (iv) RCC will co-operate with and assist TfNSW to obtain the approval in paragraph (g)(iii).
- (h) Unless expressly stated otherwise in this Agreement, TfNSW must undertake all Works on, in or under the Works Site in accordance with the Technical Requirements.
- (i) TfNSW will, at its cost, repair or replace any parts of the Works Site (including items or other property, whether owned by RCC or a third party) damaged by TfNSW or by TfNSW's Employees and Agents during the term of a Works Site Licence.
- (j) RCC's grant of a Works Site Licence is subject to any restrictions or requirements at law, including Chapter 6, Part 2, Division 2 of the *Local Government Act 1993* (NSW).

18.2 Condition of the Works Site

The parties will co-operate with each other and work together to identify and collate any information held by or available to RCC in relation to the condition and state of repair of the Works Site and any other structures or improvements on, in or under the Works Site.

18.3 RCC right of inspection

- (a) RCC may, at any time during the term of a Works Site Licence, request access to the Occupied Works Site the subject of the Works Site Licence for the purpose of:
 - (i) inspecting the condition of the Occupied Works Site;
 - (ii) inspecting the progress of the Works; or
 - (iii) carrying out an inspection for any RCC purpose.
- (b) If RCC wishes to request access to an Occupied Works Site under paragraph (a), RCC will give to TfNSW a notice listing three or more alternative times and dates for such inspection at least 3 Business Days prior to the first requested date of inspection set out in the notice.
- (c) On receipt of a notice referred to in paragraph (b), TfNSW will seek to arrange the inspection for one of the times and dates as requested by RCC in the notice given by RCC or for an acceptable alternative time and date as agreed by RCC (acting reasonably).
- (d) RCC may allow up to 5 personnel (which may include RCC's Employees and Agents except RCC's licensees and invitees) to access the Occupied Works Site during an inspection under paragraph (c), provided that:
 - (i) a representative of TfNSW accompanies the RCC personnel at all times during the inspection; and
 - (ii) the RCC personnel comply with all safety and other access requirements applying to the relevant areas of the Occupied Works Site.
- (e) An inspection of the Occupied Works Site by RCC may not proceed if a representative of TfNSW is not present at the time required for the inspection.
- (f) For the avoidance of doubt, this clause only applies to that part of the Works Site subject to an active Works Site Licence.

18.4 Works by RCC

- (a) Subject to the remainder of this clause 18.4, the parties will work together to ensure that RCC (including the RCC's Employees and Agents, other than the RCC's licensees and invitees) may access an Occupied Works Site from time to time for the purpose of undertaking any works or activities necessary to respond to any Emergency (having regard to the nature of the Emergency) or to undertake routine repair and maintenance work from time to time.
- (b) The right for RCC to access an Occupied Works Site under paragraph (a) only applies to the extent that the necessary works or activities do not relate to the Works.
- (c) RCC will, at its cost, repair any damage to the Works or the Occupied Works Site caused in exercising its rights under paragraph (a).
- (d) RCC will give notice to TfNSW:
 - (i) in relation to access for an Emergency, as soon as practicable (before or after as the case may be) on all occasions on which RCC enters the Occupied Works Site under paragraph (a); and
 - (ii) in relation to any routine repair or maintenance work which is not an Emergency, at least 20 Business Days prior to exercising such access. On receipt of this notice, TfNSW will seek to arrange the period of access as requested by RCC or an acceptable alternative time and date as agreed by RCC (acting reasonably).
- (e) If RCC enters the Occupied Works Site for any purpose (including under paragraph (a) or paragraph (c)):
 - (i) RCC will not interfere with TfNSW or TfNSW's Employees and Agents carrying out the Works;
 - (ii) RCC will co-operate with TfNSW and TfNSW's Employees and Agents and other persons who are on the Occupied Works Site (but only to the extent practicable in the circumstances in the case of an Emergency);
 - (iii) any such access is at RCC's own risk and cost (except as expressly provided in this Agreement);
 - (iv) RCC is liable for any act or omission of RCC's Employees and Agents; and
 - (v) RCC will comply with all reasonable directions of TfNSW, including in relation to safety, in accessing the Occupied Works Site.
- (f) If RCC enters the Occupied Works Site to undertake any routine repair or maintenance work referred to in paragraph (d)(ii), RCC's Employees and Agents exercising such access must:
 - (i) be accompanied by a representative of TfNSW at all times during the works if required by TfNSW; and
 - (ii) comply with all safety and other access requirements applying to the relevant areas of the Occupied Works Site.

- (g) For the avoidance of doubt, this clause only applies to that part of the Works Site subject to an active Works Site Licence.

18.5 Environmental obligations

- (a) As between TfNSW and RCC, TfNSW will be responsible for and assumes the risk of all costs, fees, losses, expenses and damages it may suffer or incur arising out of or in connection with the conditions or characteristics encountered on, in or under the Works Site, including any remediation of any Contamination required on, in or under the Works Site or that migrates on to land to the extent that:
 - (i) the remediation is required by any relevant law or Authorisation; and
 - (ii) such Contamination is caused by or contributed to by TfNSW or is otherwise exposed or exacerbated by TfNSW in undertaking the Works.
- (b) On and from the date on which TfNSW or TfNSW's Employees and Agents takes possession of an Occupied Works Site under the Works Site Licence, TfNSW cannot request RCC to participate in any voluntary management proposal in respect of any Contamination in, on or under that Occupied Works Site.
- (c) If there is any existing Contamination identified on, in or under the Works Site, the parties will assist each other and work together to pursue and recover costs from the party which caused the relevant Contamination.

18.6 Relics

- (a) TfNSW acknowledges and agrees that RCC has not made any representation, given any advice or given any warranty as to the existence or otherwise of any Relics on the Works Site or value or significance of the Works Site or anything on it.
- (b) TfNSW accepts all risk relating to Relics on a Works Site and must comply with the *Heritage Act 1977 (NSW)* and *National Parks and Wildlife Act 1974 (NSW)* in respect of the Works.
- (c) If any Relics are found by TfNSW or TfNSW's Employees and Agents in, on or under an Occupied Works Site:
 - (i) TfNSW will notify RCC as soon as reasonably practicable after that Relic is found;
 - (ii) TfNSW will appropriately deal with those Relics (at TfNSW's cost) in accordance with all applicable laws, including obtaining all necessary Authorisations in this respect; and
 - (iii) as between TfNSW and RCC, the Relics will be owned by RCC.

18.7 Native Title Claims

- (a) TfNSW acknowledges and agrees that RCC has not made any representation, given any advice or given any warranty as to the existence or otherwise of any native or Aboriginal title in respect of the Works Site or any part of the Works Site.
- (b) As between TfNSW and RCC:
 - (i) TfNSW will appropriately deal with any native title claim (being any claim or application for determination of native title under the *Native Title Act 1993 (Cth)*

or any similar law) in respect of an Occupied Works Site or any part of an Occupied Works Site during the term of the relevant Works Site Licence; and

- (ii) TfNSW will, if required by law, pay any compensation or other moneys required to be paid to the native title holders of the Occupied Works Site or any part of the Occupied Works Site pursuant to a native title claim by those native title holders where such claim is related to the Project.

18.8 Heritage

- (a) TfNSW acknowledges and agrees that RCC has not made any representation, given any advice or given any warranty as to the existence or otherwise of any heritage items on the Works Site or heritage values or significance of the Works Site or anything on it.
- (b) TfNSW accepts all risk relating to heritage items on an Occupied Works Site and must comply with the *Heritage Act 1977* (NSW) in respect of the Works.

19. UTILITIES

19.1 Utilities works

- (a) The parties acknowledge that there are various Utilities in, on and under the Works Site, including Utilities under the surface of the roads in the Works Site, which will be relocated, removed, modified or protected (as applicable) for the purpose of accommodating the Project.
- (b) The parties will co-operate with each other and work together to identify the following types of Utilities in, on or under the Works Site:
 - (i) any Utilities owned or controlled by RCC (whether owned solely by RCC or in conjunction with one or more third parties) and any third party rights applying in respect of those Utilities (whether contractual, statutory or otherwise);
 - (ii) any Utilities equipment or conduits that are no longer operational or used by any person or entity; and
 - (iii) any other Utilities in, on or under the Works Site which may need to be relocated, removed, modified or protected for the purpose of accommodating the Project.
- (c) RCC will:
 - (i) act promptly and reasonably in assessing any TfNSW requests to consent to the relocation, removal, modification or protection (as applicable) by TfNSW of any of the Utilities and other equipment and conduits referred to in paragraph (b)(i); and
 - (ii) to the extent that RCC has contractual rights against any third party referred to in paragraph (b)(i) to relocate, remove or modify its Utilities, RCC will enforce those rights, at TfNSW's cost, to enable TfNSW to carry out the Works referred to in paragraph (a).

19.2 Carrying out the works in relation to Utilities owned or controlled by RCC

- (a) TfNSW will carry out any of the relocation, removal, modification or protection works referred to in clause 19.1(a) and required for the purpose of accommodating the Project:
 - (i) at its own cost;
 - (ii) in accordance with the Technical Requirements and any other terms of this Agreement (as applicable);
 - (iii) exercising all skill, care and diligence and at the best industry practice for equivalent work; and
 - (iv) so that once complete, are structurally adequate, fit for their intended purpose and free of defects (except for minor defects and omissions).
- (b) In relation to the relocation, removal, modification or protection (as applicable) of Utilities referred to in clause 19.1(b)(i), TfNSW will:
 - (i) co-ordinate all such work with RCC;
 - (ii) obtain RCC's prior written approval for all such work (RCC will consider all requests for approval in accordance with clause 19.1(c));
 - (iii) obtain the prior written approval of any third party identified under clause 19.1(b)(i) (if any) for all such work if a right to do so has not been procured pursuant to clause 19.1(c)(ii);
 - (iv) for any Utilities that are relocated by TfNSW as part of the Project, the new location is to be agreed with RCC (acting reasonably);
 - (v) only remove a Utility as a last resort, where there is no other practical alternative;
 - (vi) carry out surface reinstatement works (temporary or otherwise) for any Utilities relocated within an Occupied Works Site. Where Utilities are relocated to a location outside the Works Site, TfNSW will finish the surface in accordance with the Urban Design Guidelines; and
 - (vii) provide RCC with copies of all relevant plans (including works-as-executed/as-built drawings in a CAD file in .dwg format) and where applicable the benefit of all warranties in respect of those Utilities.

19.3 Defects Liability Period

- (a) All relocation or modification of Utilities referred to in clause 19.1(b)(i):
 - (i) have a defects liability period which:
 - (A) begins on the date TfNSW notifies RCC in writing that the work is complete; and
 - (B) expires 12 months after the date of completion of the work;

- (ii) a further defects liability period of 12 months in respect of any work which is the subject of a notice from RCC under paragraph (b), which begins on the date on which the Defect is rectified,

(in aggregate, the **Defects Liability Period**).

- (b) If RCC identifies any Defects caused by TfNSW in the Utilities referred to in clause 19.1(b)(i) during the Defects Liability Period, RCC may notify those Defects to TfNSW in writing and TfNSW must:

- (i) work together with RCC in relation to the rectification of those Defects (at TfNSW's cost);

- (ii) promptly rectify the Defect:

- (A) within a reasonable period of the date of the notice;

- (B) at times and in a manner causing as little inconvenience on the use of the Utility as is reasonably practicable in the circumstances;

- (C) so that any loss of amenity and inconvenience to the public is minimised; and

- (iii) if reasonably required by RCC, prepare and submit a program and method statement for the performance of the Defect rectification work.

- (c) The parties acknowledge and agree that:

- (i) if TfNSW disagrees with any notice given by RCC under paragraph (b), it may notify RCC and the parties must meet and, in good faith and acting reasonably, discuss and seek to resolve the matter. If the parties are still unable to resolve the matter, it will be determined by the Independent Certifier; and

- (ii) to the extent TfNSW performs further works to Utilities the subject of a paragraph (b) notice, a further defects liability period as referred to in paragraph (a)(ii) applies to those Utilities.

- (d) **Failure to correct**

If:

- (i) TfNSW does not commence or complete rectification of a Defect within 90 days after the relevant notice (or after resolution of a dispute under paragraph (c)), RCC may (without prejudice to any other rights RCC may have) notify TfNSW in writing that it will rectify the Defect itself or engage others to rectify the Defect, in which case the costs incurred by RCC in doing so will be a debt due and payable by TfNSW to RCC; and/or

- (ii) RCC identifies a Defect which poses an actual or potential safety risk to the public, RCC may notify TfNSW in writing of the Defect and direct that TfNSW commence rectification of the Defect within 30 days of the date of receipt of RCC's notice by TfNSW. TfNSW must rectify the Defect as soon as is practicable in the circumstances.

19.4 **Carrying out works in relation to any other Utilities**

TfNSW acknowledges and agrees that RCC is not responsible for any work relating to the relocation, removal, modification or protection of Utilities referred to in clause 19.1(b)(ii) and (iii).

20. **DELIVERY OF THE PROJECT**

20.1 **Commencing and carrying out the Works**

- (a) TfNSW may, at any time, commence and carry out the Works in accordance with the Works Site Access Principles Schedule.
- (b) Without limiting paragraph (a), TfNSW must:
 - (i) ensure that the Works being carried out on, in or under an Occupied Works Site comply with all applicable laws (except where this Agreement states otherwise), the requirements of all applicable Authorisations and this Agreement;
 - (ii) deliver the completed Works in accordance with the Construction Documentation; and
 - (iii) use new materials in relation to the rectification of damage caused by the Works if consistent with good industry practice and, subject to clause 6.2(c)(i), undertake rectification of damage caused by the Works to the Public Domain areas in accordance with the Urban Design Guidelines.
- (c) If any part of the Construction Documentation are sought to be materially altered during the construction phase of the Project, to the extent:
 - (i) the Construction Documentation is relevant to RCC and its local government area; or
 - (ii) required to verify compliance with this Agreement,clause 6.4 of this Agreement will apply to any such proposed alterations.

20.2 **Inspection points by the Independent Certifier**

- (a) During the period of construction of the Works in the local government area administered by RCC, TfNSW must give RCC and the Independent Certifier at least 2 Business Day's written notice in advance of when construction that affects:
 - (i) any existing RCC owned or controlled assets, including Utilities; or
 - (ii) assets that will, in the future, be handed over to RCC as Permanent RCC Assets,is, from time to time and in accordance with the Urban Design Guidelines, about to reach a hold-point as identified in the Urban Design Guidelines (**Inspection Point Notice**).
- (b) Following receipt of an Inspection Point Notice, the Independent Certifier must:
 - (i) notify RCC and TfNSW of the date and time on which the Independent Certifier will inspect the Works referred to in paragraph (a); and

- (ii) subject to clause 6.2(c)(i), inspect the progress of the relevant Works to verify whether those Works have been undertaken in accordance with the Urban Design Guidelines.
- (c) The Independent Certifier must, within 5 Business Days of the inspection, provide to RCC and TfNSW a written copy of the Independent Certifier's findings from the inspection.
- (d) TfNSW acknowledges that RCC may exercise its right of inspection of the Works Site to attend the inspection on the following basis:
 - (i) clause 18.3(d) and clause 18.4(e) will apply to that inspection; and
 - (ii) for the avoidance of doubt, the notice periods in clause 18.3(b) and clause 18.4(d) will not apply to those inspections.

20.3 **Installation of parking signs, traffic signs and line marking**

- (a) TfNSW will be responsible (at its cost) for the supply and installation of parking signs, traffic signs and line marking within an Occupied Works Site which are required to be supplied and installed as a direct consequence of the Project. TfNSW may re-use existing signage removed as a consequence of the Project which is fit for purpose.
- (b) Excluding the area described in paragraph (a), RCC will otherwise be responsible (at its cost) for the supply and installation of parking signs, traffic signs and line marking within the local government area administered by RCC.
- (c) It is acknowledged and agreed by the parties that the "Local Traffic Committee" will consider the location, and type, of any regulatory signs and line marking to be installed within the local government area administered by RCC.
- (d) TfNSW will be responsible (at its cost) for installing temporary signage for the diversion of pedestrian, vehicular and cyclist traffic as a consequence of the Works.

20.4 **Works that are not included in the Project**

The parties agree that, as between RCC and TfNSW, TfNSW does not have responsibility to RCC under this Agreement to undertake any of the following:

- (a) any alterations or upgrades required to any public laneways;
- (b) any works outside of the Works Site, except as contemplated by this Agreement; or
- (c) any works within the local government area administered by RCC not contemplated by the Planning Approval or this Agreement.

20.5 **Permanent RCC Assets**

(a) Delivery

- (i) The parties acknowledge that Permanent RCC Assets will be installed, constructed, relocated or altered as part of the Project by TfNSW.
- (ii) All Permanent RCC Assets installed, constructed, relocated or altered as part of the Project must be located outside of the Permanent Light Rail Corridor, excluding underground conduits, pipes and ducts that cross beneath the

Permanent Light Rail Corridor or other items that may be agreed between the parties (acting reasonably).

- (iii) TfNSW will supply, install, construct, relocate or alter the Permanent RCC Assets at its cost, in accordance with the Technical Requirements and any other relevant terms of this Agreement. Once the relevant works in relation to the Permanent RCC Assets are complete, the Permanent RCC Assets must be structurally adequate and fit for their intended purpose. Subject to the above, RCC acknowledges and agrees that:
 - (A) in respect of existing Permanent RCC Assets that are relocated by TfNSW, the structural adequacy and fitness for purpose of those assets is to be at least an equivalent standard of the asset prior to the relocation by TfNSW; and
 - (B) in determining what comprises "fit for purpose":
 - (aa) TfNSW is not required to supply, install or construct new Permanent RCC Assets to a standard or quality that is higher than RCC would ordinarily supply, install or construct those assets or to a standard which is higher than as contemplated under this Agreement; and
 - (bb) subject to clause 6.2(c)(i), the requirements in the Urban Design Guidelines will apply to determine such purpose.
- (iv) TfNSW must transfer ownership and control of each Permanent RCC Asset to RCC on the date on which the conditions of handover described in paragraphs (c)(i) and (ii) are met and otherwise in accordance with the process described in this clause 20.5 and Schedule 6.

(b) Progressive completion of Permanent RCC Assets

TfNSW must progressively complete the Permanent RCC Assets and, on expiry of a Works Site Licence, handover each of the Permanent RCC Assets within the Occupied Works Site the subject of that Works Site Licence to RCC as soon as practicable to ensure that:

- (i) any loss of amenity and inconvenience to the public is minimised;
- (ii) the completion of the Permanent RCC Assets and handover of the Permanent RCC Assets occurs in a smooth and orderly manner; and
- (iii) completion of the Works is not delayed.

For the avoidance of doubt, Permanent RCC Assets are to be handed over to RCC on the same date as the corresponding Works Site Licence for those Permanent RCC Assets expires.

(c) Conditions of handover for Permanent RCC Assets

- (i) Handover of Permanent RCC Assets to RCC must not occur until:
 - (A) RCC has had a reasonable opportunity to inspect the relevant Permanent RCC Assets prior to the proposed handover;

- (B) the relevant Permanent RCC Assets have been completed in accordance with the Construction Documentation and have reached Practical Completion and TfNSW has provided all appropriate certificates and certifications in respect of the Permanent RCC Assets;
- (C) the relevant Permanent RCC Assets are able to be handed over in accordance with the condition referred to in the Urban Design Guidelines, subject to clause 6.2(c)(i); and
- (D) that part of the Works Site on which the relevant Permanent RCC Assets are located is ready to be handed back to RCC in accordance with clause 3 of the Works Site Access Principles;
- (E) TfNSW has notified RCC in writing that the relevant Permanent RCC Assets have reached Practical Completion and are ready for handover in accordance with this Agreement. This notice must:
 - (aa) clearly describe the relevant Permanent RCC Assets being handed over and their location;
 - (bb) contain all other information and documentation that an owner of the asset would reasonably require; and
 - (cc) include a date, no earlier than 20 Business Days from the date of service of the notice on RCC, that the relevant Permanent RCC Assets are proposed to be handed over to RCC,

(Proposed Handover Notice); and
- (F) RCC has either:
 - (aa) given TfNSW a notice accepting handover of the relevant Permanent RCC Assets, as described in the Proposed Handover Notice on the hand over date proposed in the Proposed Handover Notice (**Acceptance Notice**). RCC must either:
 - issue the Acceptance Notice; or
 - otherwise notify TfNSW of the reasons why it objects to the handover of the relevant Permanent RCC Assets at that time,

prior to the hand over date in the Proposed Handover Notice;
 - (bb) failed to give an Acceptance Notice to TfNSW within 10 Business Days of TfNSW's notice under paragraph (E).
- (ii) If RCC issues a notice under paragraph (c)(i)(F)(aa)(second bullet point) and TfNSW:
 - (A) agrees with the objections given in that notice, TfNSW will rectify those matters and complete the relevant works. TfNSW will then issue RCC with a new Proposed Handover Notice for those rectified Permanent RCC Assets and this clause 20.5(c) will re-apply to the rectified Permanent RCC Assets; or

- (B) disagrees with the objections given in that notice, TfNSW must refer the matter to the Independent Certifier. If the Independent Certifier determines that the objections notified by RCC under paragraph (c)(i)(F)(aa)(second bullet point) are valid matters which prevent completion of the Permanent RCC Assets in accordance with this Agreement, TfNSW will rectify those matters identified by the Independent Certifier.
- (iii) The Independent Certifier must issue a certification in relation to rectification of the matters referred to in paragraph (c)(ii)(B), following completion of the relevant works by TfNSW.
- (iv) The Handover Date for a Permanent RCC Asset will occur on the earlier of:
 - (A) the hand over date confirmed in RCC's Acceptance Notice for that Permanent RCC Asset; and
 - (B) if an Acceptance Notice is not given by RCC, the date for hand over referred to in the Proposed Handover Notice; and
 - (C) 1 Business Day after the Independent Certifier issues to RCC the certification for that Permanent RCC Asset referred to in paragraph (c)(iii).

(d) Handover of Permanent RCC Assets

Subject to paragraph (c), on and from the Handover Date:

- (i) RCC will own, control and have sole responsibility for the relevant Permanent RCC Assets;
- (ii) the Permanent RCC Assets Principles will apply to the relevant Permanent RCC Assets; and
- (iii) except in relation to defects rectification, negligence, latent defects or breach of this Agreement by TfNSW, TfNSW will have no liability and RCC releases TfNSW from all Claims in relation to the relevant Permanent RCC Assets.

(e) Defects Liability Period

- (i) Each Permanent RCC Asset handed over to RCC pursuant to paragraph (d) has:
 - (A) a defects liability period which:
 - (aa) begins on the Handover Date for that Permanent RCC Asset;
 - (bb) excluding new trees planted by TfNSW, expires 12 months after the Handover Date; and
 - (cc) for new trees planted by TfNSW, expires 24 months after the Handover Date;
 - (B) a further defects liability period of 12 months in respect of any Defect the subject of a notice from RCC under paragraph (e)(ii), which begins on the date on which the Defect is rectified,

(in aggregate, the **Defects Liability Period**).

- (ii) If RCC identifies what it considers to be any Defects in the Permanent RCC Assets during the Defects Liability Period, RCC may notify those Defects to TfNSW in writing and the following will apply:
 - (A) the Independent Certifier will determine whether RCC has identified Defects which require rectification by TfNSW in accordance with this Agreement and will notify RCC and TfNSW of the Defects that must be rectified by TfNSW;
 - (B) TfNSW will work together with RCC in relation to the rectification of the Defects identified in the Independent Certifier's notice under paragraph (e)(ii)(A) (such rectification works to be at TfNSW's cost);
 - (C) TfNSW will rectify the Defect;
 - (aa) within a reasonable period of time after the date of the Independent Certifier's notice under paragraph (e)(ii)(A);
 - (bb) at times and in a manner causing as little inconvenience on the use of the relevant Permanent RCC Assets as is reasonably practicable; and
 - (cc) so that any loss of amenity and inconvenience to the public is minimised to the extent reasonably practicable; and
 - (D) if reasonably required by RCC, prepare and submit a program and method statement for the performance of the Defect rectification work.
- (iii) The parties acknowledge and agree that despite the provision of an Acceptance Notice or certification by the Independent Certifier (as applicable), TfNSW may later require access to the areas of the Works Site relevant to that notice to undertake the Defect rectification work.

(f) Failure to correct

If:

- (i) TfNSW does not commence or complete rectification of a Defect within 90 days of the date of the Independent Certifier's notice under paragraph (e)(ii)(A), RCC may (without prejudice to any other rights RCC may have) notify TfNSW in writing that it will rectify the Defect itself or engage others to rectify the Defect, in which case the costs incurred by RCC in doing so will be a debt due and payable by TfNSW to RCC; and/or
- (ii) RCC identifies a Defect which poses an actual or potential safety risk to the public, RCC may notify TfNSW in writing of the Defect and direct that TfNSW commence rectification of the Defect within 30 days of the date of receipt of RCC's notice by TfNSW. TfNSW must rectify the Defect as soon as is practicable in the circumstances.

20.6 Other developments

RCC will, to the extent RCC is aware of the relevant development projects, provide and keep TfNSW updated with information regarding any development projects planned to be carried

out during the construction phase of the Project that may impact on the Project, including in accordance with its obligations under State Environmental Planning Policy (Infrastructure) 2007.

21. **FUNDAMENTAL OBLIGATIONS AND SUSPENSION OF THE PROJECT OR DELAY IN THE WORKS**

21.1 **Fundamental Obligations**

The parties acknowledge and agree that the following obligations of TfNSW under the Urban Design Guidelines are fundamental to RCC:

- (a) section 4 – Planting Palette in Volume 1; and
 - (b) section 5 – Materials and Furniture Palette in Volume 1,
- (collectively, **Fundamental Obligations**).

21.2 **Breach of a Fundamental Obligation**

If TfNSW breaches a Fundamental Obligation:

- (a) RCC may give a notice in writing to TfNSW of the breach of the Fundamental Obligation and must provide reasonable details regarding the breach; and
- (b) as soon as reasonably practicable after receipt of the notice by TfNSW, the Deputy Director General of TfNSW and the Mayor of RCC must meet to discuss and seek to resolve the breach of the Fundamental Obligation.

21.3 **Notice by RCC in event of suspension or significant delay**

- (a) If RCC considers (acting reasonably) that there has been a suspension of the Project or a significant delay in the Works, RCC may notify TfNSW in writing of the suspension or significant delay and, together with such notice, must provide details of the suspension or significant delay.
- (b) Within 15 Business Days of receipt by TfNSW of RCC's notice under paragraph (a), RCC and TfNSW must meet and in good faith and acting reasonably discuss whether a suspension of the Project or delay in the Works has occurred and, if this is agreed, any measures that will be undertaken by TfNSW to mitigate the impact of such suspension of the Project or delay in the Works on RCC.

22. **WORK HEALTH AND SAFETY**

22.1 **TfNSW obligations**

- (a) TfNSW must carry out the Works on an Occupied Works Site, and must ensure that any third parties engaged to carry out the Works on an Occupied Works Site do so:
 - (i) in accordance with WHS Laws;
 - (ii) in a manner which seeks to eliminate risks to health and safety, so far as is reasonably practicable, or if it is not reasonably practicable to do so, minimise those risks so far as is reasonably practicable.
- (b) TfNSW must ensure, so far as is reasonably practicable, that any TfNSW's Employees and Agents carrying out the Works on an Occupied Works Site are

provided with any information, training, instruction and supervision that is necessary to protect all persons from risks to their health and safety arising from the Works.

- (c) TfNSW acknowledges and agrees that, on and from the date of grant of a Works Site Licence to an Occupied Works Site, TfNSW has management and control of the relevant Occupied Works Site for the purpose of the WHS Act.

22.2 **RCC Obligations**

- (a) If, prior to the date of the grant of a Works Site Licence, RCC arranges for or carries out work on that part of the Works Site, RCC may be a PCBU in respect of that work within the meaning of the WHS Act. If, and to the extent that RCC is a PCBU, RCC must comply with the duties of a PCBU under the WHS Act.
- (b) RCC must notify TfNSW as soon as reasonably practicable after becoming aware of any hazard or potential hazard in or around the Works Site, which RCC reasonably believes has not:
 - (i) been managed in a way that eliminates or minimises risks to health and safety so far as is reasonably practicable; and
 - (ii) already been brought to the attention of TfNSW.

22.3 **Consultation**

- (a) TfNSW and RCC must consult, co-operate and co-ordinate activities with:
 - (i) each other if and to the extent they both hold a duty under the WHS Act in relation to the same matter relating to the Works Site or any part of the Works Site; and
 - (ii) other PCBUs carrying out work on the Works Site from time to time if and to the extent they have duties under the WHS Act in relation to the same matter.
- (b) TfNSW and RCC must consult with any of their respective Workers who are, or are likely to be, directly affected by a matter relating to work health or safety arising from the Project, including consulting with Workers:
 - (i) when identifying and minimising risks to health and safety;
 - (ii) when proposing changes that may affect the health or safety of Workers; and
 - (iii) about any risks posed to those Workers by the activities of other PCBU's on the Works Site.

23. **PERMANENT LIGHT RAIL CORRIDOR**

23.1 **Principles in relation to the Permanent Light Rail Corridor**

TfNSW and RCC acknowledge and agree that:

- (a) as at the date of this Agreement, the requirements for the Permanent Light Rail Corridor are not known and cannot be ascertained until the design for the Project is finalised;
- (b) as at the date of this Agreement, TfNSW has not determined whether the Permanent Light Rail Corridor to be provided as part of the Project will be by way of contractual

licence, an interest in land (such as a series of easements or a leasehold interest) or by way of statutory rights or a combination of these mechanisms;

- (c) they will work together in good faith and acting reasonably to develop the principles for the Permanent Light Rail Corridor as soon as practicable in the circumstances which will include, as a minimum, the following requirements:
- (i) the Permanent Light Rail Corridor will be sufficient to enable the Light Rail to be safely commissioned, operated and maintained;
 - (ii) the Permanent Light Rail Corridor rights and obligations will commence at the expiry of a Works Site Licence if Light Rail systems and infrastructure have been installed in the relevant area of the Works Site;
 - (iii) the Permanent Light Rail Corridor will:
 - (A) not extend beyond what is required to operate and maintain the Light Rail and to ensure safety and compliance with law and the requirements of Authorities;
 - (B) generally be 6.6 metres wide plus Stops and may include the area between the DKE plus the Stops;
 - (C) include all light rail infrastructure, including track, track slab and infrastructure at Stops but may exclude (if necessary), certain Light Rail services and catenary poles and wires in which case, necessary easements or licence rights will be granted in respect of such Light Rail infrastructure and services;
 - (iv) the Permanent Light Rail Corridor will not include any Permanent RCC Assets, excluding underground conduits, pipes and ducts that cross beneath the Permanent Light Rail Corridor or other items that may be agreed between the parties (acting reasonably);
 - (v) if parts of any Permanent RCC Assets (such as outreach arms on light poles) extend into the Permanent Light Rail Corridor, RCC will continue to own those assets and TfNSW will ensure that RCC has adequate rights to access, maintain and operate those assets;
 - (vi) at the expiry of the term of the Agreement in accordance with clause 1.2, the make good by TfNSW of the land comprising the Permanent Light Rail Corridor (to remove Light Rail infrastructure from the land) and the return of that land to RCC;
- (d) during the term of this Agreement, RCC agrees not to:
- (i) sell, assign or dispose of any land, or any of RCC's interest in any land, forming part of the Permanent Light Rail Corridor; or
 - (ii) enter into any other transaction, create or grant any interest or do any other thing which has the effect of granting another person the benefit of, control of or possession of, any land forming part of the Permanent Light Rail Corridor,
- without the prior written consent of TfNSW (which cannot be unreasonably withheld or delayed);

- (e) the costs of preparing any surveys or other documents required to define the Permanent Light Rail Corridor will be paid by TfNSW; and
- (f) if, at any time during the term of this Agreement, the design of the Permanent Light Rail Corridor changes and TfNSW no longer requires areas of the Permanent Light Rail Corridor for Light Rail operations, TfNSW will notify RCC and the parties will seek to agree, in good faith, on the make good and return of those areas to RCC.

23.2 Operation of the Project on and from the Permanent Light Rail Corridor

- (a) The parties acknowledge and agree as follows:
 - (i) on and from completion of the Works, there will be a range of interface and operational matters relevant to the local government area administered by RCC, the Permanent Light Rail Corridor and the on-going operation and maintenance of the Project; and
 - (ii) the parties will develop and agree to a maintenance plan setting out the interface and operational matters referred to in paragraph (a)(i) and will, for the term of this Agreement, comply with the maintenance plan and update the maintenance plan from time to time as required.

For the avoidance of doubt, the agreements referred to in this clause do not comprise interface agreements within the meaning of section 4(1) of the *Rail Safety National Law (NSW) No 82a*.

- (b) In relation to the pruning of trees, TfNSW and RCC agree as follows:
 - (i) TfNSW and RCC must work together (acting reasonably) to develop a protocol for the pruning of tree branches which encroach into the Permanent Light Rail Corridor;
 - (ii) the protocol must take into account the operational and safety requirements of the Project and specify when pruning is to occur;
 - (iii) it will be TfNSW's responsibility to prune all tree branches that encroach into the Permanent Light Rail Corridor, however no pruning will be undertaken without the prior approval of RCC (acting reasonably and promptly) and the pruning must be undertaken in accordance with the Urban Design Guidelines; and
 - (iv) the protocol is to apply during the operation of the Light Rail.

23.3 Access to the Permanent Light Rail Corridor

- (a) During the operations phase of the Project, TfNSW agrees that the parties will work together to ensure that RCC may access the Permanent Light Rail Corridor:
 - (i) for the purpose of undertaking any works or activities necessary to respond to any Emergency; or
 - (ii) to undertake routine repair and maintenance work relating to the Permanent RCC Assets, during a scheduled shut down of the Light Rail,

on similar principles to those set out in clauses 18.3 and 18.4 and RCC will not be charged any access fees or other fees to do so.

- (b) TfNSW will keep RCC informed of scheduled shut down periods, so RCC can plan routine repair and maintenance work.
- (c) The right for RCC to access the Permanent Light Rail Corridor under paragraph (a) does not apply to any works or activities which relate to the Overhead Catenary or other Light Rail systems and infrastructure (such works to be undertaken solely by or on behalf of TfNSW).

24. MAINTENANCE AND CLEANING

24.1 Maintenance

- (a) TfNSW will be responsible for ensuring the maintenance of:
 - (i) all Light Rail rolling stock and track work and all other Light Rail infrastructure, including substructures and its supports within the Permanent Light Rail Corridor, Overhead Catenary and catenary poles; and
 - (ii) all areas of the Permanent Light Rail Corridor (including Stops), excluding the Permanent RCC Assets (if any).
- (b) As between RCC and TfNSW, RCC will be responsible for ensuring the maintenance of all the local government area administered by RCC outside of the Permanent Light Rail Corridor. Any maintenance by RCC within 900mm of the DKE will be carried out in accordance with TfNSW's safety protocols, which will be developed in consultation with RCC at the same time as the principles in relation to the Permanent Light Rail Corridor under clause 23.1 are developed.
- (c) If the parties agree that it is appropriate for RCC to carry out any maintenance works in relation to the infrastructure or areas that are the responsibility of TfNSW as referred to in paragraph (a), the parties, or RCC and the operator of the Project, will enter into a separate arrangement in relation to such maintenance.

24.2 Cleaning

- (a) TfNSW will be responsible for ensuring the cleaning of all areas of the Permanent Light Rail Corridor (including Stops), excluding the Permanent RCC Assets (if any).
- (b) As between RCC and TfNSW, RCC will be responsible for ensuring the cleaning of the local government area administered by RCC outside of the Permanent Light Rail Corridor. Any cleaning by RCC within 900mm of the DKE will be carried out in accordance with TfNSW's safety protocols, which will be developed in consultation with RCC at the same time as the principles in relation to the Permanent Light Rail Corridor under clause 23.1 are developed.
- (c) If the parties agree that it is appropriate for RCC to carry out any cleaning in areas that are the responsibility of TfNSW as referred to in paragraph (a), the parties, or RCC and the operator of the Project, will enter into a separate arrangement in relation to such cleaning.

24.3 Installation of bins

- (a) The parties acknowledge and agree that:
 - (i) the current intention of TfNSW is to design the Project so that there are no bins at the Stops; and

- (ii) in some circumstances, it may be appropriate to install new bins in the vicinity of the Stops but outside the Permanent Light Rail Corridor.
- (b) If the parties agree (acting reasonably) that the installation of additional bins in the vicinity of the Stops is appropriate, RCC may install those additional bins.

25. DDA COMPLIANCE

25.1 Compliance and consultation

- (a) If, after the completion of the Works, TfNSW is required to make changes to the Project in order to comply with the DDA or the requirements of the Disability Discrimination Commissioner, TfNSW may make those changes and will not be in breach of this Agreement.
- (b) During the term of this Agreement, TfNSW will regularly consult with RCC in relation to the DDA and will keep RCC informed of any issues regarding the DDA.

26. ADVERTISING AND OTHER THIRD PARTY RIGHTS

26.1 Existing Advertising and Street Furniture Contract

- (a) TfNSW acknowledges that:
 - (i) RCC has entered into the Existing Advertising and Street Furniture Contract; and
 - (ii) it is not entitled to the advertising or other revenue generated in relation to the advertising and other rights granted under:
 - (A) the Existing Advertising and Street Furniture Contract; or
 - (B) any other advertising and street furniture contract entered into by RCC in respect of the public domain areas outside of the Permanent Light Rail Corridor.
- (b) RCC agrees not to:
 - (i) vary the Existing Advertising and Street Furniture Contract; or
 - (ii) renew or extend the term of the Existing Advertising and Street Furniture Contract,

to the extent that the Existing Advertising and Street Furniture Contract or any provision in it relates to or impacts on the Works Site or the Project, except with the prior written consent of TfNSW (acting reasonably and in a timely manner).
- (c) In relation to the Existing Advertising and Street Furniture Contract, the principles in Part 2 of Schedule 9 apply.

26.2 Third party rights

Subject to clause 26.1, RCC agrees not to enter into any advertising, licensing or street furniture contractual arrangements with third parties, including the grant of rights or interests in land to any third party, which:

- (a) relates to any part of the Works Site during the construction phase of the Project or that will impede the safe operation of the Light Rail during the operation phase of the Project;
- (b) may be inconsistent with the Project or any matter referred to in this Agreement;
- (c) may impact on the Project; or
- (d) derogates from the rights of TfNSW under this Agreement,

without the prior written consent of TfNSW (TfNSW is to act reasonably and promptly).

26.3 Naming and advertising rights in relation to the Project

- (a) Each of TfNSW and RCC will have the right to publicise the delivery and operation of the Project.
- (b) Subject to clause 26.4, the parties agree that neither RCC nor TfNSW has any right to have any advertising (including commercial or revenue generating advertising), or to facilitate or allow such advertising, in the Permanent Light Rail Corridor, including at the Stops (but excluding Light Rail rolling stock).
- (c) As between the parties:
 - (i) TfNSW will have the sole rights to any advertising or other revenue that may be derived from any advertising or other arrangements associated with the Light Rail rolling stock;
 - (ii) RCC will have the sole rights to any advertising revenue that may be derived from any advertising placed from time to time on:
 - (A) subject to paragraph (b), the Permanent RCC Assets under the control and responsibility of RCC in accordance with clause 20.5(d); and
 - (B) any Public Domain areas outside of the Permanent Light Rail Corridor during the operations phase; and
 - (iii) TfNSW will have the sole rights to naming of the Project and the Stops but will inform RCC of the naming of the Stops as early as is practicable in the circumstances and will consult with RCC regarding the final naming of the Stops. TfNSW acknowledges that RCC's preferred Stop names are as set out in Schedule 4.
- (d) The parties acknowledge and agree that:
 - (i) all Light Rail rolling stock will be fitted with in-car screens capable of displaying passenger information, including wayfinding and present-location information; and
 - (ii) the content of the in-car screens will not include advertising.

- (e) TfNSW may, at any time, assign, transfer or novate any rights of TfNSW under this clause 26.3 or clause 26.4 to any operator of the Project.

26.4 No restriction as to safety and operational signage

The parties acknowledge that no other provision in this clause 26 will limit the right of TfNSW to install signage or equipment required for the purposes of:

- (a) maintaining safety;
- (b) timetabling, directional or other passenger, operational or transport information; or
- (c) the operation of the Light Rail,

from time to time in the Permanent Light Rail Corridor (including at the Stops).

27. RESOURCING AND COMMUNITY

27.1 Resourcing contribution by RCC

- (a) RCC agrees, at its cost, to make available to TfNSW reasonable resources, including personnel and information, to facilitate the practical, on-going collaboration between the parties in relation to the Project.
- (b) The personnel to be provided by RCC under paragraph (a) will work together with the TfNSW integrated Project team on those aspects of the Project which impact on the local government area administered by RCC or other relevant matters set out in this Agreement.

27.2 Stakeholder and community engagement and communications

- (a) TfNSW will prepare a community involvement and stakeholder strategy.
- (b) The parties:
 - (i) will, where possible, work co-operatively to achieve the best practicable outcomes for stakeholders, the community and those affected by the Project during delivery of the Works in the local government area administered by RCC;
 - (ii) acknowledge that stakeholder and community engagement is important in relation to the impact of the Works on the local government area administered by RCC; and
 - (iii) will comply with, work together and regularly consult in relation to the implementation and effectiveness of stakeholder and community engagement in relation to the impact of the Works on the local government area administered by RCC, and TfNSW will develop a project specific strategy for stakeholder and community engagement in consultation with RCC;
 - (iv) agree that the strategy will include:
 - (A) identifying, and where possible, responding to the needs of stakeholders and the community;
 - (B) providing opportunities to encourage stakeholder and community feedback;

- (C) keeping stakeholders and the community regularly informed of the progress of the Project;
 - (D) providing easily accessible information about the Project; and
 - (E) being transparent in dealing with stakeholders and the community; and
- (v) must revise their approach to stakeholder and community engagement in relation to the impact of the Works on the local government area administered by RCC on an as-needed basis.
- (c) TfNSW will, to the extent practicable, provide RCC with a copy (in advance) of all written correspondence relating to the Project and issued generally to the public within the local government area administered by RCC.
- (d) A party will notify the other party in writing if:
- (i) any complaint is made or any proceedings are instituted; or
 - (ii) any order or direction is made,
- by any person (including any Authority or any landowner, lessee, tenant or licensee on or near the Works Site) in relation to the Project and in respect of any allegation of:
- (iii) non-compliance with any law; or
 - (iv) any nuisance or disturbance caused by carrying out the Project.
- (e) The parties will:
- (i) deal proactively with any complaint, proceedings, order or direction referred to in paragraph (c);
 - (ii) take appropriate measures to resolve those matters as soon as possible;
 - (iii) regularly update the other party in respect of those matters; and
 - (iv) give the other party any other information it reasonably requires in respect of those matters.

28. INTELLECTUAL PROPERTY

28.1 Intellectual Property in RCC Background IP

- (a) The parties acknowledge that RCC retains ownership of all of the RCC Background IP.
- (b) RCC grants TfNSW a non-exclusive, perpetual, irrevocable, transferable, royalty free and worldwide licence to use, adapt, reproduce, modify and exploit the RCC Background IP for the purposes of the Project in accordance with the terms of this Agreement.
- (c) TfNSW may sub-licence the licence granted under paragraph (b) to one or more contractors engaged for the purposes of the Project.
- (d) RCC warrants to the best of its knowledge and belief after making all reasonable enquiries that TfNSW's use, and TfNSW's sub-licensee's use, of the RCC Background

IP for the Project will not infringe any Intellectual Property rights of any person nor give rise to any liability to make royalty or other payments to any person.

28.2 Intellectual Property in Project Deliverables and Permanent RCC Assets

- (a) All Intellectual Property in the Project Deliverables will be owned absolutely by TfNSW and vest in TfNSW immediately on creation.
- (b) To the extent that RCC may at any time acquire any right, title or interest in any Project Deliverables, RCC, by this Agreement, assigns to TfNSW all such right, title and interest with immediate effect on creation or acquisition of the relevant right, title or interest.
- (c) RCC will give TfNSW all information and assistance TfNSW reasonably requests to facilitate any application for registration or protection of any Intellectual Property in any Project Deliverables and will execute and deliver any documents required in connection with any such application.
- (d) TfNSW grants RCC a non-exclusive, perpetual, and royalty free licence to use, adapt, reproduce, modify and sub-licence the Intellectual Property owned by TfNSW in the Permanent RCC Assets for the sole purpose of RCC's use and maintenance of the Permanent RCC Assets within the local government area administered by RCC.
- (e) Any infringement by TfNSW or TfNSW's agents, employees, contractors or subcontractors of any rights of a third party in respect of the Intellectual Property of that party as a consequence of performing the Works is at TfNSW's sole cost and responsibility.

28.3 Copyright and Moral Rights

- (a) The parties acknowledge that the Project or the Works may impact on "works" or "subject matter other than works" (both as defined in the *Copyright Act 1968* (Cth)) within or in the vicinity of the Works Site.
- (b) On the written request of TfNSW, RCC agrees to provide to TfNSW:
 - (i) any information regarding any "works" or "subject matter other than works" that may be impacted by the Project or the Works, including contact details for the relevant artist, to the extent held by, or available to, RCC; and
 - (ii) such reasonable assistance as is required by TfNSW to allow TfNSW to comply with any applicable requirements of the *Copyright Act 1968* (Cth) that TfNSW has an obligation to comply with in relation to such "works" or "subject matter other than works".
- (c) On the written request of RCC, TfNSW agrees to provide to RCC such reasonable assistance as is required by RCC to allow RCC to comply with any applicable requirements of the *Copyright Act 1968* (Cth) that RCC has an obligation to comply with in relation to such "works" or "subject matter other than works".
- (d) Any infringement by TfNSW of any Moral Rights of a third party as a consequence of performing the Works is at TfNSW's sole cost and responsibility.

29. INSURANCES

29.1 Required insurances

TfNSW will (at its own cost) effect and maintain, or procure that TfNSW's contractors effect and maintain, in respect of the Works or the operation of the Light Rail (as applicable):

- (a) **(public and products liability insurance)**: a public and products liability insurance policy written on an occurrence basis, which covers the liability of TfNSW's main contractor (including to TfNSW) in respect of:
 - (i) damage to, loss or destruction of, or loss of use of, real or personal property; and
 - (ii) injury to, or death or disease of, any persons (other than employees),
arising out of, or in connection with, the Works or the operation of the Light Rail (as applicable) for the amount referred to in Item 6 of Schedule 1;
- (b) **(contract works insurance)**: a contract works material damage insurance policy which covers physical loss or damage to the Works (including demolition, temporary and permanent works) and any other property in connection with the carrying out of the Works for the amount referred to in Item 7 of Schedule 1. This policy will include an allowance for removal of debris, professional fees and expediting expenses and coverage for all testing and commissioning activities in connection with the Works;
- (c) **(workers compensation insurance)**: workers' compensation insurance as required by law and, where common law claims can be brought outside of the relevant statutory workers compensation or accident compensation scheme, employer's liability insurance covering any injury, damage, expense, loss or liability suffered or incurred by any persons employed by TfNSW's main contractor or engaged in performing the Works or the operation of the Light Rail (as applicable) or their dependants;
- (d) **(plant and equipment insurance)**: a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased) which is used in connection with the carrying out of the Works or the operation of the Light Rail (as applicable) for not less than market value; and
- (e) **(professional indemnity insurance)**: a project specific professional indemnity insurance policy covering the liability of TfNSW's main contractor in respect of any breach of a duty owed in a professional capacity by TfNSW's main contractor and anyone engaged by them in a professional capacity for the amount referred to in Item 8 of Schedule 1.

29.2 Periods of insurance

TfNSW must maintain, or procure that TfNSW's contractors maintain:

- (a) the insurances referred to in clause 29.1(a), clause 29.1(c) and clause 29.1(d) from any time prior to the submission of any Design Documents under clause 6.4 until the completion of the decommissioning activities of the Light Rail by TfNSW on the Permanent Light Rail Corridor;

- (b) the insurances referred to in clause 29.1(b) from any time prior to the submission of any Design Documents under clause 6.4 until the commencement of the operation of the Light Rail; and
- (c) the professional indemnity insurance policy referred to in clause 29.1(e):
 - (i) in relation to the construction phase of the Project from any time prior to the submission of any Design Documents under clause 6.4 until the date which is 7 years after the commencement of the operation of the Project; and
 - (ii) in relation to the operation phase of the Project from the commencement of the operations until the completion of the decommissioning activities of TfNSW in relation to the Light Rail on the Permanent Light Rail Corridor.

29.3 Terms of insurance

- (a) The insurances referred to in clause 29.1 must be effected and maintained with either:
 - (i) the NSW Self Insurance Corporation ABN 97 369 689 650; or
 - (ii) an insurance company with a credit rating (or in the case of an insurer, a financial security rating) of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc (or such other credit rating as TfNSW may determine from time to time, provided that TfNSW consults with RCC prior to determining an appropriate decrease in the credit rating) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.
- (b) The minimum sums insured for the insurances referred to in clause 29.3(c), clause 29.3(d) or clause 29.3(e) in relation to the operation of the Light Rail will be reviewed by TfNSW on each anniversary of the commencement of the operation of the Light Rail to determine whether and by how much the minimum sums insured should be increased or decreased, having regard to the opinion of a reputable insurance broker as to prudent insurance practice at the time. If the review by TfNSW results in a determination that the minimum sums should be decreased, TfNSW will consult with RCC prior to effecting any changes.
- (c) TfNSW must ensure that the public liability and products liability insurance referred to in clause 29.1(a) is in the joint names of TfNSW and RCC (among others).
- (d) All insurances required to be effected by TfNSW in compliance with this clause 29 (other than the insurances referred to in clause 29.1(e)) which name more than one insured, must include a waiver and cross liability clause in which the insurer agrees:
 - (i) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
 - (ii) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
 - (iii) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any insurance;

- (e) TfNSW will procure the punctual payment of all premiums and other amounts payable in respect of the insurances required under this clause 29.
- (f) In respect of the insurances required to be effected and maintained under this clause 29, TfNSW must give RCC a certificate of currency to confirm that the insurances have been effected and maintained in accordance with the requirements of this clause 29 whenever requested by RCC (acting reasonably).
- (g) TfNSW will:
 - (i) not knowingly do or permit, or omit to do, anything which prejudices any insurance required under this clause 29;
 - (ii) rectify anything which might prejudice any insurance required under this clause 29;
 - (iii) reinstate an insurance required to be maintained under this clause 29 if it lapses;
 - (iv) not allow any insurance required to be maintained under the clause 29 to lapse without the prior written consent of RCC (acting reasonably); and
 - (v) comply at all times with the terms of each insurance required under this clause 29.
- (h) TfNSW will notify RCC of any occurrence of which it is aware that may give rise to a claim (other than a claim by TfNSW) under a the public liability insurance required under clause 29.1(a).
- (i) TfNSW acknowledges and agrees that if TfNSW fails to effect and maintain the insurance required by this clause 29, RCC may effect the relevant insurances on behalf of TfNSW and the premiums paid by RCC will be an amount owing to RCC by TfNSW.

SCHEDULE 1

REFERENCE SCHEDULE

Item	Description	Clause	Details
1.	TfNSW Project Director	10.1	Jeff Goodling Phone: 02 9200 0200
2.	TfNSW Representative	10.1, 8.4	Simon Hussey Deputy Project Director Phone: 02 9422 7058
3.	RCC Representative	10.1, 8.4	Jorde Frangoples Director of City Services Phone: 02 9399 0999
4.	TfNSW notice details	13.3(b)	Address: Level 5, Zenith Centre, Tower A, 821 Pacific Highway, Chatswood NSW 2067 Fax number: 02 9200 0290 Attention: Project Director
5.	RCC notice details	13.3(b)	Address: 30 Frances Street, Randwick NSW 2031 Fax number: 02 9319 1510 Attention: General Manager
6.	Public and products liability insurance	29.1(a)	Construction phase: \$500,000,000 for any one occurrence or series of occurrences arising out of the same source or original cause and unlimited in the aggregate during the period of insurance but in the aggregate in respect of all occurrences with respect to products and completed operations liability. Operation phase: \$250,000,000 for any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of insurance.
7.	Contract works insurance	29.1(b)	For the replacement value of the Works.
8.	Professional indemnity insurance	29.1(e)	Construction phase \$50,000,000 for any one claim. Operation phase \$25,000,000 for any one claim and in the aggregate annually.

SCHEDULE 2

WORKS SITE ACCESS PRINCIPLES SCHEDULE

1. Notice regarding parts of the Works Site

- (a) TfNSW may at any time give a notice to RCC setting out:
- (i) the areas of the Works Site to which access is required by TfNSW;
 - (ii) the date that access is first required to each relevant area;
 - (iii) the defined period that access will be required to each relevant area; and
 - (iv) a general description of the Works that will be carried out in the relevant areas of the Works Site,

and TfNSW is entitled to access the Works Site in accordance with the details in such notice and the terms of this Agreement.

- (b) TfNSW will provide a notice referred to in paragraph (a) to RCC at least 60 Business Days prior to the first date of access set out in that notice.
- (c) TfNSW agrees that only those parts of the Works Site that are required to carry out the relevant Works at the relevant time will be the subject of a notice under paragraph (a).
- (d) The parties acknowledge that:
- (i) TfNSW is entering into separate Development Agreements with:
 - (A) the City of Sydney;
 - (B) Australian Turf Club;
 - (C) University of New South Wales; and
 - (D) Centennial Park and Moore Park Trust,in relation to access to the land owned or administered by them (as applicable); and
 - (ii) access to and use of areas owned or administered by City of Sydney, Australian Turf Club, University of New South Wales and Centennial Park and Moore Park Trust by TfNSW for the purpose of the Project will be governed by the Development Agreements referred to in paragraph (d)(i) and the consent of RCC is not required in this respect.

2. Notice regarding Additional Areas

- (a) TfNSW may at any time notify RCC that it proposes access to an Additional Area by setting out:
- (i) the Additional Area to which access is proposed by TfNSW;
 - (ii) the date that access is first proposed to each relevant Additional Area;
 - (iii) the expected period that access will be proposed to each relevant Additional Area;
 - (iv) a general description of the Works that may be carried out in the relevant Additional Area; and
 - (v) when TfNSW proposes to prepare a baseline condition report for the Additional Area, prepared in accordance with clause 3(b)(vi) of this schedule,
- (Proposed Additional Area Notice).**
- (b) Within 20 Business Days of receiving a Proposed Additional Area Notice, RCC will determine whether it is appropriate (to be determined solely by RCC acting reasonably) for all or part of the proposed area described in that notice to be used as an Additional Area and will notify TfNSW that it:
- (i) rejects the Proposed Additional Area Notice;
 - (ii) accepts the Proposed Additional Area Notice, and advising the date that first access will be granted to TfNSW (taking into consideration the date of access requested by TfNSW, acting reasonably); or
 - (iii) accepts the Proposed Additional Area Notice subject to reasonable conditions required by RCC, and advising the date that first access will be granted to TfNSW (taking into consideration the date of access requested by TfNSW, acting reasonably).
- (c) If RCC rejects a Proposed Additional Area Notice of TfNSW under paragraph (b)(i), TfNSW may request that the parties discuss in good faith and acting reasonably such rejection and whether there are alternative means of access, the concerns of RCC in relation to TfNSW accessing the relevant area and/or mitigation of the impacts of TfNSW's access to the Proposed Additional Area to enable TfNSW to carry out the relevant Works on or around the area the subject of the Proposed Additional Area Notice.
- (d) On and from the date that first access will be granted to TfNSW, as notified in an acceptance notice under clause 2(b)(ii) or clause 2(b)(iii), any Additional Areas referred to in that notice become part of the Works Site and all the rights and obligations of the parties under this Agreement in relation to the Works Site apply to those Additional Areas.

3. Principles of access, use and occupation of an Occupied Works Site

- (a) On and from the date on which TfNSW may access part of the Works Site following a notice by TfNSW under paragraph 1(a) or may access an Additional Area under paragraph 2(b):
 - (i) a Works Site Licence commences for that part of the Works Site; and
 - (ii) that part of the Works Site will become an **Occupied Works Site** for the purpose of this Agreement.
- (b) During the term of a Works Site Licence, the following principles will apply:
 - (i) subject to paragraph (b)(vi), TfNSW will be entitled to carry out Works on and from the Occupied Works Site. For the avoidance of doubt, TfNSW is not entitled to carry out the Works on land owned or controlled by RCC except in an Occupied Works Site;
 - (ii) TfNSW will comply with applicable laws (except where this Agreement states otherwise) and the Planning Approval in relation to its use and occupation of the Occupied Works Site and RCC acknowledges that TfNSW will appoint its contractor as principal contractor for the term of each Works Site Licence;
 - (iii) TfNSW occupies and uses the Occupied Works Site at its own risk;
 - (iv) RCC makes no representations or warranties about the suitability or otherwise of the Occupied Works Site for the relevant Works being carried out by TfNSW on and from the Occupied Works Site;
 - (v) the Works will enable the effective management of access to private properties by local access vehicles (including businesses, tenants, residents, emergency service vehicles and reasonable pedestrian access) in accordance with the Planning Approval;
 - (vi) TfNSW will (at TfNSW's cost) ensure that a baseline dilapidation report (**Baseline Report**) is prepared and delivered to RCC in respect of the Occupied Works Site prior to commencing any Works on and from the Occupied Works Site, such report to:
 - (A) include details regarding the condition of the facilities and structures in the Occupied Works Site as at the date of the report;
 - (B) describe any existing items (excluding paving) that are located on, in or under an Occupied Works Site, that are not required as part of the Project, and are owned solely by RCC with no third party use or ownership rights (to the extent known by TfNSW) so they can be dealt with in accordance with this Schedule 2;
 - (vii) TfNSW accepts the condition of the Occupied Works Site and any structures and improvements in the Occupied Works Site in the following state of repair and condition:
 - (A) to the state of repair and condition as outlined in the Baseline Report; or
 - (B) if a Baseline Report does not adequately identify the state of repair and condition of the relevant part of the Occupied Works Site, the state and

condition of the Occupied Works Site as at the date of first occupation by TfNSW of the Occupied Works Site;

- (viii) if TfNSW damages property, facilities or structures on, in or under the Occupied Works Site that are owned or controlled by RCC or a third party, TfNSW will reinstate those facilities and structures and that property (as applicable) to a condition which is consistent with the condition as identified in the Baseline Report or otherwise to a condition consistent with paragraph (b)(vii)(B);
 - (ix) if TfNSW is required to permanently remove from the Occupied Works Site any facilities and structures in the Occupied Works Site that are owned or controlled by RCC, TfNSW will, to the extent practicable, relocate those facilities and structures to another location in the local government area administered by RCC as reasonably requested by RCC;
 - (x) if TfNSW is required to temporarily relocate any facilities and structures from the Occupied Works Site which are owned or controlled by RCC for the purposes of the Project, TfNSW will reinstate or replace those facilities and structures prior to expiry of the Works Site Licence, so that they are in at least an equivalent location and condition as identified in the Baseline Report or otherwise to a condition consistent with paragraph (b)(vii)(B);
 - (xi) any existing items located on, in or under the Occupied Works Site and not required as part of the Project, and owned solely by RCC with no third party use or ownership rights, are to be:
 - (A) inventoried and agreed by the parties;
 - (B) carefully removed from the Occupied Works Site by TfNSW (at its cost);
 - (C) returned to RCC in its condition in accordance with the Baseline Report (or otherwise to a condition consistent with paragraph (b)(vii)(B)); and
 - (D) unloaded and stored at a place within the local government area administered by RCC for the duration of the construction of the Project (or earlier, if RCC elects at any time for an item to be returned earlier), at no cost to RCC;
 - (xii) TfNSW may only use the Occupied Works Site to carry out its obligations and exercise its rights under this Agreement; and
 - (xiii) other than in respect of the performance of the Works in accordance with this Agreement, TfNSW must ensure that the Occupied Works Site does not become unclean or untidy.
- (c) During the term of a Works Site Licence, TfNSW is responsible for the care of the Works, the Occupied Works Site and all Permanent RCC Assets (including all RCC or third party owned property) located on, in or under the Occupied Works Site.
- (d) TfNSW will make good any loss of or damage to an Occupied Works Site or a Permanent RCC Asset while TfNSW is responsible for its care (including making good any loss of or damage to RCC or third party owned property located on, in or under the Occupied Works Site), except to the extent the loss or damage is caused by RCC, in which case, RCC will make good such loss or damage.

- (e) RCC will make good any loss of or damage to any item of Permanent RCC Assets while RCC is responsible for their care, except to the extent the loss or damage is caused by TfNSW, in which case, TfNSW will make good such loss or damage.
- (f) Subject to clause 6.2(c)(i), TfNSW must ensure that all temporary reinstatement works in the Works Site are suitably maintained and repaired (at TfNSW's cost) until reinstated to final condition in accordance with the Urban Design Guidelines and TfNSW remains responsible for, and accepts all risk associated with, the temporary works.
- (g) Not used.
- (h) A Works Site Licence will not operate or be deemed to operate in any way as a demise of any part of the Occupied Works Site.
- (i) TfNSW is not, by reason of the grant of any Works Site Licence, entitled to any proprietary estate or interest in the Occupied Works Site.
- (j) A Works Site Licence for an Occupied Works Site will expire on the date on which TfNSW ceases to occupy that Occupied Works Site and TfNSW has handed back that area to RCC in accordance with the following:
 - (i) the requirements set out in clause 20.5 and Schedule 6 in relation to the handover of Permanent RCC Assets (for the avoidance of doubt, Permanent RCC Assets are to be handed over to RCC on the same date as the corresponding Works Site Licence for those Permanent RCC Assets expires);
 - (ii) TfNSW has made good any damage to the Occupied Works Site in accordance with its obligations under this Agreement; and
 - (iii) despite the Occupied Works Site being handed back, unless otherwise agreed by RCC, any temporary works must not be handed over to RCC until such time as the temporary works are replaced with permanent works delivered in accordance with clause 20.5 and Schedule 6, unless otherwise agreed by RCC.
- (k) For the purposes of accessing the Works Site to replace temporary works with permanent works, or to undertake maintenance or repair of temporary works, RCC agrees that TfNSW is only required to provide 5 Business Days' notice (or such shorter time agreed between the parties) under clause 1(b).

4. Third party users of the Works Site

The parties agree that:

- (a) as at the date of this Agreement, RCC has identified that the third party users of the Works Site include only JCDecaux under the Existing Advertising and Street Furniture Contract;
- (b) the third party user referred to in (a) must be dealt with in accordance with the principles set out in Schedule 9; and
- (c) if, after the date of this Agreement, RCC identifies any other third party user of the Works Site, RCC and TfNSW will discuss and agree in good faith and acting reasonably any requirements to apply to the Works Site in respect of that third party user.

SCHEDULE 3

NOT USED

SCHEDULE 4

RCC'S PREFERRED STOP NAMES

Stop Locations	RCC preferred stop names
High Cross Park	High Cross Park
High Street between Wansey Road and Botany Street	UNSW High Street
Alison Road nearest corner Wansey Road	Alison Road
Alison Road, Royal Randwick Racecourse	Royal Randwick Racecourse
Anzac Parade nearest corner Carlton Street	Carlton Street
Anzac Parade nearest corner Todman Avenue	Todman Avenue
Anzac Parade, UNSW	UNSW Anzac Parade
Anzac Parade nearest corner Middle St / Strachan St	Middle Street
Anzac Parade south of 9-way intersection, interchange terminus	Kingsford

SCHEDULE 5

CLEANING AND MAINTENANCE STANDARDS

A. CLEANING

5.1 Cleaning Standards

Cleaning of the Permanent Light Rail Corridor must meet "Performance Level" set out below in the following Table S5-1. at 5am each morning, or at the commencement of Light Rail operations for the day, whichever is earlier, unless stated otherwise in this Schedule 5.

If TfNSW agrees to amend the Development Agreement dated 19 December 2013 between the City of Sydney and TfNSW to include any higher cleaning standard than the standards set out in this Schedule 5 (such standards to apply to areas outside of the pedestrianised areas of George Street, Sydney), TfNSW agrees that this Schedule 5 will be amended to incorporate those higher standards.

Table S5-1 Performance Level Requirements

Performance Level	
Litter	
(a1)	a build-up of no more than one day's estimated leaf fall;
(a2)	no broken glass;
(a3)	no build-up of silt, grit, gravel or similar material along building alignments or gutters; and
(a4)	no more than 4 items of litter within 10 lineal metres of Permanent Light Rail Corridor, excluding Stops.
Graffiti	
	No graffiti that is more than 24 hours old that in TfNSW's and RCC's opinion is able to be removed by use of high pressure steam cleaning.
Stormwater gullies in Permanent Light Rail Corridor	
	The level of litter and other material not to exceed more than half the depth of the gully

5.2 Continuity of Service

TfNSW must provide continuity in the provision of Permanent Light Rail Corridor cleaning services and ensure that contingency arrangements exist for the purpose of coping with all reasonably anticipated circumstances likely to arise, including inclement weather, scheduled special events, equipment failure, failure of staff report for work for any reason and the like. Emergency services will be required to be available on a 24 hour basis.

5.3 Resources

TfNSW must provide resources sufficient to achieve the required performance levels in the Permanent Light Rail Corridor. In particular TfNSW must have plant and equipment that is capable of achieving the performance level.

The removal of cigarette butts is an important issue in achieving required performance levels.

5.4 Flushing

The Permanent Light Rail Corridor (excluding Stops) must be flushed or hosed as required to meet the Performance Level. Stops must be flushed or hosed at least once every week.

5.5 Steam Cleaning

Stops must be steam cleaned at least twice per year.

5.6 Trackway Stormwater Gullies

TfNSW must conduct six monthly educting and cleaning of gullies in the Permanent Light Rail Corridor including the removal of debris from around pit covers, grates and lintels to ensure clear flow of stormwater from the Permanent Light Rail Corridor, roadways and footpaths.

5.7 Special Events

After major daytime events (to be agreed with RCC, acting reasonably), TfNSW must clean the affected areas of the Permanent Light Rail Corridor to meet the Performance Levels by 5am the next morning.

5.8 Waste Disposal

TfNSW is responsible for all disposal of waste collected in cleaning the Permanent Light Rail Corridor including Stops.

5.9 Customer Service

TfNSW must during normal working hours respond to all written, verbal and telephone enquiries, complaints and requests received directly from the public or passed on by RCC.

B. MAINTENANCE

5.10 Intervention Levels

TfNSW must carry out maintenance in accordance with the intervention levels set out in the following Table S5-2, within the rectification times set out in Table S5-3.

Table S5-2 Maintenance Intervention Levels

ASSET	ASSET CATEGORY	TYPE	ISSUE	INTERVENTION
Stops	Key	Pavements	Cracks/Gaps	Cracks/gaps exceed 20mmW
Stops	Key	Pavements	Depressions	Depressions present a hazard to pedestrians, cyclists or motorists
Stops	Key	Pavements	Potholes	Potholes
Stops	Key	Pavements	Pavers	Loose/rocking pavers
Stops	Key	Pavements	Tree root heaving	Trip hazard
Stops	Key	Handrails	Safety	Jagged edges

ASSET	ASSET CATEGORY	TYPE	ISSUE	INTERVENTION
Stops	Key	Handrails	Safety	Missing pieces
Stops	Key	Handrails	Stability	Lateral movement
Permanent Light Rail Corridor excluding Stops	Key	Pavements	Cracks/Gaps	Cracks/gaps exceed 20mmW
Permanent Light Rail Corridor excluding Stops	Key	Pavements	Depressions	Depressions present a hazard to pedestrians, cyclists or motorists
Permanent Light Rail Corridor excluding Stops	Key	Pavements	Pavers	Loose/rocking pavers
Permanent Light Rail Corridor excluding Stops	Key	All	Cracks/Gaps	Cracks indicative of road failure
Permanent Light Rail Corridor excluding Stops	Key	All	Delamination	Delamination indicative of road failure
Permanent Light Rail Corridor excluding Stops	Key	All	Depressions	Depressions present a hazard to pedestrians, cyclists or motorists
Permanent Light Rail Corridor excluding Stops	Key	All	Misalignment	Slab settlement of >20mm
Permanent Light Rail Corridor excluding Stops	Key	All	Potholes	Potholes
Signage	Ancillary	Stems	Bent	Bent
Signage	Ancillary	Stems	Stability	Unstable
Signage	Ancillary	Signplates	Wording	Out-of-Date or Incomplete
Signage	Ancillary	Signplates	Legible	Fails to convey intended message
Signage	Ancillary	Signplates	Street Signs	Missing
Signage	Ancillary	Signplates	Traffic Signs	Missing
Signage	Ancillary	Signplates	Damage	Damaged
Permanent Light Rail Corridor stormwater	Key	Covers and Grates	Safety	Cover/Grate is missing
Permanent Light Rail Corridor stormwater	Key	Grates	Vertical Displacement	Displacement presents a hazard to pedestrians, cyclists or motorists
Permanent Light Rail Corridor stormwater	Key	Covers	Vertical Displacement	Displacement presents a hazard to pedestrians, cyclists or motorists
Permanent Light Rail Corridor stormwater	Key	Trap Gully	Eduction	Water trap no longer visible
Permanent Light Rail Corridor stormwater	Key	Untrap Gully	Eduction	Outlet no longer visible

Table S5-3 Rectification Times

CATEGORY	DEFINITION	RECTIFICATION TIME
URGENT	Damaged /Missing Asset Presenting Immediate Danger	1 working day
HIGH	Damaged /Missing Asset Creating a Hazard in a High Use Area	5 working days
MEDIUM	Damaged /Missing Asset Creating a Hazard in a Low Use Area	20 working days
LOW	Damaged /Missing Asset NOT Creating a Hazard	60 working days

SCHEDULE 6

PERMANENT RCC ASSETS

Part 1

Set out below is a list of those assets that, if installed or constructed, relocated or modified as part of the Project within the Works Site, will be owned and controlled by RCC after the dates of progressive completion in accordance with clause 20.5:

- (a) Street/public domain furniture (including bus shelters, bus seats, litter bins, ashtrays, pay phones, poster bollards, bike racks, bollards, drinking fountains/bubblers, tree grates and tree guards).
- (b) Light poles and in ground lights.
- (c) Cables, switchboards and other related items associated with RCC's street lighting.
- (d) Toilets.
- (e) Trees.
- (f) Paving and kerbs.
- (g) Stormwater drainage system (excluding those systems owned by or to be owned by Sydney Water).
- (h) Public art.
- (i) Unclassified roadways outside the Permanent Light Rail Corridor.
- (j) Any new parks/road closures.
- (k) Kiosks.
- (l) Parking and traffic signs.
- (m) Parking meters.
- (n) Survey marks.
- (o) Any asset located outside of the Permanent Light Rail Corridor and not owned or controlled by a third party or comprising Light Rail systems or infrastructure.

Part 2

The principles that will apply to the Permanent RCC Assets that have been installed, constructed or relocated as part of the Project are, in addition to the requirements set out in clause 20.5, as follows:

- (a) where applicable, works-as-executed/as-built drawings (in a CAD file in .dwg format) will be provided to RCC;
- (b) where applicable, the benefit of warranties in relation to the Permanent RCC Assets will be transferred to RCC to the extent that TfNSW is able to do so as soon as practicable after the dates of progressive completion.

SCHEDULE 7

TECHNICAL REQUIREMENTS

Section	Details
1	TERM 1 - PROCUREMENT PHASE
1.1	Design
1.1.1	<p>The following documents are to be referenced in the Project "RFP" documentation as information documents:</p> <p>(a) the Randwick City Council Light Rail Urban Design Guidelines (Volume 2) adopted on 29 April 2014; and</p> <p>(b) the technical specification in the Randwick City Council Light Rail Urban Design Guidelines (Volume 1) adopted on 29 April 2014.</p>
1.1.2	<p>Alison Road, Randwick – TfNSW will:</p> <ul style="list-style-type: none"> • investigate relocation of the shared path on the northern side of the bus-way to the southern side between the busway/Light Rail alignment and Alison Road; and • liaise with RCC regarding this option and, if practicable, without delaying the Project, will relocate the shared path.
1.1.3	The design of the Project must not preclude the potential future link of a light rail system to Maroubra Junction via Anzac Parade. Specifically, the design of the track alignment must allow for the installation of future switches and cross overs with minimal track reconstruction.
1.1.4	If TfNSW decides in the future to extend the Project to Maroubra Junction, TfNSW will review the functionality and requirements of the Kingsford Interchange.
1.1.5	Where compliance with Urban Design Guidelines is specified in these Technical Requirements and there is no applicable RCC code, standard or specification, the relevant part of City of Sydney Codes and Standards will apply.
1.2	Light rail stops and Public Domain interface with Light Rail stops
1.2.1	<p>Stops are to be designed to comply with safety and statutory requirements and, to the extent permitted by law, are to allow for maximum pedestrian permeability and accessibility.</p> <p>TfNSW will consult with the disability sector as part of the process for determining disability requirements.</p> <p>TfNSW acknowledges that it will, at minimum, provide a step free access to one portion of all Stops.</p>
1.2.2	TfNSW will consult with RCC, and will consider the concerns raised by RCC, in regard to any proposed changes to Stop locations or proposed changes to the Light Rail route (whether such proposals relate to the Project's initial construction phase or after the construction phase) within the local government area administered by RCC.
1.2.3	<p>Subject to any requirements at law and safety requirements, the design of the Stops, the Permanent Light Rail Corridor and the Public Domain (within the Works Site) along the route in the local government area administered by RCC is to:</p> <p>(a) minimise use of barriers and fences;</p> <p>(b) minimise surrounding level changes;</p> <p>(c) minimise steps; and</p>

	(d) be integrated where possible with the levels of the surrounding environment, to minimise visual level changes and to facilitate pedestrian flow and universal access.
1.2.4	Shelters at Stops within the local government area administered by RCC, where provided, are to be designed to maximise transparency (while providing shade, where appropriate) and visibility and, to the extent practicable, to minimise barriers for pedestrians and reduce clutter and signage.
1.2.5	There will be no commercial advertising on Light Rail structures, urban elements or Stops within the local government area administered by RCC. The only vending machines at Stops within the local government area administered by RCC will be Opal card readers or equivalent and, if required, ticket dispensing machines. Food, drink or other commercial vending machines are not to be installed at Stops within the local government area administered by RCC.
1.2.6	TfNSW acknowledges that RCC may scope a proposal known as “Feasible Interchange Alternatives” relating to the Randwick interchange/terminus. TfNSW will consider this proposal once developed by RCC. Notwithstanding anything in clause 6, in the event that TfNSW agrees to an alternative interchange location proposed by RCC under this section 1.2.6, TfNSW will seek a modification to the Planning Approval in relation to the alternative interchange location.
1.2.7	For the Kingsford Interchange, TfNSW will: (a) undertake a safety audit of the interchange, including pedestrian safety, and analysis of traffic light phasing and effects this may have on the behaviour and the safety of pedestrians (incorporating safety by design principles and customer experience); (b) undertake modelling of pedestrian and vehicular traffic flows around the interchange and the 9 Ways intersection and the immediately surrounding precinct (extent to be determined in consultation with RCC); (c) investigate replacement of the proposed slip lane from Anzac Parade southbound into Rainbow Street with a deceleration lane to increase the size of the adjacent landscaped area; and (d) consult with RCC on the above matters.
1.2.8	A Light Rail Stop will be located in High Street near the intersection with Wansey Road. TfNSW will continue to facilitate the conversations between RCC and RMS in relation to the proposed pedestrianisation of the portion of High Street between Wansey Road and Botany Street. During the final design of the Project, TfNSW will consult with RCC in relation to the expected patronage at all Stops in the local government area administered by RCC and will, wherever possible, develop Stop designs to accommodate the expected passenger boardings. If any Stop locations are identified to have geographic conditions that prohibit the provision of platforms adequate for expected patronage, TfNSW will in consultation with RCC develop crowd management plans to ensure the safety of pedestrians waiting to board the Light Rail vehicles. TfNSW will investigate the effects of the Stop on the Arthur Street/Botany Street intersection and will provide traffic modelling results to RCC. TfNSW will provide traffic signals at the intersections of Belmore Road/Arthur Street and Botany Street/Arthur Street, if required as a consequence of the Project. TfNSW will investigate the requirement for traffic signals at the intersection of Wansey Road and Arthur Street.
1.2.9	A Light Rail Stop will be located in Anzac Parade near the University of NSW. During development of the Stop design, TfNSW will take into account pedestrian crowding,

	safety and daily management of pedestrian flows.
1.2.10	TfNSW will ensure the track form and other mitigation measures for the Light Rail within the local government area administered by RCC comply with the noise, vibration and EMF requirements of the Planning Approval. The track form will be selected based on its ability to adequately control noise, vibration and EMF. TfNSW will, at a minimum, ensure that there is no material adverse impact on the equipment of UNSW or the POW Hospital as a result of Light Rail caused noise, vibration and EMF.
1.2A	Light Rail Stabling
1.2A.1	RCC may want to lodge a claim for compensation under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> in relation to the Light Rail Randwick stabling facility.
1.2A.2	The design of any buildings or structure for the Light Rail Randwick stabling facility shall minimise the visual and amenity impacts. TfNSW will consult with RCC on the design of any buildings or structures within the Light Rail Randwick stabling facility.
1.2A.3	TfNSW will provide RCC with an overlay of the Light Rail alignment onto RCC's flood study.
1.3	Public domain
1.3.1	Any public domain works undertaken by TfNSW within the local government area administered by RCC are, subject to clause 6.2(c)(i) of this Agreement, to be in accordance with the Urban Design Guidelines.
1.4	Parks and open spaces
1.4.1	Where the construction of the Project affects the condition of any park owned or controlled by RCC, TfNSW is, subject to clause 6.2(c)(i) of this Agreement, to reconstruct the disturbed portions of the park to the standard in the Urban Design Guidelines or a design that is agreed with RCC. This may include the following parks: (a) High Cross Park; (b) Tay Reserve; and (c) Anzac Parade median. Where access paths or ground levels of an existing park in the local government area administered by RCC are altered by TfNSW, the design of these components must be integrated with the surrounding areas and levels and is to be acceptable to RCC (acting reasonably and promptly). Finished surface levels of the above parks in areas directly impacted by the Project are to be designed to maximise entry points into the park and ensure DDA compliance.
1.4.2	If necessary because of the Project alignment, the pair of sandstone horse trough supports with bronze plaques in Wilson Place will be relocated by TfNSW to a location nominated by RCC within the local government area administered by RCC at no cost to RCC.
1.4.3	TfNSW will ensure that: (a) access to as much as is reasonably practicable of High Cross Park will be available for community use on Anzac Days, Remembrance Days and Sydney White Ribbon Walks during construction of the Project; (b) limited capacity access to High Cross Park cenotaph will be maintained at all times during construction; and (c) construction work which could limit public access to High Cross Park, including establishment of construction compounds but excluding short duration activities such as geotechnical investigations, survey and the like, will not commence at High Cross Park

	prior to 27 April 2015.
1.5	Access and connections – NOT USED
1.6	Paving, kerbs and footpaths
1.6.1	To the extent a road lane within the local government area administered by RCC is impacted by the Project works, TfNSW is to restore the pavement of that road lane, by mill and re-sheet, to the full width of the road lane (to the white line) and the full length of the road lane up to each end of the relevant block. This includes all associated works such as lane marking, service covers and traffic signal detectors.
1.6.2	The width of the surface of the concrete haunches surrounding the girder rail in a paved track installation is to be kept to a minimum to improve visual amenity.
1.6.3	If works being undertaken as part of the Project in the local government area administered by RCC involve: <ul style="list-style-type: none"> (a) kerb lines being moved; (b) levels of footpaths being altered; (c) installation of multi-function poles; and (d) installation of catenary poles, existing footpath pavers which are affected are, subject to clause 6.2(c)(i) of this Agreement, to be removed and replaced in accordance with the Urban Design Guidelines. If TfNSW does not wish to re-use the pavers, TfNSW will return the pavers to RCC.
1.6.4	TfNSW is to make good any areas impacted by the Works for the extent of the route in the local government area administered by RCC to ensure a smooth transition to unaffected areas and to, subject to clause 6.2(c)(i) of this Agreement, reflect a consistent quality, design, finish and appearance and in accordance with the Urban Design Guidelines.
1.6.5	Footpath widths in the end (final after construction) state, where modified by TfNSW as part of the Project, will be not less than the widths set out in Annexure B to this Agreement unless: <ul style="list-style-type: none"> • TfNSW can demonstrate that a further reduction in width will not decrease capacity (as defined by the Level of Service) to the lesser of Level of Service C or the forecast level of pedestrian volumes as set out in the NSW Government Metropolitan Strategy for Sydney to 2031; and • RCC has been consulted regarding the proposed reduction in footpath width. For the purpose of this section, Level of Service means the level of service as set out in "Pedestrian planning and design" by John J Fruin.
1.6.6	The paving material used by TfNSW adjacent to Stops at the Randwick Interchange, Kingsford Interchange and UNSW upper and lower campus is, subject to clause 6.2(c)(i) of this Agreement, to be RCC's City Paver as specified in the Urban Design Guidelines.
1.6.7	All footpaths directly impacted by the Project within the local government area administered by RCC will, subject to clause 6.2(c)(i) of this Agreement, be restored on a like for like basis in accordance with the Urban Design Guidelines. <p>If RCC requires a higher standard, provided that TfNSW, acting reasonably, determines that the higher standard can be delivered without delay or disruption to the Project, TfNSW and RCC will consult and agree on a monetary contribution from RCC for delivery of the difference in standards. For avoidance of doubt, there will be no additional capital cost to TfNSW in delivering the higher standard.</p> <p>Prior to closing a footpath within an Occupied Work Site, TfNSW will notify RCC of the proposed closure and consult with RCC in relation to the closure.</p>

1.6.8	The Permanent Light Rail Corridor excluding the track slab along Anzac Parade from Alison Road to Kingsford Interchange, Alison Road between Anzac Parade and Doncaster Ave, and High Street between Wansey Road and Belmore Road is to be asphalt or concrete. The Permanent Light Rail Corridor excluding the track slab from Darley Road surrounding the Royal Randwick Racecourse is to be in accordance with the Planning Approval.
1.6.9	TfNSW will consult with RCC in relation to any construction by RCC of cycle paths through Randwick Racecourse to UNSW and through the Kingsford Interchange to connect to the south of Randwick City and will investigate requirements for provision of the cycle paths.
1.7	Pedestrianised areas
1.7.1	TfNSW will continue to facilitate discussions between RCC and RMS in relation to the proposed pedestrianisation of the portion of High Street between Wansey Road and Botany Street.
1.8	Public Domain Furniture
1.8.1	TfNSW will be responsible for the cost of relocation of existing public domain furniture which is required to be moved because of the Project. RCC will be responsible for the cost of any new public domain furniture which TfNSW agrees with RCC to provide, outside the Permanent Light Rail Corridor, as part of the Project. RCC will nominate locations for any new or relocated public domain furniture within the local government area administered by RCC outside of the Permanent Light Rail Corridor (such nomination to be given in a timely manner).
1.8.2	Bus stops along Anzac Parade will not be permanently removed as part of the Project, but TfNSW may temporarily relocate bus stops during construction.
1.9	Signage and wayfinding
1.9.1	Light Rail passenger information signage located at the Stops in the local government area administered by RCC is to be in accordance with any TfNSW or State standards, or where there are no such standards, TfNSW will work together with RCC to develop appropriate standards.
1.9.2	Light Rail wayfinding signs located in the local government area administered by RCC are, subject to clause 6.2(c)(i) of this Agreement, to be in accordance with the Urban Design Guidelines and integrated with RCC's signage or otherwise as agreed between TfNSW and RCC.
1.9.3	Signage and wayfinding provided as part of the Project within the local government area administered by RCC will be limited to that directly relevant to the Project and will not include provision for information on other features or events.
1.10	Public art
1.10.1	All existing public art works on RCC land which will be impacted by the Project are to be protected and maintained or removed (if required) at no cost to RCC for the duration of potential impact by the Project. TfNSW will not commence any physical Works on an Occupied Works Site that could damage public art until the public art has been protected in accordance with the above requirements.
1.10.2	Existing public art that is removed temporarily by TfNSW will be reinstated at the original location or at a new location agreed with RCC that is within the local government area administered by RCC.
1.11	Sustainability
1.11.1	Any street furniture, multi-function poles including banner poles along the centre median of Anzac Parade, signage and kerbing removed from the Works Site are to be re-used within

	the proposed works or carefully removed and returned to a location nominated by RCC which is within the local government area administered by RCC, to enable future re-use by RCC.
1.11.2	Light Rail design and operations are to be in accordance with any sustainability strategy objectives of the Planning Approval.
1.12	Drainage
1.12.1	TfNSW will liaise with RCC in relation to all aspects of drainage in the local government area administered by RCC and which is impacted by the Project. TfNSW will develop solutions for overland flow control where existing kerbs will be lost as a direct result of the Project, with such solutions to reasonably minimise visual impact.
1.12.2	Any subsurface drainage (including inlets) below the Permanent Light Rail Corridor or affected by the Project is to be designed and constructed to a minimum of a 1 in 10 year event. For the avoidance of doubt: (a) no elements of the existing stormwater drainage network are to be downsized, even if their capacity exceeds the 1 in 10 year event; and (b) this requirement does not extend to drainage mains downstream of the Works Site or mains within the Works Site that are not directly impacted by the Project. Where subsurface drainage connects into RCC's drainage network, engineering drawings of drainage upgrades resulting from this clause shall be submitted to RCC for agreement.
1.12.3	For areas within the local government area administered by RCC and impacted by the Project, the Project is to be designed so as not to increase flooding impacts on private property during rainfall events (up to a 1 in 100 year event).
1.12.4	Drainage pits directly affected by the Project are required at: (a) every corner; (b) changes in direction of the drainage line; and/or (c) every 100m on straight runs. All pits which can be accessed by cycles are to be cycle safe.
1.12.5	All drainage access pits, other than those required to drain the track slab of the Light Rail, are to be located outside of the Permanent Light Rail Corridor.
1.13	Multi-function poles
1.13.1	TfNSW will consider, during detailed design, the use of multi-function poles for catenary support, including the use of Smartpoles® along Anzac Parade from Alison Road to Kingsford Interchange Terminus. If Smartpoles® are adopted by the Project in the local government area administered by RCC, RCC will be responsible for obtaining licences from the City of Sydney for such use of Smartpoles®.
1.13.2	Centre poles and side poles for catenary support will not be used in the same street, with the exception of Anzac Parade and Alison Road, in which TfNSW must consider visual continuity in the design.
1.14	Power
1.14.1	At High Cross Park, a single phase and a 3 phase power outlet (1 x 32amp) are to be provided by TfNSW as part of the Project, preferably to be installed as part of any amenities building.
1.14.2	TfNSW will underground any existing overhead power lines to the extent that those lines cross over the Light Rail tracks in Anzac Parade. TfNSW will consult with RCC in relation to the undergrounding of any other existing overhead

	power lines within the Works Site.
1.15	Communications – Not Used
1.16	Future utilities
1.16.1	<p>General purpose empty conduits along length of Light Rail corridor</p> <p>Subject to the principles in Section 1.16.3 of these Technical Requirements, an empty conduit for electrical, communication and related services of 100mm diameter UPVC conduit is to be installed along each side of the track slab within the local government area administered by RCC.</p> <p>These conduits will be owned by TfNSW.</p>
1.16.2	<p>General purpose empty ducts at cross roads</p> <p>Subject to the principles in Section 1.16.3 of these Technical Requirements, a single 100mm diameter duct passing under the Light Rail track bed will be installed on each side of the following listed cross streets. The ducts will be capped and will not be provided with end pits. TfNSW will own these ducts.</p> <p>The cross street locations are:</p> <p>Alison Road at Anzac Parade; Alison Road at Doncaster Avenue; Alison Road at Darley Road; Alison Road at Wansey Road; Wansey Road at High Street; High Street at Botany Street; High Street at Clara Street; High Street at Avoca Street; Anzac Parade at Abbotford Street; Anzac Parade at Ascot Street; Anzac Parade at Todman Avenue; Anzac Parade at Doncaster Avenue; Anzac Parade at High Street; Anzac Parade at Day Avenue; Anzac Parade at Stachan Street; Anzac Parade at Rainbow Street; and Anzac Parade at Wallace Street.</p>
1.16.3	<p>General principles</p> <p>The installation of conduits, ducts and the allocation of space for future services referred to in this Section 1.16 are intended to prevent the need to disrupt the Light Rail for the purpose of installing future services and apply only to the extent that:</p> <ol style="list-style-type: none"> (a) the road is in the local government area administered by RCC; (b) the relevant part of the road will be disturbed as part of the Project; (c) the installation does not require digging or excavation deeper than 1.0m in depth; (d) other services or infrastructure do not hinder or are not required to be relocated or disturbed as a consequence of the installation or allocation; and

	<p>(e) the installation or allocation is practicable to achieve.</p> <p>Pits are not required at the ends of any conduits installed in accordance with Sections 1.16.1 and 1.16.2 of these Technical Requirements.</p>
1.16.4	TfNSW will co-ordinate with NBN Co in relation to conduits for the National Broadband Network and all necessary provisions will be made in this respect (if required).
1.17	Lighting
1.17.1	Lighting required to be installed by TfNSW along the Light Rail route in the local government area administered by RCC in relation to the road surface and any pedestrian walkway is to be in accordance with CPTED principles.
1.17.2	Any street and pedestrian lighting installed along the Light Rail route for the Project in the local government area administered by RCC is, subject to clause 6.2(c)(i) of this Agreement, to use Light Emitting Diodes in accordance with the Urban Design Guidelines.
1.18	Parking
1.18.1	<p>RCC will be responsible for the implementation of any changes to the function and management of on-street kerbside activity outside the Light Rail alignment but within the area of influence of the Project.</p> <p>If requested by RCC, TfNSW will facilitate discussions between RCC and RMS in relation to RCC's proposed on-street parking strategies. For the avoidance of doubt, TfNSW is not responsible for the implementation of mitigation measures.</p> <p>TfNSW will provide, at its cost, the traffic model and data for the local government area administered by RCC and used for the Project. RCC may use this data for its own purposes including the investigation of mitigation measures for the local traffic and parking arrangements associated with the Project.</p>
1.18.2	<p>TfNSW will consult with RCC in relation to the management of the parking of workers involved in the construction of the Project in the local government area administered by RCC.</p> <p>TfNSW will investigate the feasibility of utilising the Anzac Parade median south of Kingsford for a construction compound including parking for workers in lieu of Rainbow Street.</p>
1.19	Trees
1.19.1	<p>Trees along the Light Rail route for the Project (in the local government area administered by RCC) are to be retained wherever practicable and protected in accordance with the Randwick Local Environmental Plan 2012 under the provisions of Clause 5.9, the Randwick Development Control Plan 2013, Part B5 and, subject to clause 6.2(c)(i) of this Agreement, the Tree Management Specification in the Urban Design Guidelines.</p> <p>TfNSW will ensure that a tree management process is developed and implemented so that, if RCC's and TfNSW's tree experts do not agree on the extent of the removal or limbing of trees in the local government area administered by RCC, an independent arborist appointed by TfNSW and RCC will review and make a determination in this respect, provided that such tree management process must not delay or prevent the implementation of the Project or has an adverse impact on the operation of the Project.</p> <p>Priority locations for RCC are:</p> <ul style="list-style-type: none"> (a) High Cross Park; (b) Alison Road / Randwick Racecourse; (c) Anzac Parade / Alison Road; and (d) Wansey Road / Randwick Racecourse. <p>Trees, shrubs, grasses and ground covers to be planted in the local government area administered by RCC are to be in accordance with the following.</p>

	<p>(e) The species to be planted as part of this Project are to be in accordance with the RCC Light Rail Urban Design Guidelines, Volume 1 Section 4 - Planting Palette. Tree species for other locations are to be determined during the future design development in consultation and approved by RCC.</p> <p>(f) Tree locations will be determined in consultation with RCC.</p> <p>(g) Trees will generally be placed at 6 to 7 metres spacing.</p> <p>TfNSW is to source all new trees to be planted in the local government area administered by RCC in accordance with the RCC Light Rail Urban Design Guidelines Volume 2 , Section 1 – Tree Management Specification.</p> <p>TfNSW must (at its cost):</p> <p>(h) maintain all new species (trees, shrubs, grasses & groundcovers) planted as part of the Project; and</p> <p>(i) rectify any Defects identified,</p> <p>for a period of 24 months after handover to RCC pursuant to clause 20.5, and in accordance with the RCC Light Rail Urban Design Guidelines Volume 2, Section 1 – Tree Management Specification.</p> <p>The requirement to plant trees as outlined in this Section 1.19.1 only applies to the extent that services, infrastructure and vehicular access to private properties are not required to be relocated or altered to enable the planting of the trees.</p> <p>TfNSW will include financial incentives to design the Light Rail to avoid trees in its contract with the main contractor designing and constructing the Light Rail.</p> <p>All limbing of trees in the LGA of RCC required by reason of the construction or operation of the Project will be performed in consultation with RCC's arborists. In relation to trees identified for retention, TfNSW will consult with RCC as to the extent that those trees will be limbed (if at all) to allow future operation of the Light Rail. Limbing of trees will be carried out as required, but will occur at least annually to minimise the extent of cut back. RCC may overview any tree limbing as it is carried out.</p>
1.19.2	All other trees on RCC land that are impacted by the Project are to be protected and maintained during the Works construction period and dealt with in accordance with RCC Tree Management Controls (contained within the RCC LEP 2012 and the RCC DCP 2013) and in accordance with RCC Tree Management Manuals and Policies.
1.19.3	<p>Tree replacement will be determined in accordance with the Project Approval.</p> <p>TfNSW will work with RCC to determine the most appropriate locations for any replacement trees.</p> <p>If RCC, acting reasonably, cannot accommodate the number of replacement trees required by the Project Approval, secondary offsets as specified in TfNSW's <i>Vegetation Offset Guide</i> (2013d) may be adopted. TfNSW will consult with RCC to determine the most appropriate offset.</p>
1.19.4	TfNSW will endeavour to retain the maximum number of trees along the Alison Road alignment adjacent to the Royal Randwick Racecourse between the Alison Road/Wansey Road Stop and the Royal Randwick Racecourse Stop.
1.20	Soundproofing and hoardings
1.20.1	Where the Light Rail passes sensitive noise receivers in the local government area administered by RCC (as defined in the approval for the Project), TfNSW will take practicable measures to minimise noise and isolate vibration.
1.20.2	Hoardings erected as part of the Project are to meet TfNSW standards developed in consultation with RCC, including in relation to Project information, Project promotional material and organisational branding. Hoardings will be designed to ensure safety, security

	and community amenity, including in relation to transparency.
1.20.3	Hoardings erected around construction compounds within the local government area administered by RCC must have visual display graphics that are well maintained and free of graffiti.
1.21	Survey Marks
1.21.1	Permanent survey marks are to be preserved during the Works. If any permanent survey mark located within the Works Site is to be destroyed due to the Works, RCC is to be notified 2 weeks in advance. Before the Works are concluded on a Works Site, the box containing the survey pin is to be reinstated by a registered surveyor at the expense of TfNSW.
1.22	Substations
1.22.1	TfNSW will investigate alternative substation locations to High Cross Park during development of the Detailed Design. If a substation needs to be located in High Cross Park, TfNSW will consult with RCC in relation to undergrounding of the substation. The Driver's room and cycle path will be designed to be located at the South end of the Light Rail tracks and, if the line of the Light Rail is extended in the future, the demolition and removal of those amenities to permit the extension will be at RCC's cost.
1.23	Reinstatement of fencing
1.23.1	The existing pedestrian safety fencing in Alison Road adjacent to the Royal Randwick Racecourse in both the median and on the footpath, if removed during construction, is to be reinstated. on completion of construction in the area, or the area otherwise made safe to an appropriate safety standard for pedestrians.
2	TERM 2 – DELIVERY PHASE
2.1	Co-ordination – NOT USED
2.2	Traffic management
2.2.1	TfNSW will be responsible for all traffic co-ordination matters within the local government area administered by RCC in relation to the Works. RCC will provide assistance to TfNSW in this respect.
2.2.2	Construction staging of the Works is to be developed to demonstrate a balance between efficient construction methods and minimising impact on business operation and resident amenity within the local government area administered by RCC during the construction phase of the Project.
2.2.3	Temporary road closures are to be discussed in advance with RCC, RMS and TMC.
2.3	Other development projects
2.3.1	In developing the program and access requirements for the Project, TfNSW will consider existing approved developments in the City of Randwick.
2.3.2	TfNSW will be responsible for liaising with the developer(s) and managing all interface and co-ordination issues in relation to relevant approved developments that will be undertaken during the construction phase of the Project.
2.4	Hours of work
2.4.1	TfNSW will consult with residents, UNSW, RCC, RRR, NSW Health, NIDA, Souths Jnrs and TAFE, hotels and other businesses in the local government area administered by RCC affected by the Works and will manage any potential noise issues arising from out-of-hours works.

2.5	Construction compounds
2.5.1	<p>Except as required under Section 1.4 of these Technical Requirements, RCC land required for use as amenities and materials compounds for Project construction activities will be fully reinstated on completion of the works related to each compound to the previous existing condition or as otherwise agreed between TfNSW and RCC.</p> <p>TfNSW will provide RCC with a photographic survey and dilapidation report of RCC's assets which are potentially affected by the Project prior to construction.</p>
2.5.2	<p>A construction compound is not proposed at Tay Reserve, although the Light Rail alignment will impact on a portion of the reserve.</p> <p>A construction compound will be required in High Cross Park for the Randwick Stop and interchange. There will be no additional significant tree loss above that required for the design footprint of the Stop and interchange for the purposes of establishing a construction compound in High Cross Park.</p> <p>A construction compound is proposed for the Rainbow Street site.</p> <ul style="list-style-type: none"> • TfNSW will, as soon as practicable after the date of this Agreement, offer to enter into a contract for the sale of the Rainbow Street site with RCC at market value assessed at the date of this Agreement. • If the parties agree to enter into a contract for sale, the contract for sale will include the following matters: <ul style="list-style-type: none"> • RCC to make instalment payments (such instalment payments to be agreed between TfNSW and RCC) in respect of the purchase price for the Rainbow Street site over a period not exceeding 5 years from the date of this Agreement; and • on and as a condition of completion of the sale, RCC will grant to TfNSW a construction lease (the form of the lease will be attached to the contract for sale and on terms acceptable to TfNSW and RCC) for TfNSW to use and occupy the Rainbow Street site for: <ul style="list-style-type: none"> ○ the purpose of a construction compound for the Project; ○ a rent of \$1.00 for the term of the construction lease; and ○ a term sufficient for the construction of the Project to achieve practical completion and for demobilisation from the Rainbow Street site. <p>RCC may provide an alternative equivalent construction compound site to the Rainbow Street site, at no cost to TfNSW and for use by TfNSW during the construction period of the Project. TfNSW may, in its absolute discretion, accept or reject the alternative site proposed by RCC.</p> <p>Nothing in this clause obliges RCC to enter into a contract for the sale of the Rainbow Street site.</p>
2.5.3	<p>Public domain furniture, public art and similar materials which are removed by TfNSW from construction compounds within the local government area administered by RCC shall be stored at suitable locations for later reinstallation at the same locations or at locations agreed between RCC and TfNSW.</p>
2.6	Consultation
2.6.1	<p>TfNSW will be responsible for stakeholder and community engagement during the construction phase of the Works. TfNSW will consult with RCC on the stakeholder and</p>

	<p>community communication and consultation strategy prior to commencement of the Works for the local government area administered by RCC.</p> <p>TfNSW will provide a community liaison person dedicated to the local government area administered by RCC with clearly defined responsibilities, with responsibility for implementation of the engagement and communications plans in consultation with RCC.</p>
2.7	Air quality
2.7.1	A Dust Management Plan will be prepared in consultation with NSW EPA, and will address the requirements of EPA and the Planning Approval. The Dust Management Plan will include requirements for ambient air quality monitoring during construction.
3	TERM 3 – OPERATIONS PHASE
3.1	Cleaning
3.1.1	<p>TfNSW will be responsible for cleaning within the Permanent Light Rail Corridor.</p> <p>TfNSW will ensure that the areas for which it has cleaning responsibility are cleaned in accordance with Schedule 5 of this Agreement. Cleaning includes graffiti removal. The requirements in Schedule 5 include separate cleaning standards for special events.</p> <p>TfNSW will incorporate the above cleaning standards into the Project obligations (as key performance indicators relating to output based cleaning standards and with appropriate financial incentives for compliance) and the right for TfNSW to step-in and rectify any breaches of the key performance indicators.</p>
3.1.2	<p>Cleaning of the public domain outside of the Permanent Light Rail Corridor will be the responsibility of RCC, except when that area is subject to a Works Site Licence.</p> <p>Any cleaning by RCC within 900mm of the DKE will be carried out in accordance with TfNSW's safety protocols, which will be developed in consultation with RCC at the same time as the principles in relation to the Permanent Light Rail Corridor under clause 23.1 of the Development Agreement are developed.</p>
3.2	Hours of operation
3.2.1	The Light Rail service will generally operate between the hours of 05:00am and 01:00am, 365 days per year. Service changes may be required for Royal Randwick Racecourse, Centennial Park, UNSW and RCC special events. Services for these special events will be co-ordinated by TfNSW with the event organisers and RCC.
3.3	Service performance parameters
3.3.1	TfNSW will make available to RCC all data that is available to TfNSW related to passenger numbers, on-time running, service and vehicle reliability and other similar information, subject to it not being "Commercial-In-Confidence" or subject to confidentiality obligations.
3.4	In-car information technology
3.4.1	All Light Rail cars are to be fitted with in-car screens capable of displaying passenger information, including wayfinding and present-location information. The content of the display is to be limited to passenger information and is not to include advertising.
3.5	Maintenance
3.5.1	Maintenance of the Permanent Light Rail Corridor, Stops and Light Rail rolling stock and infrastructure will be the responsibility of TfNSW, including overhead catenary wires, Light Rail ticketing infrastructure and Light Rail emergency help points.
3.5.2	Maintenance of the public domain, including public domain furniture and public art, and the other areas beyond the Permanent Light Rail Corridor will be the responsibility of RCC,

	<p>except when that area is subject to a Works Site Licence.</p> <p>Any maintenance by RCC within 900mm of the DKE will be carried out in accordance with TfNSW's safety protocols, which will be developed in consultation with RCC at the same time as the principles in relation to the Permanent Light Rail Corridor under clause 18.1 are developed.</p>
3.5.3	<p>All maintenance activities at the Randwick Stabling Facility will be performed in accordance with the industrial noise requirements in the Planning Approval. TfNSW will ensure that heavy maintenance is precluded at the Randwick Stabling Facility. For these purposes, "heavy maintenance" means wheel profiling, heavy body repair and major component exchange.</p>
3.7	Access
3.7.1	<p>The operation of the Project's Light Rail service is not to prevent access to local properties by businesses, residents and emergency service vehicles at any time, subject to traffic management imposed by the roads authority.</p>

SCHEDULE 8

NOT USED

SCHEDULE 9

EXISTING ADVERTISING AND STREET FURNITURE CONTRACT

Part 1 – List of Existing Advertising and Street Furniture Contract

The Existing Advertising and Street Furniture Contract which is on foot as at the date of this Agreement is the contract between RCC and JCDecaux Australia Pty Ltd ACN 078 716 793 (**JCDecaux**) dated 5 August 1998. RCC confirms that it has, prior to the date of this Agreement, notified TfNSW of all variations to the Existing Advertising and Street Furniture Contract.

Part 2 – Principles to apply to the Existing Advertising and Street Furniture Contract

The parties agree that the following will apply in relation to the Existing Advertising and Street Furniture Contract:

- (a) TfNSW and RCC acknowledge that:
 - (i) a number of items of Street Furniture may need to be relocated or removed as a result of the Project;
 - (ii) for the purposes of this Part 2 of this Schedule 9:
 - (A) **Implementation Program** has the same meaning as set out in clause 1(k);
 - (B) **Specification** has the same meaning as set out in clause 1(z);
 - (C) **Street Furniture** has the same meaning as set out in clause 1(bb),
of the Existing Advertising and Street Furniture Contract;
- (b) TfNSW may at any time and from time to time notify RCC that it requires:
 - (i) the relocation of up to 5% of the total number of items of Street Furniture which contain advertising panels as set out in the Implementation Program;
 - (ii) the relocation of any number of items of Street Furniture which do not contain advertising panels;
 - (iii) removal of up to 5% of the total number of items of Street Furniture which contain advertising panels as set out in the Implementation Program, subject to the net maximum reduction requirements as set out in clause 23.1(i) of the Existing Advertising and Street Furniture Contract;
 - (iv) removal of any number of items of Street Furniture which do not contain advertising panels;
- (c) each notice of TfNSW under paragraph (b) must identify the date by which each item of Street Furniture is to be relocated or removed by JCDecaux;

- (d) if TfNSW gives RCC a notice under paragraph (b), RCC will give JCDecaux notice requiring that JCDecaux remove and relocate those items of Street Furniture and will liaise directly with JCDecaux in relation to all relevant matters arising out of the removal or relocation, including requiring the removal and relocation of the Street Furniture nominated by TfNSW by the dates nominated by TfNSW;
- (e) TfNSW and RCC will co-operate and co-ordinate with each other to minimise the costs associated with the relocation and removal of Street Furniture as a result of the Project; and
- (f) TfNSW will, following the completion of the removal or relocation of Street Furniture by JCDecaux, pay to RCC the compensation amounts that are payable by RCC to JCDecaux in accordance with clauses 11 and 27 (as applicable) of the Specification incurred by reason of the relocation or removal requested by TfNSW pursuant to this Part 2 of Schedule 9. RCC will provide all such costs and compensation information to TfNSW on an 'open book' basis

SCHEDULE 10

FORM OF NOTICE OF ACTIVATION

Notice of Activation

(clause 3.1 and clause 4.1 of the Development Agreement)

Sydney Light Rail Project ("Project")

To: The RCC Representative

From: Transport for NSW
ABN 18 804 239 602

In accordance with the terms of clause [3.1/4.1] of the Development Agreement between Randwick City Council (ABN 77 362 844 121) and Transport for NSW (ABN 18 804 239 602) dated [*insert date*] with respect to the Project (**Development Agreement**), Transport for NSW hereby notifies Randwick City Council that:

- [it wishes to undertake the Early and Preparatory Works /
- funding approval has been given by the NSW Government in respect of the Project and the Planning Approval has been issued on terms and conditions acceptable to Transport for NSW and it wishes to undertake the Works.].

Dated: [*insert date*]

.....

Signed for and on behalf of

Transport for NSW

ANNEXURE A
PLAN OF THE WORKS SITE

Note: this Annexure comprises 19 pages of plans.

ANNEXURE B
FOOTPATH WIDTHS

Alignment Centre Line Chainage	Footpath Widths			
	West		East	
	Existing	Proposed	Existing	Proposed
30460	11.023	As existing	3.782	As existing
30480	10.497	As existing	Tay Ln intersection	
30500	10.435	As existing	4.023	As existing
30520	10.487	As existing	3.588	As existing
30540	10.624	As existing	4.039	As existing
30560	Boronia St intersection		4.082	As existing
30580	13.299	As existing	4.029	As existing
30600	14.241	As existing	3.964	As existing
30620	13.849	As existing	4.012	As existing
30640	12.973	As existing	3.552	As existing
30660	12.409	As existing	Abbotford St intersection	
30680	8.891	As existing	3.554	As existing
30700	4.011	As existing	3.958	3.732
30720	3.699	3.699	4.098	3.376
30740	4.020	3.729	4.09	3.653
30760	4.091	3.738	4.043	3.639
30780	3.528	3.748	Carlton St intersection	
30800	4.08	3.756	3.965	3.649
30820	4.084	3.765	4.01	3.649
30840	4.117	3.773	3.968	3.65
30860	4.12	3.873	3.976	3.654
30880	4.135	4.199	4.002	3.65
30900	4.14	4.204	4.037	3.651
30920	4.062	4.222	4.075	3.652
30940	4.365	4.576	Goodwood St intersection	
30960	4.643	As existing	3.692	As existing
30980	4.117	As existing	3.718	As existing
31000	3.578	As existing	4.052	As existing
31020	3.12	As existing	4.088	As existing
31040	2.852	As existing	Ascot St intersection	
31060	2.743	As existing	4.075	As existing
31080	3.423	As existing	4.032	As existing
31100	3.638	As existing	4.057	As existing
31120	3.852	As existing	4.02	As existing
31140	4.084	As existing	Bowral St intersection	
31160	Duke St intersection		4.002	As existing

Alignment Centre Line Chainage	Footpath Widths			
	West		East	
	Existing	Proposed	Existing	Proposed
31180	4.126	As existing	3.983	As existing
31200	3.884	As existing	4.136	As existing
31220	3.889	As existing	4.094	As existing
31240	4.035	As existing	4.101	As existing
31260	Todman Ave intersection		Todman Ave intersection	
31280				
31300	3.874	As existing	4.021	As existing
31320	3.797	As existing	4.021	As existing
31340	3.781	As existing	4.024	As existing
31360	3.74	As existing	4.057	As existing
31380	4.004	As existing	4.039	As existing
31400	7.419	As existing	Darling St intersection	
31420	12.723	As existing	6.807	As existing
31440	Addison St intersection		6.143	As existing
31460			5.895	As existing
31480	8.774	As existing	5.194	As existing
31500	5.173	As existing	4.842	As existing
31520	4.23	As existing	4.182	As existing
31540	4.194	As existing	3.939	As existing
31560	4.194	As existing	3.77	As existing
31580	4.203	As existing	3.814	As existing
31600	4.1	As existing	3.732	As existing
31620	4.106	As existing	3.683	As existing
31640	4.168	As existing	3.665	As existing
31660	Doncaster Ave intersection		Doncaster Ave intersection	
31680				
31700	5.769	5.578	4.011	As existing
31720	8.537	6.44	4.005	As existing
31740	9.353	6.744	6.855	As existing
31760	7.608	6.09	4.261	As existing
31780	4.635	4.343	4.025	As existing
31800	4.498	4.442	3.711	As existing
31820	4.338	As existing	4.032	As existing
31840	3.785	As existing	4.094	4.065
31860	3.973	As existing	4.114	3.899
31880	3.784	As existing	High St intersection	
31900	3.821	As existing	4.054	3.347
31920	3.821	As existing	4.137	3.346
31940	3.821	3.579	4.102	3.345

Alignment Centre Line Chainage	Footpath Widths			
	West		East	
	Existing	Proposed	Existing	Proposed
31960	3.84	3.80	4.088	3.345
31980	3.826	3.80	4.05	4.00
32000	3.862	3.80	4.04	4.00
32020	3.874	3.80	3.957	4.00
32040	3.826	3.80	4.002	4.00
32060	3.839	3.80	4.02	4.00
32080	3.818	3.80	4.041	4.00
32100	3.807	3.80	4.078	4.00
32120	3.771	3.80	4.122	4.00
32140	3.802	3.80	4.065	4.00
32160	3.81	3.80	4.126	4.00
32180	3.815	3.80	4.088	4.00
32200	Day Ave intersection		4.076	4.00
32220			4.042	4.00
32240	3.597	3.271	4.099	4.00
32260	3.513	3.268	4.113	3.929
32280	3.514	3.255	4.105	4.048
32300	3.503	3.241	4.105	4.139
32320	3.529	3.228	4.064	3.783
32340	3.522	3.189	4.044	3.266
32360	3.473	3.377	4.052	2.766
32380	Barker St intersection		Barker St intersection	
32400				
32420	3.493	3.514	3.357	2.906
32440	3.49	As existing	3.425	As existing
32460	3.498	As existing	3.425	As existing
32480	3.491	As existing	3.426	As existing
32500	As existing	As existing	3.462	As existing
32520	As existing	As existing	3.404	As existing
32540	As existing	As existing	3.435	As existing
32560	As existing	As existing	3.439	As existing
32580	3.417	As existing	3.465	As existing
32600	Middle St/Strachan St intersection		Middle St/Strachan St intersection	
32620	3.464	As existing	3.484	As existing
32640	3.495	As existing	3.515	As existing
32660	3.488	As existing	3.498	As existing
32680	3.468	As existing	3.496	As existing
32700	3.492	As existing	3.473	As existing

	Footpath Widths			
Alignment Centre Line Chainage	West		East	
	Existing	Proposed	Existing	Proposed
32720	3.535	As existing	3.491	As existing
32740	3.565	As existing	3.487	As existing
32760	Meeks St/Borrodale Rd intersection		Meeks St/Borrodale Rd intersection	
32780				
32800	3.47	As existing	3.408	As existing
32820	3.44	As existing	3.43	As existing
32840	3.483	As existing	3.395	As existing
32860	3.499	As existing	3.537	As existing
32880	3.478	As existing	3.442	As existing
32900	3.477	As existing	3.558	As existing