Development Agreement

Sydney Light Rail Project

Transport for NSW
ABN 18 804 239 602

and

The Council of the City of Sydney
ABN 22 636 550 790

Execution Version – 19 December 2013
<table>
<thead>
<tr>
<th>CLAUSE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. PURPOSE AND TERM OF THIS AGREEMENT</td>
<td>7</td>
</tr>
<tr>
<td>1.1 Purpose of this Agreement</td>
<td>7</td>
</tr>
<tr>
<td>1.2 Term of this Agreement</td>
<td>8</td>
</tr>
<tr>
<td>2. APPLICATION OF PART B PROVISIONS (GENERAL AND INTERPRETATION)</td>
<td>8</td>
</tr>
<tr>
<td>2.1 Definitions</td>
<td>8</td>
</tr>
<tr>
<td>2.2 Interpretation and general provisions</td>
<td>8</td>
</tr>
<tr>
<td>3. ACTIVATION OF PART C PROVISIONS (EARLY AND PREPARATORY WORKS)</td>
<td>8</td>
</tr>
<tr>
<td>3.1 Notice of activation</td>
<td>8</td>
</tr>
<tr>
<td>3.2 Activation of Part C Provisions (Early and Preparatory Works)</td>
<td>8</td>
</tr>
<tr>
<td>3.3 Early and Preparatory Works form part of the Works</td>
<td>8</td>
</tr>
<tr>
<td>4. ACTIVATION OF PART D PROVISIONS (WORKS)</td>
<td>9</td>
</tr>
<tr>
<td>4.1 Notice of activation</td>
<td>9</td>
</tr>
<tr>
<td>4.2 Activation of Part D Provisions (Works)</td>
<td>9</td>
</tr>
<tr>
<td>5. ROLES OF THE PARTIES</td>
<td>9</td>
</tr>
<tr>
<td>5.1 Role of TfNSW</td>
<td>9</td>
</tr>
<tr>
<td>5.2 Role of the City</td>
<td>11</td>
</tr>
<tr>
<td>5.3 Co-operation of the parties</td>
<td>11</td>
</tr>
<tr>
<td>5.4 Independent Certifier</td>
<td></td>
</tr>
<tr>
<td>6. DESIGN OF THE PROJECT</td>
<td>12</td>
</tr>
<tr>
<td>6.1 Responsibility for design of the Project</td>
<td>12</td>
</tr>
<tr>
<td>6.2 TfNSW design obligations</td>
<td>12</td>
</tr>
<tr>
<td>6.3 City's role in development of Design Documentation</td>
<td>14</td>
</tr>
<tr>
<td>6.4 City review of Design Documentation</td>
<td>14</td>
</tr>
<tr>
<td>6.5 Prototype of Stop and public domain and Permanent Light Rail Corridor paving</td>
<td>15</td>
</tr>
<tr>
<td>6.6 Public art</td>
<td>16</td>
</tr>
<tr>
<td>6.7 Hoarding design at construction compounds</td>
<td>17</td>
</tr>
<tr>
<td>6.8 No obligation to review</td>
<td>17</td>
</tr>
<tr>
<td>6.9 General hierarchy and order of precedence</td>
<td>17</td>
</tr>
<tr>
<td>6.10 Progress reports and program for the Works</td>
<td>18</td>
</tr>
<tr>
<td>7. PROJECT FUNDING</td>
<td>19</td>
</tr>
<tr>
<td>7.1 Responsibility for Project funding</td>
<td>19</td>
</tr>
<tr>
<td>8. PROCUREMENT AND ADMINISTRATION</td>
<td>19</td>
</tr>
<tr>
<td>8.1 Project governance</td>
<td>19</td>
</tr>
<tr>
<td>8.2 Procurement of the Project</td>
<td>20</td>
</tr>
<tr>
<td>8.3 No disposal</td>
<td>21</td>
</tr>
<tr>
<td>8.4 Appointment and role of the TfNSW Representative and the City Representative</td>
<td>21</td>
</tr>
<tr>
<td>9. INDEMNITY</td>
<td>22</td>
</tr>
<tr>
<td>9.1 Indemnity in relation to Claims</td>
<td>22</td>
</tr>
<tr>
<td>9.2 Third party Claims the subject of the indemnity</td>
<td>23</td>
</tr>
<tr>
<td>10. INTERPRETATION</td>
<td>25</td>
</tr>
<tr>
<td>10.1 Definitions</td>
<td>25</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>10.2</td>
<td>Rules for interpreting this Agreement</td>
</tr>
<tr>
<td>10.3</td>
<td>Business Days</td>
</tr>
<tr>
<td>10.4</td>
<td>Ambiguous or inconsistent terms</td>
</tr>
<tr>
<td>11.</td>
<td>DISPUTE RESOLUTION</td>
</tr>
<tr>
<td>11.1</td>
<td>Notice of dispute</td>
</tr>
<tr>
<td>11.2</td>
<td>Process for resolution of disputes</td>
</tr>
<tr>
<td>11.3</td>
<td>Expert determination</td>
</tr>
<tr>
<td>11.4</td>
<td>Parties to continue to comply</td>
</tr>
<tr>
<td>11.5</td>
<td>Condition precedent to litigation</td>
</tr>
<tr>
<td>11.6</td>
<td>Summary or urgent relief</td>
</tr>
<tr>
<td>12.</td>
<td>GST AND OTHER TAXES</td>
</tr>
<tr>
<td>12.1</td>
<td>Payment of GST</td>
</tr>
<tr>
<td>12.2</td>
<td>Tax invoice</td>
</tr>
<tr>
<td>12.3</td>
<td>Adjustments</td>
</tr>
<tr>
<td>12.4</td>
<td>Indemnities</td>
</tr>
<tr>
<td>13.</td>
<td>GENERAL</td>
</tr>
<tr>
<td>13.1</td>
<td>Representations and warranties</td>
</tr>
<tr>
<td>13.2</td>
<td>Assignment and other dealings</td>
</tr>
<tr>
<td>13.3</td>
<td>Notices</td>
</tr>
<tr>
<td>13.4</td>
<td>Liability for expenses and stamp duty</td>
</tr>
<tr>
<td>13.5</td>
<td>Variations and Amendment</td>
</tr>
<tr>
<td>13.6</td>
<td>Confidentiality</td>
</tr>
<tr>
<td>13.7</td>
<td>Waiver of rights</td>
</tr>
<tr>
<td>13.8</td>
<td>Operation of this Agreement</td>
</tr>
<tr>
<td>13.9</td>
<td>Employees and agents</td>
</tr>
<tr>
<td>13.10</td>
<td>Governing law and jurisdiction</td>
</tr>
<tr>
<td>13.11</td>
<td>No partnership or joint venture</td>
</tr>
<tr>
<td>13.12</td>
<td>Compliance with law and Authorisations</td>
</tr>
<tr>
<td>13.13</td>
<td>Operation of certain clauses</td>
</tr>
<tr>
<td>14.</td>
<td>APPLICATION OF PART B PROVISIONS (GENERAL AND INTERPRETATION)</td>
</tr>
<tr>
<td>14.1</td>
<td>Definitions</td>
</tr>
<tr>
<td>14.2</td>
<td>Interpretation and general provisions</td>
</tr>
<tr>
<td>15.</td>
<td>DELIVERY OF THE EARLY AND PREPARATORY WORKS</td>
</tr>
<tr>
<td>15.1</td>
<td>Early and Preparatory Works Notice</td>
</tr>
<tr>
<td>16.</td>
<td>APPLICATION OF PART B PROVISIONS (GENERAL AND INTERPRETATION)</td>
</tr>
<tr>
<td>16.1</td>
<td>Definitions</td>
</tr>
<tr>
<td>16.2</td>
<td>Interpretation and general provisions</td>
</tr>
<tr>
<td>17.</td>
<td>FACILITATION OF THE PROJECT</td>
</tr>
<tr>
<td>17.1</td>
<td>Work authorisations and permits</td>
</tr>
<tr>
<td>17.2</td>
<td>Event and function planning by the City</td>
</tr>
<tr>
<td>17.3</td>
<td>Interface Agreement</td>
</tr>
<tr>
<td>17.4</td>
<td>Parking impacts</td>
</tr>
<tr>
<td>18.</td>
<td>LAND AND ACCESS</td>
</tr>
<tr>
<td>18.1</td>
<td>Access to and use and occupation of the Works Site</td>
</tr>
<tr>
<td>18.2</td>
<td>Condition of the Works Site</td>
</tr>
<tr>
<td>18.3</td>
<td>City right of inspection</td>
</tr>
<tr>
<td>18.4</td>
<td>Works by the City</td>
</tr>
</tbody>
</table>
18.5 Environmental obligations .................................................. 45
18.6 Relics ................................................................................. 45
18.7 Native Title Claims .............................................................. 45
18.8 Heritage .............................................................................. 45

19. UTILITIES ............................................................................. 46
19.1 Utilities works ...................................................................... 46
19.2 Carrying out the works in relation to Utilities owned or controlled by the City ........................................................................... 46
19.3 Defects Liability Period .......................................................... 47
19.4 Carrying out works in relation to any other Utilities .................................................. 48

20. DELIVERY OF THE PROJECT .................................................... 48
20.1 Commencing and carrying out the Works ......................................... 48
20.2 Inspection points by the Independent Certifier ...................................... 49
20.3 Installation of parking signs, traffic signs and line marking .................. 49
20.4 Works that are not included in the Project ............................................ 50
20.5 Permanent City Assets ................................................................... 50
20.6 Other developments ......................................................................... 54

21. CITY CONTRIBUTION TO PROJECT FUNDING .................. 54
21.1 Contribution by the City to the funding of the Project .................................. 54
21.2 Certifications to be issued by the Independent Certifier ......................... 54
21.3 Payment of City Contribution Payment ............................................... 55
21.4 Suspension of the City Contribution Payment ........................................ 56
21.5 Adjustment of City Contribution Payment Dates .................................... 56
21.6 Ceasing of City Contribution Payments .............................................. 57
21.7 Refund of the City Contribution ....................................................... 57
21.8 Refund principles ......................................................................... 58
21.9 Application of suspension and refund of the City Contribution Payments .... 58

22. WORK HEALTH AND SAFETY ................................................... 58
22.1 Persons conducting a business or undertaking ........................................ 58
22.2 Consultation between PCBUs and with Workers ..................................... 59
22.3 Due diligence by an "officer" .................................................................. 59
22.4 Reporting hazards ............................................................................ 60

23. PERMANENT LIGHT RAIL CORRIDOR .................................... 60
23.1 Principles in relation to the Permanent Light Rail Corridor ....................... 60
23.2 Operation of the Project on and from the Permanent Light Rail Corridor ....... 61
23.3 Access to the Permanent Light Rail Corridor ......................................... 62

24. MAINTENANCE AND CLEANING ............................................. 63
24.1 Maintenance ...................................................................................... 63
24.2 Cleaning ......................................................................................... 63
24.3 Installation of bins ............................................................................ 63

25. DDA COMPLIANCE .................................................................... 64
25.1 Compliance and consultation .............................................................. 64

26. ADVERTISING AND OTHER THIRD PARTY RIGHTS .................. 64
26.1 Existing Advertising and Street Furniture Contract .................................. 64
26.2 Third party rights ............................................................................ 65
26.3 Naming and advertising rights in relation to the Project .......................... 65
26.4 No restriction as to safety and operational signage .................................. 66
26.5 Banners on Smartpoles® .................................................................... 66
27. RESOURCING AND COMMUNITY.................................................................66
   27.1 Resourcing contribution by the City...............................................66
   27.2 Stakeholder and community engagement and communications ........66

28. INTELLECTUAL PROPERTY.................................................................67
   28.1 Intellectual Property in the City Background IP............................67
   28.2 Intellectual Property in Project Deliverables and Permanent City Assets 69
   28.3 Copyright and Moral Rights..........................................................69
   28.4 DEDICATION OF LAND.....................................................................70
   28.5 Dedication of land to the City........................................................70

Schedule
1  REFERENCE SCHEDULE ........................................................................71
2  WORKS SITE ACCESS PRINCIPLES SCHEDULE ....................................72
3  CITY CONTRIBUTION PAYMENTS.........................................................77
4  FUNDAMENTAL OBLIGATIONS...............................................................78
5  CLEANING AND MAINTENANCE STANDARDS......................................80
6  PERMANENT CITY ASSETS.................................................................85
7  TECHNICAL REQUIREMENTS...............................................................87
8  CITY CODES AND STANDARDS............................................................103
9  FORM OF NOTICE OF ACTIVATION........................................................105

Annexure
A  PLAN OF THE WORKS SITE
B  BASELINE PAVING LAYOUT
C  CITY'S PREFERRED PAVING LAYOUT
D  CONCEPT DESIGNS - CATENARY SMARTPOLES®
E  INTERSECTIONS DRAWING
F  SUSTAINABILITY STRATEGY OBJECTIVES
G  GEORGE STREET TRANSFORMATION AND LIGHT RAIL TREE MANAGEMENT SPECIFICATION
H  GEORGE STREET PEDESTRIANISED AREA TRACK ALIGNMENT DESIGN PRINCIPLES
I  GEORGE STREET AND ALFRED STREET PRELIMINARY TREE AND POLE LAYOUT
J  INDICATIVE PROJECT PROGRAM
K 原型项目程序方案
THIS AGREEMENT is made on 19 December 2013

BETWEEN:
Transport for NSW ABN 18 804 239 602 of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood (TfNSW)
The Council of the City of Sydney ABN 22 636 550 790 of Town Hall House, 456 Kent Street, Sydney (City)

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 the City.
(D) TfNSW and the City:
   (1) entered into a non-binding memorandum of understanding on 22 April 2013 dealing with various matters in relation to the Project; and
   (2) agree that this Agreement supersedes the MOU.
(E) TfNSW and the City are seeking to minimise the impact of construction of the Project on the community, businesses and residents in the local government area administered by the City.
(F) The City wishes to ensure the effective integration of the Project and the Public Domain to achieve a world class, functional and high quality Public Domain.
(G) TfNSW wishes to achieve certainty as to the obligations under this Agreement to enable an effective and efficient procurement process for the Project.
(H) The City has agreed to contribute the City Contribution to the Project’s funding and acknowledges that value for money to the City will be achieved through:
   (1) handover by TfNSW to the City of the Permanent City Assets;
   (2) relocation of Utilities and preparation of roads in the local government area administered by the City for the purposes of the Project, which includes the delivery of various services and facilities to enable other City projects, initiatives and amenities (although not forming part of the Project);
   (3) provision of the pedestrianised area and related amenities in George Street;
   (4) the benefit and amenity of a Light Rail system integrated with the Public Domain and running through the local government area administered by the City; and
(5) the benefit of the Fundamental Obligations and implementation of the Technical Requirements and the City Codes and Standards as part of the Project.

(TfNSW and the City agree to work together to seek to achieve their objectives in respect of the Project, the Permanent Light Rail Corridor and the Public Domain.

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 and the effective integration of the Public Domain and the Project;

(ii) achieve the best possible outcome for the Project, the relevant stakeholders and those affected by the Project;

(iii) achieve certainty as to the obligations under this Agreement to enable an effective and efficient procurement process for the Project;

(iv) deliver 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 Hospitals 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 demand; and

(v) integrate the Project and the Public Domain as contemplated in this Agreement in a manner that achieves a world class, functional and high quality Public Domain (to the extent impacted by the Project) and realises value for money for the City Contribution.

(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 and the Planning Approval has not been obtained;

(ii) as the design and Planning Approval process for the Project advance and progress, TfNSW will, as part of that design and Planning Approval process, use reasonable endeavours to advocate for the Fundamental Obligations and 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 the City 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;

(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); and
(vi) the City Contribution is to be refunded to the City for a number of specified events, including if the Works are not completed and the Project's Light Rail service does not commence operations by the Sunset Date.

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 the City 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 the City 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 the City an Early and Preparatory Works Notice activating the Part C Provisions (Early and Preparatory Works); and

(b) gives the City 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 the City a Works Notice notifying the City that each of the following has occurred:

(a) funding approval has been given by the NSW Government in respect of the Project; and

(b) Planning Approval has been issued on terms and conditions acceptable to TfNSW.

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:

(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 Department of Planning and Infrastructure 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 Department of Planning and Infrastructure 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 Department of Planning and Infrastructure in respect of the Project, it will use reasonable endeavours to advocate for the Fundamental Obligations and the Technical Requirements, so that the Planning Approval will be as consistent with this Agreement as possible in the circumstances.

(e) The City 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 Fundamental Obligations, the Technical Requirements, the City Codes and Standards 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 the City in accordance with the Fundamental Obligations, the Technical Requirements, the City Codes and Standards and its other obligations under this Agreement.

(h) The City 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;

(iii) remains fully responsible for all of its obligations under this Agreement despite any engagement by TfNSW of such third parties 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; and

(iv) excluding its obligations under clause 27.2 and clause 21, 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) If an Early and Preparatory Works Notice or Works Notice is given by TfNSW to the City, 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 the City.

(j) For the avoidance of doubt, the parties acknowledge and agree that as between the City and TfNSW:

(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,

are solely the responsibility of TfNSW and the City has no control or responsibility in relation to these matters.

(k) Subject to clause 5.1(l), the City 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.

(l) The parties agree that clause 5.1(k) is not taken to limit any liability which TfNSW would have had to the City under this Agreement as a result of a breach by TfNSW of a term of this Agreement but for clause 5.1(k).
5.2 Role of the City

(a) The City 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) The City confirms its support of, and will not object to, any submissions by TfNSW to the Department of Planning and Infrastructure, the Central Sydney Planning Committee, the Central Sydney Traffic and Transport Committee or other relevant planning agencies in relation to the Project that are in accordance with the provisions of this Agreement.

(c) Subject to clause 5.2(d), TfNSW acknowledges and agrees that nothing in this Agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the City to exercise any of its functions and powers pursuant to any law.

(d) The parties agree that clause 5.2(c) is not taken to limit any liability which the City would have had to TfNSW under this Agreement as a result of a breach by the City of a term of this Agreement but for clause 5.2(c).

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 the City with a copy of that information, the Independent Certifier is required to supply that information to the City 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 the City 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:

(i) as at the date of this Agreement, a definition design ("Final Definition Design" dated 16 August 2013) has been prepared by or on behalf of TfNSW in relation to the Project;

(ii) the definition design referred to in paragraph (b)(i) will be used for the purposes of the environmental impact statement for the Project and to progress the procurement process for the Project; and

(iii) 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.

6.2 **TfNSW design obligations**

(a) TfNSW will, in accordance with its obligations under this Agreement, design the Works in accordance with:

(i) the Fundamental Obligations;

(ii) the Technical Requirements;

(iii) the City Codes and Standards; and

(iv) its other obligations under this Agreement.

(b) TfNSW acknowledges that:

(i) the parties have spent considerable time and resources developing the Fundamental Obligations and the Technical Requirements and the City has spent considerable time preparing the City Codes and Standards;

(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 Fundamental Obligations, the Technical Requirements, the City Codes and Standards and the other TfNSW obligations under this Agreement are a Project cost payable by TfNSW.

(c) TfNSW and the City acknowledge that:

(i) 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); and

(ii) despite paragraph (c)(i) and without limiting TfNSW's obligation to comply with the City Codes and Standards, the City prepared the City Codes and Standards and TfNSW is not responsible for the adequacy or completeness of the City Codes and Standards. If TfNSW becomes aware of an aspect of the
City Codes and Standards which is not adequate for the purposes of the Project or this Agreement, TfNSW will notify the City and provide the City with an opportunity to consider whether it will release TfNSW from the obligation to comply with the relevant requirement or whether the parties should seek to agree a variation to this Agreement.

(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.

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 the City in writing and give reasonable details as to why TfNSW considers that it will be unable to comply with clause 6.2(a);
   (B) the City 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 the City in writing and give reasonable details as to why it seeks the variation, including any possible alternatives; and
   (B) the City 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).
6.3 City's role in development of Design Documentation

TfNSW will:

(a) involve the City in the development of the Design Documentation by consulting and collaborating regularly with the City throughout the design process;

(b) without limiting clause 6.3(a), TfNSW will meet regularly with the City throughout the design process; and

(c) have regard to matters and concerns raised by the City to TfNSW in relation to the development of the Design Documentation.

6.4 City review of Design Documentation

(a) TfNSW will give the City 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 the City (including, without limitation, Moore Park); and

(ii) required to verify compliance with this Agreement.

(b) TfNSW will:

(i) submit the relevant Design Documentation to the City in a manner and at a rate which will give the City a reasonable opportunity to review the submitted Design Documentation;

(ii) give the City not less than 13 Business Days to review the submitted Design Documentation;

(iii) if requested by the City, make available the appropriate design or other suitably qualified personnel to explain the Design Documentation or provide such information regarding the Design Documentation as the City reasonable requests; and

(iv) give the City 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) The City may (but is not obliged to) within the period referred to in paragraph (b)(ii):

(i) provide comments in writing to TfNSW in respect of the Design Documentation; and/or

(ii) notify TfNSW if the Design Documentation does not, in the City's opinion, comply with clause 6.2(a), giving reasons why the City considers that the Design Documentation does not so comply.

The City will, if it intends to exercise its right under this paragraph (c), provide its comments as early as is practicable in the circumstances and prior to the expiry of the period referred to in paragraph (b)(ii).
(d) If the City gives TfNSW a notice under paragraph (c)(ii):

(i) TfNSW must forward the notification of the City (and the reasons of the City) to the Independent Certifier;

(ii) the Independent Certifier will review the comments of the City and determine whether there are non-compliances with clause 6.2(a);

(iii) if the Independent Certifier determines that 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 the City 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), paragraph (d)(iv) and clause 6.5(d).

(f) Without limiting paragraph (a), TfNSW acknowledges and agrees that:

(i) when it submits Design Documentation to the City that contains design for Light Rail infrastructure to be installed in the Permanent Light Rail Corridor within the local government area administered by the City that may relate to or have an impact on the Public Domain, then to the same or similar design resolution and with the same level of quality and detail, the corresponding Public Domain and urban design adjoining that space also needs to be provided as soon as is practicable and no later than 3 months after the submission of that design;

(ii) at the request of the City, TfNSW will submit Design Documentation to the urban domain reference group established for the Project for consideration of relevant design issues by that reference group; and

(iii) when TfNSW has developed Design Documentation that contains a design outcome for DDA compliance, it will as soon as is practicable in the circumstances submit that Design Documentation to the City for review in accordance with this clause 6.4.

6.5 Prototype of Stop and public domain and Permanent Light Rail Corridor paving

(a) TfNSW must, as soon as practicable after TfNSW enters into a contract to undertake the Works (excluding the Early and Preparatory Works), construct a Stop to be used as a prototype to demonstrate design and finishes. The construction of the Stop will be at TfNSW’s cost. The Stop must include:

(i) a canopy on at least one side of the Stop;

(ii) the elements (including paving) reflected in the drawing which is Annexure K; and

(iii) the final paving layout developed by TfNSW in accordance with the principles in Section 1.6.2 of Schedule 7.
(b) The prototype Stop:

(i) may comprise one of the Project's Stops within the local government area administered by the City in-situ or may be constructed in an off-site location;

(ii) is only required to include a single platform;

(iii) is not required to include any Light Rail systems or rolling stock;

(iv) is not required to include working services (such as lighting); and

(v) may be developed in parts.

(c) The prototype will not be for the purposes of testing alignment of the Light Rail.

(d) On completion of the prototype Stop (or a part of the prototype Stop), TfNSW must give the City not less than 13 Business Days to review the constructed prototype Stop (or part of the prototype Stop, as applicable) and clause 6.4 will apply as if the Stop was Design Documentation.

(e) For the avoidance of doubt, the construction of the prototype Stop by TfNSW is not intended for the purpose of proving up, changing or enhancing the City Codes and Standards or all of the Technical Requirements that may apply at the relevant Stop.

(f) If the City gives TfNSW a notice of non-compliance under clause 6.4(c)(ii) and if TfNSW:

(i) agrees with the opinion of the City as set out in the City's notice, TfNSW will amend the prototype Stop and allow the City to inspect the prototype Stop (in which case paragraphs (d) and (f) will re-apply); or

(ii) disagrees with the opinion of the City as set out in the City's notice, the dispute resolution procedure set out in clause 11 will apply. TfNSW may proceed with the design of the Project, despite the existence of any such dispute, at the risk of TfNSW.

6.6 Public art

The City 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 the City’s intention to integrate public art with the Project at specific locations between Circular Quay and Central Station;

(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) the City 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 the City'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 the City will work together to facilitate the provision of public art between Circular Quay and Central Station by the City 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 the City and at the City'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 the City 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

In addition to Section 1.20.2 of the Technical Requirements, TfNSW and the City will work together and co-operate to develop a design for hoardings to be used by the Project in the construction compound areas. 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, the City does not assume or owe any duty of care to TfNSW to review, or in reviewing, any Design Documentation submitted to it for any errors, omissions or compliance with this Agreement.

(b) No participation by the City in the development of, review of, or comments on any Design Documentation submitted by TfNSW will lessen or otherwise affect TfNSW’s obligations under this Agreement or constitute an acknowledgement by the City 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 Fundamental Obligations; then

(iii) compliance with the Technical Requirements; then

(iv) compliance with TfNSW’s other obligations under this Agreement; then

(v) compliance with the City Codes and Standards.

(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 Infrastructure 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, 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) In relation to Moore Park:

(i) the parties acknowledge that aspects of the design for the Project at Moore Park may be the subject of review by both the Centennial Park and Moore Park Trust and the City;

(ii) if there is a conflict in design review comments from the Centennial Park and Moore Park Trust and from the City, TfNSW:

(A) will seek to facilitate the resolution of the conflict and, where necessary, a discussion between the City and Centennial Park and Moore Park Trust to reach agreement in relation to the conflict;

(B) may elect for the comments of the Centennial Park and Moore Park Trust to take precedence over the comments of the City; and

(iii) if, at any time (including before TfNSW executes an agreement with Centennial Park and Moore Park Trust in relation to the Project), TfNSW identifies a conflict between the technical requirements of the Centennial Park and Moore Park Trust and the Technical Requirements, TfNSW will notify the City of such conflict.

(e) 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 the City copies of the:

(i) long term delivery program;

(ii) summarised delivery phase progress reports; and

(iii) 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 the City.

(b) The TfNSW Representative and City Representative must discuss progress of the Works on a regular basis, so the City is kept informed of the delivery status of the Project.
7. PROJECT FUNDING

7.1 Responsibility for Project funding

Except as expressly provided in clause 21, 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) The City has, or will have, membership on the reference groups once those groups are formed as follows:

(i) at least two members on the urban domain reference group for the Project, which will generally have the role set out in clause 8.1(h); and

(ii) at least one member on each of the utilities reference group and the delivery phase roundtable for the Project.

(d) TfNSW will ensure that:

(i) the Project reference groups of which the City is a member meet frequently during each year from the date on which the reference groups are formed until completion of the Works; and

(ii) the City’s feedback given as a member of a Project reference group is passed on to the Project’s advisory board.

(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) The City 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 the City to facilitate appropriate City 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.
The City may request the TfNSW Project Director to call special meetings of the urban domain reference group where there is a design issue relevant to the rights and obligations in this Agreement that requires urgent discussion and review by the urban domain reference group. TfNSW will act reasonably in considering a request from the City under this clause 8.1(i).

8.2 Procurement of the Project

(a) TfNSW will liaise with the City during the implementation of the procurement strategy for the Project for the purpose of allowing the City to participate, where appropriate in TfNSW's reasonable opinion, in relation to significant contracts and significant consultancy appointments being entered into by TfNSW in relation to the Works.

(b) The parties each acknowledge that the participation by the City in respect of the procurement strategy for the Project as contemplated under paragraph (a) will occur as follows:

(i) the City will have at least two representatives as advisors on a special advisory committee for the Project, which will provide input to the relevant Project's tender assessment committee in respect of the relevant contract or appointment to ensure compliance with this Agreement. The City representatives on the specialist advisory committee will have the opportunity to evaluate parts of the tenders in relation to their area of expertise and report on their assessment to the tender assessment committee, including highlighting potential risks and benefits to the Project and assisting the Project's tender assessment committee through participation in discussions and answering queries of the tender assessment committee. TfNSW will ensure that the City's feedback given as a member of the special advisory committee is passed on to the Project's tender assessment committee; and

(ii) following the selection of the preferred tenderer for the Project and until the project deed for the Project is executed by TfNSW, TfNSW will consult with the City in relation to any negotiations with the preferred tenderer regarding design aspects for the Project that relate to the local government area administered by the City for the purposes of the City providing comments to TfNSW on any proposed options and innovations and to achieve the best outcomes for the City and the Project.

(c) If requested by the City, TfNSW will facilitate a discussion between the City 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 the City.

(d) Without limiting this clause 8.2, TfNSW will give the City:

(i) the opportunity to review and comment on relevant sections of the draft specification (as nominated by the City) that will form part of the tender for the project deed for the Project. Clause 6.4 will apply to the City's review of the draft specification as if it were part of the Design Documentation, except that the City will have a review period as nominated by TfNSW (provided that such period must be at least 5 Business Days); and

(ii) 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 the City 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, the City agrees not to:

(a) sell, assign or dispose of any land, or any of the City'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,

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

8.4 Appointment and role of the TfNSW Representative and the City Representative

(a) TfNSW will appoint the person referred to in Item 5 of Schedule 1 to be the TfNSW Representative for the purposes of this Agreement and will notify the City in writing of any changes to that appointment as soon as reasonably practicable.

(b) The City will appoint the person referred to in Item 6 of Schedule 1 to be the City 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 City 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 City 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 City Representative are taken to be within the knowledge of the City;

(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 City Representative has the authority to act on behalf of the City in its role under this Agreement but acts at all times as the agent of the City and is subject to the directions of the City.
9. **INDEMNITY**

9.1 **Indemnity in relation to Claims**

(a) TfNSW indemnifies the City, the City’s employees (which for this clause 9 includes contractors on contracts of employment) and the elected representatives of the City from and against all third party Claims brought against, suffered or incurred by the City, the City’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 the City’s Utilities by TfNSW or TfNSW’s Employees and Agents in connection with the Project;

(iii) the design (excluding designs supplied by the City and not varied by TfNSW), manufacture (if applicable), construction, installation, upgrade (if applicable) or relocation of the Permanent City 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 the City 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) and footings of Smartpoles® removed, relocated or installed as part of the Project by TfNSW or TfNSW’s Employees and Agents);

(B) any act or omission of the City 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 dedicated by or handed back to the City by TfNSW as contemplated under this Agreement or Permanent City Assets handed over to the City under this Agreement;

(C) a breach of this Agreement by the City; or

(D) a negligent act or negligent omission of the City, the City’s employees or its elected representatives; or

(ii) the relevant Claim relates to:

(A) areas of the public domain and assets of the City 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 the City in respect of Permanent City 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 the City agree that, if a third party Claim contemplated under clause 9.1(a) is made against the City, the City's employees or the elected representatives of the City (as applicable):

(a) the City will notify TfNSW as soon as is practicable after becoming aware of the Claim;

(b) the City 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) the City will keep TfNSW regularly informed about the progress of the Claim; and

(d) TfNSW may make a request to the City to exercise, or the City may request that TfNSW exercises, at TfNSW's cost, the rights of the City, the City's employees or the City's elected representatives (as applicable) to defend such Claim directly, in which case, if the City agrees to TfNSW's request (acting reasonably) or the request is made by the City, the City will execute all documents and provide all information and materials to TfNSW as is held by the City and necessary to enable TfNSW to efficiently and effectively defend the Claim.
EXECUTED as an agreement.

SIGNED FOR AND ON BEHALF OF THE COUNCIL OF THE CITY OF SYDNEY by its Chief Executive Officer in the presence of:

[Signature]

Signature of Chief Executive Officer

[Name]

Name (print)

LAURA ANNE HAY

Name of witness

EXECUTED on behalf of TRANSPORT FOR NSW by its authorised delegate in the presence of:

[Signature]

Witness signature

[Name]

Witness name (print)

Witness address (print)

Christopher Deccan Lock
Deputy Director General
Transport Projects Division

24

Execution Version City of Sydney Development Agreement - Sydney Light Rail Project
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 the City; or

(b) subject to clause 18.1(g), any area controlled by the City and which the City 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 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 the City 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 Services; and

(c) any other person (whether autonomous or not) charged with the administration of a law.
Baseline Paving Layout means the paving layout attached as Annexure B.

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.

City Background IP means all Intellectual Property of the City incorporated in its existing assets, including Smartpoles®, the new suite of catenary Smartpoles® described in Annexure D, existing street furniture designs and the new street furniture designs described in the City Codes and Standards.

City Codes and Standards means the City codes, development policies and standards listed in Schedule 8, which may be amended by the City at any time before 1 February 2014 (without the requirement to comply with the variation process set out in clause 6.2 or clause 13.5).

City Contribution means the fixed monetary amount set out in Item 1 which excludes any value-in-kind contribution and is payable by the City to TfNSW in accordance with clause 21.

City Contribution Payment means each fixed monetary amount set out in column 1 of the table in Schedule 3.

City Contribution Payment Date means each date set out in column 2 of the table in Schedule 3.

City Representative means the person appointed by the City and notified to TfNSW in accordance with clause 8.4, provided that such person is suitably qualified to carry out the functions of the City Representative under this Agreement, which at the date of this Agreement is the person identified in Item 6.

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

City's Preferred Paving Layout means the paving layout attached as Annexure C.

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 the City on 3 June 2013 in relation to the Project.

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.


Defect means a defect, error or omission in the Permanent City Assets or Utilities owned by the City 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 City Assets or Utilities or otherwise results in the Permanent City 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 the City;

(b) the design of the Permanent City Assets and any aspect of the Project that impacts on the Permanent City 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 the City;

(d) for the purpose of clause 20.1(c), includes any proposed design changes to the Construction Documentation; and

(e) the 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 Services;
(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 the City under an Early and Preparatory Works Notice.

Early and Preparatory Works Notice means a notice given by TfNSW to the City 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 agreement dated 22 January 1998 and titled General Conditions of Contract between the City and JCDecaux Australia Pty Ltd as Trustee of JCDecaux Australia Unit Trust.

Fundamental Obligations means the TfNSW obligations in relation to the Project set out in Schedule 4, as may be varied in accordance with clause 6.2 or clause 6.9.

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)(vi).

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.

Indicative Project Program means the program which is Annexure J.

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 the City on 22 April 2013 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 28 (inclusive) of this Agreement;
(b) Schedule 1 – Schedule 9 (inclusive); and
(c) Annexure A - Annexure K (inclusive).

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

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

Permanent City 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 Infrastructure in respect of the Project in accordance with the EP&A Act.

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 Services 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 City Assets.

Public Domain means those areas of the public domain within the local government area administered by the City 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).

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.

Smartpole® means a multi-function track based system that allows multiple mounted accessories to be accommodated on a single pole with an aluminium extrusion, including, for example, the following accessories:

(a) street lighting and signage;
(b) banners;
(c) pedestrian lighting and signals;
(d) CCTV and telecommunications technology;
(e) feature lighting;
(f) traffic signals; and
(g) variable message signs and general signage.

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.

Sunset Date means 31 December 2023.

Technical Requirements means the technical requirements of the City 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 4.

TfNSW Representative means the person appointed by TfNSW and notified to the City 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 5.

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 the City and the City's Employees and Agents).

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

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 and includes any utility in a Smartpole®.

WHS Act means the Work Health and Safety Act 2011 (Cth).

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) inspections of the Works Site for any purpose arising out of or in connection with the Project;
undertaking any early or preparatory works in relation to the Project, including the removal, relocation, modification and protection of Utilities and temporary reinstatement works;

construction of all relevant aspects of the Project, including the City Permanent Assets; and

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 9.

Works Site means the area described as ‘Works Site’ on the Plan of the Works Site attached at Annexure A and is land owned by the City, 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 the City 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
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.

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 Chief Operating Officer of the City 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 Chief Executive Officer of the City 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 a dispute between the parties and either party considers that the dispute is of a technical nature, whether or not the parties have undertaken 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 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.
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; and

(b) except where clause 11.3 applies, the period referred to in clause 11.2(b) 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

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 Tax Invoice

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

12.3 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.

12.4 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 the City and TNSW 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 7 and 8, 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) The City acknowledges that:

(i) it has entered into the Confidentiality Deed Poll before the date of this Agreement; and

(ii) it will, in exercising its rights and complying with its obligations under this Agreement, comply with the Confidentiality Deed Poll.

(b) TfNSW will:

(i) treat as confidential:

(A) all information of the City which is given to TfNSW by the City in relation to this Agreement or the Project and by its nature is confidential; and
(B) all information which is designated by the City as confidential or TfNSW knows or ought reasonably to have known is confidential,

(Confidential Information);

(ii) not use Confidential Information for any purpose other than for the performance of its obligations or exercising its rights under this Agreement; and

(iii) not disclose Confidential Information to any person other than TfNSW's Employees and Agents who need to know the information for the proper performance of their duties in connection with the Project or as contemplated under paragraph (c).

(c) 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 in relation to the Project (subject to the requirement for that party to enter into confidentiality arrangements equivalent to those set out in this clause 13.6);

(iii) to any party participating in the procurement process for the Project (subject to the requirement for that party to enter into confidentiality arrangements equivalent to those set out in this clause 13.6); and

(iv) if required in connection with legal proceedings, but in each case, TfNSW will give the City notice of any proposed disclosure.

(d) TfNSW 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.
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.

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 the City from doing a thing, then the City will:

(i) do everything necessary to ensure that the City’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 9.1 (indemnity in relation to Claims), 11 (dispute resolution), 13.1 – 13.3 (inclusive), 13.5 – 13.12 (inclusive), 21.7 (refund of the City Contribution), clause 21.8 (Refund principles) 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 the City an Early and Preparatory Works Notice, TfNSW may carry out the Early Works and Preparatory Works in accordance with:

(a) clause 17, clause 18, clause 19, clauses 20.1 - 20.4, clause 22, clause 25, clause 26, clause 27 and clause 28 (inclusive) of the Part D Provisions (Works);

(b) clause 21 of the Part D Provisions (Works), but not until TfNSW notifies the City in writing that each of the following has occurred:

(i) funding approval has been given by the NSW Government in respect of the Project; and

(ii) the Planning Approval has been issued on terms and conditions acceptable to TfNSW,

which apply as if those clauses were incorporated in full in these Part C Provisions (Early and Preparatory 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 the City in respect of the Project, the City 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 the City

(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 Sydney central business district 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 the City 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.

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 Impacts

(a) The parties acknowledge that the Project will have impacts on parking available in certain areas of the local government area administered by the City.
Subject to Section 1.18 of the Technical Requirements, TfNSW is responsible for the assessment and mitigation of directly impacted parking changes adjacent to or along the alignment of the Light Rail corridor.

The City is responsible for any other parking changes in and around the local government area administered by the City.

18. LAND AND ACCESS

18.1 Access to and use and occupation of the Works Site

(a) The City 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 no licence fee or other consideration is payable by TfNSW in relation to the grant of a Works Site Licence.

(c) The City 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 City's inspection rights under clause 18.3 and clause 20.2; and

(ii) the right of the City to carry out works under clause 18.4,

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) The City 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 the City controls an area of land, such as Martin Place, but does not own that land:

(i) TfNSW acknowledges that the City may only be entitled to grant rights of access to TfNSW in respect of that land to the extent the City 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 the City and TfNSW (acting reasonably); and
(iv) the City 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 City Codes and Standards.

(i) TfNSW will, at its cost, repair or replace any parts of the Works Site (including items or other property, whether owned by the City or a third party) damaged by TfNSW or by TfNSW's Employees and Agents during the term of a Works Site Licence.

(j) The City'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 the City 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 City right of inspection

(a) The City 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 City purpose.

(b) If the City wishes to request access to an Occupied Works Site under paragraph (a), the City 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 the City in the notice given by the City or for an acceptable alternative time and date as agreed by the City (acting reasonably).

(d) The City may allow up to 5 personnel (which may include the City's Employees and Agents except the City'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 City personnel at all times during the inspection; and

(ii) the City 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 the City 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 the City

(a) Subject to the remainder of this clause 18.4, the parties will work together to ensure that the City (including the City’s Employees and Agents, other than the City’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), undertake routine repair and maintenance work from time to time or to install public art in accordance with clause 6.6.

(b) The right for the City 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) The City will, at its cost, repair any damage to the Works or the Occupied Works Site caused in exercising its rights under paragraph (a).

(d) The City 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 the City enters the Occupied Works Site under paragraph (a); and
   (ii) in relation to any routine repair or maintenance work which is not an Emergency and to install public art, 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 the City or an acceptable alternative time and date as agreed by the City (acting reasonably).

(e) If the City enters the Occupied Works Site for any purpose (including under clause 18.3 or paragraph (a) or paragraph (c)):
   (i) the City will not interfere with TfNSW or TfNSW's Employees and Agents carrying out the Works;
   (ii) the City 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 the City's own risk and cost (except as expressly provided in this Agreement);
   (iv) the City is liable for any act or omission of the City's Employees and Agents; and
   (v) the City will comply with all reasonable directions of TfNSW, including in relation to safety, in accessing the Occupied Works Site.
(f) If the City enters the Occupied Works Site to undertake any routine repair or maintenance work or to install public art as referred to in paragraph (d)(ii), the City'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) TfNSW will be responsible for the remediation of any Contamination on, in or under the Works Site 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) 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

If any Relics are found in, on or under an Occupied Works Site in connection with the Works, TfNSW will appropriately deal with those Relics in accordance with all applicable laws and, as between TfNSW and the City, the Relics will be owned by the City.

18.7 Native Title Claims

(a) TfNSW acknowledges and agrees that the City 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 the City:

(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 the City 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 the City (whether owned solely by the City 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) The City 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 the City has contractual rights against any third party referred to in paragraph (b)(i) to relocate, remove or modify its Utilities, the City 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 the City

(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 City Codes and Standards, the Technical Requirements, the Fundamental Obligations 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 the City;

(ii) obtain the City's prior written approval for all such work (the City 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 the City (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 to relevant City Codes and Standards; and

(vii) provide the City 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 the City 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 the City under paragraph (b), which begins on the date on which the Defect is rectified,

(in aggregate, the Defects Liability Period).

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

(i) work together with the City 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 the City, 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 the City under paragraph (b), it may notify the City 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 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 (d)), the City may (without prejudice to any other rights the City 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 the City in doing so will be a debt due and payable by TfNSW to the City.

19.4 Carrying out works in relation to any other Utilities

TfNSW acknowledges and agrees that the City 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 City Codes and Standards, the requirements of all applicable Authorisations and this Agreement; and

(ii) deliver the completed Works in accordance with the Construction Documentation.
(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 the City and its local government area (including, without limitation, Moore Park); 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 the City, TfNSW must give the City and the Independent Certifier at least 1 Business Day's written notice in advance of when construction that affects:

(i) any existing City owned or controlled assets, including Utilities; or

(ii) assets that will, in the future, be handed over to the City as Permanent City Assets,

is, from time to time and in accordance with the City Codes and Standards, about to reach a hold-point as identified in the City Codes and Standards (Inspection Point Notice).

(b) Following receipt of an Inspection Point Notice, the Independent Certifier must:

(i) notify the City and TfNSW of the date and time on which the Independent Certifier will inspect the Works referred to in paragraph (a); and

(ii) inspect the progress of the relevant Works to verify whether those Works have been undertaken in accordance with the City Codes and Standards.

(c) The Independent Certifier must, within 5 Business Days of the inspection, provide to the City and TfNSW a written copy of the Independent Certifier's findings from the inspection.

(d) TfNSW acknowledges that the City 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), the City 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 the City.

(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 the City.

20.4 Works that are not Included in the Project

The parties agree that, as between the City and TfNSW, TfNSW does not have responsibility to the City 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 in accordance with the City Codes and Standards or as contemplated by this Agreement; or
(c) any works within the Public Domain not contemplated by the City Codes and Standards, the Planning Approval or this Agreement.

20.5 Permanent City Assets

(a) Delivery

(i) The parties acknowledge that Permanent City Assets will be installed, constructed, relocated or altered as part of the Project by TfNSW.

(ii) All Permanent City 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 City Assets at its cost, in accordance with the City Codes and Standards, the Technical Requirements, the Fundamental Obligations and any other relevant terms of this Agreement. Once the relevant works in relation to the Permanent City Assets are complete, the Permanent City Assets must be structurally adequate and fit for their intended purpose. Subject to the above, the City acknowledges and agrees that:

(A) in respect of existing Permanent City Assets that are relocated by TfNSW, the structural adequacy and fitness for purpose of those assets is to be to the same or equivalent standard of the asset prior to the relocation by TfNSW; and

(B) in determining what comprises "fit for purpose", TfNSW is not required to supply, install or construct new Permanent City Assets to a standard or quality that is higher than the City would ordinarily supply, install or construct those assets or to a standard which is higher than as contemplated under this Agreement.
TfNSW must transfer ownership and control of all of the Permanent City Assets to the City on the earlier to occur of the following:

(A) the date on which the conditions of handover described in paragraphs (c)(i) and (ii) are met;

(B) the date on which commencement of operation of the Project’s Light Rail service takes place; or

(C) the Sunset Date,

and otherwise in accordance with the process described in this clause 20.5 and Schedule 6.

(b) **Progressive completion of Permanent City Assets**

TfNSW must progressively complete the Permanent City Assets and, on expiry of a Works Site Licence, handover each of the Permanent City Assets within the Occupied Works Site the subject of that Works Site Licence to the City 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 City Assets and handover of the Permanent City Assets occurs in a smooth and orderly manner; and

(iii) completion of the Works is not delayed.

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

(c) **Conditions of handover for Permanent City Assets**

(i) **Handover of Permanent City Assets to the City** must not occur until:

(A) the City has had a reasonable opportunity to inspect the relevant Permanent City Assets prior to the proposed handover;

(B) the relevant Permanent City Assets have been completed in accordance with the Construction Documentation;

(C) the relevant Permanent City Assets are able to be handed over in accordance with the condition referred to in the City Codes and Standards; and

(D) that part of the Works Site on which the relevant Permanent City Assets are located is ready to be handed back to the City in accordance with clause 3 of the Works Site Access Principles;

(ii) TfNSW has notified the City in writing that the relevant Permanent City Assets have reached completion and are ready for handover in accordance with this Agreement. This notice must:

(A) clearly describe the relevant Permanent City Assets being handed over and their location;
(B) contain all other information and documentation that an owner of the asset would reasonably require; and

(C) include a date, no earlier than 20 Business Days from the date of service of the notice on the City, that the relevant Permanent City Assets are proposed to be handed over to the City,

(Proposed Handover Notice); and

(iii) the City has given TfNSW a notice accepting handover of the relevant Permanent City Assets, as described in the Proposed Handover Notice on the hand over date proposed in the Proposed Handover Notice (Acceptance Notice). The City must either:

(A) issue the Acceptance Notice; or

(B) otherwise notify TfNSW of the reasons why it objects to the handover of the relevant Permanent City Assets at that time,

prior to the hand over date in the Proposed Handover Notice.

(iv) If the City issues a notice under paragraph (c)(iii)(B) 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 the City with a new Proposed Handover Notice for those rectified Permanent City Assets and this clause 20.5(c) will re-apply to the rectified Permanent City 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 the City under paragraph (c)(iii)(B) are valid matters which prevent completion of the Permanent City Assets in accordance with this Agreement, TfNSW will rectify those matters identified by the Independent Certifier.

(v) The Independent Certifier must issue a certification in relation to rectification of the matters referred to in paragraph (c)(iv), following completion of the relevant works by TfNSW.

(vi) The Handover Date for a Permanent City Asset will occur on the earlier of:

(A) the hand over date confirmed in the City's Acceptance Notice for that Permanent City Asset; and

(B) 1 Business Day after the Independent Certifier issues to the City the certification for that Permanent City Asset referred to in paragraph (c)(v).

(d) Handover of Permanent City Assets

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

(i) the City will own, control and have sole responsibility for the relevant Permanent City Assets;
(ii) the Permanent City Assets Principles will apply to the relevant Permanent City Assets;

(iii) except in relation to defects rectification, negligence, latent defects or breach of this Agreement by TfNSW, TfNSW will have no liability and the City releases TfNSW from all Claims in relation to the relevant Permanent City Assets.

(e) Defects Liability Period

(i) Each Permanent City Asset handed over to the City pursuant to paragraph (d) has:

(A) a defects liability period which:

(aa) begins on the Handover Date for that Permanent City 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 the City under paragraph (e)(ii), which begins on the date on which the Defect is rectified,

(in aggregate, the Defects Liability Period).

(ii) If the City identifies what it considers to be any Defects in the Permanent City Assets during the Defects Liability Period, the City may notify those Defects to TfNSW in writing and the following will apply:

(A) the Independent Certifier will determine whether the City has identified Defects which require rectification by TfNSW in accordance with this Agreement and will notify the City and TfNSW of the Defects that must be rectified by TfNSW;

(B) TfNSW will work together with the City 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 City 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 the City, prepare and submit a program and method statement for the performance of the Defect rectification work.
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 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), the City may (without prejudice to any other rights the City 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 the City in doing so will be a debt due and payable by TfNSW to the City.

20.6 **Other developments**

The City will, to the extent the City 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. **CITY CONTRIBUTION TO PROJECT FUNDING**

21.1 **Contribution by the City to the funding of the Project**

(a) The City Contribution is payable as progressive fixed annual part payments in accordance with this clause 21.

(b) The parties acknowledge and agree that:

(i) TfNSW will apply the City Contribution to the costs of the Project; and

(ii) the City Contribution is not indexed and is a fixed monetary amount, regardless of the actual costs of the Project.

(c) Despite any other clause in this Agreement, and without limiting clause 21.4:

(i) TfNSW must not issue a tax invoice to the City in relation to any City Contribution Payment; and

(ii) the City is entitled to withhold any City Contribution Payment which is due to be paid as reflected in Schedule 3,

until after the date on which a contract for either the Early and Preparatory Works or the Works (as applicable) is entered into.

21.2 **Certifications to be Issued by the Independent Certifier**

(a) No earlier than 45 Business Days before a City Contribution Payment Date, the Independent Certifier must issue a certification that:

(i) work on the Project:

      (A) is continuing generally in accordance with the Indicative Project Program; or
(B) is complete; or
(C) is not continuing generally in accordance with the Indicative Project Program; or
(D) is temporarily not continuing; or
(E) will no longer proceed; and

(ii) the Fundamental Obligations (in relation to both the Design Documentation and the Works in the local government area administered by the City) are, to the extent applicable:

(A) being satisfied or, in relation to the Fundamental Obligations numbered 6, 7 and 8 in Schedule 4, being materially satisfied; or

(B) not being satisfied or, in relation to the Fundamental Obligations numbered 6, 7 and 8 in Schedule 4, not being materially satisfied.

(b) On completion of the Works, the Independent Certifier must issue a certification certifying whether the Fundamental Obligations:

(i) have been satisfied or, in relation to the Fundamental Obligations numbered 6, 7 and 8 in Schedule 4, have been materially satisfied; or

(ii) have not been satisfied or, in relation to the Fundamental Obligations numbered 6, 7 and 8 in Schedule 4, have not been materially satisfied.

(c) If, at any time before the City pays the final City Contribution Payment, the Independent Certifier becomes aware that an event in paragraph (a)(i)(D) or (E) has occurred, the Independent Certifier must promptly issue a certification that the relevant event has occurred.

(d) TfNSW must ensure that the Independent Certifier’s deed for the Project includes relevant certification obligations so that this clause 21 can be given effect.

21.3 Payment of City Contribution Payment

(a) TfNSW will issue a tax invoice to the City in respect of the applicable City Contribution Payment if the Independent Certifier has provided a certification that:

(i) work on the Project is continuing generally in accordance with the Indicative Project Program and the Fundamental Obligations are being satisfied (or materially satisfied, as applicable); or

(ii) work on the Project is complete.

(b) The City must pay to TfNSW the City Contribution Payment within 20 Business Days of receipt of a valid tax invoice.

(c) For the avoidance of doubt, for the obligation of the Independent Certifier or TfNSW to issue a certification or valid tax invoice within the timeframes set out in clause 21.2(a) or clause 21.3(a), time is not of the essence. If a timeframe is missed, the City will pay the City Contribution Payment within 20 Business Days after receipt of both the appropriate certification and a valid tax invoice.
21.4 **Suspension of the City Contribution Payment**

(a) If the Independent Certifier issues a certification that the Project is temporarily not continuing, the City will be entitled to withhold payment of any City Contribution Payments to TfNSW under this clause 21 until such time as:

(i) the Independent Certifier issues a certification that the Project has recommenced; and

(ii) TfNSW has issued a tax invoice to the City in relation to the relevant City Contribution Payments.

(b) If the Independent Certifier issues a certification that the Fundamental Obligations are not being satisfied or materially satisfied (as applicable), the City will be entitled to withhold payment of any City Contribution Payments to TfNSW under this clause 21 until such time as:

(i) the Independent Certifier issues a certification that the Fundamental Obligations are now being satisfied or materially satisfied (as applicable); and

(ii) TfNSW has issued a tax invoice to the City in relation to the relevant City Contribution Payments.

(c) Notwithstanding clause 21.3(a)(ii), if the Independent Certifier issues a certification:

(i) under clause 21.2(a)(i)(B) that work on the Project is complete; and

(ii) under clause 21.2(a)(ii)(B) that the Fundamental Obligations have not been satisfied or materially satisfied (as applicable),

the City will be entitled to withhold payment of any City Contribution Payments to TfNSW under this clause 21 until the Independent Certifier provides a certification that the Fundamental Obligations have been satisfied or materially satisfied (as applicable).

(d) If payment of a City Contribution Payment has recommenced following a suspension, the obligations of the parties under clause 21.2 and clause 21.3 will apply on revised City Contribution Payment Dates that have been adjusted to reflect the period of delay.

21.5 **Adjustment of City Contribution Payment Dates**

(a) If the Independent Certifier issues a certification that the Project is not continuing generally in accordance with the Indicative Project Program, then the parties must meet in good faith and acting reasonably agree:

(i) new City Contribution Payment Dates for any remaining City Contribution Payments; and

(ii) an updated Indicative Project Program to reflect the progress of the Project.

(b) Without limiting paragraph (a), the new City Contribution Payment Dates must be suitable to ensure the timing of the City Contribution Payments correspond with the revised program and status of construction.
21.6 **Ceasing of City Contribution Payments**

If the Independent Certifier issues a certification that the Project will no longer proceed:

(a) the City is not required to pay any further City Contribution Payments; and

(b) the refund provision in clause 21.7(c) will apply.

21.7 **Refund of the City Contribution**

(a) If the Independent Certifier issues a certification under clause 21.2(b) on completion of the Works that the Fundamental Obligations have not been satisfied or, in relation to the Fundamental Obligations numbered 6, 7 and 8 in Schedule 4, have not been materially satisfied, TfNSW will either:

(i) rectify the Works so that the Independent Certifier can certify, within 12 months of the date of the Independent Certifier's initial certification (time is of the essence), that the Fundamental Obligations have now been satisfied or materially satisfied (as applicable); or

(ii) refund to the City the City Contribution Payments that have been paid by the City to TfNSW in accordance with the principles outlined in clause 21.8.

(b) If the Independent Certifier issues a certification that the Project is temporarily not continuing and the Project does not recommence for a continuous period of 3 years, TfNSW will refund to the City those City Contribution Payments that have been paid by the City to TfNSW in accordance with the principles outlined in clause 21.8.

(c) If the Independent Certifier issues a certification that work on the Project will no longer proceed, TfNSW will refund to the City those City Contribution Payments that have been paid by the City to TfNSW in accordance with the principles outlined in clause 21.8.

(d) If the Works are not complete and operation of the Project's Light Rail service has not commenced by the Sunset Date, TfNSW will refund to the City those City Contribution Payments that have been paid by the City to TfNSW in accordance with the principles outlined in clause 21.8.

(e) Payment of the refund under clause 21.7(d) can be withheld for up to 12 months if the Independent Certifier issues a certification that:

(i) the Works are nearing completion;

(ii) only residual works outside of the local government area administered by the City remain to be completed; and

(iii) the residual works are programmed for completion, and reasonably anticipated by the Independent Certifier to be completed, within 12 months of the date of the Independent Certifier's certification.

(f) If the City becomes entitled to a refund under this clause 21.7, the City will issue a tax invoice to TfNSW for the relevant refund due in accordance with the principles outlined in clause 21.8.

57

Execution Version City of Sydney Development Agreement - Sydney Light Rail Project
The refunds referred to in this clause 21.7 will be paid by TfNSW to the City within 30 Business Days after receipt of a tax invoice from the City to TfNSW for the relevant refund.

21.8 Refund principles

(a) Any refund owed by TfNSW to the City under this clause 21, will be calculated in accordance with the following formula:

\[ \text{Refund} = S - P \]

where:

S = amount paid by the City to TfNSW under this clause 21 to date; and

P = total value of all Permanent City Assets handed over to the City in accordance with clause 20.5, to be valued by the Independent Certifier.

(b) For the avoidance of doubt, the City will only be entitled to a refund if the refund amount due (based on the above formula) is less than or equal to the amount of City Contribution Payments actually paid to date.

21.9 Application of suspension and refund of the City Contribution Payments

The City acknowledges and agrees that, to the extent that:

(a) work on the Project is not continuing generally in accordance with the Indicative Project Program;

(b) work on the Project is temporarily not continuing;

(c) work on the Project will no longer proceed; or

(d) the Fundamental Obligations are not being satisfied or, in relation to the Fundamental Obligations numbered 6, 7 and 8 in Schedule 4, are not being materially satisfied,

by reason of a breach of this Agreement by the City or a negligent act or negligent omission of the City, the right of suspension of the City Contribution Payment by the City or the obligation to refund the City Contribution Payment (as applicable) will not apply.

22. WORK HEALTH AND SAFETY

22.1 Persons conducting a business or undertaking

The parties acknowledge and agree that:

(a) prior to the date of the grant of a Works Site Licence, if the City arranges for or carries out work on that part of the Works Site, it is a PCBU under the WHS Act;

(b) on and from the date of grant of a Works Site Licence, TfNSW or its contractors will become a PCBU in relation to activities involved in the relevant Occupied Works Site;

(c) the WHS Act provides that a PCBU must ensure, so far as is reasonably practicable, the health and safety of Workers who are engaged by the PCBU, caused to be engaged by the PCBU, or whose activities are influenced or directed by the PCBU;

(d) the obligation in clause 22.1(c) applies to the parties in relation to Workers at work in their respective businesses and undertakings;
(e) each PCBU must also ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of their business or undertaking;

(f) the obligation in clause 22.1(e) applies to the parties such that they each must ensure that work carried out in their respective undertakings does not present a risk to Workers in the businesses or undertakings of others;

(g) more than one PCBU can concurrently have a health and safety duty in relation to the same matter;

(h) they will, at the relevant times, be PCBUs with management or control of a workplace in relation to the Works Site and will have an obligation under the WHS Act to ensure, so far as is reasonably practicable, that the workplace is without risks to the health and safety of any person; and

(i) the health and safety duties described in this clause 22 cannot be transferred to another party. While the parties can and should consult with contractors and others to ensure the health and safety of Workers and of the workplace, they cannot transfer their statutory liability to others.

22.2 Consultation between PCBUs and with Workers

(a) TfNSW and the City agree that they will ensure their respective PCBUs consult, co-operate and co-ordinate activities with:

(i) each other to the extent that there is a concurrent health and safety duty 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, such as contractors and subcontractors, where they have health and safety duties in relation to the same matter.

(b) TfNSW and the City will also consult with any of their Workers who are, or are likely to be, directly affected by a matter relating to work health or safety, including consulting with Workers:

(i) when identifying and minimising risks to health and safety;

(ii) 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 PCBUs on the Works Site.

22.3 Due diligence by an “officer”

(a) The parties acknowledge and agree that an officer of TfNSW and the City (as applicable) will have a separate duty to exercise due diligence to ensure that the relevant PCBU is complying with its health and safety obligations.

(b) TfNSW and the City (as applicable) will ensure that their relevant officers can show the steps taken by that officer to exercise due diligence under the WHS Act in relation to the relevant business or undertaking (noting that the WHS Act provides some guidance in relation to reasonable steps to take in this regard).
(c) For the purposes of paragraph (a) and paragraph (b), an "officer" includes a person who makes, or participates in making, decisions that affect the whole or a substantial part of the business or undertaking of a corporation or a business or undertaking of the City or TfNSW (as applicable).

22.4 Reporting hazards

The City agrees to, as soon as possible and in any event within 2 Business Days of becoming aware, notify TfNSW of:

(a) any hazard or potential hazard in or around the Works Site;
(b) any loss or damage to or defects in the Works or the Works Site; and
(c) any circumstances reasonably likely to occasion any such loss, damage or defects.

23. PERMANENT LIGHT RAIL CORRIDOR

23.1 Principles in relation to the Permanent Light Rail Corridor

TfNSW and the City 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 a 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) comply with the Fundamental Obligation set out in clause 2 of Schedule 4;

(B) 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;

(C) generally be 6.6 metres wide plus Stops and may include the area between the DKE plus the Stops;

(D) 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 City 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 City Assets (such as outreach arms on Smartpoles or light poles) extend into the Permanent Light Rail Corridor, the City will continue to own those assets and TfNSW will ensure that the City has adequate rights to access, maintain and operate those assets; and

(vi) the Permanent Light Rail Corridor will not include the structures forming part of the leased areas of the tunnels under George Street owned by the City and subject to leases by third party tenants. TfNSW acknowledges that the City does not own the tunnel structures and airspace leases only are granted to the relevant tenants, who constructed, own and are responsible for the tunnel structures;

(d) during the term of this Agreement, the City agrees not to:

(i) sell, assign or dispose of any land, or any of the City'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); and

(e) the costs of preparing any surveys or other documents required to define the Permanent Light Rail Corridor will be paid by TfNSW.

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 Public Domain, 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.

(b) The City will use best endeavours to ensure that, during the operation of the Project's Light Rail service:

(i) timed restrictions will be used to manage vehicle access to the George Street pedestrianised area during peak traffic periods; and
(ii) loading of goods will be permitted on and from the George Street pedestrianised area in the evenings and early mornings or otherwise at hours to be agreed with TfNSW.

(c) TfNSW agrees that during the operation of the Project's Light Rail service:

(i) local access vehicles (including tenants, residents and emergency vehicles) will have access to private properties in George Street; and

(ii) local access vehicles accessing or servicing private properties in the George Street pedestrianised area will be permitted to drive on the Light Rail tracks at low speeds but will not be permitted to stop or otherwise obstruct the Light Rail track.

(d) In relation to the pruning of trees, TfNSW and the City agree as follows:

(i) TfNSW and the City 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 the City (acting reasonably and promptly); 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 the City 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 Public Domain or the Permanent City 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 the City will not be charged any access fees or other fees to do so.

(b) TfNSW will keep the City informed of scheduled shut down periods, so the City can plan routine repair and maintenance work.

(c) The right for the City 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 (which, for the avoidance of doubt, does not include Smartpoles®); and
   
   (ii) all areas of the Permanent Light Rail Corridor (including Stops), excluding the Permanent City Assets (if any).

(b) As between the City and TfNSW, the City will be responsible for ensuring the maintenance of all the public domain outside of the Permanent Light Rail Corridor. Any maintenance by the City within 900mm of the DKE will be carried out in accordance with TfNSW's safety protocols, which will be developed in consultation with the City 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 the City 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 the City 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 City Assets (if any).

(b) As between the City and TfNSW, the City will be responsible for ensuring the cleaning of all the public domain outside of the Permanent Light Rail Corridor. Any cleaning by the City within 900mm of the DKE will be carried out in accordance with TfNSW's safety protocols, which will be developed in consultation with the City 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 the City to carry out any cleaning in areas that are the responsibility of TfNSW as referred to in paragraph (a), the parties, or the City 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) Subject to Section 1.8.3 of the Technical Requirements, if the parties agree (acting reasonably) that the installation of additional bins in the vicinity of the Stops is appropriate, the City 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 the City in relation to the DDA and will keep the City 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) the City 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 the Existing Advertising and Street Furniture Contract.

(b) The City 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.

(c) In relation to the Existing Advertising and Street Furniture Contract, TfNSW and the City will work together in good faith to:

(i) assess and agree the street furniture that is located in the Works Site and will require protection in situ, relocation or removal; and

(ii) agree a program for protection in situ, relocation or removal of the affected street furniture.
26.2 Third party rights

The City agrees not to enter into any advertising or street furniture 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 the City will have the right to publicise the delivery and operation of the Project.

(b) Subject to paragraph (d) and clause 26.4, the parties agree that neither the City 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) the City 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 City Assets under the control and responsibility of the City in accordance with clause 20.5(d); and

(B) any Public Domain areas; and

(iii) TfNSW will have the sole rights to naming of the Project and the Stops. TfNSW will inform the City of the naming of the Stops as early as is practicable in the circumstances.

(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).

26.5 **Banners on Smartpoles®**

The City will have the sole right to install banners (that display commercial or revenue generating advertising, or community announcements) on Smartpoles® adjoining the Permanent Light Rail Corridor, whether or not those Smartpoles® are connected to catenary wires, provided the banners do not encroach into the Permanent Light Rail Corridor or impede the safe operation of the Light Rail at any time.

27. **RESOURCING AND COMMUNITY**

27.1 **Resourcing contribution by the City**

(a) The City 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 the City 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 the City or other relevant matters set out in this Agreement.

27.2 **Stakeholder and community engagement and communications**

(a) In addition to Section 2.6.1 of the Technical Requirements, 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 the City;

   (ii) acknowledge that stakeholder and community engagement is important in relation to the impact of the Works on the local government area administered by the City;

   (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 the City, and TfNSW will develop a project specific plan for stakeholder and community engagement in consultation with the City;
(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 the City on an as-needed basis.

(b) TfNSW will, to the extent practicable, provide the City 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 the City.

(c) 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.

(d) 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 the City Background IP

(a) The parties acknowledge that the City retains ownership of all of the City Background IP. This includes ownership, at all times, of the Intellectual Property in the City's existing and new street furniture, the Smartpoles® and the new suite of
catenary Smartpoles® described in Annexure D, whether or not TfNSW is entitled to or does alter or develop such designs.

(b) All Intellectual Property in any work arising from or created, produced or developed by TfNSW, whether alone or jointly with others or by any third party, in connection with any alterations or additions to the City Background IP, including development of concept designs to final design for the new suite of catenary Smartpoles® described in Annexure D, will immediately upon creation or performance vest in the City and will remain the City's sole and exclusive property.

(c) TfNSW must take all necessary steps, including signing assignment deeds and procuring that third parties sign assignment deeds, to give effect to paragraph (b). In addition, TfNSW must ensure that the Project contracts require that each person involved in creating any part of any modifications to the City Background IP in which copyright subsists, irrevocably waives any and all Moral Rights they have in each relevant copyright work and consents to the City doing or failing to do any act in relation to those works that would, except for this clause, infringe their Moral Rights in the works including:

(i) exercising any of the rights in the works without identifying them;

(ii) exercising any of the rights in the works in a manner which incorrectly attributes any work created by them to someone else; and

(iii) editing, deleting from or otherwise altering the works in any manner determined by the City.

(d) Any proposed alterations or additions by TfNSW to the City Background IP must be made only for the purposes of the Project and in consultation with the City and must not reduce or remove the existing functionality of Smartpoles® or street furniture (as applicable). 

(e) Where any alterations or additions to the City Background IP are made under paragraph (b), TfNSW must ensure that the City obtains copies of all relevant information and design documentation necessary as owner of the Intellectual Property, including in relation to Smartpoles® that the City is the owner of all tools and moulds for the Smartpoles® and its accessories.

(f) The City grants TfNSW a non-exclusive, perpetual, irrevocable, transferable, royalty free and worldwide licence to use, adapt, reproduce, modify and exploit the City Background IP for the purposes of the Project in accordance with the terms of this Agreement.

(g) TfNSW may sub-licence the licence granted under paragraph (f) to one or more contractors engaged for the purposes of the Project.

(h) TfNSW acknowledges that the designs or other documents provided by the City in relation to the Smartpoles® is Confidential Information for the purpose of clause 13.6.

(i) TfNSW must not take any steps to damage or adversely impact the City Background IP.
(j) TfNSW must ensure that all contractors engaged in connection with the Project:

(i) are only given that part of the City Background IP that is necessary for the contractor’s component of services; and

(ii) enter into an agreement with TfNSW that contains provisions to protect the City Background IP that are no less onerous than those set out in this clause 28.

(k) TfNSW must return any designs or other documents provided by the City in relation to the Smartpoles® to the City when they are no longer required by TfNSW for the purposes of the Project and in any event promptly on completion of the Works.

(l) TfNSW must notify the City as soon as it becomes aware of any infringement or suspected infringement of the City Background IP.

(m) The City 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 City 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 City Assets

(a) All Intellectual Property in the Project Deliverables (excluding the City Background IP and any modifications to it but including any review of, or comment or input on, the Project Deliverables by the City) will be owned absolutely by TfNSW and vest in TfNSW immediately on creation.

(b) To the extent that the City may at any time acquire any right, title or interest in any Project Deliverables, the City, 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) The City 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 the City a non-exclusive, perpetual and royalty free licence to use, adapt, reproduce, modify, and sub-license the Intellectual Property owned by TfNSW in the Permanent City Assets for the sole purpose of the City’s use and maintenance of the Permanent City Assets within the local government area administered by the City.

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, the City 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 author, to the extent held by, or available to, the City; and
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 the City, TfNSW agrees to provide to the City such reasonable assistance as is required by the City to allow the City to comply with any applicable requirements of the Copyright Act 1968 (Cth) that the City has an obligation to comply with in relation to such "works" or "subject matter other than works".

28.4 DEDICATION OF LAND

28.5 Dedication of land to the City

The City acknowledges and agrees that:

(a) under Section 1.4.3 of the Technical Requirements, TfNSW agrees to dedicate certain land to the City for community use; and

(b) it will ensure that the land dedicated to it as contemplated under paragraph (a) is retained by the City as community land and community use only and is not reclassified as operational land.
## SCHEDULE 1

**REFERENCE SCHEDULE**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Details</th>
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<tbody>
<tr>
<td>1.</td>
<td>City Contribution</td>
<td>$220,000,000 (exclusive of GST)</td>
</tr>
<tr>
<td>2.</td>
<td>City Contribution Payment Dates</td>
<td>Each date set out in Schedule 3</td>
</tr>
<tr>
<td>3.</td>
<td>City Contribution Payment</td>
<td>Each amount set out in Schedule 3</td>
</tr>
<tr>
<td>4.</td>
<td>TfNSW Project Director</td>
<td>Jeff Goodling&lt;br&gt;Phone: 02 9200 0200</td>
</tr>
<tr>
<td>5.</td>
<td>TfNSW Representative</td>
<td>Andrew Tompson&lt;br&gt;Deputy Project Director&lt;br&gt;Phone: 02 9422 0609</td>
</tr>
<tr>
<td>6.</td>
<td>City Representative</td>
<td>Terry Daly&lt;br&gt;Executive Manager - City Transformation&lt;br&gt;Phone: 02 9246 7273</td>
</tr>
<tr>
<td>7.</td>
<td>TfNSW notice details</td>
<td>Address: Level 5, Zenith Centre, Tower A, 821 Pacific Highway, Chatswood NSW 2067&lt;br&gt;Fax number: 02 9200 0280&lt;br&gt;Attention: Project Director</td>
</tr>
<tr>
<td>8.</td>
<td>City notice details</td>
<td>Address: GPO Box 1591, Sydney 2001&lt;br&gt;Fax number: 02 9265 9500&lt;br&gt;Attention: Terry Daly, Executive Manager - City Transformation</td>
</tr>
</tbody>
</table>
1. Notice regarding parts of the Works Site
   (a) TfNSW may at any time give a notice to the City 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 the City 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 a separate Development Agreement with the Centennial Park and Moore Park Trust in relation to access to the land the subject of that Trust; and
       (ii) access to and use of areas of Moore Park by TfNSW for the purpose of the Project will be governed by the Development Agreement referred to in paragraph (d)(i) and the consent of the City is not required in this respect.

2. Notice regarding Additional Areas
   (a) TfNSW may at any time notify the City 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).
Within 20 Business Days of receiving a Proposed Additional Area Notice, the City will determine whether it is appropriate (to be determined solely by the City acting reasonably) for all or part of the proposed area described in that notice to be used as 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 the City, and advising the date that first access will be granted to TfNSW (taking into consideration the date of access requested by TfNSW, acting reasonably).

On and from the date that first access will be granted to TfNSW, as notified in an acceptance notice under clause 2(b)(i) 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 the City except in an Occupied Works Site;

(ii) TfNSW will comply with applicable laws (except where this Agreement states otherwise), the City Codes and Standards and the Planning Approval in relation to its use and occupation of the Occupied Works Site and the City 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) the City 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 the City 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 kerbstones, stormwater drainage infrastructure crossing directly under the proposed rail corridor, Smartpoles, parking meters, street furniture and other 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 the City 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 the City 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 the City, TfNSW will, to the extent practicable, relocate those facilities and structures to another location in the local government area administered by the City as reasonably requested by the City;

(x) if TfNSW is required to temporarily relocate any facilities and structures from the Occupied Works Site which are owned or controlled by the City 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 the same or equivalent location and condition as identified in the Baseline Report or otherwise to a condition consistent with paragraph (b)(vii)(B);
any existing kerbstones, Smartpoteso, parking meters, street furniture and other items (excluding paving, which is dealt with separately in Section 1.6.2A of the Technical Requirements) located on, in or under the Occupied Works Site and not required as part of the Project, and owned solely by the City 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 the City 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 the City for the duration of the construction of the Project (or earlier, if the City elects at any time for an item to be returned earlier), at no cost to the City;

(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 City Assets (including all City 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 City Asset while TfNSW is responsible for its care (including making good any loss of or damage to City 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 the City. In which case, the City will make good such loss or damage.

(e) The City will make good any loss of or damage to any item of Permanent City Assets while the City 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) 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 City Codes and Standards and TfNSW remains responsible for, and accepts all risk associated with, the temporary works.

(g) Within 40 Business Days of receipt of a notice under clause 1(a), the City will notify TfNSW in writing of site specific requirements that must be complied with during the term of a Works Site Licence related to:

(i) maintenance of appropriate access (including temporary driveways) in respect of the Occupied Works Site; and/or
(ii) maintenance by the City of any City lights or services on, in or under the Occupied Works Site.
(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 the City in accordance with the following:

   (i) the requirements set out in clause 20.5 and Schedule 6 in relation to the handover of Permanent City Assets (for the avoidance of doubt, Permanent City Assets are to be handed over to the City on the same date as the corresponding Works Site Licence for those Permanent City 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 the City, any temporary works must not be handed over to the City 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 the City.

(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, the City 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 rights in respect of the Works Site

   (a)  In relation to banners along the Project’s route in the local government area administered by the City, the City will not enter into any agreements with third parties (such as Destination NSW) for the display of banners in the Works Site for the period commencing 26 April 2015 until completion of the Works. If the City wishes to display banners in any part of the Works Site during this period, it will consult with TfNSW and only do so if the proposed banners will not delay the Works or adversely affect safety.

   (b)  TfNSW and the City:

      (i)  each acknowledge that there may be other third party rights which apply to or are relevant to the Works Site; and

      (ii)  will co-operate with each other in good faith and acting reasonably to identify those third party rights as early as is practicable and to agree the principles for dealing with those third party rights in a manner which seeks to minimise the impacts on the third party, cost impacts on the City and on TfNSW undertaking the Works within an Occupied Works Site in a timely and efficient manner.
Set out in the table below are details of the following:

- the amount of each City Contribution Payment; and
- the City Contribution Payment Date applicable to each City Contribution Payment.

<table>
<thead>
<tr>
<th>City Contribution Payment amount (SM)</th>
<th>City Contribution Payment Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.6</td>
<td>15 December 2014</td>
</tr>
<tr>
<td>48.6</td>
<td>15 December 2015</td>
</tr>
<tr>
<td>47.1</td>
<td>15 December 2016</td>
</tr>
<tr>
<td>63.6</td>
<td>15 December 2017</td>
</tr>
<tr>
<td>38.6</td>
<td>15 December 2018</td>
</tr>
<tr>
<td>2.3</td>
<td>15 December 2019</td>
</tr>
<tr>
<td>0.2</td>
<td>15 December 2020</td>
</tr>
</tbody>
</table>
SCHEDULE 4
FUNDAMENTAL OBLIGATIONS

The Fundamental Obligations are as follows:

1. The Pedestrianisation of George Street between Hunter and Bathurst Streets.

   "Pedestrianisation" means creating an area in which kerbs and other barriers to pedestrians are minimised, closed to through traffic and has the look and feel of a pedestrian area. Except for the Light Rail service, pedestrians will have priority of use in this area at all times.

2. In the pedestrianised area of George Street, the Light Rail track alignment must be in accordance with the George Street Pedestrianised Area Track Alignment Design Principles as described in Annexure H to this Agreement.

3. The design of the Stops, the Permanent Light Rail Corridor and the Public Domain (within the Works Site) along the route within the local government areas administered by the City must minimise the use of barriers to facilitate pedestrian flow and universal access.

4. In relation to overhead traction wiring (catenary wires) and charging stations for the Project in the local government area administered by the City:

   (a) the pedestrianised area of George Street between the Town Hall Stop and the Wynyard Stop, is to be catenary wire free;

   (b) it is the City's preference that:

      (i) the future potential pedestrianised areas of George Street referred to in Section 1.1.4 of the Technical Requirements; and

      (ii) the full length of Alfred Street, be catenary wire free;

   (c) it is the City preference that:

      (i) in all areas that are catenary wire free, there be no overhead charging wires at charging stations; and

      (ii) if clause 4(c)(i) is not possible, any overhead charging infrastructure at charging stations must have minimal visual impact;

   (d) there must be no overhead charging infrastructure at charging stations between the Town Hall Stop and the Wynyard Stop, without prior consultation with the City;
(e) TfNSW must:

(i) procure the preparation of:

(A) a concept design showing all proposed areas that will be catenary wire free;

(B) a concept design showing the location and design of charging stations in all areas that are catenary wire free; and

(C) a concept design for the Stops;

(ii) give the City a reasonable opportunity to review the submitted concept plans (being not less than 13 Business Days); and

(iii) have regard to the matters and concerns raised by the City to TfNSW in relation to the submitted concept plans,

prior to execution of the project deed in relation to the Project.

(f) To give effect to a City preference in this clause 4, TfNSW must ensure that the City's preference is contained in the procurement documentation for the Works (excluding the Early and Preparatory Works) and be listed as part of the evaluation criteria for that contract, but, for the avoidance of doubt, TfNSW will not be in breach of this clause 4 if the City's preference does not ultimately form part of the Project provided TfNSW complies with the process in this clause 4.

5. Section 1.5.4 (Access and connections) of the Technical Requirements, but excluding the last sentence.

6. Section 1.6.2 (Paving, kerbs and footpaths) of the Technical Requirements.

7. Sections 1.13 (Smartpoles) and 1.17 (Lighting) of the Technical Requirements.

8. Section 1.19.1 (Trees) of the Technical Requirements.

9. Transfer of ownership and control to the City of the City Permanent Assets in accordance with clauses 20.5(a), 20.5(c) and 20.5(d). After completion of the Works, TfNSW must ensure that the City is the roads authority for all land in the local government area administered by the City which is a public road and formed part of the Works Site and was transferred from the City to RMS during construction of the Works, excluding the Permanent Light Rail Corridor.

10. The Project must, by the Sunset Date, provide a Light Rail service which operates as a regular public transport service from Circular Quay to the University of New South Wales (Kensington Campus) and Randwick Hospitals Campus (comprising the Sydney Children's Hospital, Prince of Wales Hospital, Royal Hospital for Women and the Prince of Wales Private Hospital).
A. CLEANING

5.1 Cleaning Standards

Cleaning of the Permanent Light Rail Corridor in:

(a) the pedestrianised area of George Street and at all Stops must meet Performance Level 3; and
(b) all other areas must meet Performance Level 2,

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.

The pedestrianised area of George Street and all Stops must meet Performance Level 2 at all other times.

The requirements for Performance Levels 2 and 3 are set out in the following Table S5-1.

<table>
<thead>
<tr>
<th>Table S5-1 Performance Level Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Performance Level 3</strong></td>
</tr>
<tr>
<td><strong>Performance Level 2</strong></td>
</tr>
<tr>
<td>Litter</td>
</tr>
<tr>
<td>(a1) a build-up of no more than one day’s estimated leaf fall;</td>
</tr>
<tr>
<td>(a2) no broken glass;</td>
</tr>
<tr>
<td>(a3) no build-up of silt, grit, gravel or similar material along building alignments or gutters;</td>
</tr>
<tr>
<td>(a4) no more than 2 items of litter within 10 lineal metres of Permanent Light Rail Corridor, excluding Stops; and</td>
</tr>
<tr>
<td>(a5) no items of litter at Stops.</td>
</tr>
<tr>
<td>Steam cleaning</td>
</tr>
<tr>
<td>No residual build-up of litter at Stops.</td>
</tr>
<tr>
<td>Posters</td>
</tr>
<tr>
<td>None at stops.</td>
</tr>
<tr>
<td>Graffiti</td>
</tr>
<tr>
<td>No graffiti that is more than 24 hours old that in TfNSW’s and the City’s opinion is able to be</td>
</tr>
<tr>
<td>Performance Level 3</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>removed by use of high pressure steam cleaning.</td>
</tr>
<tr>
<td>Stormwater gullies in Permanent Light Rail Corridor</td>
</tr>
<tr>
<td>The level of litter and other material not to exceed more than half the depth of</td>
</tr>
<tr>
<td>the gully.</td>
</tr>
<tr>
<td>Litter bins/recycling bins/cigarette ash cylinders</td>
</tr>
<tr>
<td>Not applicable.</td>
</tr>
</tbody>
</table>

5.2 Continuity of Service

TiNSW 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

TiNSW must provide resources sufficient to achieve the required performance levels in the Permanent Light Rail Corridor. In particular TiNSW 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 within the pedestrianised area of George Street, including Stops within the pedestrianised area of George Street, must be flushed or hosed each night.

The Permanent Light Rail Corridor outside the pedestrianised area of George Street, excluding Stops, must be flushed or hosed as required to meet Performance Level 2. Stops outside the pedestrianised area of George Street must be flushed or hosed at least once every week.

5.5 Steam Cleaning

The Permanent Light Rail Corridor within the pedestrianised area of George Street including Stops within the pedestrianised area must be steam cleaned at least 3 times per year.

Stops outside the pedestrianised area of George Street must be steam cleaned at least twice per year.

5.6 Trackway Stormwater Gullies

TiNSW 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.

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5.7 Special Events

After daytime events, including Anzac Day Marches, St Patrick’s Day, Chinese New Year and the like, TfNSW must clean streets utilised by the events within 2 hours of the passing of the last part of the parade, if applicable, or conclusion of the event.

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 ensure that all dealings with customers are conducted in a courteous and helpful manner.

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 the City.

TfNSW must provide a response to all telephone enquiries within one hour of receipt by TfNSW and respond in writing within five days with respect to letters addressed to TfNSW.

TfNSW shall draft responses for the City in relation to letters addressed to the City and passed on to TfNSW within five days of receipt from the City by TfNSW.

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

<table>
<thead>
<tr>
<th>ASSET</th>
<th>ASSET CATEGORY</th>
<th>TYPE</th>
<th>ISSUE</th>
<th>INTERVENTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Permanent Light Rail Corridor in pedestrianised area and all Stops</td>
<td>Key Pavements</td>
<td>Cracks/Gaps</td>
<td>Cracks/gaps exceed 20mmW</td>
</tr>
<tr>
<td></td>
<td>Permanent Light Rail Corridor in pedestrianised area and all Stops</td>
<td>Key Pavements</td>
<td>Depressions</td>
<td>Depressions present a hazard to pedestrians, cyclists or motorists</td>
</tr>
<tr>
<td></td>
<td>Permanent Light Rail Corridor in pedestrianised area and all Stops</td>
<td>Key Pavements</td>
<td>Potholes</td>
<td>Potholes</td>
</tr>
<tr>
<td></td>
<td>Permanent Light Rail Corridor in pedestrianised area and all Stops</td>
<td>Key Pavements</td>
<td>Pavers</td>
<td>Loose/flocking pavers</td>
</tr>
<tr>
<td></td>
<td>Permanent Light Rail Corridor in pedestrianised area and all Stops</td>
<td>Key Pavements</td>
<td>Tree root heaving</td>
<td>Trip hazard</td>
</tr>
<tr>
<td></td>
<td>Permanent Light Rail Corridor in pedestrianised area and all Stops</td>
<td>Key Handrails</td>
<td>Safety</td>
<td>Jagged edges</td>
</tr>
</tbody>
</table>

82

Execution Version City of Sydney Development Agreement - Sydney Light Rail Project
<table>
<thead>
<tr>
<th>ASSET CATEGORY</th>
<th>TYPE</th>
<th>ISSUE</th>
<th>INTERVENTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>area and all Stops</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in pedestrianised area and all Stops</td>
<td>Key</td>
<td>Handrails</td>
<td>Safety</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in pedestrianised area and all Stops</td>
<td>Key</td>
<td>Handrails</td>
<td>Stability</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in other areas excluding Stops</td>
<td>Key</td>
<td>Pavements</td>
<td>Cracks/Gaps</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in other areas excluding Stops</td>
<td>Key</td>
<td>Pavements</td>
<td>Depressions</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in other areas excluding Stops</td>
<td>Key</td>
<td>Pavements</td>
<td>Pavers</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in other areas excluding Stops</td>
<td>Key</td>
<td>All</td>
<td>Cracks/Gaps</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in other areas excluding Stops</td>
<td>Key</td>
<td>All</td>
<td>Delamination</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in other areas excluding Stops</td>
<td>Key</td>
<td>All</td>
<td>Depressions</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in other areas excluding Stops</td>
<td>Key</td>
<td>All</td>
<td>Misalignment</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor in other areas excluding Stops</td>
<td>Key</td>
<td>All</td>
<td>Potholes</td>
</tr>
<tr>
<td>Signage</td>
<td>Ancillary</td>
<td>Stems</td>
<td>Bent</td>
</tr>
<tr>
<td>Signage</td>
<td>Ancillary</td>
<td>Stems</td>
<td>Stability</td>
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<tr>
<td>Signage</td>
<td>Ancillary</td>
<td>Signplates</td>
<td>Wording</td>
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<td>Ancillary</td>
<td>Signplates</td>
<td>Street Signs</td>
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<tr>
<td>Signage</td>
<td>Ancillary</td>
<td>Signplates</td>
<td>Traffic Signs</td>
</tr>
<tr>
<td>Signage</td>
<td>Ancillary</td>
<td>Signplates</td>
<td>Damage</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor stormwater</td>
<td>Key</td>
<td>Covers and Grates</td>
<td>Safety</td>
</tr>
<tr>
<td>Permanent Light Rail</td>
<td>Key</td>
<td>Grates</td>
<td>Vertical</td>
</tr>
<tr>
<td>ASSET</td>
<td>ASSET CATEGORY</td>
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<td>ISSUE</td>
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</tr>
<tr>
<td>Corridor stormwater</td>
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<td></td>
<td>Displacement</td>
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<tr>
<td>Permanent Light Rail Corridor stormwater</td>
<td>Key</td>
<td>Covers</td>
<td>Vertical Displacement</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor stormwater</td>
<td>Key</td>
<td>Trap Gully</td>
<td>Eduction</td>
</tr>
<tr>
<td>Permanent Light Rail Corridor stormwater</td>
<td>Key</td>
<td>Untrap Gully</td>
<td>Eduction</td>
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</tbody>
</table>

Table S5-3 Rectification Times

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>DEFINITION</th>
<th>RECTIFICATION TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>URGENT</td>
<td>Damaged /Missing Asset Presenting Immediate Danger</td>
<td>1 working day</td>
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<tr>
<td>HIGH</td>
<td>Damaged /Missing Asset Creating a Hazard in a High Use Area</td>
<td>5 working days</td>
</tr>
<tr>
<td>MEDIUM</td>
<td>Damaged /Missing Asset Creating a Hazard in a Low Use Area</td>
<td>20 working days</td>
</tr>
<tr>
<td>LOW</td>
<td>Damaged /Missing Asset NOT Creating a Hazard</td>
<td>60 working days</td>
</tr>
</tbody>
</table>
SCHEDULE 6
PERMANENT CITY ASSETS

Part 1

Set out below is a list of those assets that, if installed or constructed, relocated or upgraded as part of the Project within the local government area administered by the City will be owned and controlled by the City after the dates of progressive completion in accordance with clause 20.5:

1. Street/public domain furniture (including bus shelters, automatic public toilets, bus seats, litter bins, recycling bins, ashtrays, pay phones, electronic kiosks, police video phones, poster bollards, bike racks, City maps, bollards, drinking fountains/bubblers, tree grates and tree guards).

2. Light poles and in-ground lights.

3. Smartpoles®, including power and communications cables and the power and communications conduits that link the Smartpoles® (excluding any power cables, communications cables and any cables or wires for overhead catenary wires installed as part of the Project and attached to or installed in or onto the Smartpoles®).

4. Cables, switchboards, and other related items associated with the City’s street lighting.

5. Toilets.

6. Trees.

7. Paving and kerbs.

8. Any empty ducts provided specifically for the City.

9. Stormwater drainage system (excluding those systems owned by or to be owned by Sydney Water).


11. Unclassified roadways outside the Permanent Light Rail Corridor.

12. Any new or reinstated parks/pocket parks/road closures.


14. Parking and traffic signs.

15. Parking meters.

16. CCTV equipment, other than CCTV solely monitoring Stops or not otherwise used for the purposes of the Light Rail operations, including optic fibre and conduits.

17. Survey marks.

18. The conduits, pipes and ducts referred to in Section 1.16.2, Section 1.16.3 and Section 1.16.5 of the Technical Requirements.
19. 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.

20. Any other asset that the City nominates as an asset that the City would typically own, in which case the parties must meet and in good faith discuss and seek to resolve a variation to this Agreement.

Part 2

The principles that will apply to the Permanent City 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 the City;

(b) where applicable, the benefit of warranties in relation to the Permanent City Assets will be transferred to the City to the extent that TfNSW is able to do so as soon as practicable after the dates of progressive completion; and

(c) TfNSW must (at its cost) maintain all new trees for a period of 24 months after the Handover Date specified in the relevant Acceptance Notice for that tree, in accordance with the George Street Transformation and Light Rail Tree Management Specification attached as Annexure G to this Agreement. This will not include responsibility for damage to the trees directly caused by third parties.
SCHEDULE 7

TECHNICAL REQUIREMENTS

<table>
<thead>
<tr>
<th>1</th>
<th>TERM 1 - PROCUREMENT PHASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Design</td>
</tr>
<tr>
<td>1.1.1</td>
<td>The design of the Project must not preclude the potential future link of a Light Rail system to Barangaroo via Millers Point and Walsh Bay and to Green Square being achieved. Specifically, the design of the track alignment must allow for the installation of future switches and cross overs with minimal track reconstruction.</td>
</tr>
<tr>
<td>1.1.2</td>
<td>The George Street Concept Design dated September 2013, will be referenced in the Project &quot;RFP&quot; documentation as an information document.</td>
</tr>
<tr>
<td>1.1.3</td>
<td>The George Street and Alfred Street Preliminary Tree and Pole Layout, attached as Annexure I to this Agreement, will be referenced in the Project &quot;RFP&quot; documentation as an information document.</td>
</tr>
<tr>
<td>1.1.4</td>
<td>The design of the Project must not preclude the City's vision for the future potential pedestrianisation of George Street between Liverpool and Bridge Streets.</td>
</tr>
<tr>
<td>1.2</td>
<td>Light rail stops and public domain interface with Light Rail stops</td>
</tr>
<tr>
<td>1.2.1</td>
<td>The Project will at the least include Interchanges at Circular Quay, Wynyard, Town Hall, China Town, Rawson Place and Central. At least one Stop will be located in Surry Hills. Stops in George Street will be located to achieve an average Stop spacing of 450 metres and no single spacing greater than 750 metres.</td>
</tr>
<tr>
<td>1.2.2</td>
<td>Stops are to be designed to comply with statutory requirements and, to the extent permitted by law, are to allow for maximum pedestrian permeability and accessibility. TNSW will consult with the disability sector as part of the process for determining disability requirements. TNSW will, at a minimum, provide a step free access to one portion of the Stops from the pedestrianised areas. TNSW will investigate the suitability of an additional Stop at or near Wimbo Park, taking into account all relevant factors, including demand and travel times, and will provide the City with a copy of the summary of its findings.</td>
</tr>
<tr>
<td>1.2.2A</td>
<td>TNSW will consult with the City, and will have regard to matters and concerns raised by the City, in regard to any proposed changes to Stop locations within the local government area administered by the City or proposed changes to the Light Rail route (whether such proposals relate to the Project's initial construction phase or after the construction phase).</td>
</tr>
<tr>
<td>1.2.3</td>
<td>Subject to any requirements at law, 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 the City is to: minimise use of barriers and fences; minimise surrounding level changes; minimise steps; and be integrated where possible with the levels of the surrounding environment, to minimise visual level changes and to facilitate pedestrian flow and universal access.</td>
</tr>
<tr>
<td>1.2.4</td>
<td>Shelters at Stops 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. In George Street, where there is a building awning in close proximity to the Stop, consideration is to be given to not providing a shelter.</td>
</tr>
</tbody>
</table>
Shelters at Stops are to have a refined lightweight canopy over only part of the Stop and each canopy is to be sympathetically integrated into the streetscape and complement building awnings, street trees and the City’s public domain furniture suite and palette.

TfNSW is to use paving material at Stops in the local government area administered by the City with the material types specified in the Sydney Streets Code for footpaths (which form part of the City Codes and Standards).

The only vending machines at Stops will be Opal card readers and, if required, ticket dispensing machines. Food, drink or other commercial vending machines are not to be installed at Stops.

Public domain

Any works undertaken by TfNSW within the local government area administered by the City are to be in accordance with the City of Sydney’s Public Domain Codes (Streets, Signs, Lights, Parks, and Landscape including Technical Specifications) Parts 1 and 2 (which forms part of the City Codes and Standards), including materials and furniture palettes.

Parks and open spaces

Where the construction of the Project affects the condition of any park owned or controlled by the City, TfNSW is to reasonably reconstruct the disturbed portions of the park to a standard equivalent to its pre-existing condition, or otherwise to a standard or design that is agreed by the City. This may include the following parks:

- Ward Park;
- Wimbo Park;
- Edgley Street Reserve; and
- Belmore Park.

Where access paths or ground levels of an existing park are altered by TfNSW, the design of these components must be integrated with the surrounding areas and levels and is to be acceptable to the City (acting reasonably and promptly).

Finished surface levels in areas directly impacted by the Project are to be designed to maximise entry points into the park and ensure DDA compliance.

All works are to be in accordance with the City’s Public Domain Manual and Sydney Streets Code (which form part of the City Codes and Standards).

In relation to Moore Park:

- Any above ground infrastructure to be located in Moore Park West (excluding any Stop at Moore Park) is to be designed to:
  - minimise visual impact to its surrounds;
  - maximise access;
  - maximise view lines; and
  - maximise accessible open space,

  provided that such design does not compromise Light Rail operations.

- If construction of the Project affects Moore Park, then the disturbed portion of the park is to be reconstructed to a condition equivalent to the pre-existing condition in order to maintain a high level of useable open space.

- To the extent impacted by the Project, the equivalent level and quality of the playing fields are to be maintained and high quality "Water Sensitive Urban Design" turf is to be used.

- If suitable materials are excavated from the tunnel works, that material is to be used to level the area of Moore Park West adjacent to the Eastern Distributor to seek to improve the surface drainage of that area and to maintain a high level of useable open space in that area. Existing topsoil will be removed and reinstated to promote grass...
1.5.4 Where,

- TfNSW will provide the design for the tunnel portal under Moore Park to the City for review and will collaborate with the City with the aim of achieving a high quality design, including aesthetics.
- TfNSW must construct a shared pedestrian and cycleway path from existing paths in Moore Park to the South Dowling Street crossing referred to in Section 1.5.2, with a minimum width of 4-5 metres.
- TfNSW may use ballast track in Moore Park East with concrete crossings at pedestrian desire lines.

All works at Moore Park are to be in accordance with the City's Public Domain Manual and Sydney Streets Code (which form part of the City Codes and Standards). Any proposed designs are to be reviewed by both Centennial Park and Moore Park Trust and the City.

1.4.3 To the extent not required for the Light Rail or to provide compensatory parking for the part acquisition of the Langton Centre, TfNSW is to develop a new open space park on the former site of Olivia Gardens. The site is to be integrated with the existing Wimbo Park and the proposed design prepared in consultation with the City.

On completion of the Works at this site, TfNSW will dedicate the balance of any land not required for Light Rail purposes to the City for future use as a community use area. TfNSW will, in respect of this area, provide topsoil (including ensuring that 25% of this area is available for deep tree planting), concrete paving, turf, water connections and conduits for general park lighting in accordance with the City's Public Domain Manual and Sydney Streets Code (which form part of the City Codes and Standards). Additionally, if side catenary poles are used, they will include lighting.

1.4.4 TfNSW must construct a shared pedestrian and cycleway path from South Dowling Street to Bourke Street, with a minimum width of 5 metres.

1.4A New pocket parks and public places

1.4A.1 Where, as part of the Project, TfNSW closes a street or creates a new pocket park or public space, TfNSW will (in consultation with the City) ensure these areas comply with the City's lighting requirements in the City Codes and Standards and include suitable:
- simple landscaping and/or paving; and
- minimal street furniture (such as seats).

1.5 Access and connections

1.5.1 At-grade signalised crossings are to be installed for the Light Rail service (with a shared area for pedestrians and cyclists) across South Dowling Street.

1.5.2 A bridge at South Dowling Street over the Eastern Distributor is to be provided for the Light Rail service, with a shared pedestrian and cycleway. The minimum width of the shared pedestrian and cycleway section of the bridge is to be 5 metres.

1.5.3 TfNSW is to undertake a concept design study in relation to a proposed pedestrian and cycle connection (by way of bridge crossing) over Anzac Parade to complete the pedestrian link from the Sydney Cricket Ground to Devonshire Street. TfNSW is to ensure that the design for the Project will not preclude the future construction of a bridge in accordance with that concept design. TfNSW is to consult with the City in relation to the concept design, including the proposed location for the pedestrian connection.

1.5.4 TfNSW will prepare a conceptual design for a future dedicated cycleway connecting the northern end of Prince Alfred Park with the southern end of Castlereagh Street in a location...
that would be desirable for cyclists to use and that is supported by TfNSW. Construction of
the cycleway is not included in the Project.

1.5.5 The bridge and pedestrian crossings referred to in this Section 1.5 are to be designed so
that they improve connectivity and are integrated with the surrounding environment.

1.5.6 The design of the Project is to ensure that local access vehicles accessing or servicing
private properties in the George Street pedestrianised areas do not block Light Rail
operations at intersections.

1.6 Paving, kerbs and footpaths

1.6.1 To the extent a road lane 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.

1.6.2 – The design solution for the levels and quality of the pedestrianised area of George St
must achieve an holistic design from building line to building line, and minimise cross
falls.

– Kerbs must be removed from the pedestrianised areas of George Street and Alfred
Street.

– In the pedestrianised areas of George Street, TfNSW is to restore (including subsurface
as necessary) and re-surface the areas of footpath paving impacted by the Project.

– 60mm pavers are to be used in all trafficable areas, including in the pedestrianised area
of George Street.

– The City prefers that the paving for the pedestrianised area of George Street and Alfred
Street be constructed in accordance with the City's Preferred Paving Layout attached at
Annexure C to this Agreement.

– The parties acknowledge that, as at the date of this Agreement, all of the DDA
requirements relating to the paving layout for the pedestrianised area of George Street
and Alfred Street were not finalised so a paving layout could not be settled between
TfNSW and the City. During the design development process for the Works:

  o the Baseline Paving Layout attached at Annexure B will be used as the starting
    point, TfNSW must further develop the Baseline Paving Layout to break up the
    visual dominance of the luminous contrast strips shown on either side of the
    proposed trackway, to the extent that safety and DDA accessibility requirements
    allow, so that the paving layout for the pedestrianised area of George Street and
    Alfred Street achieves the City's Preferred Paving Layout as much as possible; and

  o the City, the City's DDA expert, TfNSW and TfNSW's DDA expert are to meet and
    in good faith discuss how to break up the visual dominance of the luminous contrast
    strips shown on either side of the proposed trackway.

– TfNSW must construct the paving in the pedestrianised area of George Street and
Alfred Street in accordance with the final paving layout developed by TfNSW in
accordance with the above principles.

1.6.2A TfNSW is entitled to carefully remove and recycle any 40mm pavers extracted from
footpaths in the pedestrianised area of George Street. These 40mm pavers may be re-
used by TfNSW in other areas of the City's local government area, where appropriate or if
TfNSW does not wish to re-use the pavers, TfNSW will return the pavers to the City.

1.6.2B 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; and

  – the colour of the concrete is to be designed to complement the final paving layout
developed by TfNSW in accordance with the principles in Section 1.6.2.

Alternatively, the pavers may be laid over the concrete haunches so that they are not
If works being undertaken as part of the Project involve:

- kerb lines being moved; and/or
- levels of footpaths being altered,

existing pavers in the footpaths affected are to be removed and replaced in accordance with the City of Sydney’s Sydney Streets Code and the Sydney Streets Technical Specifications (which forms part of the City Codes and Standards).

TfNSW is to make good any areas impacted by the Works for the extent of the route in the local government area administered by the City to ensure a smooth transition to unaffected areas and to reflect a consistent quality, design, finish and appearance.

Within the pedestrianised areas, George Street is to appear as a continuous unified street rather than divided into sections by east-west roads and the grade of the pedestrianised areas of George Street is to continue across the intersections, in accordance with the drawing in Annexure E to this Agreement.

The paving texture of the streets crossing George Street between Bathurst Street and Hunter Street and between the pedestrian crossings is to indicate a slower zone in which local access vehicles should show caution, as indicated in Annexure E to this Agreement.

The paving texture of all signalised pedestrian crossings along George Street outside the pedestrianised area is to indicate a slower zone in which local access vehicles should show caution, as indicated in Annexure E to this Agreement.

The design of the Project is to require cars to ramp up and on to the paving to cross George Street at Park, Market and King Streets. The ramps are to be in coloured concrete in accordance with the City Codes and Standards and Austroads Guide to Road Design.

Paving and kerbstones are to be used in areas as outlined in the City of Sydney’s Sydney Streets Code (which forms part of the City Codes and Standards).

Paving and kerbstones are to be sourced as follows:

- Austral Black paving is to be sourced from Blackhill, South Australia;
- Trachyte kerbstones are to be sourced from the City’s stockpile;
- Bluestone kerbstones required for repair are to be sourced from an agreed source (preferably in Victoria); and
- other paving materials are to be sourced in accordance with the City of Sydney Public Domain Codes and Specifications (as listed in the City Codes and Standards), provided that if the above sources are not readily available, TfNSW may use suitable materials from other sources as agreed between TfNSW and the City.

Reconstituted or recycled concrete paving units are to be used in areas as outlined in the City’s Sydney Streets Code (which forms part of the City Codes and Standards).

If the width of a footpath on the non-pedestrianised parts of George Street is being altered by TfNSW, the width of the footpath cannot be reduced to less than 3.0 metres in accordance with recommended standards in Austroads Guide to Road Design (Part 3, section 4.11.3). This requirement does not apply to the footpaths on the south-western corner at World Square which may be required to have a minimum width of 2.8 metres to accommodate the Stop and a minimum width single traffic lane. TfNSW will use its best efforts to ensure that footpath widths are as wide as possible. This requirement does not apply to footpaths in the pedestrianised area of George Street during construction.

In the pedestrianised areas, DDA requirements will, to the extent permitted by law, be achieved through luminance contrast and textural change in the paving and the location of...
lighting poles and trees.

Tactile ground surface indicators (TGSIs) are not to be used along the Light Rail corridor alignment (excluding Stops) unless:
- the Independent Certifier determines they are required to comply with law; or
- the Accessible Transport Advisory Committee recommends for their use.

If the Accessible Transport Advisory Committee strongly advocates for the use of TGSIs, TfNSW must inform the City and give the City an opportunity to meet with the Accessible Transport Advisory Committee prior to its recommendation being made.

If TGSIs are used as part of the Project within the local government area administered by the City (whether at Stops or elsewhere) they will be:
- stainless steel within the CBD; and
- stainless steel or integral with the paver in all other areas within the local government area administered by the City.

TfNSW will consult with the City in relation to the selection of TGSIs.

1.6.11
The paving material used by TfNSW in the Light Rail corridor in Devonshire Street (excluding the Stop), Wimbo Park and Olivia Gardens is to be concrete, concrete unit pavers or asphalt.

Footpaths on both sides of Devonshire Street between Chalmers Street and Bourke Street will be reconstructed with concrete unit pavers in accordance with the City’s paving standards in the City Codes and Standards.

1.6.12
The paving material used by TfNSW at the Moore Park and Devonshire Street Stops is to be concrete pavers/unit pavers.

1.6.13
All footpaths directly impacted by the Project at Rawson Place, Eddy Avenue and Chalmers Street are to be reinstated with granite paving in accordance with the City’s paving standards in the City Codes and Standards.

1.6.14
The Light Rail trackway at Rawson Place, Eddy Avenue and Chalmers Street is to be asphalt or concrete.

1.7 Pedestrianised areas

1.7.1
Within the pedestrianised areas of George Street, outdoor dining furniture (along with lighting, trees and public domain seating) will be located immediately outside of, and adjacent to, the Light Rail corridor, creating a defined area for activity while preserving clear pedestrian movement along the street.

1.8 Public Domain Furniture

1.8.1
New public domain furniture to be supplied and installed as part of the Project in the local government area administered by the City (seats, bins, drinking fountains, bollards, tree grates, tree guards) are to comply with the Sydney Streets Code (which forms part of the City Codes and Standards) and are to be sourced from the City’s supplier or as otherwise agreed between TfNSW and the City.

The City will nominate all locations for new or relocated public domain furniture (including the furniture referred to in Section 1.8.3) within the local government area administered by the City outside of the Permanent Light Rail Corridor (such nomination to be given in a timely manner).

1.8.2
Relocated and new bus stops and shelters located along the Light Rail route in the local government area administered by the City are to conform to the City Codes and Standards and DDA requirements.

1.8.3
TfNSW is to supply and install the following public domain furniture in George Street and Alfred Street:
- litter bins: generally at 35 metre intervals on both sides of the street;
- seats: in pairs where possible and on both sides of the street, generally at 45 metre intervals; and
- drinking fountains: generally at 150-165 metre intervals, subject to service location and availability.

1.9 Signage and wayfinding

1.9.1 Light Rail passenger information signage located at the Stops in the local government area administered by the City is to be in accordance with any TNSW or State standards, or where there are no such standards, TNSW will work together with the City to develop appropriate standards.

1.9.2 Light Rail wayfinding signs located in the local government area administered by the City are to be in accordance with the City’s Wayfinding Strategy and integrated with the City’s signage or otherwise as agreed between TNSW and the City.

1.10 Public art

1.10.1 All existing public art works on City land, which will be impacted by the Project, are to be protected and maintained or removed (if required) for the duration of potential impact by the Project. As soon as practicable after the date of this Agreement, and in any event on or before 31 March 2014, the City will give TNSW a written direction on how each existing public art work is to be protected during the Works Site Licence period (options include safeguarding of artistic work in situ, temporary relocation or permanent relocation) and such requirements are to be agreed between the City and TNSW acting reasonably. The City may elect to do this work itself (at TNSW’s cost). TNSW 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 Any consultation with artists in relation to the impact of the Project on public art will be done directly by the City. TNSW will assist the City to inform artists (if required) if any artworks are to be removed or relocated as a result of the Project.

1.11 Sustainability

1.11.1 Any street furniture, Smartpoles®, signage and kerbing removed from the Works Site are to be re-used within the proposed works or carefully removed and returned to the City to enable future reuse by the City.

1.11.2 Light Rail design and operations are to be in accordance with the sustainability strategy objectives referred to in Annexure F.

1.12 Drainage

1.12.1 TNSW will liaise with the City in relation to all aspects of drainage in the local government area administered by the City and which is directly impacted by the Project, especially in the pedestrianised areas. The designers will develop solutions for overland flow control where existing kerbs will be lost as a direct result of the Project.

1.12.1A In the pedestrianised area of George Street, drainage directly affected by the Project must be designed without kerbs and to have a minimal visual impact.

1.12.2 TNSW is to investigate opportunities for implementing "Water Sensitive Urban Design" outside of CBD areas, within the local government area administered by the City.

1.12.3 If "Water Sensitive Urban Design" is to be constructed within the local government area administered by the City as part of the Project, it is to be in accordance with "Evaluating Options for Water Sensitive Urban Design – a National Guide", by Department of Environment, dated July 2009.

1.12.4 Any subsurface drainage (including inlets) directly affected by the Project is to be designed to a minimum of a 1 in 10 year event. For the avoidance of doubt:
- no elements of the existing stormwater drainage network are to be downsized, even if
For areas within the local government area administered by the City 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).

Drainage pits directly affected by the Project are required at:
- every corner;
- changes in direction of the drainage line; and/or
- every 100m on straight runs.

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.

The City’s existing Smartpoles® are believed to be incapable of supporting the load of overhead Light Rail wires. To avoid the need for an intrusive second set of poles in the street, the City has developed new concept designs for a suite of new, stronger poles which it is believed can carry lighting, overhead Light Rail wires, signage and signalling. This new suite of catenary Smartpoles® must be used within the local government area administered by the City in the pedestrianised areas of George Street and otherwise where catenary wires for the Light Rail system are used. Central running catenary poles must not be used in George Street or Alfred Street.

This new suite of catenary Smartpoles® are:
- George Street pedestrian area, catenary-free Smartpole®, Type S3B (which includes a beacon light) (for use in the pedestrianised areas of George Street and Alfred Street);
- George Street catenary Smartpole®, Type S3A (which includes a beacon light and is to carry catenary wires) (for use in George Street, excluding the pedestrianised areas but including Stops where appropriate); and
- General Use catenary Smartpole®, Type S3C (which does not include a beacon light) (for use in the local government area administered by the City local government area administered by the City, excluding George Street and Alfred Street),

as shown in the Concept Designs - Catenary Smartpoles® attached as Annexure D to this Agreement.

The Type S3C Smartpole® is to be silver in colour for all City Centre streets, other than Devonshire Street.

The Type S3C Smartpole® on Devonshire Street and areas outside the City Centre are to be bronze in colour in accordance with the Sydney Streets Code (which forms part of the City Codes and Standards).

The catenary Smartpoles® are to be supplied and installed by TfNSW (at its cost). It is the responsibility of TfNSW to ensure the design of the new suite of Smartpoles® are structurally adequate and fit for purpose, subject to non-Light Rail loadings being provided by the City.

TfNSW is to source all Smartpoles® from a panel of suppliers nominated by the City or as otherwise agreed between TfNSW and the City.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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</table>
| 1.13.2  | In the pedestrianised areas of George Street:  
- all existing Smartpoles® are to be removed by TfNSW;  
- TfNSW is to supply and install a row of new Type S3B catenary-free Smartpoles® on either side of the trackway on a new alignment at approximately 20 metre centres or as required to meet lighting standards;  
- the alignment of the Smartpoles®, except at Stops, is to be as close as possible to the DKE and generally between 0.9 metres and 1.4 metres from the DKE depending on the final paving design; and  
- the City's preference is that all existing Smartpole® in-ground conduits and services are to be re-routed to the new Type S3B catenary-free Smartpoles® on the new Light Rail alignment. |
| 1.13.3  | In the areas outside of the pedestrianised areas of George Street the location of catenary Smartpoles® is to be generally immediately behind the kerb at 20 metre spacing, subject to Section 1.13.5 of these Technical Requirements, or as required to meet lighting standards and catenary requirements. |
| 1.13.4  | The spacing and location of catenary support poles is to be integrated with the City's Smartpole® layout and the spacing required to support the catenary. |
| 1.13.5  | Where possible, catenary wires are to use existing Smartpole® locations with new design Type S3A or Type S3C catenary Smartpoles® to be installed at that existing location to take the additional catenary loading. |
| 1.13.6  | To the extent reasonable having regard to cost and aesthetics, any block that makes use of Smartpoles® for catenary support is to have all existing Smartpoles® replaced with new design Type S3A or Type S3C catenary Smartpoles®. |
| 1.14.1  | In the pedestrianised areas of George Street and Alfred Street within the local government area administered by the City, single phase and 3 phase power outlets (1 x 32amp) are to be provided by TfNSW at each new Smartpole® installed by TfNSW as part of the Project. |
| 1.14.2  | The parties will work together to ensure that adequate interim CCTV coverage in the Sydney CBD is maintained during construction and appropriate and adequate permanent CCTV coverage in the Sydney CBD is re-activated at completion of the Works. |
| 1.14.3  | If overhead power lines in the local government area administered by the City are required to be relocated as a consequence of the Project, they are to be converted to underground power supplies. |
| 1.15.1  | If required by NBN Co, National Broadband Network conduits are to be installed along the full length of the Light Rail route in the local government area administered by the City at NBN Co's cost. These conduits will be owned by TfNSW or NBN Co, as agreed between those parties. |
| 1.16.1  | Allocation for thermal reticulation network  
Subject to the principles in Section 1.16.6 of these Technical Requirements, and without TfNSW being required to undertake any works or relocate any services to achieve the allocation, TfNSW is to allow for an allocation of space for the City to install the City's proposed thermal reticulation network adjacent to the Light Rail route along George and Chalmers Streets. This allocation will seek to accommodate 2 x 600mm high density conduits at a minimum 500mm depth (400mm if ground surface is concrete or asphalt pavement), with a minimum 300mm separation between those conduits and will sit outside of the Permanent Light Rail Corridor. The installation of conduits in relation to those future...
services and the services system do not form part of the Project and are the responsibility of the City.

1.16.2 Future connections at nominated cross streets for thermal reticulation network

Subject to the principles in Section 1.16.6 of these Technical Requirements, empty conduits (see below for details) are to be provided at five crossings at nominated cross streets to enable future connection by the City to a thermal reticulation network. The locations of the crossings nominated by the City as at the date of this Agreement are:

- Grosvenor Street/Bridge Street;
- Margaret St South/Hunter Street North;
- Barrack Street/Martin Place;
- Bathurst Street; and
- Goulburn St.

If it is not practicable to install the conduits at one of the above crossings, TfNSW and the City will work together to nominate an alternative crossing. These conduits will be:

- 2 x 600mm high density at a minimum 500mm depth (400mm if ground surface is concrete or asphalt pavement), with a minimum 300mm separation between those conduits;
- provided from footpath to footpath at the five crossings to enable the City to pull TRN pipes through in the future, without trenching through the Light Rail corridor; and
- polyethylene and able to withstand the continuous TRN surface temperature of approximately 90°C.

1.16.3 Non-potable water network

Subject to the principles in Section 1.16.6 of these Technical Requirements, a 150mm diameter water pipe for recycled water is to be laid on each side of the road in the City Centre from Circular Quay to Chalmers Street (Inclusive) (ie: Alfred Street to Chalmers/Devonshire Street Intersection).

Connection of the new pipes to other pipes is not required. The pipes are to be designed, constructed and pressure tested (where practicable) in accordance with the WSA 03-2002-3.1 Water Supply Code of Australia SYDNEY WATER EDITION 2012 Edition for use as a future non-potable, pressurised, recycled water pipe network. The City will own the non-potable recycled water pipes post-construction.

1.16.4 General purpose empty conduits along length of Light Rail corridor

Subject to the principles in Section 1.16.6 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 road in the City Centre from Circular Quay to Chalmers Street (Inclusive); and
- in any other areas in the local government area administered by the City that are impacted by the Project.

These conduits will be owned by TfNSW or the Project.

1.16.5 General purpose empty ducts at cross streets

Subject to the principles in Section 1.16.6 of these Technical Requirements, a single 100mm diameter duct passing under the Light Rail track bed will be installed on each side of the cross streets to the Light Rail route in the local government area administered by the City. The ducts will be capped and will not be provided with end pits. The City will own these ducts.

1.16.6 General principles

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:
- the road is in the local government area administered by the City;
- the relevant part of the road will be disturbed as part of the Project;
- the installation does not require digging or excavation deeper than 1.0m in depth;
- 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
- the installation or allocation is practicable to achieve.
Pits are not required at the ends of any conduits installed in accordance with Sections 1.16.1 to 1.16.5 of these Technical Requirements.
If TINSW or the Project is stated as owning the conduits installed, the City will, from time to time and if there is space available in the conduits, be entitled to install the City’s services in the conduits for a peppercorn rental. If the services of any other party is installed in the conduit, TINSW or the Project (as applicable) is entitled to any revenue derived from that installation. TINSW or the Project (as applicable) will not unreasonably withhold consent to a utility authority installing services in the conduits at no charge, if there is space available in the relevant conduit.
TINSW will provide the City with as-built diagrams (in a CAD file in .dwg format) of the installations and allocation as at the completion of construction of the Project.

1.17 Lighting

1.17.1 Lighting required to be installed by TINSW along the Light Rail route in the local government area administered by the City in relation to the road surface and any pedestrian walkway is to be in accordance with the City’s “Lighting Master Plan and Specifications” for luminaires and lighting energy management systems and CPTED principles.

Supply (but not installation) of road lighting external (on outreach arms) luminaires on lighting poles and beacon lights and up-lighting fixtures on new Smartpoles® in locations as nominated by the City will be supplied by the City (at the City’s cost).

1.17.2 Any street and pedestrian lighting installed along the Light Rail route for the Project in the local government area administered by the City is to use Light Emitting Diodes in accordance with the City’s standard set out in the George Street Lighting Masterplan (which forms part of the City Codes and Standards). Lighting is to comply with the Draft Intermediate Sydney Lights Design Code (which forms part of the City Codes and Standards) and will be designed to maximise uniformity of lighting levels within the Public Domain.

1.17.3 - The lighting level from Chalmers Street to Alfred Street is to be P6 plus 30%.
- The lighting level on Devonshire Street is to be:
  o pedestrian lighting P2; and
  o vehicular lighting V2.
- George Street lighting pole heights are to be in accordance with the Concept Designs-Catenary Smartpoles® attached as Annexure D to this Agreement.
- The nominated road lighting external luminaire is GE R250.

All new lighting is to be capable of being remotely monitored and controlled (ie Smart Controls which is a system consisting of a control in the switchbox and has a SIM card that allows two way communications between the lights and a remote computer with a node in each of the luminaires being controlled. This allows real time monitoring of voltage, power consumed, power factor and switching times and the expected remaining life of each light).

1.18 Parking

TINSW is to explore opportunities to mitigate loss of car parking in the local government area administered by the City as a result of the Project, without affecting open space and Public Domain in the local government area administered by the City.
1.18.2 TfNSW is to seek agreement with the City on the location, volume, type, design, access and controls applying to parking supply in the local government area administered by the City that is both removed and relocated as a result of the Project.

1.18.3 The parties acknowledge that the work for the requirements in Sections 1.18.1 and 1.18.2 will not be complete prior to the signing of this Agreement.

1.19 Trees

1.19.1 Trees along the Light Rail route for the Project (in the local government area administered by the City) are to be retained wherever practicable and protected in accordance with the George Street Transformation and Light Rail Tree Management Specification attached as Annexure G to this Agreement.

Trees planted in the local government area administered by the City are to be in accordance with the following:

- trees are, where practicable, to be placed at approximately 8.7 metre spacing between Smartpoles in an opposite pattern (ie not alternate or staggered spacing);
- in the pedestrianised area of George Street, the alignment of trees, except at Stops, is to be as close as possible to the DKE and generally between 0.9 metres and 1.4 metres from the DKE depending on the final paving design; and
- the species of tree to be planted as part of the Project must be:
  - Alfred Street - Zelkova Serrata 'Green Vase';
  - George Street - Zelkova Serrata 'Green Vase';
  - Rawson Street/Eddy Avenue - Zelkova Serrata 'Green Vase';
  - Chalmers Street – Platanus acerifolia;
  - Devonshire Street – Liriodendron tulipifera;
  - other locations or within parks - to be determined during future design development in consultation with the City.

TfNSW is to source all new trees to be planted in the local government area administered by the City in accordance with the George Street Transformation and Light Rail Tree Management Specification attached as Annexure G to this Agreement.

As soon as practicable after the date on which TfNSW enters into a project deed for the Project, TfNSW must:

- give the City its plan describing the procurement process for the new trees to be planted in the local government area administered by the City and when it will commence; and
- enter into a contract for the new trees (as the trees need to be ordered years in advance, to give the trees sufficient time to grow, to ensure availability) and give the City relevant extracts of the contract in relation to the supply of the trees.

Trees pits for all new trees are:

- to be provided in accordance with the George Street Transformation and Light Rail Tree Management Specification attached as Annexure G to this Agreement; and
- to have a tree pit soil specification developed in accordance with the George Street Transformation and Light Rail Tree Management Specification attached as Annexure G to this Agreement, with this specification to be developed during the course of finalising the detailed tree pit designs. TfNSW must give the City a draft copy of the specification and develop a final specification in consultation with the City.

Without limiting the above obligations, TfNSW must otherwise comply with the George Street Transformation and Light Rail Tree Management Specification attached as Annexure G to this Agreement.

TfNSW must (at its cost):

- maintain all new trees planted as part of the Project; and
1.19.2 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.

1.20 Soundproofing and hoardings

1.20.1 Where the Light Rail passes sensitive noise receivers in the local government area administered by the City (as defined in the approval for the Project), including properties on Devonshire Street, TNSW will take practicable measures to minimise noise and isolate vibration.

1.20.2 Hoardings erected as part of the Project are to meet TNSW standards developed in consultation with the City, including in relation to project information, project promotional material and joint organisational branding. Hoardings will be designed to ensure safety, security and community amenity, including in relation to transparency, except as specified in clause 8.7. Hoardings along the alignment in the centre of the streets will allow for visibility across the street.

1.21 Survey Marks

1.21.1 Permanent survey marks are to be preserved during the Works as stated on the City’s Standard Conditions of Development Consent (reproduced in Section 1.21.2 of these Technical Requirements).

If any permanent survey mark located within the Works Site is to be destroyed due to the Works, the City’s Principal Surveyor 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 TNSW as per the City’s Standard Conditions of Development Consent. The City will reinstate the pin and renumber the mark.

1.21.2 A copy of the City’s Standard Conditions of Development Consent for survey marks:

**PRESERVATION OF SURVEY MARKS**

All works in City streets must ensure the preservation of existing permanent survey marks (a brass bolt, or a lead plug holding a brass tack, covered by a cast iron box). At least forty-eight hours prior to the commencement of any works in the public way within 1 metre of a permanent survey mark contact must be made with the City’s Project Manager Survey / Design Services to arrange for the recovery of the mark.

Prior to the issue of a construction certificate, a survey plan, clearly showing the location of all permanent survey marks fronting the site and within 5 metres on each side of the frontages must be submitted to Council.

At least forty-eight hours prior to the commencement of any works in the public way within 1 metre of a permanent survey mark contact must be made with the City’s senior surveyor to arrange for the recovery of the mark. Either TNSW will reinstate the survey mark in accordance with all laws and provide to the City the details of the reinstatement or a fee must be paid to the City for the replacement of the survey mark removed or damaged in accordance with the City’s Schedule of Fees and Charges (Reinstatement of Survey Box).

**PROTECTION OF SURVEY INFRASTRUCTURE**

Prior to the commencement of any work on site, a statement prepared by a Surveyor registered under the Surveying Act 2002 must be submitted to Council verifying that a
survey has been carried out in accordance with the Surveyor General’s Direction No. 11 – Reservation of Survey Infrastructure. Any Permanent Marks proposed to be or have been destroyed must be replaced, and a “Plan of Survey Information” must be lodged at the Land and Property Management Authority.

1.22 Substations

1.22.1 In the local government area administered by the City, the traction power substations installed or constructed for the Project in the City road ways or on land owned or controlled by the City, will be underground.

2 TERM 2 – DELIVERY PHASE

2.1 Co-ordination

2.1.1 Reinstatement works are to be undertaken to reconnect the City’s cycle network following any interruptions caused by the Works.

2.2 Traffic management

2.2.1 TfNSW will be responsible for all traffic co-ordination matters within the local government area administered by the City. The City 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 during the construction phase of the Project.

2.2.3 Temporary road closures are to be discussed in advance with the City.

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 Sydney.

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 hotels and other businesses in the local government area administered by the City affected by the Works and will manage any potential noise issues arising from out-of-hours works.

2.5 Construction compounds

2.5.1 Except as required under Section 1.4, City 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 in accordance with the City Codes and Standards, or as otherwise agreed between TfNSW and the City.

2.6 Consultation

2.6.1 TfNSW will be responsible for stakeholder and community engagement during the construction phase of the Works. The stakeholder and community communication and consultation strategy will be agreed between TfNSW and the City prior to commencement of the Works.
3.1 Cleaning

3.1.1 TfNSW will ensure that the areas it is responsible to clean under clause 24.2 are cleaned in accordance with the City standards set out in Schedule 5 to ensure consistency of cleaning activities occurring in public domain and Light Rail areas. Cleaning includes graffiti removal. The requirements in Schedule 5 include separate cleaning standards for special events.

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.

3.1.2 Cleaning of the public domain and the other areas referred to in clause 24.2 will be the responsibility of the City, except when that area is subject to a Works Site Licence. In relation to the Permanent City Assets, the City will assume cleaning obligations after handover of those assets has occurred in accordance with clause 20.5.

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 special events including New Year’s Eve, Vivid, Anzac Day march, and various fun runs and marathons. These events will be co-ordinated with the event organisers and the City in conjunction with the Light Rail operator and other stakeholders.

3.3 Service performance parameters

3.3.1 TfNSW will make available to Council all data that is provided to TfNSW by the Project on 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 Light Rail corridor, Stops and Light Rail rolling stock and infrastructure referred to in clause 24.2 will be the responsibility of TfNSW, including overhead catenary wires, Light Rail ticketing infrastructure and Light Rail emergency help points.

TfNSW will incorporate the maintenance standards in Schedule 5 into the Project obligations (as key performance indicators relating to output based maintenance 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.

3.5.2 Maintenance of the public domain and the other areas referred to in clause 24.2 will be the responsibility of the City, except when that area is subject to a Works Site Licence. In relation to the Permanent City Assets, the City will assume routine and other maintenance obligations after handover of those assets has occurred in accordance with clause 20.5.

3.7 Access

3.7.1 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 all times, subject to traffic management imposed by the roads authority.

3.7.2 Local access vehicles (excluding taxis) accessing or servicing private properties in the George Street pedestrianised area will be permitted to drive on the Light Rail tracks at low
speeds but will not be permitted to stop on the tracks or otherwise obstruct Light Rail operations.

4 GENERAL

4.1 Dedication of land to the City

4.1.1 Any land within the local government area administered by the City which is compulsorily acquired by TfNSW as part of the Project and which is not required by TfNSW as part of the Project or for other TfNSW requirements and affects or will become the public domain, existing parks, gardens, open space or public domain infrastructure, will be dedicated to the City as soon as practicable after completion of the Works.

4.2 Community Engagement

4.2.1 The TfNSW marketing strategy for the Project is to include provisions for joint marketing and branding of the Project, where relevant.