

Sydney Metro City & Southwest Independent Certification of the Line-wide Works Independent Certifier Deed

Contract No: 11513

CPB Contractors Pty Limited

ABN 98 000 893 667

UGL Engineering Pty Limited

ABN 96 096 365 972

Sydney Metro

ABN 12 354 063 515

Advisian Pty Ltd

ABN 50 098 008 818

and

(From the Accession Date) the person who accedes to
this deed under clause 2

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Exhibit

1 Indicative list of LW Contractor submissions

THIS INDEPENDENT CERTIFIER DEED is made on

2019

BETWEEN:

- (1) **CPB Contractors Pty Limited** ABN 98 000 893 667 of Level 18, 177 Pacific Highway, North Sydney, NSW 2000; and
UGL Engineering Pty Limited ABN 96 096 365 972 of Level 8, 40 Miller Street, North Sydney, NSW 2060,

(together the **LW Contractor**); and
- (2) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**);
- (3) **Advisian Pty Ltd** ABN 50 098 008 818 of Level 17, 141 Walker Street, North Sydney NSW 2060 (**Independent Certifier**); and
- (4) (From the Accession Date) the person who accedes to this deed under clause 2, being the person defined as the "Acceding Party" in the Accession Deed that the Principal requires the Independent Certifier and the LW Contractor to execute under clause 2(a) (the **Operator**).

RECITALS:

- (A) The LW Contractor has entered into the Line-wide Contract with the Principal in respect of the Project Works.
- (B) The Independent Certifier represents that it is experienced generally in design and construction and, in particular, in the design and construction of works similar to the Project Works and offers its expertise in those fields.
- (C) The Project Agreements contemplate that the Independent Certifier will discharge those functions set out in Schedule 1.
- (D) The Independent Certifier will perform its obligations on the terms of this deed.
- (E) In accordance with the Line-wide Contract, the LW Contractor will progressively hand control of the Project Works to the Principal, so that the Principal may hand control of the Project Works to the Operator in order to allow it to undertake the OTS2 Project Works and to commence operation of Sydney Metro City & Southwest.
- (F) The Independent Certifier will issue a Notice of Construction Completion and a Notice of Completion in respect of each Portion of the Project Works and the Operator will be bound by the Independent Certifier's certification as set out in the Notice of Construction Completion for Portion 3 of the Project Works for the purposes of taking possession of the relevant parts of the Construction Site.
- (G) The Operator has not been engaged by the Principal. Once the Operator has been engaged, the Operator will execute the Accession Deed substantially in the form included in Schedule 6 and will thereby accede to the terms of this deed.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed:

Accession Date has the same meaning as given to the term "Effective Date" in the Accession Deed, being the date from which the Operator accedes to this deed.

Accession Deed means the deed in substantially the same form as Schedule 6 (with relevant details duly completed) which is to be executed by the Independent Certifier, the LW Contractor, the Principal and the Operator in accordance with clause 2.

Additional Services means any additional services requested by the Principal from the Independent Certifier from time to time by the issue of an Additional Services Order, as those services are described in each Additional Services Order.

Additional Services Fee means the fee specified in any Additional Services Order for the Additional Services set out in that Additional Services Order, calculated in accordance with clause 7.1(a)(ii).

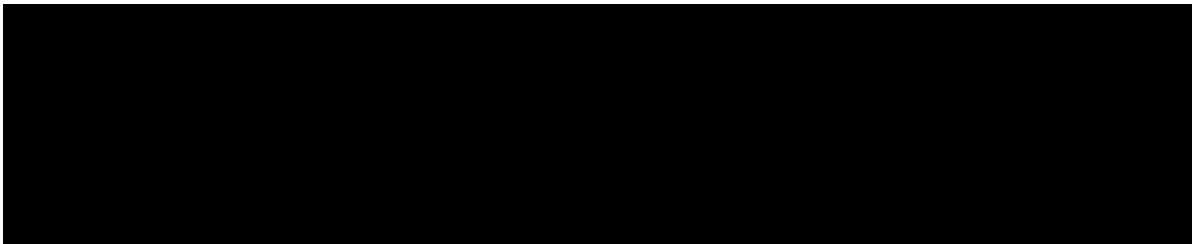
Additional Services Order means a written request from the Principal to the Independent Certifier to carry out Additional Services issued under clause 7.1(a).

Certification Methodology means the certification methodology set out in Schedule 7.

Certification Plan means the plan that the Independent Certifier is required to prepare in accordance with clause 4.8, and in respect of which the Principal has not issued a notice under clause 4.8(c), as that plan is updated from time to time in accordance with clause 4.9 of this deed.

Completion Phase Services means all Core Services related to:

- (a) construction of the Project Works;
- (b) Milestone Achievement of each Milestone;
- (c) the performance by the LW Contractor of its obligations in respect of Milestone Achievement of each Milestone;
- (d) Construction Completion and Completion of each Portion;
- (e) the performance by the LW Contractor of its obligations in respect of Construction Completion and Completion of each Portion;
- (f) completion of Local Area Works; and
- (g) the performance by the LW Contractor of its obligations in respect of Local Area Works.



[REDACTED]

Core Services means the services set out in Schedule 1 to this deed, and includes the Design Phase Services and the Completion Phase Services.

Core Services Fee means the amount payable to the Independent Certifier for the performance of the Core Services, as calculated in accordance with paragraph 1(b) of the Payment Schedule.

[REDACTED]

Date of Framework Agreement means 21 December 2018.

Design Phase Services means all Core Services related to:

- (a) the design of the Project Works; and
- (b) the performance by the LW Contractor of its design obligations in respect of the Project Works.

Dispute Representatives has the meaning given to that term in clause 9.2.

Fee means the amount payable to the Independent Certifier for the performance of the Services in accordance with the Payment Schedule.

[REDACTED]

[REDACTED]

GST, GST law and other terms used in clause 11 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 11) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

Independent Certifier's Project Director means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 4.4(b)(ii).

Independent Certifier's Representative means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 4.4(b)(ii).

Line-wide Contract means the deed titled "Sydney Metro City & Southwest – Line-wide Works Incentivised Target Cost Contract" between the Principal and the LW Contractor dated 20 November 2018.

Liquidated Damages Loss means any liability for liquidated damages under the Line-wide Contract caused by any conduct, act or omission of the Independent Certifier (other than any conduct or act performed in accordance with this deed) causing delay to the LW Contractor:

- (a) achieving Construction Completion of a Portion by the Date for Construction Completion of the Portion; or
- (b) reaching Milestone Achievement of a Specified Milestone by the Date for Milestone Achievement of the Specified Milestone.

Loss means any cost, expense, loss, damage, liability or other amount whether present, future, fixed, unascertained, actual or contingent.

NSW Trains means the body corporate constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

Other Parties means the Principal, the LW Contractor and, from the Accession Date, the Operator.

Payment Schedule means Schedule 2 to this deed.

PDCS means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 12.1.

Project Agreements means:

- (a) the Line-wide Contract; and
- (b) the LW Operator Cooperation and Integration Deed; and
- (c) the LW OpCo Cooperation and Integration Deed.

Public Transport Agency means the Principal, TfNSW (and each of its divisions), RailCorp, Sydney Trains and NSW Trains.

RailCorp means Rail Corporation New South Wales, a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

Reputable Insurer means an insurance company having the Required Rating.

Required Rating means a credit rating (or in the case of an insurer, a financial security rating) of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

Services means:

- (a) the Core Services; and
- (b) any Additional Services,

and includes all things necessary for, or incidental to, the proper and professional performance of those services.

Substitute Certifier has the meaning given in clause 7.4(a).

Sydney Trains means Sydney Trains, the body corporate constituted by Part 2A of the *Transport Administration (General) Regulations 2005* (NSW).

Term means the term of this deed as set out in clause 3.2.

TfNSW means Transport for NSW, a NSW government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW).

Upper Limiting Fee means each upper limiting fee specified in paragraph 1(b) of the Payment Schedule, as adjusted in accordance with this deed.

Wilful Misconduct means any malicious conduct or any breach of this deed which results from a conscious and intentional indifference and disregard to the relevant provisions of this deed and the risk of causing the Loss claimed by the relevant Other Party in respect of the breach but does not include errors of judgement, mistakes, errors or acts or omissions made in good faith.

1.2 Definitions in Line-wide Contract

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the Line-wide Contract will have the same meaning in this deed as in the Line-wide Contract.

1.3 Interpretation

In this deed:

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

and the following rules apply in interpreting this deed unless the context makes clear that a rule is not intended to apply:

(b) where the Independent Certifier or an Other Party comprises more than one entity, an obligation or a liability assumed by, or a right conferred on, the relevant Other Party or the Independent Certifier (as applicable), binds or benefits them jointly and severally;

(c) **person** includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation;
- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) where under this deed:
 - (i) a notice, certificate or direction is required to be given; or
 - (ii) a default must be remedied,

within a stated number of days, only Business Days will be counted in computing the number of days;
- (m) for all purposes other than as set out in clause 1.3(l), day means calendar day;
- (n) a reference to a **month** is a reference to a calendar month;
- (o) a reference to a court or tribunal is to an Australian court or tribunal;
- (p) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (q) any reference to **information** will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.4 **Business Day**

If the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

1.5 **Ambiguous terms**

- (a) If the Principal considers, or if any of the Independent Certifier, LW Contractor or the Operator notifies the Principal's Representative in writing that it considers, that there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed (including in any schedules), the Principal's Representative must direct the interpretation of this deed which the parties must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.5(a), is not required to determine whether or not there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.5(a):
 - (i) will not relieve the Independent Certifier, the LW Contractor or the Operator from or alter its liabilities or obligations under this deed or otherwise according to Law;

- (ii) will not limit or otherwise affect the Principal's rights against any of the Independent Certifier, the LW Contractor or the Operator, whether under this deed or otherwise according to Law; and
- (iii) must, in respect of a notice given under clause 1.5(a) by the Independent Certifier, the LW Contractor or the Operator, be given within 20 Business Days of receipt of that notice.

1.6 No bias against drafter

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

1.7 Excluding liability

Any provision of this deed which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law.

2. ACCESSION BY THE OPERATOR

- (a) The LW Contractor and the Independent Certifier must, upon being requested by the Principal, execute four counterparts of the Accession Deed in accordance with the Principal's instructions and provide such copies to the Principal, notwithstanding that the counterparts of the Accession Deed may not have been signed by the Principal or the Operator.
- (b) The LW Contractor and the Independent Certifier may not object to the identity of the person selected by the Principal to be the Operator.
- (c) The Operator and the obligations owed to the Operator under this deed will only become effective upon the accession of the Operator to this deed in accordance with this clause 2 and the executed Accession Deed.
- (d) Upon accession of the Operator to this deed as referred to in clause 2(c), the rights and liabilities of the parties to this deed will be as set out in this deed as amended in accordance with the requirements of the Accession Deed.
- (e) The Principal will provide each of the Independent Certifier and the LW Contractor with a copy of the Accession Deed duly executed by the Principal and the Operator.

3. APPOINTMENT OF THE INDEPENDENT CERTIFIER

3.1 Appointment

- (a) Each of the Other Parties appoint the Independent Certifier under this deed to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 3.1(a).
- (c) The Independent Certifier must carry out the Services in accordance with the requirements of this deed and the Project Agreements and, to the extent the Certification Plan is consistent with the Project Agreements or the nature of the Services, it will carry out and perform the Services in accordance with the Certification Plan.

3.2 **Term**

The Term of this deed commences on the date of this deed and continues until the earlier of:

- (a) completion of the Services; or
- (b) termination in accordance with clause 10.

3.3 **Payment**

The Principal will pay the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.

3.4 **Nature of Services**

- (a) The Independent Certifier and the Other Parties acknowledge and agree that the Certification Plan is incidental to, and does not limit or otherwise affect the Services or the Independent Certifier's obligations under the deed.
- (b) Where this deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then the Principal must, acting reasonably and after prior consultation with the LW Contractor and, as relevant, the Operator, determine the appropriate action, agreement, decision, direction or the like.
- (c) In reaching decisions in relation to this deed which may affect the Other Parties, the Principal will take into account representations made by the LW Contractor and the Operator.

3.5 **Rights under the Project Agreements**

The Independent Certifier may exercise any of the rights granted to it under the Project Agreements for the purpose of performing the Services.

4. **INDEPENDENT CERTIFIER'S OBLIGATIONS**

4.1 **Acknowledgement**

The Independent Certifier acknowledges that:

- (a) it has received a copy of the execution version of each Project Agreement and that it has read, and is familiar with, the terms of these documents to the extent they relate to the Services;
- (b) it must continue performing the Core Services notwithstanding that the relevant Upper Limiting Fee may have been reached; and
- (c) it will not be entitled to payment of any amount in addition to the relevant Upper Limiting Fee (as adjusted in accordance with paragraph 4 of Schedule 2) for the performance of the Core Services.

4.2 **General representations and warranties**

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under Law and has the power to execute, deliver and perform its obligations under this deed and that all necessary

corporate and other action has been taken to authorise that execution, delivery and performance;

- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and Laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any Law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

4.3 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
 - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of a professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) must, at all times, act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Project Agreements (and, where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 4.3(a) and 4.3(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or any Project Agreement;
- (e) without limiting its obligations under any provision of this deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services;
 - (ii) it will make available for the performance of the Services, as a minimum, the levels of resources specified in Schedule 3; and

(iii) without limiting subparagraphs (i) and (ii), to the extent the Certification Plan is consistent with:

- (A) the Project Agreements;
- (B) the nature of the Services; or
- (C) without limiting subparagraphs (A) or (B), the requirements of clause 4.14,

it will carry out and perform the Services in accordance with the Certification Plan;

- (f) will provide transport on site for the use of its site personnel;
- (g) will, in carrying out the Services, carry out physical inspections of the Construction Site, any Extra Land, the Project Works and the LW Contractor's Activities:
 - (i) when appropriate or necessary to do so in order to perform the Core Services (including for the purpose of determining whether Milestone Achievement of any Milestone or Construction Completion or Completion of any Portion has been achieved by the LW Contractor);
 - (ii) when otherwise reasonably requested by the Principal; and
 - (iii) in a manner which satisfies the requirements of the Certification Plan,

and will invite and permit the Principal and the Operator to accompany it on all such inspections;

- (h) will carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the LW Contractor and the Operator) except where it is the unavoidable consequence of performing the Services; and
- (i) in undertaking the Services, will comply with all the safe working requirements of the LW Contractor and the Operator, including the reasonable instructions of the LW Contractor in relation to safety and site security while on the Construction Site.

4.4 Personnel

- (a) The Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the nominated people referred to in Schedule 3:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Principal (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the people are removed:
 - (A) they must be replaced by people of at least equivalent skill, expertise and experience, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed;

- (B) they must be approved in writing by the Principal, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed; and
 - (C) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Project Agreements and the Services; and
- (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) The Principal may direct the Independent Certifier to remove from the performance of the Services any of the people referred to in Schedule 3 and the Independent Certifier must comply promptly with any such direction and nominate a replacement.
- (d) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 which the Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.
- (e) The Independent Certifier must make available additional personnel to the extent required by the Principal.
- (f) The Independent Certifier must ensure that the persons appointed to the positions of:
 - (i) the Independent Certifier's Project Director; and
 - (ii) the Independent Certifier's Representative,
 including any replacements, at all times:
 - (iii) have the authority to act on behalf of and to bind the Independent Certifier in respect of the Services;
 - (iv) have full authority to promptly execute documents (including any certifications) and to promptly make decisions in relation to the Services; and
 - (v) have authority to bind the Independent Certifier in relation to any matter arising out of or in connection with the Services.

4.5 **Subcontracting**

- (a) Subject to clause 4.5(c), the Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request to subcontract).
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Independent Certifier.

- (c) Unless the Principal otherwise approves in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 5 for the performance of the relevant parts of the Services.

4.6 **Quality Assurance**

- (a) The Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this deed as a result of:
 - (i) compliance with the quality assurance requirements of this deed; or
 - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this deed, including any review of, comments upon, or notice in respect of, the Certification Plan or any audit under clause 4.11.

4.7 **Information provided to Independent Certifier**

- (a) The Independent Certifier is entitled to rely on information provided to it in accordance with the Line-wide Contract by either of the Principal or the LW Contractor as being true and correct in all material respects unless:
 - (i) such information is:
 - (A) manifestly incorrect;
 - (B) provided on a qualified basis; or
 - (C) actually known or ought to reasonably have been known by the Independent Certifier to be untrue or incorrect as a result of it carrying out the Services in accordance with, and to the standards acknowledged, required by, or warranted in this deed; or
 - (ii) the Principal or the LW Contractor (as the case may be) subsequently informs the Independent Certifier of any change to the information provided to it.
- (b) The LW Contractor must provide to the Independent Certifier (with a copy to the Principal):
 - (i) the proposed design package structure, including the number of packages and associated description/naming, and a milestone program for staged submission of each design package in accordance with clause 9.5 of the Line-wide Contract (**Design Submission Program**) within 25 Business Days of the date of this deed; and
 - (ii) an updated Design Submission Program each week during the period that the LW Contractor is carrying out design activities under the Line-wide Contract.

4.8 **Certification Plan**

- (a) The Independent Certifier must prepare and submit to the Other Parties within 25 Business Days of the date of this deed a Certification Plan which must:

- (i) be based on the Certification Methodology contained in Schedule 7;
 - (ii) meet or exceed the requirements of Schedule 4;
 - (iii) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the Certification Methodology contained in Schedule 7; and
 - (iv) comply with the requirements for the Certification Plan in Schedule 4 of this deed.
- (b) The Other Parties may review the Certification Plan submitted under clause 4.8(a).
 - (c) The Principal may, if the Certification Plan does not comply with this deed or if the Principal believes (after prior consultation with the LW Contractor and, as relevant, the Operator) that the Certification Plan does not provide the information required by Schedule 4, notify the Independent Certifier of the non-compliance.
 - (d) If the Independent Certifier receives a notice under clause 4.8(c), the Independent Certifier must promptly submit an amended Certification Plan to the Other Parties, after which clause 4.8(b) will reapply.
 - (e) If the Independent Certifier does not receive a notice under clause 4.8(c) within 15 Business Days after the submission of the relevant Certification Plan, the relevant Certification Plan submitted by the Independent Certifier will be the Certification Plan with which the Independent Certifier must comply (as it is updated under clause 4.9).

4.9 **Revisions to Certification Plan**

- (a) The Independent Certifier must:
 - (i) progressively amend, update and develop the Certification Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Project Works, any Modifications and any changes in the manner of performing the Services;
 - (ii) ensure that any amendments, updates or developments of the Certification Plan under clause 4.9(a)(i) are consistent with, and provide, the information set out in Schedule 4; and
 - (iii) submit each revision of the Certification Plan to the Other Parties for their review and comment.
- (b) The Other Parties may review the Certification Plan submitted under clause 4.9(a)(iii).
- (c) The Principal may, if the Certification Plan does not comply with this deed or the Principal believes (after prior consultation with the LW Contractor and, as relevant, the Operator) that the revised Certification Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification Plan, notify the Independent Certifier of that non-compliance or reduction.
- (d) If the Independent Certifier receives a notice under clause 4.9(c), the Independent Certifier must promptly submit an amended Certification Plan to the Other Parties after which clause 4.9(b) will reapply.

- (e) The Other Parties owe no duty to the Independent Certifier to review the Certification Plan for errors, omissions or compliance with this deed.
- (f) Without limiting clauses 3.1(c) or 4.3(e), the Independent Certifier must not, either in the preparation of the Certification Plan required by clause 4.8 or the amending, updating and development of the Certification Plan required by clauses 4.9(a) and 4.9(d), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the Certification Methodology contained in Schedule 7 or the then existing Certification Plan without the written approval of the Principal's Representative (after prior consultation with the LW Contractor and, as relevant, the Operator).
- (g) The Independent Certifier may not amend the Certification Plan other than in accordance with this clause 4.9.

4.10 **Progress Reports by the Independent Certifier**

The Independent Certifier must provide a monthly progress report to the Principal's Representative, the LW Contractor and the Operator no later than 5 Business Days after the end of the month and in such format as is required by the Principal's Representative, containing, identifying or setting out:

- (a) an executive summary of the Services undertaken by the Independent Certifier during the reporting period, which must include a summary and status of the key issues identified by the Independent Certifier in connection with the performance of the Project Works by the LW Contractor, including actions taken to address the issues in the reporting period and proposed future actions;
- (b) a high level summary of the Services proposed to be undertaken by the Independent Certifier in the forthcoming reporting period;
- (c) the Independent Certifier's current and predicted resourcing structure for the performance of the Services;
- (d) a summary of the Core Services Fee paid to date;
- (e) the forecast effort to complete the Design Phase Services and the Completion Phase Services (as applicable) and the estimated Core Services Fee that would be payable in respect of that effort based on the assumption that there is no applicable Upper Limiting Fee;
- (f) details of any actual or potential Defects or other non-compliances in the Project Works that it has identified during the reporting period; and
- (g) any additional information requested by the Other Parties from time to time.

4.11 **Audit and surveillance**

- (a) The Independent Certifier must:
 - (i) allow any audit of its quality assurance system under this deed by the Principal or a third party at, in the case of a third party, the request of the Other Parties or any one of the Other Parties; and
 - (ii) fully co-operate with the Principal or the relevant third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Independent Certifier must, at all times:

- (i) give to the Principal or the third party access to premises occupied by the Independent Certifier where the Services are being undertaken; and
- (ii) permit the Principal or the third party to inspect applicable information relevant to the quality assurance audit.

4.12 **Access to records**

The Independent Certifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents received, prepared or generated by the Independent Certifier in the course of carrying out the Services. For the avoidance of doubt, the Operator is entitled to have access to such records and documents, including such records and documents as may have been created prior to the Operator acceding to this deed in accordance with clause 2 and the Accession Deed.

4.13 **Copies of notices and documents**

All notices and documents:

- (a) provided by the Independent Certifier to an Other Party must be copied to the other parties; and
- (b) provided by an Other Party to the Independent Certifier must be provided by the Independent Certifier to the other parties.

4.14 **Co-operation with Other Independent Certifiers**

- (a) The parties acknowledge and agree that:
 - (i) the LW Contractor's Activities interface with Interface Works; and
 - (ii) another independent certifier may be engaged by the Principal (**Other Independent Certifier**) to certify that any Interface Works have been designed and constructed in accordance with the requirements of the relevant Interface Works Contract.
- (b) Without limiting or otherwise affecting any of the Independent Certifier's obligations under this deed, the Independent Certifier must co-operate with Other Independent Certifiers, and do everything reasonably necessary to facilitate Other Independent Certifiers to certify the design and construction of Interface Works, including providing Other Independent Certifiers with such assistance or information as may be directed by the Principal's Representative.
- (c) The Independent Certifier must ensure that the Principal is provided with a copy of any written communication given by the Independent Certifier to an Other Independent Certifier within 2 Business Days of providing the same to that Other Independent Certifier.

4.15 **Document management and transmission**

- (a) Without limiting clause 12.1, the Independent Certifier must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by the Principal's Representative, in accordance with the processes, procedures and systems in the SWTC or as otherwise required by the Principal's Representative.
- (b) Documents supplied by the Principal to the Independent Certifier will remain the property of the Principal and must be returned by the Independent Certifier to the Principal on demand in writing. The documents must not, without the prior written

approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Services.

- (c) The Independent Certifier must keep all the Independent Certifier's records relating to the Services in a secure and fire proof storage.
- (d) The Independent Certifier will not be entitled to make, and the Principal or the LW Contractor will not be liable upon, any claim arising out of or in any way in connection with complying with its obligations under this clause 4.15.
- (e) The Independent Certifier must ensure that any documentation that it provides to the Principal or the LW Contractor in computer readable form contains no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

5. **INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY**

5.1 **Independent Certifier to be independent**

- (a) The Independent Certifier warrants to the Other Parties that in performing the Services, it will act:
 - (i) independently of the Other Parties;
 - (ii) honestly and reasonably;
 - (iii) with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of a professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular; and
 - (iv) within the times prescribed under the Project Agreements or as anticipated by the LW Contractor's Program, or such other programs that become relevant to the performance of the Services during the Term.
- (b) Without limiting clause 5.3(a), the parties acknowledge that:
 - (i) the Independent Certifier has been engaged by the Principal and the LW Contractor prior to the Operator having been engaged by the Principal;
 - (ii) when the Operator has been engaged by the Principal, the Operator will accede to this deed;
 - (iii) the Independent Certifier is obliged to act independently of the Operator;
 - (iv) the Independent Certifier may (after consultation with the Other Parties) be engaged by the Operator in relation to the OTS2 Project Works but must demonstrate to the satisfaction of the parties that it has sufficient separation procedures in place to permit it to act independently of the Operator;
 - (v) the LW Contractor may not make any claim against the Principal or (to the extent that the Independent Certifier complies with this deed) the Independent Certifier arising out of or in any way in connection with the

Independent Certifier being engaged by the Operator in relation to the OTS2 Project Works; and

- (vi) neither the Principal, the LW Contractor nor (from the Accession Date) the Operator may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence solely because it is engaged by the Operator in relation to the OTS2 Project Works.

5.2 **Confidentiality**

The Independent Certifier must:

- (a) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the Project Works, this deed, the Project Agreements or the Sydney Metro City & Southwest and not provide, disclose or use the information or documents except:
 - (i) to disclose them to the Other Parties;
 - (ii) for the purposes of performing the Services;
 - (iii) where required by Law or to obtain legal advice on this deed; or
 - (iv) with the prior written consent of the Other Parties; and
- (b) ensure that its subcontractors comply with the terms of clause 5.2(a).

This obligation will survive completion of the Services or the termination of this deed.

5.3 **Exclusivity**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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(i) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(ii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6. OBLIGATIONS OF THE OTHER PARTIES

6.1 No interference or influence

- (a) The Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this deed will not of itself constitute a breach of this clause.
- (b) Clause 6.1(a) will not prevent the Other Parties from providing written comments in accordance with the Project Agreements to the Independent Certifier in respect of the Design Documentation or any other aspect of the LW Contractor's Activities (including in connection with the Independent Certifier's determination of whether Milestone Achievement of any Milestone or Construction Completion or Completion of any Portion has been achieved by the LW Contractor) and the Independent Certifier must consider any such comments received from the Other Parties.

6.2 Co-operation

- (a) Without limiting or otherwise affecting any of the LW Contractor's obligations under this deed or the Project Agreements, the LW Contractor must:
 - (i) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise reasonably requested by the Independent Certifier or directed by the Principal;
 - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to all premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as reasonably requested by the Independent Certifier or directed by the Principal, including allowing the Independent Certifier to have safe, convenient and unimpeded access to the Construction Site and any Extra Land and all areas where the Project Works are being performed, from the date on which the LW Contractor is provided with access under the Line-wide Contract; and
 - (iii) ensure that hold points and witness points are included in the LW Contractor's Program as reasonably required by the Independent Certifier to enable the Independent Certifier to perform the Services.
- (b) The LW Contractor must ensure that the Principal is provided with a copy of any written communication given by the LW Contractor to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.

- (c) The Operator must ensure that the Principal is provided with a copy of any written communication given by the Operator to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.

6.3 **Principal to have no liability**

Each party acknowledges that the Principal is not liable, nor will be taken to have a liability, or to have assumed a liability or become (on enforcement of any of their powers or otherwise) liable:

- (a) to any party to this deed by reason of the Principal being a party to this deed; or
- (b) for the performance of any obligation of the LW Contractor, the Operator or the Independent Certifier under this deed or under any Project Agreement.

7. **ADDITIONAL SERVICES, CHANGES TO CORE SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER**

7.1 **Additional Services**

- (a) At any time during the Term, the Principal may issue an Additional Services Order to the Independent Certifier including the following details:
 - (i) a description of the Additional Services to be performed by the Independent Certifier under the Additional Services Order, including:
 - (A) the program for carrying out the Additional Services;
 - (B) the personnel required to perform the Additional Services; and
 - (C) the estimated number of hours or days (as applicable) required to be performed by each personnel; and
 - (ii) the Additional Services Fee payable by the Principal for the performance of the Additional Services the subject of the Additional Services Order, which must be:
 - (A) calculated by reference to the schedule of rates set out in the Payment Schedule; or
 - (B) if the nature of the services are such that the schedule of rates set out in the Payment Schedule is not applicable, based on reasonable rates and prices.
- (b) The Independent Certifier must, within five Business Days of receipt of an Additional Services Order, provide the Principal with a notice either:
 - (i) accepting the Additional Services Order; or
 - (ii) containing detailed written reasons why it cannot accept the Additional Services Order.
- (c) An Additional Services Order is deemed accepted for all purposes under this deed if no notice is received by the Principal from the Independent Certifier in accordance with clause 7.1(b).
- (d) If an Additional Services Order is accepted or deemed to be accepted by the Independent Certifier under this clause 7.1:

- (i) the Additional Services set out in that Additional Services Order become part of the Services and must be performed in accordance with this deed; and
 - (ii) the Additional Services Fee (if any) set out in that Additional Services Order becomes part of the Fee and must be paid in accordance with this deed.
- (e) The Principal is not obliged to issue any Additional Services Order to the Independent Certifier under clause 7.1(a).
- (f) The Independent Certifier acknowledges that:
- (i) the Principal has made no representations as to the amount of work (if any) which the Principal may request the Independent Certifier to perform under Additional Services Orders;
 - (ii) the Independent Certifier may not make any claim against the Principal on the basis that the Principal has not requested or engaged the Independent Certifier to perform any or sufficient work under Additional Services Orders; and
 - (iii) the Principal is entitled to engage other contractors to perform services similar to the Services.

7.2 **Change to Core Services**

Without limiting clause 7.1, the Principal (after prior consultation with the LW Contractor and, as relevant, the Operator) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Core Services (including an addition or omission) and the Independent Certifier must comply with that direction.

7.3 **Suspension of Services**

The Principal (after prior consultation with the LW Contractor and, as relevant, the Operator) may, by written notice to the Independent Certifier (copied to the LW Contractor and the Operator), direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.

7.4 **Appointment of Substitute Certifier**

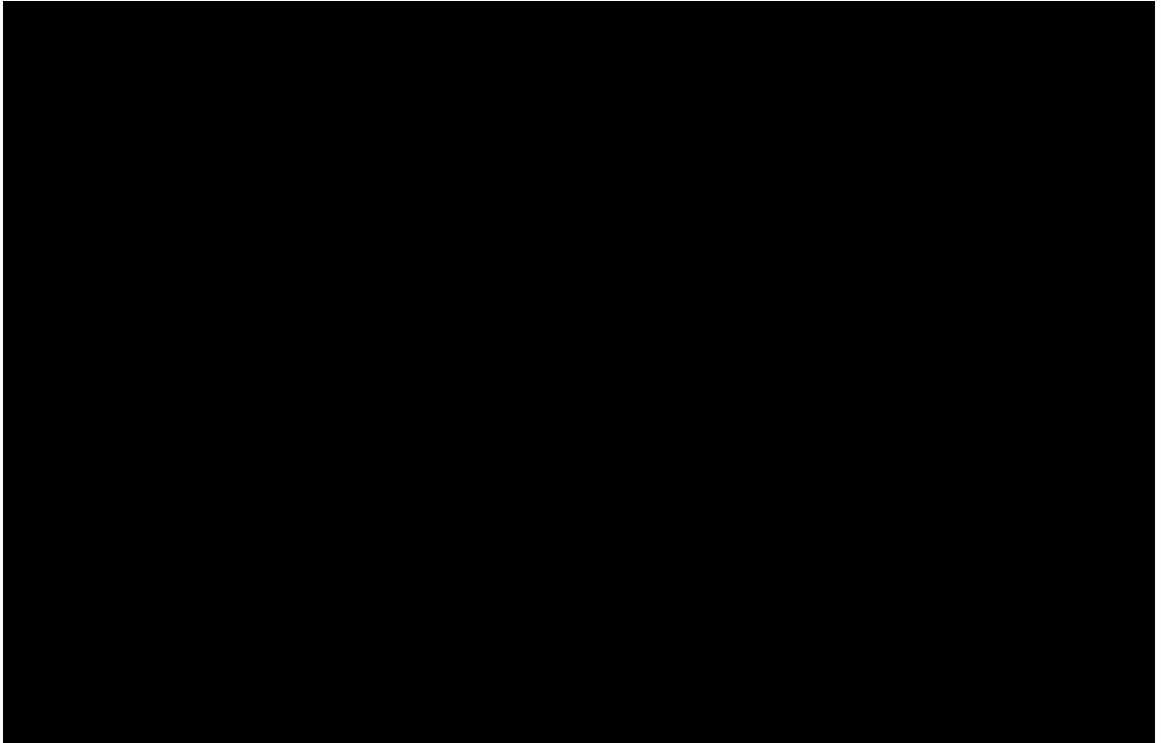
- (a) The Independent Certifier acknowledges and agrees that the Principal may, after consultation with the Other Parties, appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Core Services directed under clause 7.2, and any decision of a Substitute Certifier appointed will be treated (between the Principal, the LW Contractor, the Operator and the Independent Certifier) as if it is a decision of the Independent Certifier, and the Substitute Certifier will have all of the rights, powers and obligations of the Independent Certifier under the Project Agreements in connection with those Services.
- (b) Notwithstanding a change to the Core Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 7, in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

8. **LIABILITY, INSURANCE AND INDEMNITY**

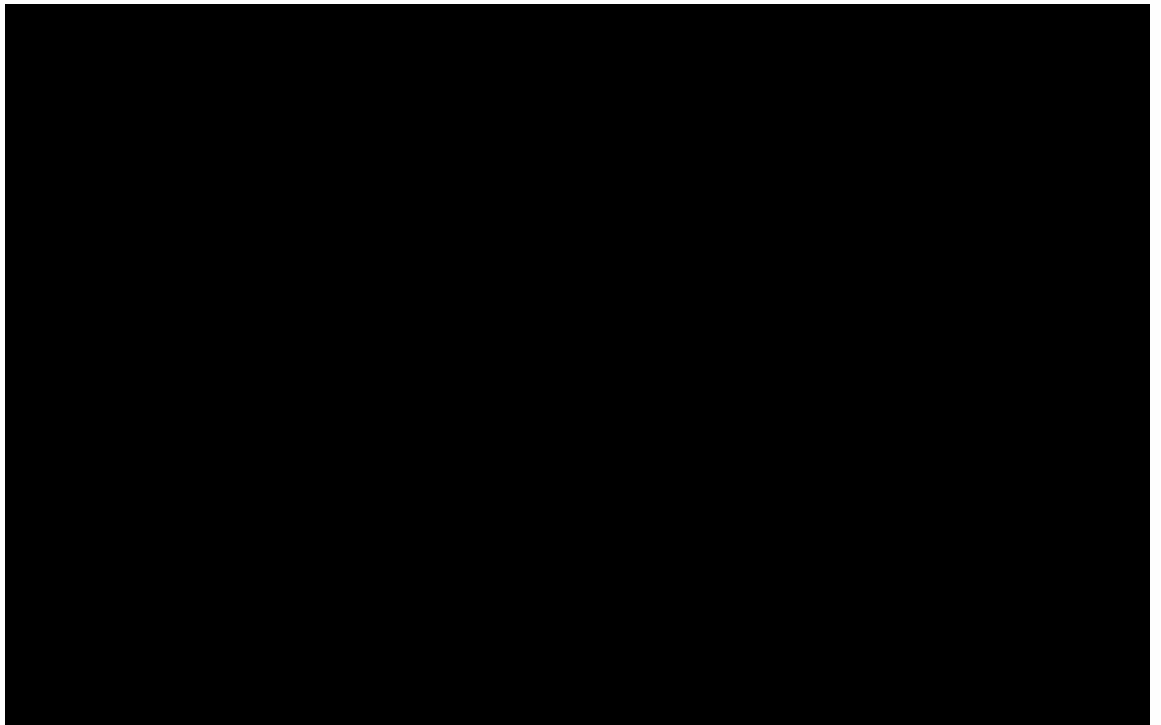
8.1






8.2



8.3



8.4 **Insurances**

- (a) The Independent Certifier must, from the later of the date of the Line-wide Contract and the date of this deed, hold and maintain:
- (i) 
 - (ii) workers compensation insurance in accordance with the requirements of Law;
 - (iii) public liability insurance with:
 - (A) a limit of indemnity of not less than  for any one claim in respect of civil liability for third party property damage, personal injury or death arising from the performance of the Services under this deed; and
 - (B) a deductible of not more than ; and
 - (iv) such other insurance as may reasonably be required by the Other Parties.
- (b) All insurance policies effected by the Independent Certifier in compliance with this clause 8.4 must be taken out with Reputable Insurers approved by the Principal's Representative (such approval not to be unreasonably withheld).

8.5 **Notice of matter affecting insurance**

The Independent Certifier must notify the Other Parties immediately upon becoming aware and, where possible, no later than 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

8.6 **Provision of information**

The Independent Certifier must provide to the Other Parties:

- (a) not used; and
- (b) certificates of currency, with respect to the insurances effected and maintained by the Independent Certifier for the purposes of this clause 8,

at any time and from time to time on request by any party and prior to the renewal of each policy.

8.7 **Periods for insurance**

The Independent Certifier must maintain:

- (a) the professional indemnity insurance for a period of 7 years (whether annually renewable or a single project policy) after the Date of Construction Completion of

the last Portion to achieve Construction Completion or the date of termination of this deed, whichever is earlier;

- (b) the workers compensation insurance until it ceases to perform the Services;
- (c) the public liability insurance until it ceases to perform the Services; and
- (d) any other insurances for such time as may reasonably be required by the Other Parties.

8.8 **Obligations unaffected by insurance**

The requirement to effect and maintain insurance in this clause 8 does not limit the liability or other obligations of the Independent Certifier under this deed.

8.9 **Indemnity**

- (a) Subject to clause 8.1, the Independent Certifier is liable for and indemnifies each Other Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of:
 - (i) any damage to or loss of property; or
 - (ii) death of or injury to any person,insofar as the liability, loss, claim, expense or damage arises out of the act, error or omission of the Independent Certifier, its employees, agents or consultants.
- (b) The Independent Certifier's liability to indemnify an Other Party under clause 8.9(a) will be reduced to the extent that an act or omission of that Other Party has contributed to that liability, loss, claim, expense or damage.

9. **DISPUTE RESOLUTION**

9.1 **Procedure for resolving disputes**

- (a) The parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 9.
- (b) It is a condition precedent to the referral of a dispute to litigation that a party first exhausts the procedures referred to in clause 9.2.

9.2 **Negotiation**

- (a) If a dispute arises, then a party to the dispute may give notice to the other parties to the dispute, requesting that the dispute be referred for resolution to the respective chief executive officers of those parties to the dispute.
- (b) A notice under clause 9.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 9.2; and
 - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 9.2(a) (**Dispute Representatives**), then the Dispute Representatives (or the persons for the time

being acting in those positions) must meet and use reasonable endeavours acting in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 9.2(a) is received. The joint decisions (if any) of the Dispute Representatives must be reduced to writing within the 10 Business Days referred to in this clause 9.2(c) and will be contractually binding on the parties to the dispute.

- (d) The 10 Business Days referred to in clause 9.2(c) may be extended by agreement of the parties to the dispute in writing.

9.3 **Continue to perform**

Notwithstanding the existence of a dispute, each of the Other Parties and the Independent Certifier must continue to perform their obligations under this deed.

10. **TERMINATION OF APPOINTMENT**

10.1 **Notice of termination**

Following consultation with the Other Parties, the Principal may terminate the appointment of the Independent Certifier under this deed by notice in writing served on the Independent Certifier (copied to the LW Contractor and the Operator) if:

- (a) the Independent Certifier is in breach of this deed and the breach is not remediable in the reasonable opinion of the Principal;
- (b) the Independent Certifier is in breach of this deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by the Principal of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier; or
- (d) the Principal in its absolute discretion for any reason whatsoever serves on the Independent Certifier a notice of termination of the appointment of the Independent Certifier in respect of the Services, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

10.2 **Termination**

Where a notice is served on the Independent Certifier under clause 10.1, the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 10.1; or
- (b) the appointment of a replacement for the Independent Certifier.

10.3 **Delivery of documents**

Upon the earlier of the date of termination of the appointment of the Independent Certifier and the date of completion of the Services, the Independent Certifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services;
- (b) may retain a copy of those books, records, drawings, specifications and other documents referred to in clause 10.3(a) for the sole purpose of business record

keeping, insurance and quality assurance, subject to the Independent Certifier complying with its confidentiality obligations under clause 5.2; and

- (c) acknowledges that the Other Parties have the right to use all such documents for any purposes in connection with the Sydney Metro City & Southwest, the Project Works, the LW Contractor's Activities or the Project Agreements, provided that the Independent Certifier will have no liability to the Other Parties in relation to any documents handed over pursuant to clause 10.3(a) unless such documents have been formally issued and marked as final by the Independent Certifier.

10.4 **Reasonable assistance**

Where the Other Parties give a notice under clause 10.1 of termination of the appointment of the Independent Certifier, the Independent Certifier must provide full assistance to the Other Parties and any appointed replacement for the Independent Certifier in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

10.5 **Payment until date of termination**

Where the appointment of the Independent Certifier is terminated under clause 10.1(d), the Independent Certifier is only entitled to be paid by the Principal the proportion of the Fee for Services performed up to the date of the termination.

10.6 **Termination without prejudice**

Termination of the appointment of the Independent Certifier will be without prejudice to any claim which any of the Other Parties may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.

10.7 **Survive termination**

This clause 10 will survive the termination of this deed by the Other Parties under clause 10.1.

10.8 **Rights upon termination**

If the appointment of the Independent Certifier is terminated pursuant to clauses 10.1(a) to 10.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the deed had the Independent Certifier repudiated the deed and the Other Parties elected to treat the deed as at an end and recover damages.

11. **GST**

- (a) Except where the context suggests otherwise, terms used in this clause 11 have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11.
- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be

limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 11(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 11(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 11(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

12. GENERAL

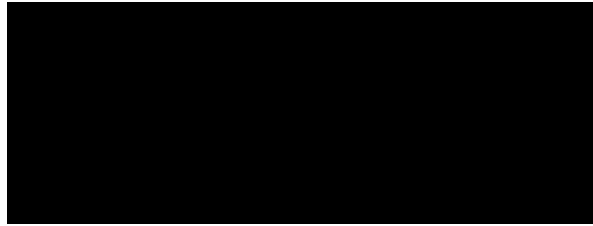
12.1 Notices

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time the Principal's Representative may notify the Independent Certifier that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the Independent Certifier to use the PDCS; and
 - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) Each Notice must:
 - (i) before the date referred to in clause 12.1(b):
 - (A) be in writing;
 - (B) be addressed as follows (or as otherwise notified by that party to each other party from time to time):
 - (aa) to the Principal's Representative:

Address:

Email:

Attention:

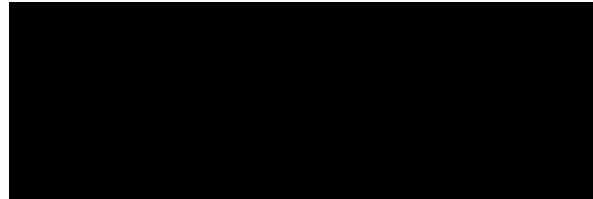


(bb) to the Independent Certifier:

Address:

Email:

Attention:

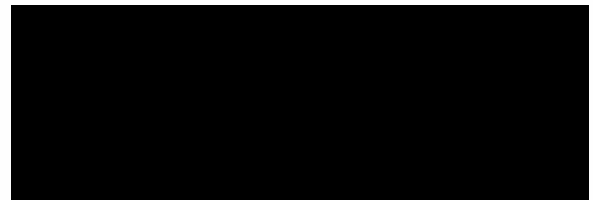


(cc) to the LW Contractor:

Address:

Email:

Attention:



(ii) on and from the commencement date for use of the PDCS referred to in clause 12.1(b):

- (A) be sent through the PDCS in accordance with the requirements set out in clause 12.1(e); and
- (B) in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 12.1(c)(i).

(d) A communication is taken to be received by the addressee:

- (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
- (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
- (iii) (in the case of international post) 7 Business Days after the date of posting; and
- (iv) (in the case of delivery by hand) on delivery.

(e) With respect to Notices sent through the PDCS:

- (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (ii) only the text in any Notice, or subject to clause 12.1(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and

- (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (f) The Independent Certifier warrants that it will:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the Independent Certifier from time to time;
 - (iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
 - (v) advise the Principal's Representative of which personnel require access to the PDCS;
 - (vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 12.1(c)(ii)(B) to the Principal's Representative through the PDCS.
- (g) If the Independent Certifier is an unincorporated joint venture and one of the joint venturers is, a foreign company (as defined in the Corporations Act), the Independent Certifier must:
 - (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
 - (ii) obtain the process agent's consent to the appointment.
- (h) The Principal has no liability for any losses the Independent Certifier may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Independent Certifier will not be entitled to make, and the Principal will not be liable upon, any claim against the Principal arising out of or in connection with the Independent Certifier's access to or use of the PDCS or any failure of the PDCS.
- (i) Wherever this deed requires the Independent Certifier to provide any documents, notices or other communications to the Operator, the Independent Certifier must address such communications to the Operator:
 - (i) at the address notified to the Independent Certifier by the Principal; or

- (ii) if required by the Principal, by way of the PDCS.

12.2 **Governing Law**

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

12.3 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 12.3(a).

12.4 **Principal as a public authority**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Independent Certifier, the LW Contractor and the Operator acknowledges and agrees that, without limiting clause 12.4(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this deed and will not entitle any of the Independent Certifier, the LW Contractor or the Operator to make any claim against the Principal.
- (c) The parties agree that clauses 12.4(a) and 12.4(b) are taken not to limit any liability which the Principal would have had to the Independent Certifier, the LW Contractor or the Operator under this deed as a result of a breach by the Principal of a term of this deed but for clauses 12.4(a) and 12.4(b) of this deed.

12.5 **Amendments**

This deed may only be varied by a deed executed by or on behalf of each of the parties.

12.6 **Waiver**

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

12.7 **Cost of performing obligations**

Each party must, unless this deed expressly provides otherwise, pay its own costs and expenses in connection with performing its obligations under this deed.

12.8 **Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

12.9 **Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

12.10 **Assignment**

(a) Assignment by the Independent Certifier

The Independent Certifier cannot assign, novate or otherwise transfer any of its rights, interests or obligations under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

(b) Assignment by the LW Contractor

The LW Contractor cannot assign, novate or otherwise transfer any of its rights, interests or obligations under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

(c) Assignment and novation by the Principal

(i) Without limiting clause 12.11, the Principal may:

(A) assign, novate or otherwise transfer all or any part of its rights under this deed without the Independent Certifier, LW Contractor or the Operator's prior approval, provided that the assignee, novatee or transferee (as applicable) is also a party to whom the Principal is assigning, novating or transferring its rights under the Line-wide Contract in accordance with the terms of the Line-wide Contract; and

(B) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without each of the Other Parties' prior written consent (which must not be unreasonably withheld or delayed),

and may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the Independent Certifier, LW Contractor or the Operator.

(ii) The Independent Certifier, the LW Contractor and, from the Accession Date, the Operator agree to such assignment, novation or transfer such that no further consent is required.

(iii) In the case of a novation by the Principal under this clause:

- (A) the Principal will be released from its obligations under this deed and the respective rights of the Principal, the Independent Certifier, the LW Contractor and, from the Accession Date, the Operator against one another under this deed will cease;
 - (B) the novated agreement will be on the same terms as this deed, such that the incoming party, the Independent Certifier, the LW Contractor and, from the Accession Date, the Operator will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 12.10(c)(iii)(A), except that the incoming party replaces the Principal for all purposes under the agreement; and
 - (C) the Independent Certifier, the LW Contractor and, from the Accession Date, the Operator consent to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
- (iv) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

12.11 Transfer of functions or Public Transport Agency assets

- (a) The parties acknowledge that:
 - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Independent Certifier, the LW Contractor and, from the Accession Date, the Operator acknowledge and agree that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Independent Certifier, the LW Contractor and, from the Accession Date, the Operator will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 12.11.

- (d) For the purposes of this clause 12.11, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

12.12 **Replacement body**

Where a reference is made to any Authority, institute, association, body, person or organisation (**Former Body**) which is reconstituted, renamed, replaced, ceases to exist or has its powers or functions transferred to another Authority, institute, association, body, person or organisation, that reference will be deemed to refer to the Authority, institute, association, body, person or organisation (**Replacement Body**) which then serves substantially the same powers, functions or objects as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

12.13 **Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

12.14 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

12.15 **Expenses**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating and preparing this deed.

12.16 **Entire agreement**

To the extent permitted by Law, in relation to its subject matter, this deed (together with the Accession Deed from the time of accession by the Operator):

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

12.17 **Indemnities**

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

12.18 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two or more of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

12.19 Severance

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

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

12.20 Moratorium legislation

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

13. AUSTRALIAN GOVERNMENT REQUIREMENTS

- (a) The Independent Certifier:
 - (i) declares as at the date of this deed; and
 - (ii) must ensure during the term of this deed,
that, in relation to the Services, it and its subcontractors, consultants and each related entity:
 - (iii) complies with, and acts consistently with, the Building Code;
 - (iv) meets the requirements of section 11 of the Building Code;
 - (v) is not subject to an Exclusion Sanction or a formal warning that any further failure to comply with the Building Code may result in the imposition of an Exclusion Sanction;
 - (vi) has not been the subject of an adverse decision, direction or order, or failed to comply with a decision, direction or order, made by a court or tribunal for a breach of the BCIIIP Act, a designated building law, work health and safety law, competition and consumer law or the *Migration Act 1958* (Cth) (other than a decision, direction or order that is stayed or has been revoked);
 - (vii) has not been required to pay any amount under an adjudication certificate or owed any unsatisfied judgement debts to a building contractor or building industry participant (as those terms are defined in the BCIIIP Act);

- (viii) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (ix) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
 - (x) complies with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code.
- (b) The Independent Certifier acknowledges and agrees that compliance with the Building Code does not relieve the Independent Certifier from any responsibility or obligation under this deed.
- (c) The Independent Certifier must promptly:
- (i) notify the ABCC of:
 - (A) any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC of the steps proposed to be taken by the Independent Certifier to rectify the breach; and
 - (B) the steps taken to rectify any breach of the Building Code within 10 days of providing a notification under clause 13(c)(i)(A); and
 - (ii) give the Principal a copy of any notification given by the Independent Certifier to the ABCC under clause 13(c)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (d) The Independent Certifier acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIP Act and the Building Code and must ensure that it (and must procure that its subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
- (i) for entry under section 72 of the BCIIP Act;
 - (ii) to interview any person under section 74 of the BCIIP Act;
 - (iii) to produce records or documents under sections 74 and 77 of the BCIIP Act; and
 - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (e) The Independent Certifier must not enter into a subcontract for any aspect of the Services unless:
- (i) the subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Independent Certifier agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the subcontract with the subcontractor includes an equivalent clause to this clause 13.

- (f) The Independent Certifier must provide the Commonwealth with any subcontractor's Declaration of Compliance referred to in clause 13(e) promptly upon request.
- (g) The Independent Certifier must maintain adequate records of the compliance with the Building Code by:
 - (i) the Independent Certifier;
 - (ii) the subcontractors;
 - (iii) the Independent Certifier's consultants; and
 - (iv) any related entity of the Independent Certifier.
- (h) For the purposes of this clause 13, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

SCHEDULE 1

Core Services

1. GENERAL

- (a) The Independent Certifier is engaged to certify that the LW Contractor has designed and constructed the Project Works in accordance with the requirements of the relevant sections of the Line-wide Contract.
- (b) The Independent Certifier must:
 - (i) at all times:
 - (A) act independently of the Principal and the LW Contractor; and
 - (B) be familiar with its role, functions, obligations, duties and services (express or implied) under this deed;
 - (ii) in carrying out its obligations under this deed, review and have regard to all:
 - (A) documents and information made available to the Independent Certifier by the Principal; and
 - (B) comments provided by the Principal's Representative in respect of the LW Contractor's Activities; and
 - (iii) provide no lesser levels of resourcing than that detailed in Schedule 3.
- (c) Without limiting paragraph 1(b)(ii)(A), the documents and information that the Principal may make available to the Independent Certifier include:
 - (i) minutes in respect of each meeting referred to in paragraph 2.1(a);
 - (ii) monthly reports submitted by the LW Contractor;
 - (iii) reports submitted by the LW Contractor in relation to any Defects that it detects (including all action proposed to correct that Defect);
 - (iv) reports or results of any on-site or off-site inspection, testing and audits regarding quality or compliance; and
 - (v) any other reports, notices, correspondence and other documents in relation to any actual or potential non-compliance with the Line-wide Contract.
- (d) The Core Services include:
 - (i) all the functions, obligations, duties and services set out in this Schedule 1; and
 - (ii) all things which would be reasonably expected of a professional performing those functions, obligations, duties and services.
- (e) In performing the Design Phase Services set out in paragraph 2.2:
 - (i) the Independent Certifier is not required to carry out "first principles" calculations or "proof engineering" in connection with the Design Documentation; and

- (ii) the scope of Design Documentation that the Independent Certifier will be required to review and certify under this deed will be limited to the Design Documentation provided to the Independent Certifier by the Principal.

2. **CORE SERVICES UNDER THE LINE-WIDE CONTRACT**

2.1 **General Services**

The Independent Certifier must, throughout the Term:

- (a) ensure that a representative attends:
 - (i) a monthly progress meeting with the Principal's Representative within 5 Business Days of the submission of each monthly progress report to the Principal's Representative in accordance with clause 4.10 of this deed; and
 - (ii) in respect of the submission of Design Documentation for each key design pack (an indicative list of which is set out in Exhibit 1 (Indicative list of key LW Contractor submissions)):
 - (A) one meeting prior to submission of the Design Documentation for each design stage; and
 - (B) a design presentation workshop delivered by the LW Contractor within 5 Business Days of submitting the Design Documentation for each design stage;
- (b) inspect the LW Contractor's Activities from time to time as reasonably required to perform the Completion Phase Services in accordance with the requirements of this deed, including spot-checking and inspection of any significant non-compliances with the Line-wide Contract which have been reported; and
- (c) promptly notify the Other Parties of:
 - (i) elements of the Design Documentation that do not (or may not) comply with the relevant sections of the Line-wide Contract;
 - (ii) actual or potential Defects; or
 - (iii) other non-compliances with the Line-wide Contract,that it identifies when attending meetings and performing its surveillance and other functions.

2.2 **Design Phase Services**

- (a) **Clause 9.9(c):** The Independent Certifier must:
 - (i) review any Design Stage 3 Design Documentation which is provided to the Independent Certifier in accordance with clause 9.5(b) of the Line-wide Contract; and
 - (ii) within the Principal's Design Review Period, assess whether or not the Design Stage 3 Design Documentation complies with the requirements of the Line-wide Contract and notify the Principal's Representative that the Independent Certifier considers that the Design Documentation:
 - (A) does not comply with the requirements of the Line-wide Contract (Minor Non-Compliances excepted); or

- (B) is not sufficiently complete to enable the Independent Certifier to form a view on whether it is compliant; or
 - (C) complies with the requirements of the Line-wide Contract, which notification must include an executed copy of the certificate in the form of Schedule B9 to the Line-wide Contract.
- (b) **Clause 9.9(f)(i):** If the LW Contractor gives a notice under clause 9.9(e)(ii) of the Line-wide Contract, the Independent Certifier must, promptly after receipt of the notice:
- (i) consult with the Principal's Representative; and
 - (ii) notify the Principal Representative whether the Independent Certifier considers that the LW Contractor's notice under clause 9.9(e)(ii) of the Line-wide Contract satisfactorily addresses the Independent Certifier's concerns, which notification must, if the Independent Certifier is satisfied, include an executed copy of the certificate in the form of Schedule B9 to the Line-wide Contract,
- and if:
- (iii) the Principal's Representative does not consider that the LW Contractor's notice under clause 9.9(e)(ii) of the Line-wide Contract satisfactorily addresses its concerns; and
 - (iv) the disagreement between the Principal's Representative and the LW Contractor is in relation to a non-compliance identified by the Independent Certifier,
- the Independent Certifier must attend the relevant meeting under clause 9.9(f)(i)(A)(bb)(b) of the Line-wide Contract.
- (c) **Clause 9.13:** The Independent Certifier must, if the LW Contractor wishes to amend Final Design Documentation prior to the Date of Construction Completion of a Portion to which the Final Design Documentation relates, comply with clause 9.9 of the Line-wide Contract as if the Design Documentation submitted to it in accordance with clause 9.13(a) of the Line-wide Contract is Design Stage 3 Design Documentation.

2.3 Completion Phase Services

- (a) **Clause 16.2(c):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the LW Contractor of the estimated Date of Construction Completion of a Portion under clause 16.2(a)(ii) of the Line-wide Contract, jointly with the Principal's Representative and the LW Contractor's Representative, inspect the LW Contractor's Activities at a mutually convenient time.
- (b) **Clause 16.2(d):** Within 2 Business Days of the joint inspection referred to in clause 16.2(c) of the Line-wide Contract, the Independent Certifier must give the LW Contractor and the Principal a notice either:
 - (i) containing a list of items which it believes must be completed before Construction Completion of the Portion is achieved; or
 - (ii) stating that it believes the LW Contractor is so far from achieving Construction Completion for that Portion that it is not practicable to issue a list as contemplated in clause 16.2(d)(i) of the Line-wide Contract.

- (c) **Clause 16.2(e)**: The Independent Certifier must, after receipt of a notice from the LW Contractor in writing stating that it considers it has achieved Construction Completion of the Portion under clause 16.2(e) of the Line-wide Contract and an executed certificate in the form of Schedule B4 to the Line-wide Contract, jointly inspect the LW Contractor's Activities with the Principal's Representative, the LW Contractor's Representative and, in respect of Sydney Trains Works only, the representative of any relevant Authority, at a mutually convenient time.
- (d) **Clause 16.2(f)**: Within 5 Business Days after receipt of a notice from the LW Contractor under clause 16.2(e) of the Line-wide Contract, or of receipt of a notice under clause 16.2(g) of the Line-wide Contract, the Independent Certifier must:
 - (i) if Construction Completion of the Portion has been achieved:
 - (A) provide to the Principal's Representative and the LW Contractor a document signed by the Independent Certifier in the form of Schedule B10 to the Line-wide Contract; and
 - (B) additionally:
 - (aa) if the relevant Portion includes Sydney Trains Works, provide to the Principal's Representative a certificate in the form of Schedule B13 to the Line-wide Contract in relation to those Sydney Trains Works; and
 - (bb) if the relevant Portion includes Sydney Trains Project Works, provide to the Principal's Representative, Sydney Trains and RailCorp a certificate in the form of schedule 6 to the Sydney Trains Transition Agreement with respect to the Sydney Trains Project Works; or
 - (ii) if Construction Completion of the Portion has not been achieved, issue a notice to the LW Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before Construction Completion of the Portion; or
 - (B) that the LW Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to notify the LW Contractor of the items which remain to be completed as contemplated by clause 16.2(f)(ii)(A) of the Line-wide Contract.
- (e) **Clause 16.2(h)(ii)**: In making its determination under clause 16.2(f) of the Line-wide Contract, the Independent Certifier must consider comments from the Principal's Representative or the Operator in relation to any non-compliance of the LW Contractor's Activities with the Line-wide Contract.
- (f) **Clause 16.3**: The Independent Certifier must issue a Notice of Construction Completion for a Portion under clause 16.2(f)(i)(A) of the Line-wide Contract if directed to do so by the Principal's Representative where a notice required to be given by the LW Contractor to the Independent Certifier under either clause 16.2(d) or 16.2(f) has not been given by the LW Contractor.
- (g) **Clause 16.4(b)**: The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the LW Contractor of the estimated Date of Completion of a Portion under clause 16.4(a)(ii) of the Line-wide Contract, jointly inspect the LW Contractor's Activities with the Principal's Representative and the LW Contractor's Representative at a mutually convenient time.

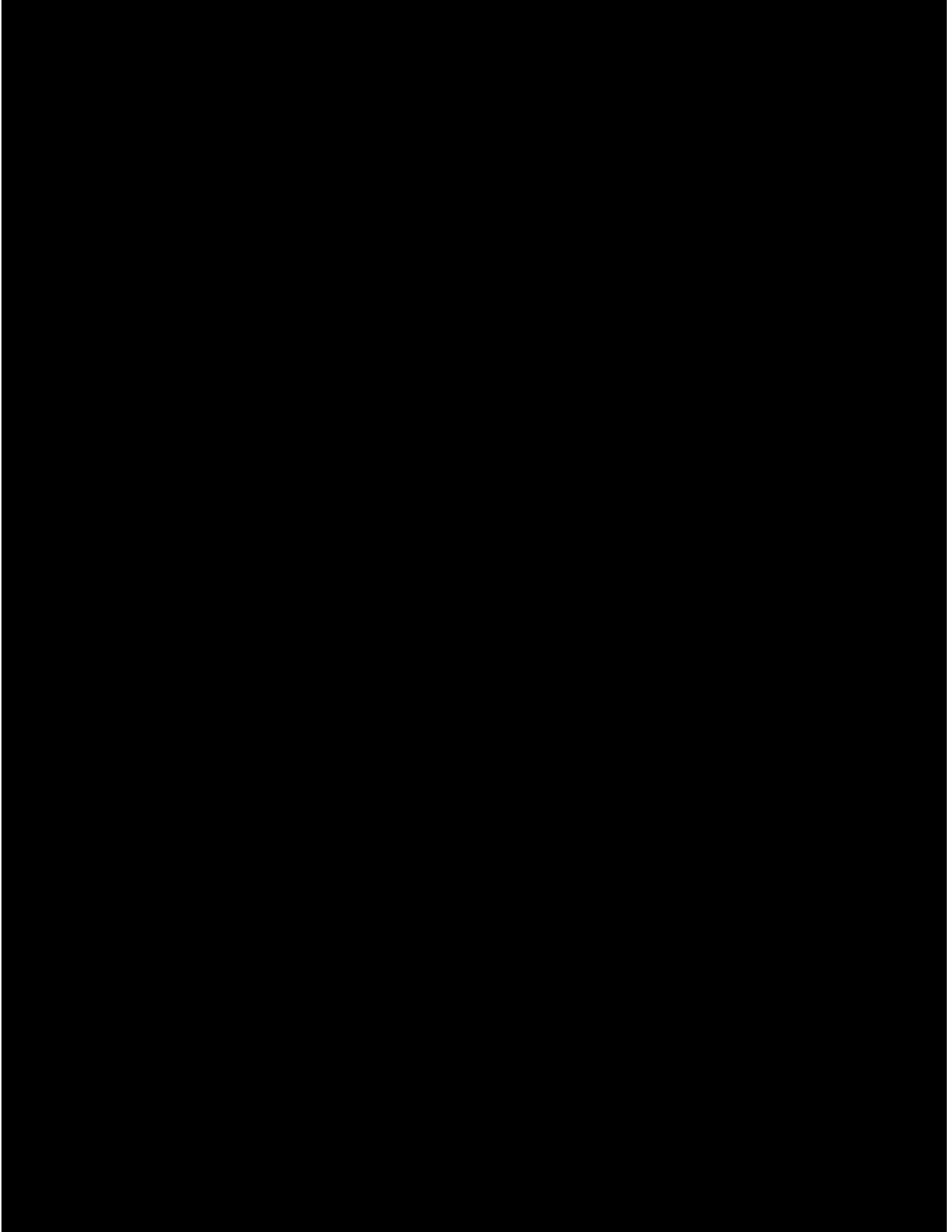
- (h) **Clause 16.4(c):** Within 2 Business Days of the joint inspection referred to in clause 16.4(b) of the Line-wide Contract, the Independent Certifier must give the LW Contractor and the Principal a notice either:
 - (i) containing a list of items which it believes must be completed before Completion of the Portion is achieved; or
 - (ii) stating that it believes the LW Contractor is so far from achieving Completion for that Portion that it is not practicable to issue a list as contemplated in clause 16.4(c)(i) of the Line-wide Contract.
- (i) **Clause 16.4(d):** The Independent Certifier must, within 3 Business Days after receipt by the Principal's Representative of a one month written notice from the LW Contractor of the estimated Date of Completion of a Portion under clause 16.4(a)(iii) of the Line-wide Contract, inspect the LW Contractor's Activities.
- (j) **Clause 16.4(e):** The Independent Certifier must, within 2 Business Days after the inspection referred to in clause 16.4(d) of the Line-wide Contract, provide the LW Contractor with a list of Defects (including Minor Defects and Agreed Defects) which the LW Contractor must rectify in order to achieve Completion of the Portion (**Pre-Completion Notice**).
- (k) **Clause 16.4(g):** The Independent Certifier must, after receipt of a notice from the LW Contractor in writing stating that it considers it has achieved Completion of a Portion under clause 16.4(g) of the Line-wide Contract and an executed certificate in the form of Schedule B3 to the Line-wide Contract, jointly inspect the LW Contractor's Activities with the Principal's Representative and the LW Contractor's Representative at a mutually convenient time.
- (l) **Clause 16.4(h):** Within 5 Business Days of receipt of a notice from the LW Contractor under clause 16.4(g) of the Line-wide Contract, or of receipt of a notice under clause 16.4(i) of the Line-wide Contract, the Independent Certifier must:
 - (i) if Completion of the Portion has been achieved, provide to the Principal's Representative and the LW Contractor a document signed by the Independent Certifier in the form in Schedule B11 to the Line-wide Contract; or
 - (ii) if Completion of the Portion has not been achieved, issue a notice to the LW Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before Completion of the Portion; or
 - (B) that the LW Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the LW Contractor of the items which remain to be completed as contemplated by clause 16.4(h)(ii)(A) of the Line-wide Contract.
- (m) **Clause 16.4(j)(ii):** In making its determination under clause 16.4(h) of the Line-wide Contract, the Independent Certifier must consider comments from the Principal's Representative or the Operator in relation to any non-compliance of the LW Contractor's Activities with the Line-wide Contract.
- (n) **Clause 17.2(b):** The Independent Certifier must, within 5 Business Days of receipt by the Principal's Representative of a three month written notice from the LW Contractor of the estimated Date of Milestone Achievement of a Milestone under clause 17.2(a)(ii) of the Line-wide Contract, jointly with the Principal's

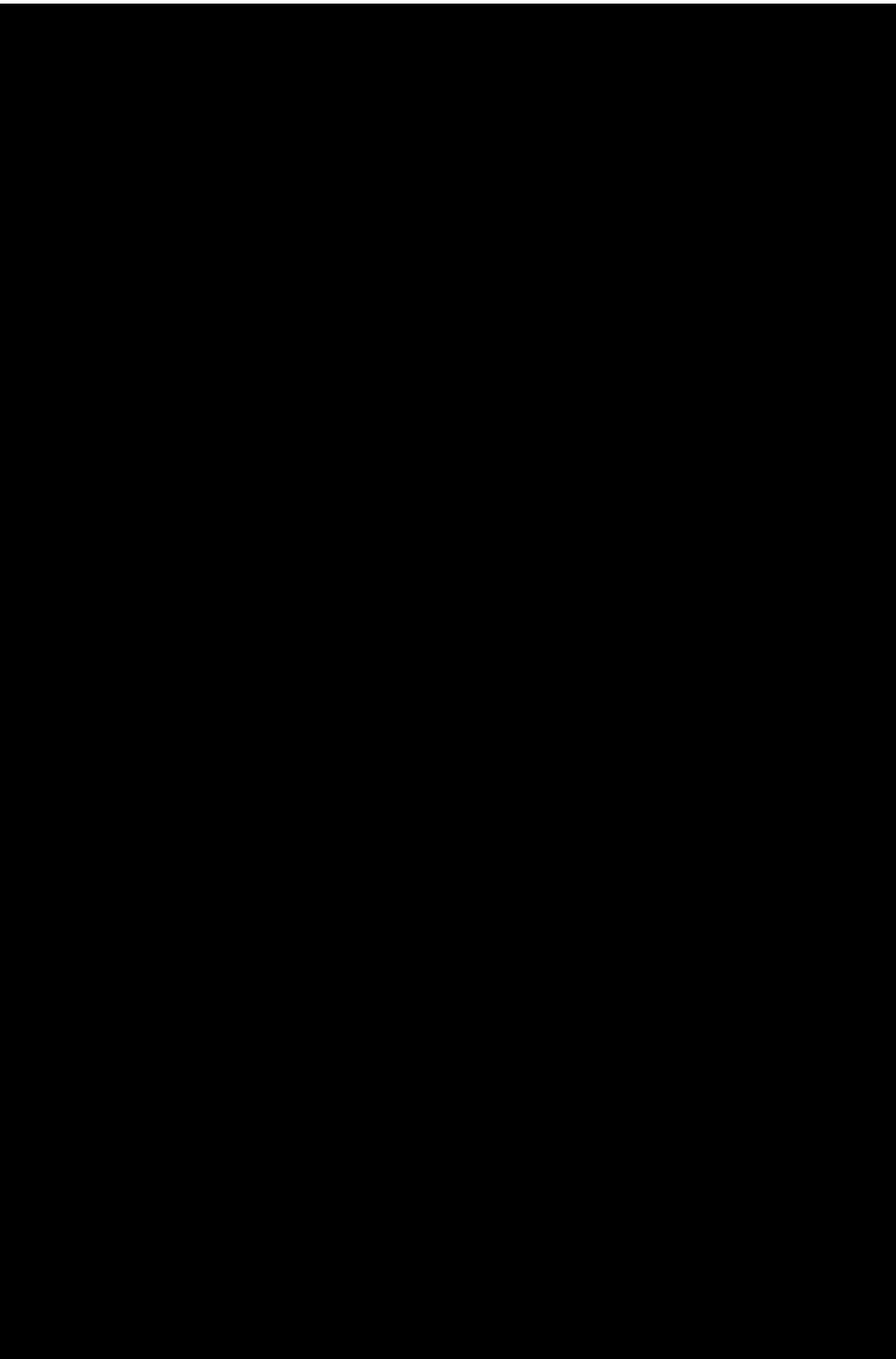
Representative and the LW Contractor's Representative, inspect the LW Contractor's Activities at a mutually convenient time.

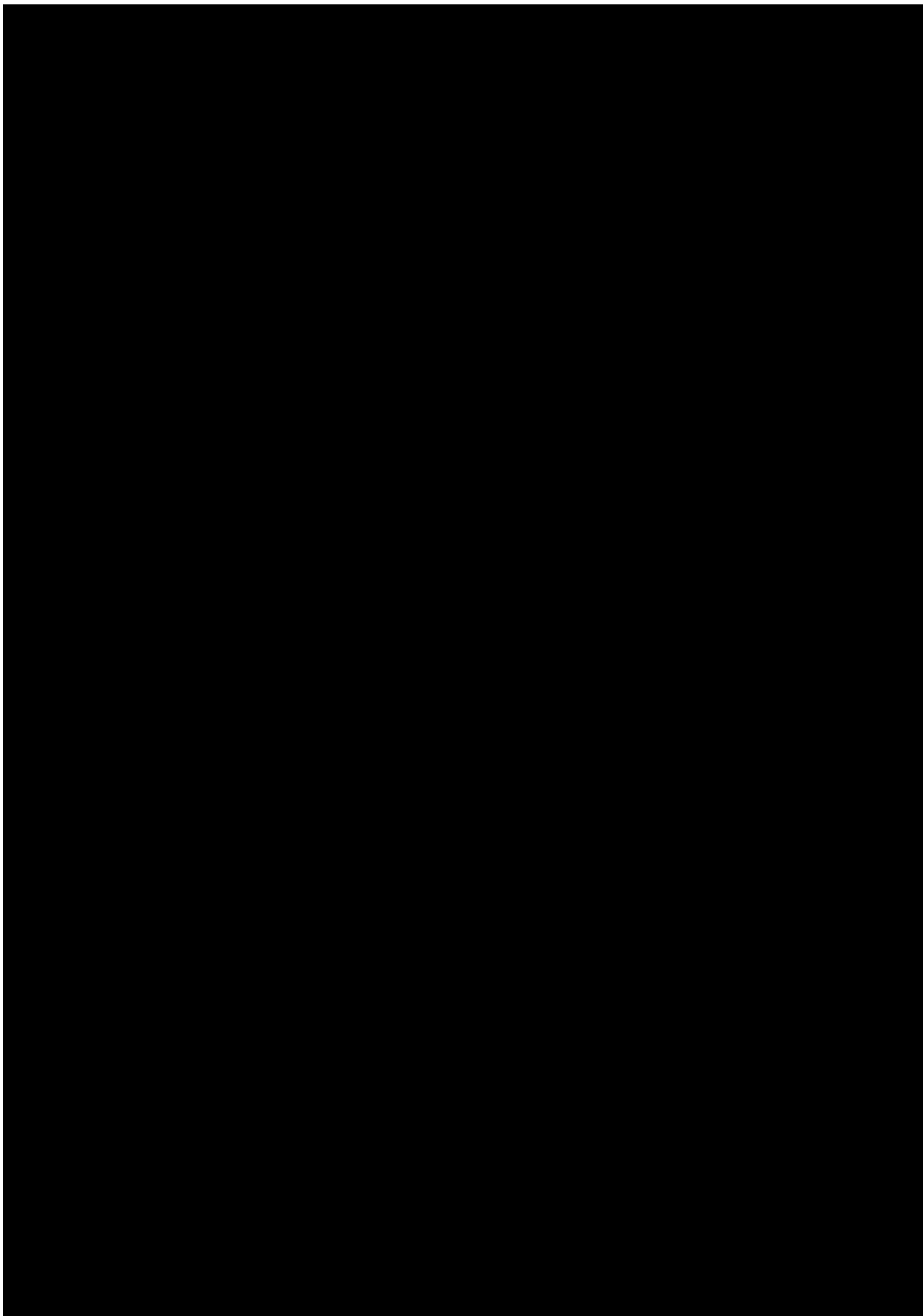
- (o) **Clause 17.2(c):** Within 2 Business Days of the joint inspection referred to in clause 17.2(b) of the Line-wide Contract, the Independent Certifier must give the LW Contractor and the Principal a notice either:
 - (i) containing a list of items which it believes must be completed before Milestone Achievement of the Milestone is achieved; or
 - (ii) stating that it believes the LW Contractor is so far from achieving Milestone Achievement of the Milestone that it is not practicable to issue a list as contemplated in clause 17.2(c)(i) of the Line-wide Contract.
- (p) **Clause 17.2(d):** The Independent Certifier must, after receipt of a notice from the LW Contractor in writing stating that it considers it has achieved Milestone Achievement of the Milestone under clause 17.2(d) of the Line-wide Contract and an executed certificate in the form of Part 1 of Schedule B12 to the Line-wide Contract, jointly inspect the LW Contractor's Activities with the Principal's Representative, the LW Contractor's Representative and any other person nominated by the Principal's Representative at a mutually convenient time.
- (q) **Clause 17.2(e):** The Independent Certifier must, within 5 Business Days after receipt of a notice from the LW Contractor under clause 17.2(d) of the Line-wide Contract, or of receipt of a notice under clause 17.2(f) of the Line-wide Contract:
 - (i) if Milestone Achievement of the Milestone has been achieved, provide to the Principal's Representative and the LW Contractor the certificate in the form in Part 2 of Schedule B12 to the Line-wide Contract; or
 - (ii) if Milestone Achievement of the Milestone has not been achieved, issue a notice to the LW Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before Milestone Achievement of the Milestone; or
 - (B) that the LW Contractor is so far from achieving Milestone Achievement of the Milestone that it is not practicable to notify the LW Contractor of the items which remain to be completed as contemplated by clause 17.2(e)(ii)(A) of the Line-wide Contract.
- (r) **Clause 17.2(g)(ii):** In making its determination under clause 17.2(e) of the Line-wide Contract, the Independent Certifier must consider comments from the Principal's Representative or the Operator in relation to any non-compliance of the LW Contractor's Activities with the Line-wide Contract.
- (s) **Clause 17.3:** The Independent Certifier must issue a Notice of Milestone Achievement for a Milestone under clause 17.2(e)(i) of the Line-wide Contract if directed to do so by the Principal's Representative under clause 17.3 of the Line-wide Contract.

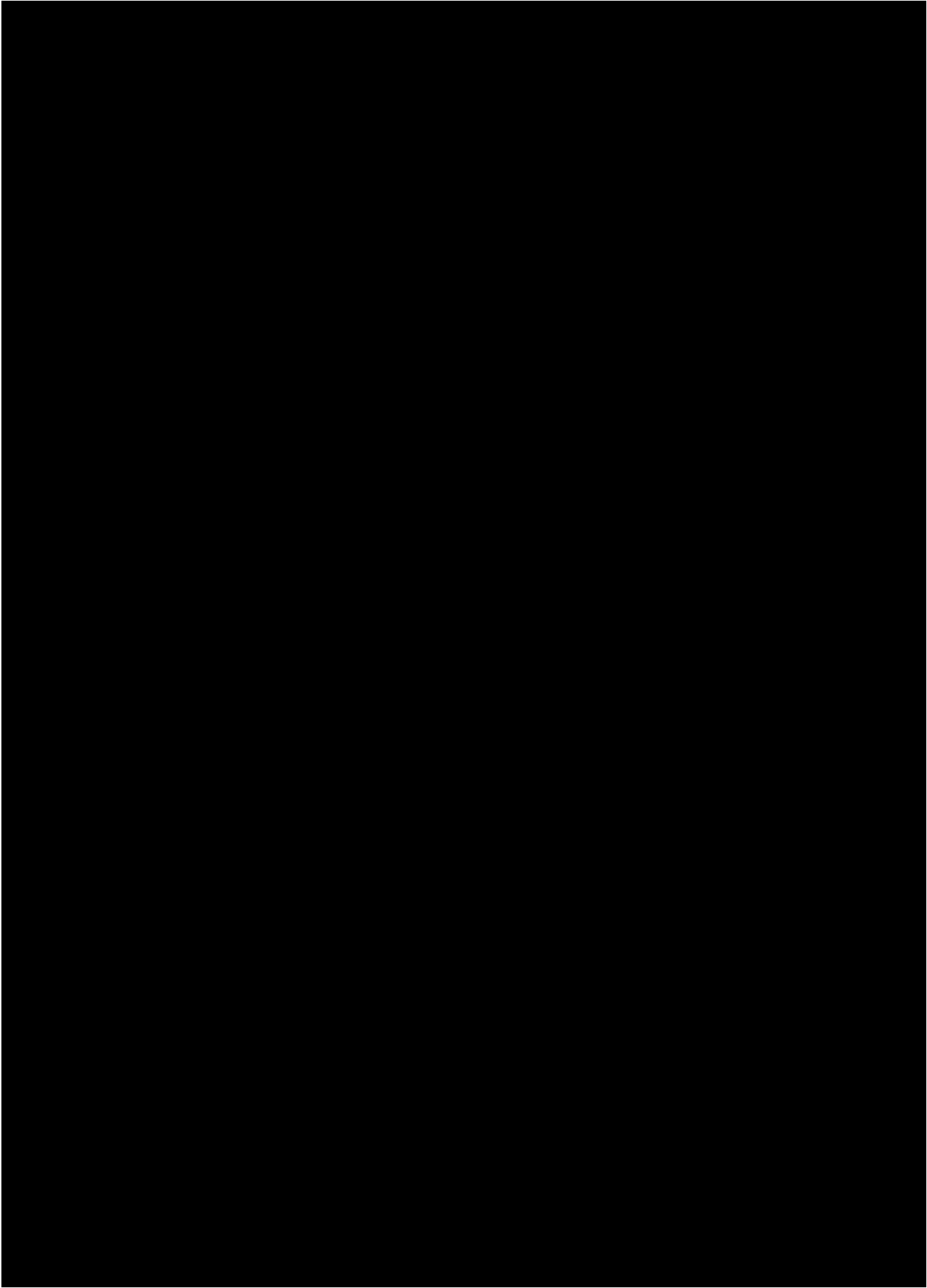
SCHEDULE 2

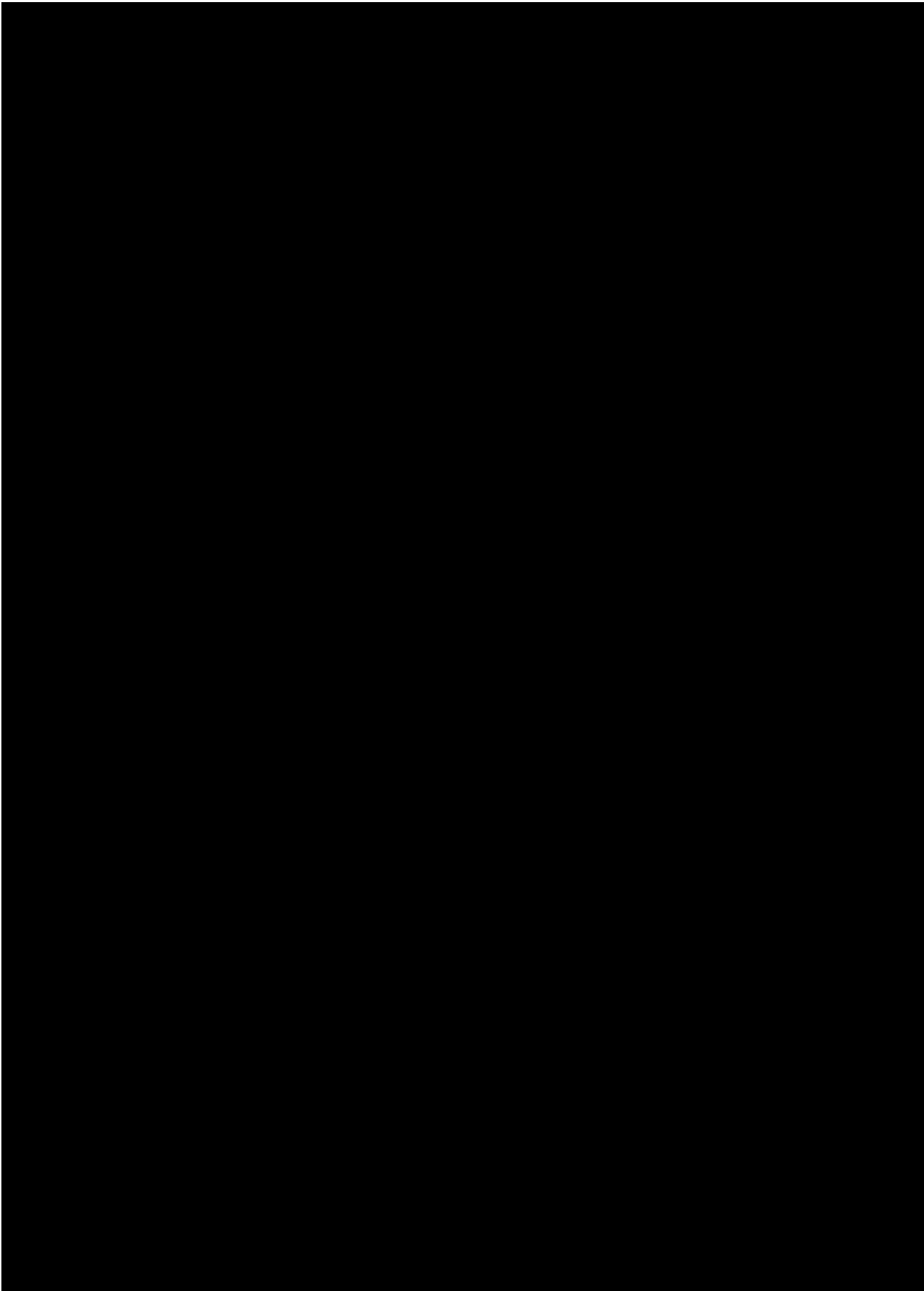
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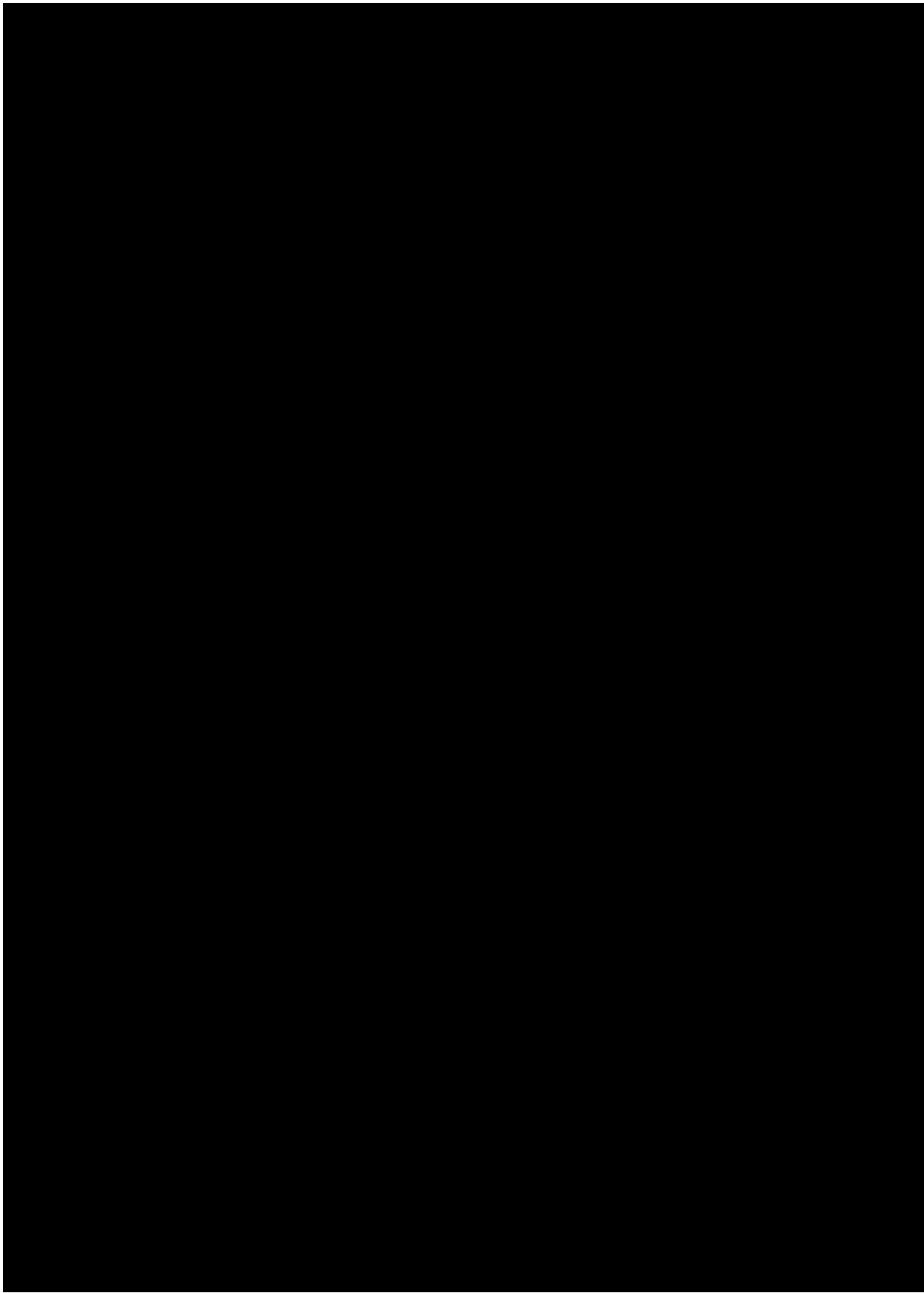


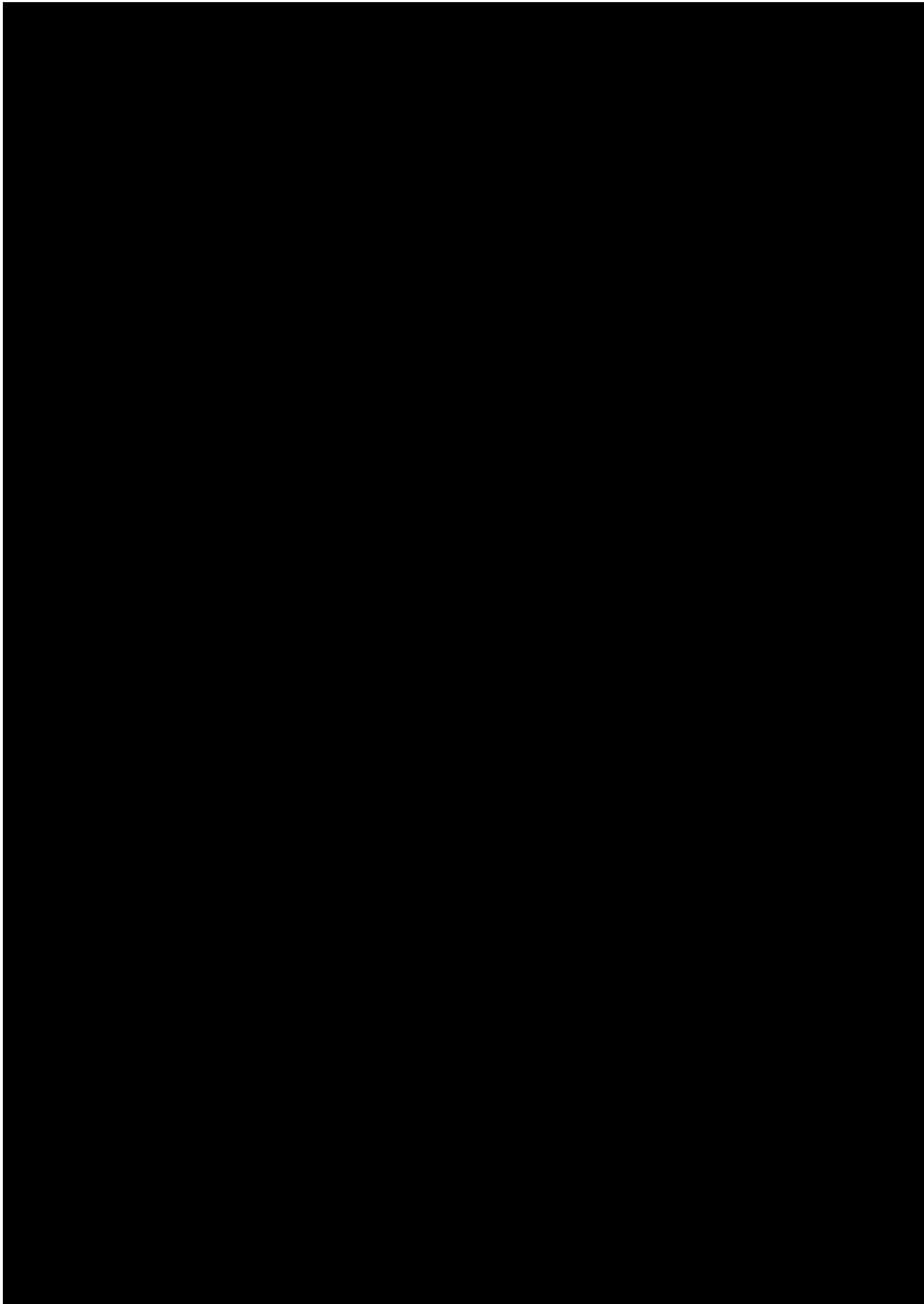




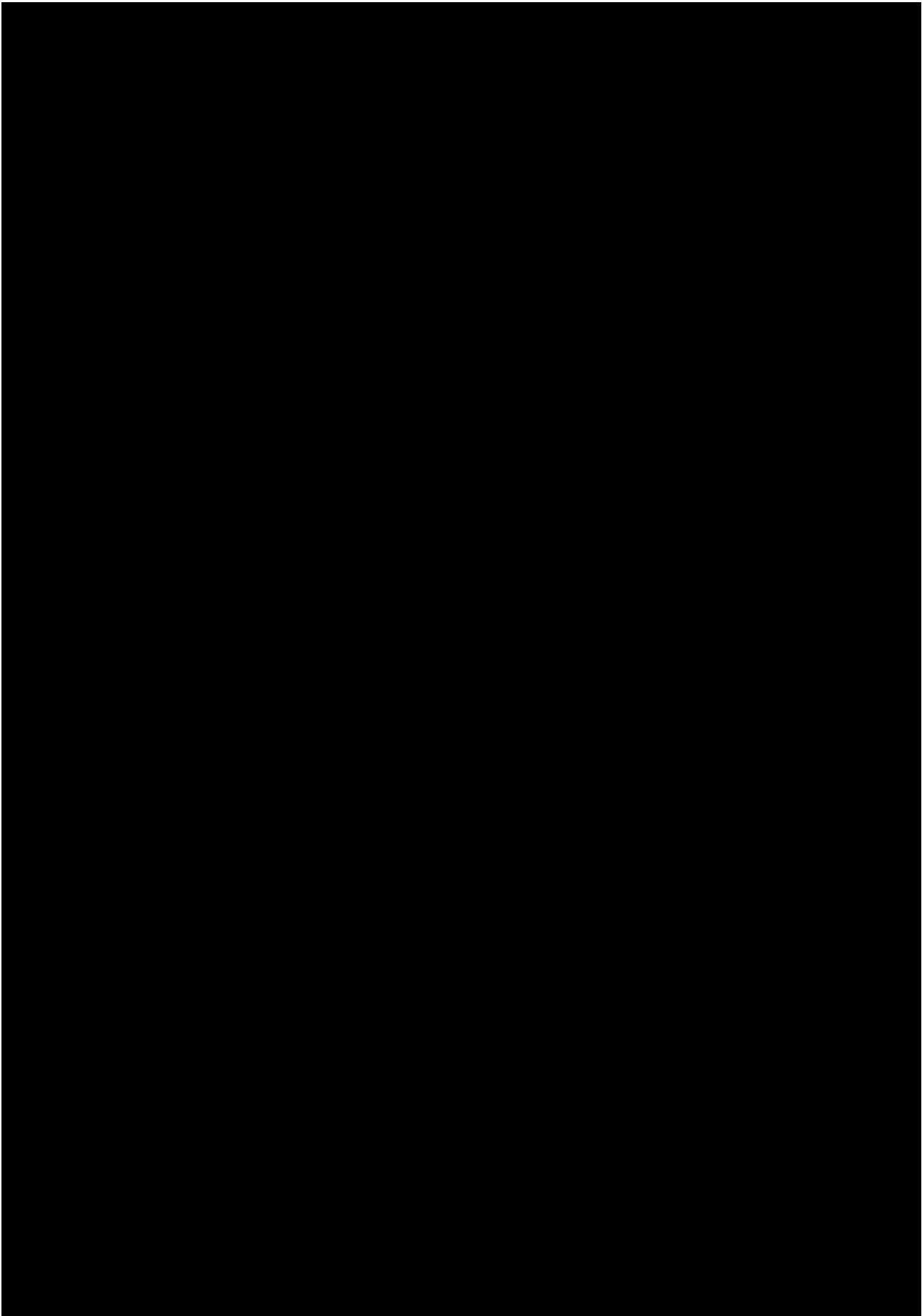


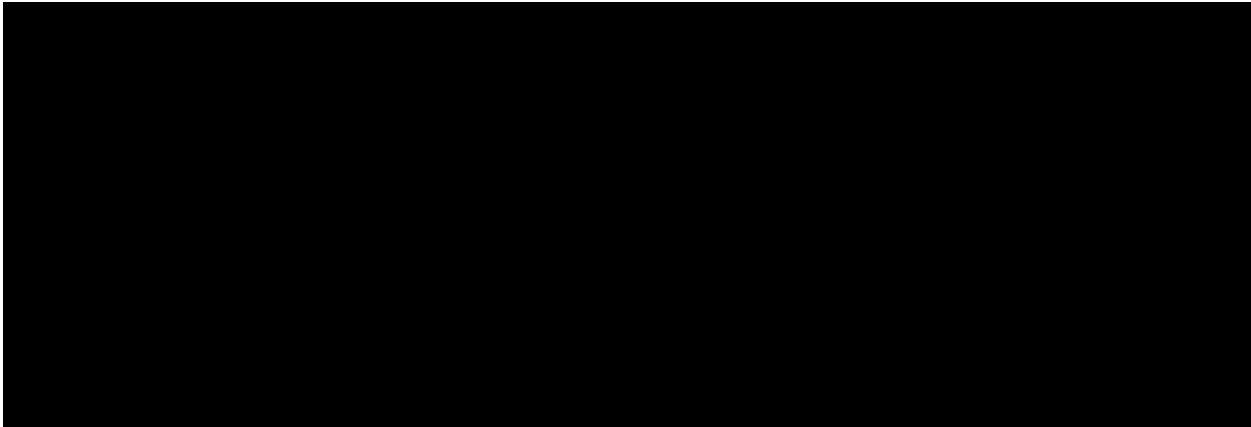


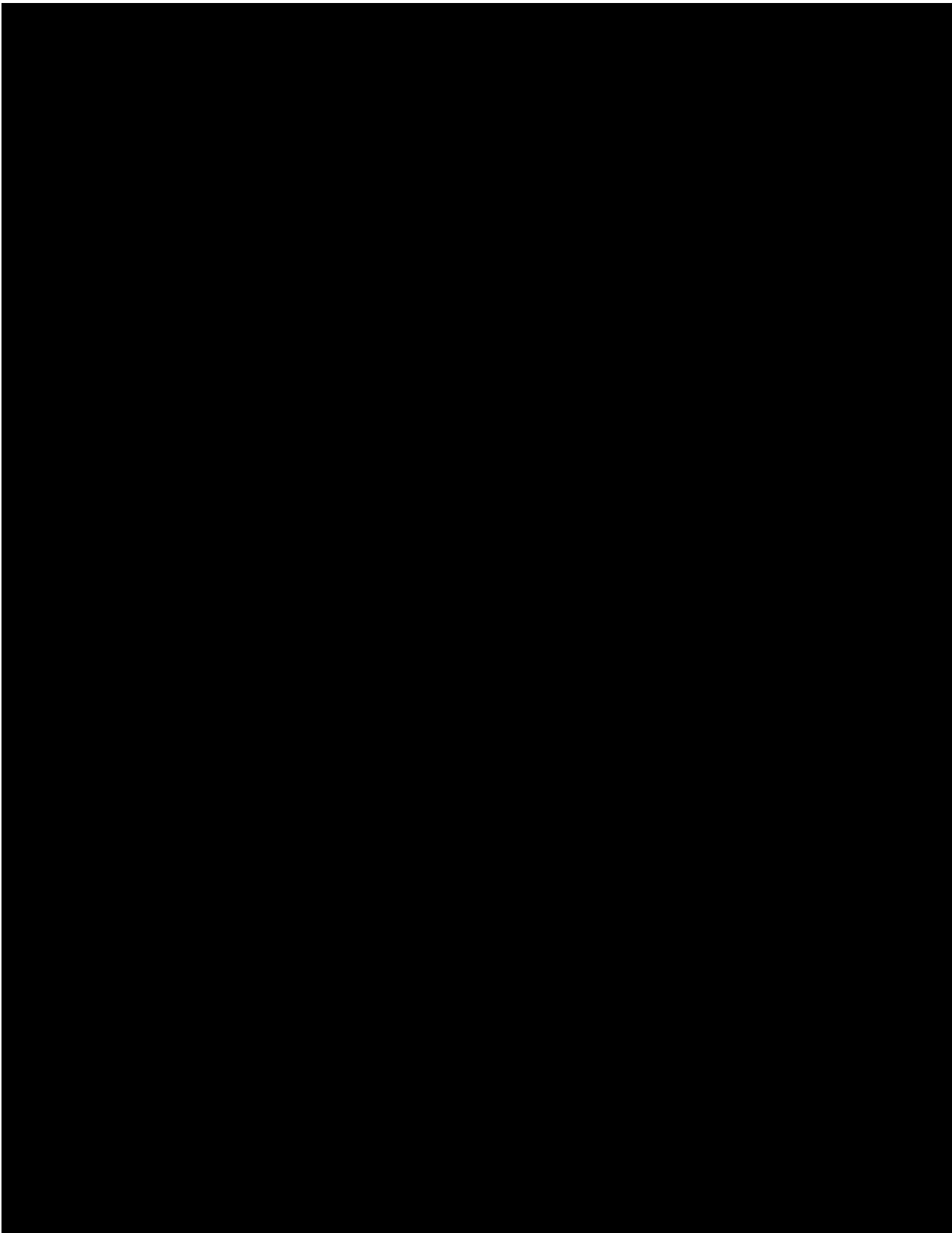


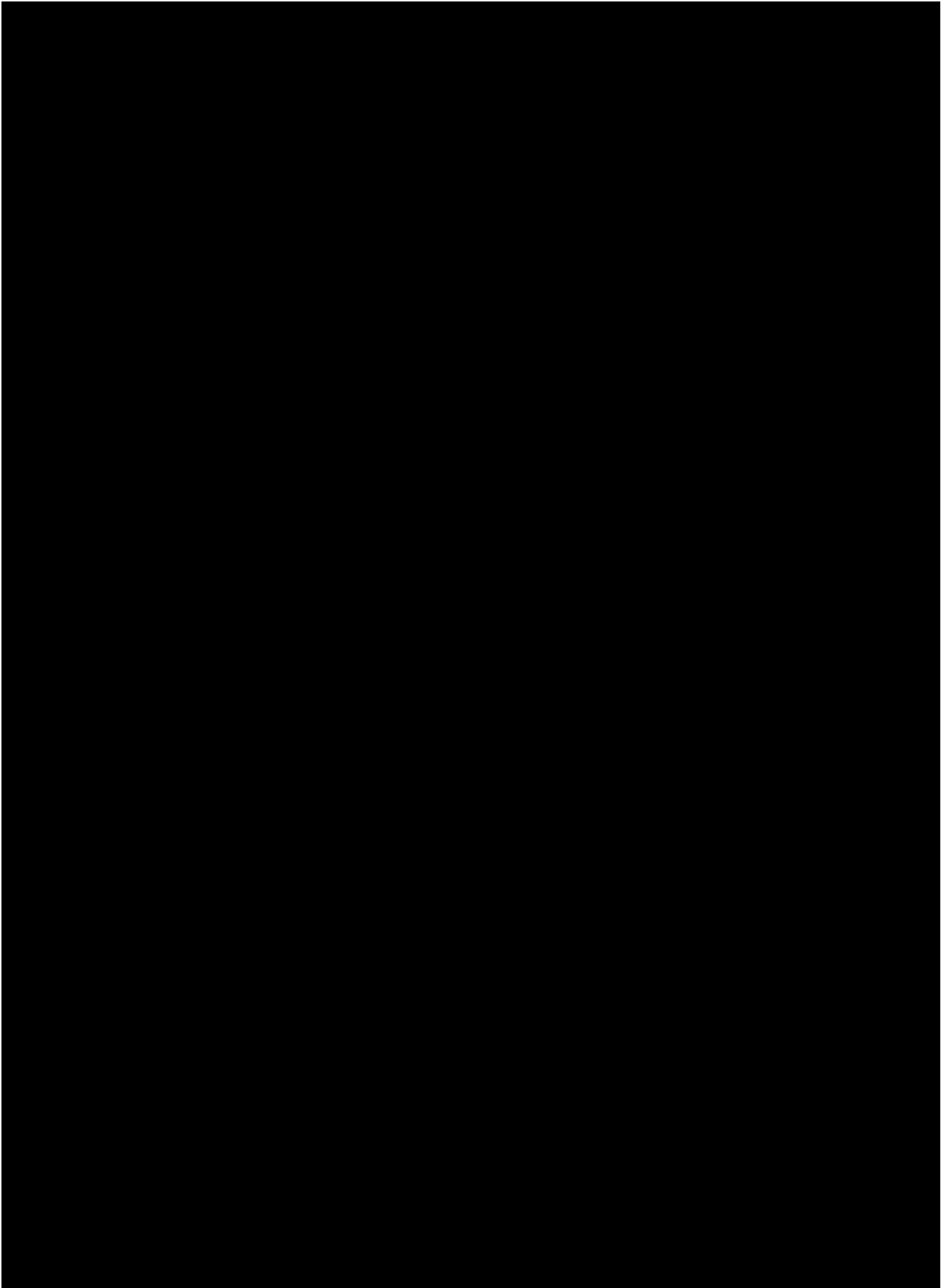


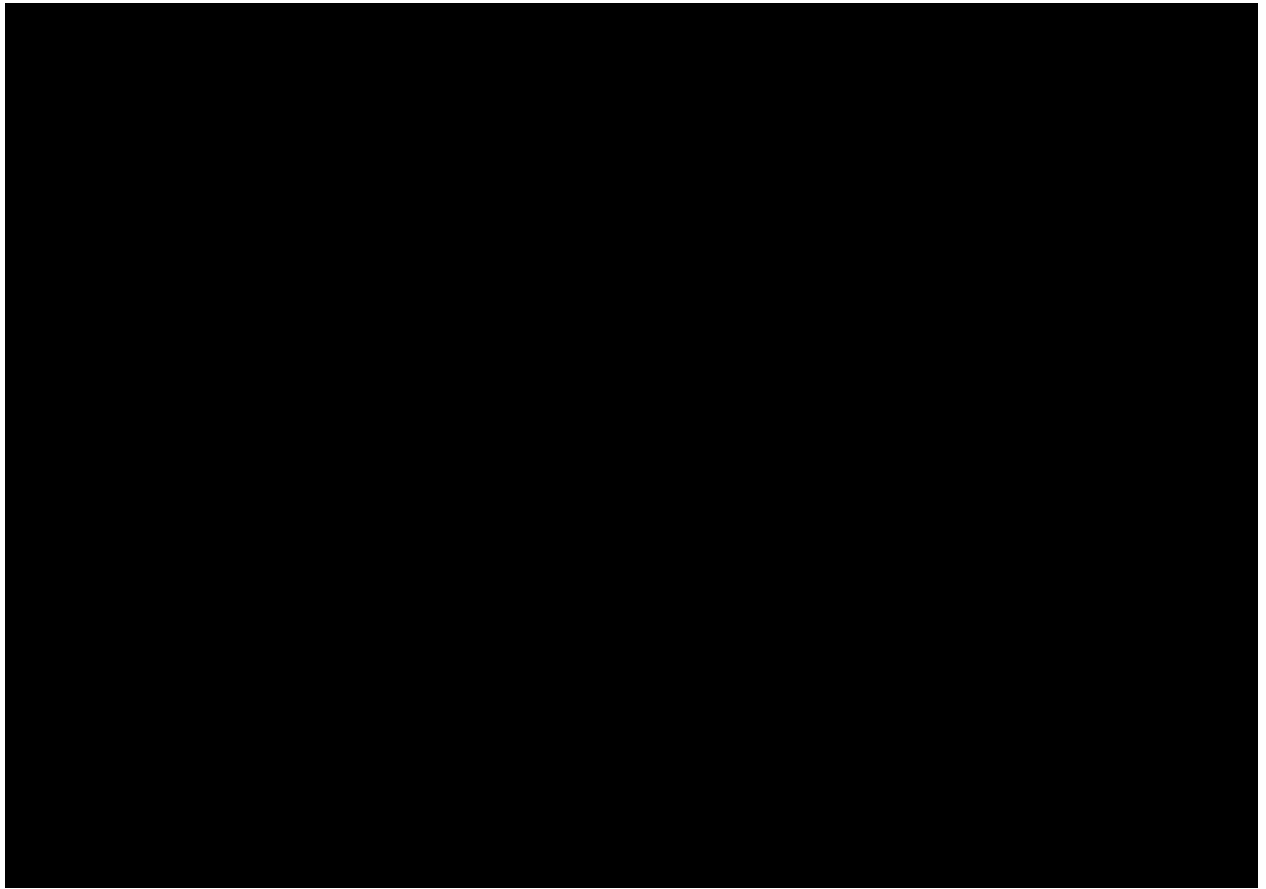












SCHEDULE 3

Minimum resources commitment

1. MINIMUM RESOURCES COMMITMENT

The Independent Certifier acknowledges and agrees that the minimum levels of resources set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.

The Independent Certifier must provide at least the following key personnel to perform the Core Services, with the minimum days to be committed at each phase as set out below:

		Minimum commitment in the performance of the Design Phase Services for each package (days)	Minimum commitment in the performance of the Completion Phase Services for each package (days)
Role		LW Works	LW Works
Core Team	IC Project Director & Representative		
	Project Manager & Document Controller		
	Line Wide (Rail Systems)		
	WL, PT & BR		
	OTS2 IC		
	VC, MP & CN		
	Construction Surveillance Officer		
	Line Wide Director		
	Program & Planning		
	Stakeholder & Liaison		
	Occupational Health & Safety Specialist		
	Project & Deed Establishment Mngr		
	Project & Deed Establishment Assistance		

Specialist	Technical Coordinator - Rail Systems
	Technical Coordinator - Stations & Infrastructure
	Technical Coordinator - Project Wide Services
	Track
	Tunnel Services
	Permanent HV Supply System
	OHW & Traction Supply
	Integration, Testing & Commissioning
	Civil Engineer
	Fire & Life Safety & Ventilation
	Platform Screen Doors
	Operations & Maintenance
	Delivery Phase (Trains)
	Delivery Phase Signalling & Control Systems
	Radio & Communication Systems
	Central Control System
	Mechanical
	Electrical
	Station Architecture
	Public Domain & Urban Planning
	Geotechnical
	Ground Settlement & Groundwater
	Structural Engineer
	Survey Property & Land

	Drainage	
	Building Management System	
	Landscaping	
	Risk, Technical Interfaces & Systems Engineering	
	RAMS	
	Metro and Sydney Trains Performance	
	Environment & Sustainability	
	Operational Readiness	
	Rail Safety, Accreditation & Station Operations	

Note: In this Schedule 3:

- (a) full time means a minimum of 8 hours per day Monday to Friday; and
- (b) a reference to "days" excludes public holidays and includes only those days which are stated in the LW Contractor's Program as working days.

2. **INDICATIVE ABILITY, KNOWLEDGE, SKILL, EXPERTISE AND EXPERIENCE OF INDEPENDENT CERTIFIER'S PERSONNEL**

The following are indicative of the level of ability, knowledge, skill, expertise and experience required of the Independent Certifier's personnel for the specified roles. The Principal will have regard to the criteria set out in this paragraph 2 in determining whether to approve replacement personnel in accordance with clause 4.4 of this deed.

IC Project Director (Independent Certifier's Representative)

Appropriately qualified with 15 years' experience on major projects in senior roles with recent exposure on verification and certification projects in Australia.

Core Team Leads (Line-wide, OTS2 and Stations)

Appropriately qualified with 10 years' experience on major projects in senior roles with recent exposure on verification and certification projects in Australia.

Technical Coordinators

Appropriately qualified with 5 years' experience on major projects in relevant roles.

Specialists

Minimum of 10 years' experience on the specific discipline to assess.

SCHEDULE 4

Requirements for Certification Plan

The Certification Plan must, as a minimum, address and detail:

- (a) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Construction Site and the roles and tasks of the nominated personnel and subcontractors;
- (b) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (c) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (d) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (e) the Independent Certifier's internal processes for ensuring all documents and supporting evidence have been completed and approved (where required) by persons with appropriate delegated authority and competency and are available as supporting evidence;
- (f) all compliance records to be maintained;
- (g) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews of aspects of the LW Contractor's Activities;
- (h) hold point and witness point requirements, in the form of a schedule, including the identification of all witness points and hold points required by the Independent Certifier;
- (i) the Independent Certifier's comprehensive plans for (as applicable):
 - (i) monitoring, auditing, reviewing, assessment and testing of the LW Contractor's Activities;
 - (ii) without limiting sub-paragraph (i), monitoring, auditing, reviewing, assessment and testing of the quality and durability of the Project Works to determine and ensure the LW Contractor's compliance with the requirements of the Line-wide Contract; and
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey;
- (j) the Independent Certifier's strategies, processes, methodologies and procedures for:
 - (i) addressing environmental monitoring and protection;
 - (ii) audit, surveillance and monitoring of the LW Contractor's design and construction activities, including the processes used for determining the levels and scope of surveillance of activities;
 - (iii) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;

- (iv) providing comments to the LW Contractor in respect of its carrying out of the LW Contractor's Activities, whether by participation in design workshops, design surveillance or otherwise;
 - (v) ensuring that the LW Contractor has addressed all issues of review, comment and consultation with the Principal in respect of the Design Documentation and the LW Contractor's Activities; and
 - (vi) risk management of the work covered by sub-paragraphs (i) and (ii) above;
- (k) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby each of the following requirements will be achieved and satisfied:
- (i) the functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier as set out in Schedule 1;
 - (ii) certification of the Design Documentation (Schedule B9, Line-wide Contract);
 - (iii) certification of Construction Completion of each Portion (Schedule B10, Line-wide Contract);
 - (iv) certification of Completion of each Portion (Schedule B11, Line-wide Contract);
 - (v) certification of Milestone Achievement of each Milestone (Schedule B12, Line-wide Contract);
 - (vi) certification of Sydney Trains Works (Schedule B13, Line-wide Contract);
 - (vii) certification of Local Area Works (Schedule B14, Line-wide Contract); and
 - (viii) determination of any matters required by the Project Agreements;
- (l) the Independent Certifier's proposed standards including:
- (i) committed surveillance activities; and
 - (ii) committed resources; and
- (m) the basis of the Certification Methodology contained in Schedule 7 in terms of the assumptions relating to the LW Contractor's Activities including:
- (i) number of design lots developed; and
 - (ii) program durations; and
 - (iii) how the Independent Certifier will address the reporting requirements set out in clause 4.10 of this deed and otherwise advise the Principal of issues that it identifies in carrying out the Services, and considers may impact on or delay the ability of the LW Contractor to design and construct the Project Works in accordance with the requirements of the Line-wide Contract.

SCHEDULE 5

Subcontractors

Name of subcontractor	Part of the Services
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

SCHEDULE 6

Form of Accession Deed

This Accession Deed made at _____ on _____

BETWEEN:

- (1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and

[Note: Insert details of LW Contractor and Independent Certifier.] (together the **Continuing Parties**)

- (2) **[insert name of the Operator]** (ABN **[insert]**) of **[insert address]** (**Acceding Party**)

RECITALS

- (A) The Continuing Parties are each party to the Independent Certifier Deed.
- (B) Each of the Continuing Parties and the Acceding Party has agreed that the Acceding Party will accede to the Independent Certifier Deed on or about the date of execution of the OTS2 Project Deed, on the terms of this deed.
- (C) The Continuing Parties and the Acceding Party have agreed to amend the Independent Certifier Deed on the terms set out in this deed.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed:

Accession Deed means this deed.

Effective Date means the date of this deed.

Independent Certifier Deed means the deed titled "Sydney Metro City & Southwest Independent Certification of the Line-wide Works: Independent Certifier Deed" which was originally entered into between the Continuing Parties on **[insert date]**.

Operator means the entity or person that enters into the OTS2 Project Deed with the Principal.

OTS2 Project Deed means the deed entitled **[insert full title of the OTS2 Project Deed]** entered into between the Principal and the Operator on or about the date of this deed.

1.2 Definitions in Line-wide Contract

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the Line-wide Contract will have the same meaning in this deed as are provided for in the Line-wide Contract.

1.3 Interpretation

In this deed:

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

and the following rules apply in interpreting this deed unless the context makes clear that a rule is not intended to apply:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) person includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation;
- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) **where** under this deed:
 - (i) a notice, certificate or direction is required to be given; or
 - (ii) a default must be remedied,within a stated number of days, only Business Days will be counted in computing the number of days;
- (m) for all purposes other than as set out in clause 1.3(l), **day** means calendar day;

- (n) a reference to a **month** is a reference to a calendar month;
- (o) a reference to a court or tribunal is to an Australian court or tribunal;
- (p) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (q) any reference to **information** will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.4 **No bias against drafter**

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

2. **CONSIDERATION**

In consideration of the Acceding Party executing this deed, each Continuing Party agrees to pay the Acceding Party \$1 upon the Acceding Party's request.

3. **COVENANT**

3.1 **Covenant by Acceding Party**

The Acceding Party confirms that it has been supplied with a copy of the Independent Certifier Deed as originally executed by the Continuing Parties and covenants with each of the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of the Operator's obligations under, the Independent Certifier Deed (as amended by Schedule 1 to this deed) in so far as they may remain to be observed and performed as at the date of this Accession Deed.

3.2 **Covenant by Continuing Parties**

Each Continuing Party covenants with the Acceding Party, with effect from the Effective Date, to be bound by the provisions of, and to perform all its obligations under the Independent Certifier Deed (as amended by Schedule 1 to this deed) in so far as they may remain to be observed and performed as at the date of this Accession Deed.

3.3 **Amendment to Independent Certifier Deed**

Each Continuing Party and the Acceding Party agree that the Independent Certifier Deed is amended as set out in Schedule 1 to this deed.

4. **REPRESENTATIONS AND WARRANTIES**

The Acceding Party represents and warrants to each of the Continuing Parties that the obligations in this deed are valid and binding obligations of the Acceding Party.

5. **GENERAL**

5.1 **Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Name: [insert]

Address: [insert]

Email: [insert]

For the attention of: [Insert name of the Principal's Representative]

Name: [insert]

Email: [insert]

Address: [insert]

For the attention of: [Insert name of LW Contractor's Representative]

Name: [insert]

Address: [insert]

Email: [insert]

For the attention of: [Insert name of Independent Certifier's Representative]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with clause 5.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of delivery by hand) on delivery; and
 - (iv) (in the case of email):
 - (A) if it is transmitted by 5.00 pm (Sydney time) on a Business Day – on that Business Day; or
 - (B) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day, on the next Business Day.

5.2 Governing Law

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

5.3 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 5.3(a).

5.4 **Principal as a public authority**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Independent Certifier, the LW Contractor and the Operator acknowledges and agrees that, without limiting clause 5.4(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this deed and will not entitle any of the Independent Certifier, the LW Contractor or the Operator to make any claim against the Principal.
- (c) The parties agree that clauses 5.4(a) and 5.4(b) are taken not to limit any liability which the Principal would have had to the Independent Certifier, the LW Contractor or the Operator under this deed as a result of a breach by the Principal of a term of this deed but for clauses 5.4(a) and 5.4(b) of this deed.

5.5 **Amendments**

This deed may only be varied by a deed executed by or on behalf of each of the parties.

5.6 **Waiver**

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

5.7 **Cost of performing obligations**

Each party must, unless this deed expressly provides otherwise, pay its own costs and expenses in connection with performing its obligations under this deed.

5.8 **Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

5.9 **Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

5.10 **Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party unless this deed expressly provides otherwise.

5.11 **Replacement body**

Where a reference is made to any Authority, institute, association, body, person or organisation (**Former Body**) which is reconstituted, renamed, replaced, ceases to exist or has its powers or functions transferred to another Authority, institute, association, body, person or organisation, that reference will be deemed to refer to the Authority, institute, association, body, person or organisation (**Replacement Body**) which then serves substantially the same powers, functions or objects as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

5.12 **Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

5.13 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

5.14 **Expenses**

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating and preparing this deed.

5.15 **Stamp duties**

The Principal:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;
- (b) indemnifies each other party against any liability arising from failure to comply with clause 5.15(a); and

- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

5.16 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

5.17 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

5.18 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two or more of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

5.19 Severance

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

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

5.20 Moratorium legislation

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

SCHEDULE 1

The Independent Certifier Deed is deemed to be amended by:

1. immediately after the definition of "NSW Trains" in clause 1.1, insert the following definition:

"Operator" means **[insert full name of the Operator]** (ABN **[insert]**) of **[insert]**.

2. inserting the following details at the end of clause 12.1(c)(i)(B):

Name: **[insert name of the Operator]**

Address: **[insert]**

Email: **[insert]**

For the attention of: **[insert]**

Executed as a deed.

Executed by **Sydney Metro (ABN 12 354 063 515)** by its authorised delegate in the presence of:

Signature of witness

Name of witness in full

Executed by **[Note: insert name of Independent Certifier.]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Name of Director in full

Executed by **[Note: Insert name and ABN of LW Contractor entity.]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Name of Director in full

Signature of authorised delegate

Name of authorised delegate

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Executed by **[Note: Insert name and ABN of the Operator]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

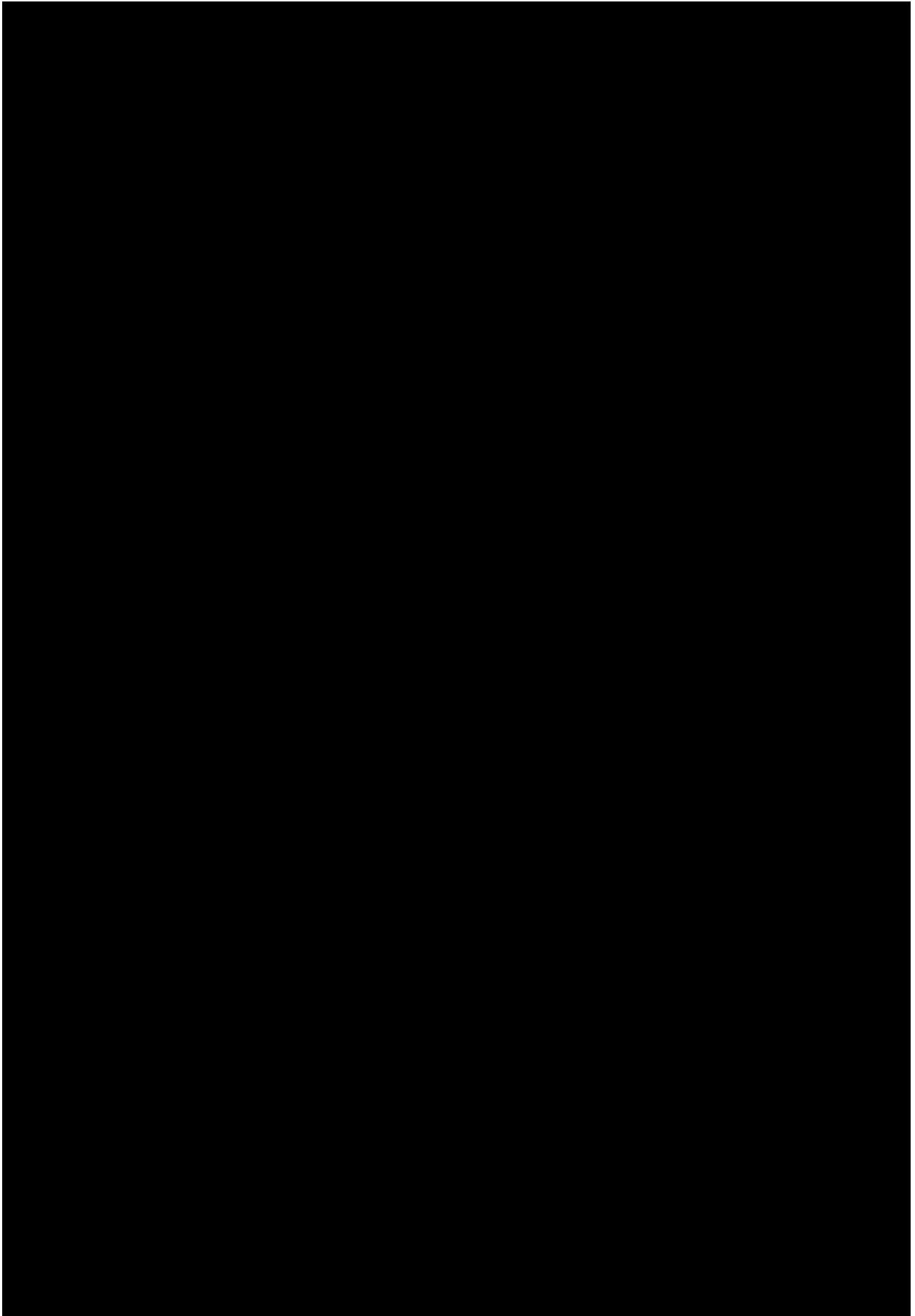
Signature of Director

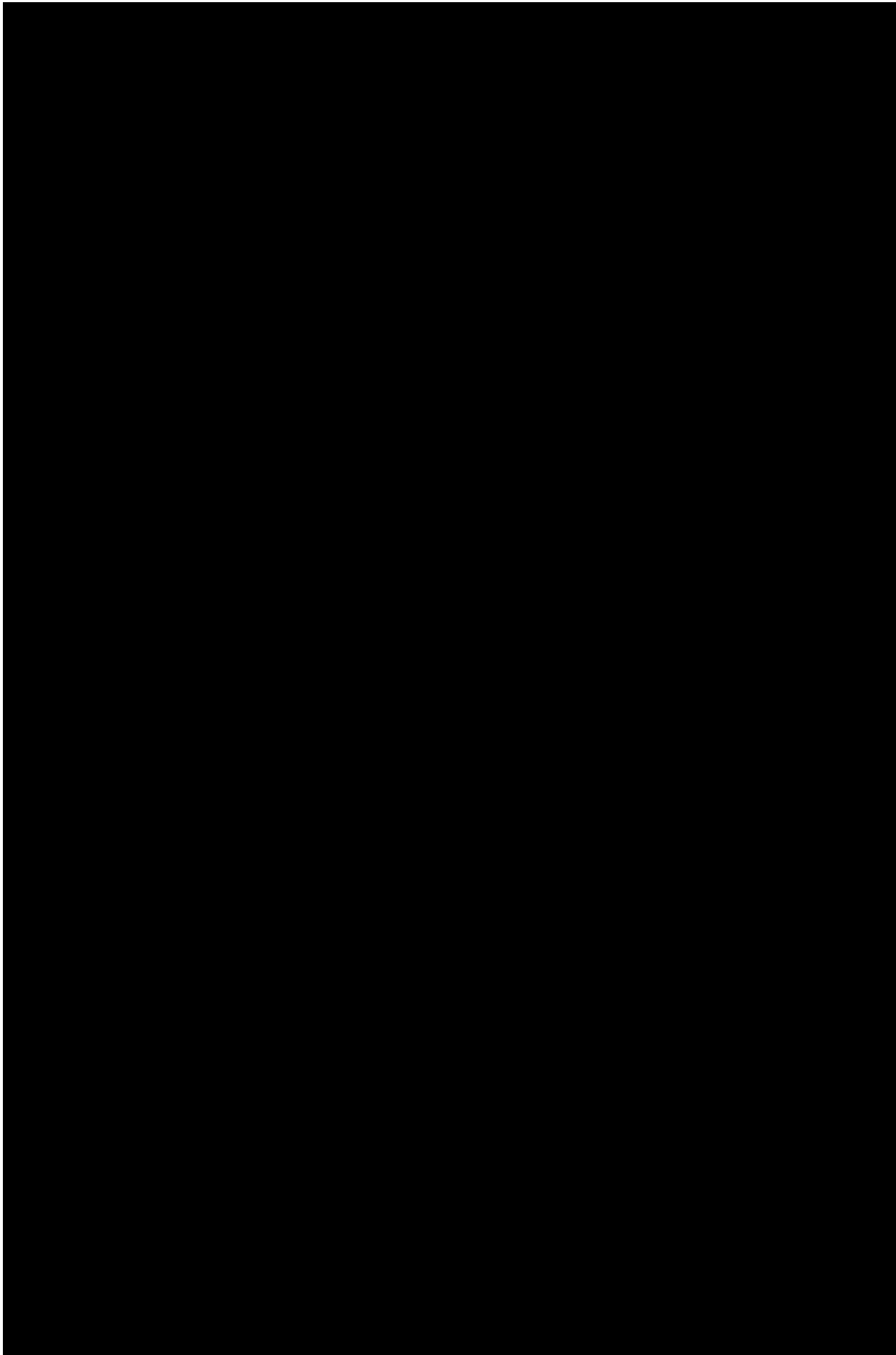
Name of Director in full

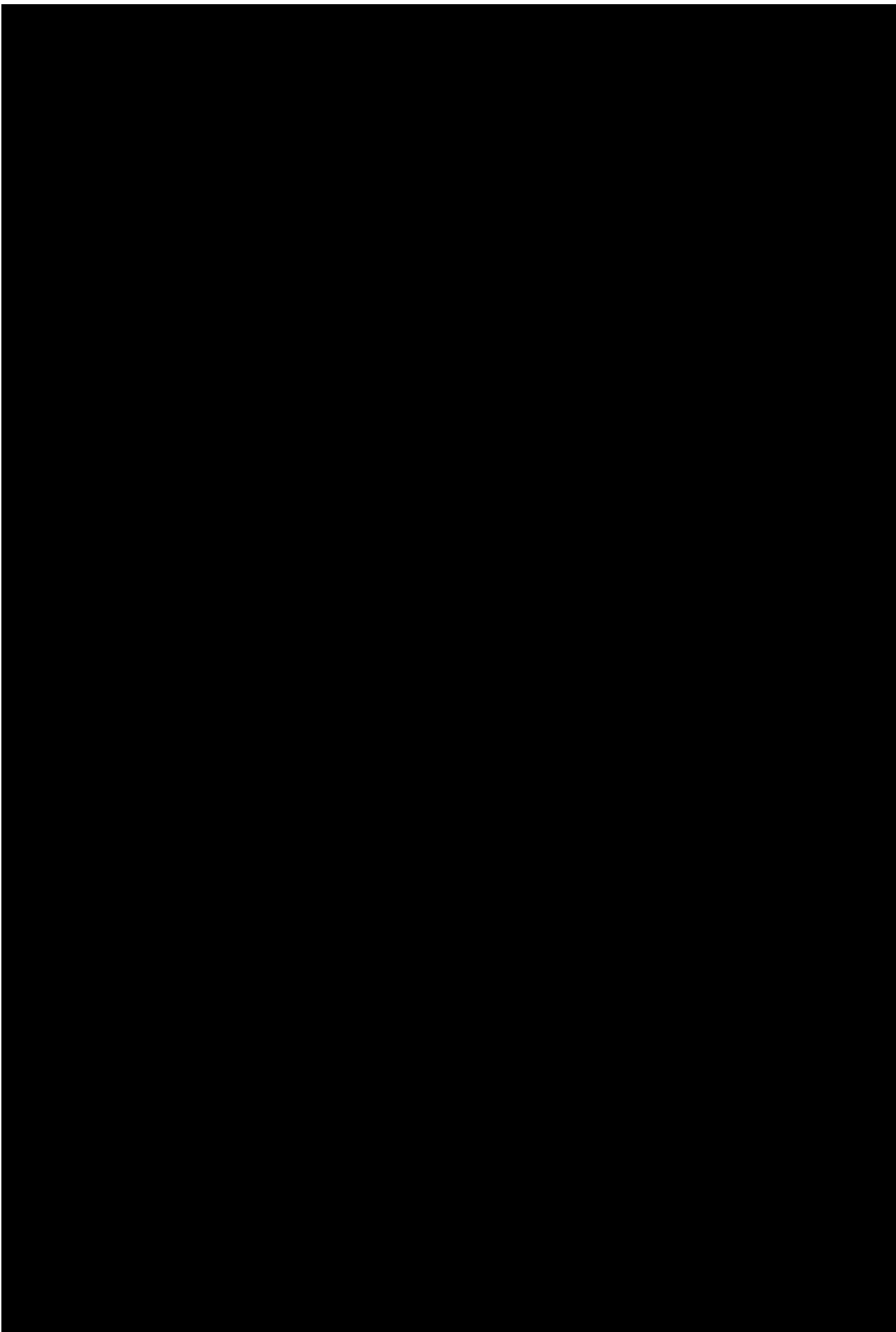
Signature of Secretary/other Director

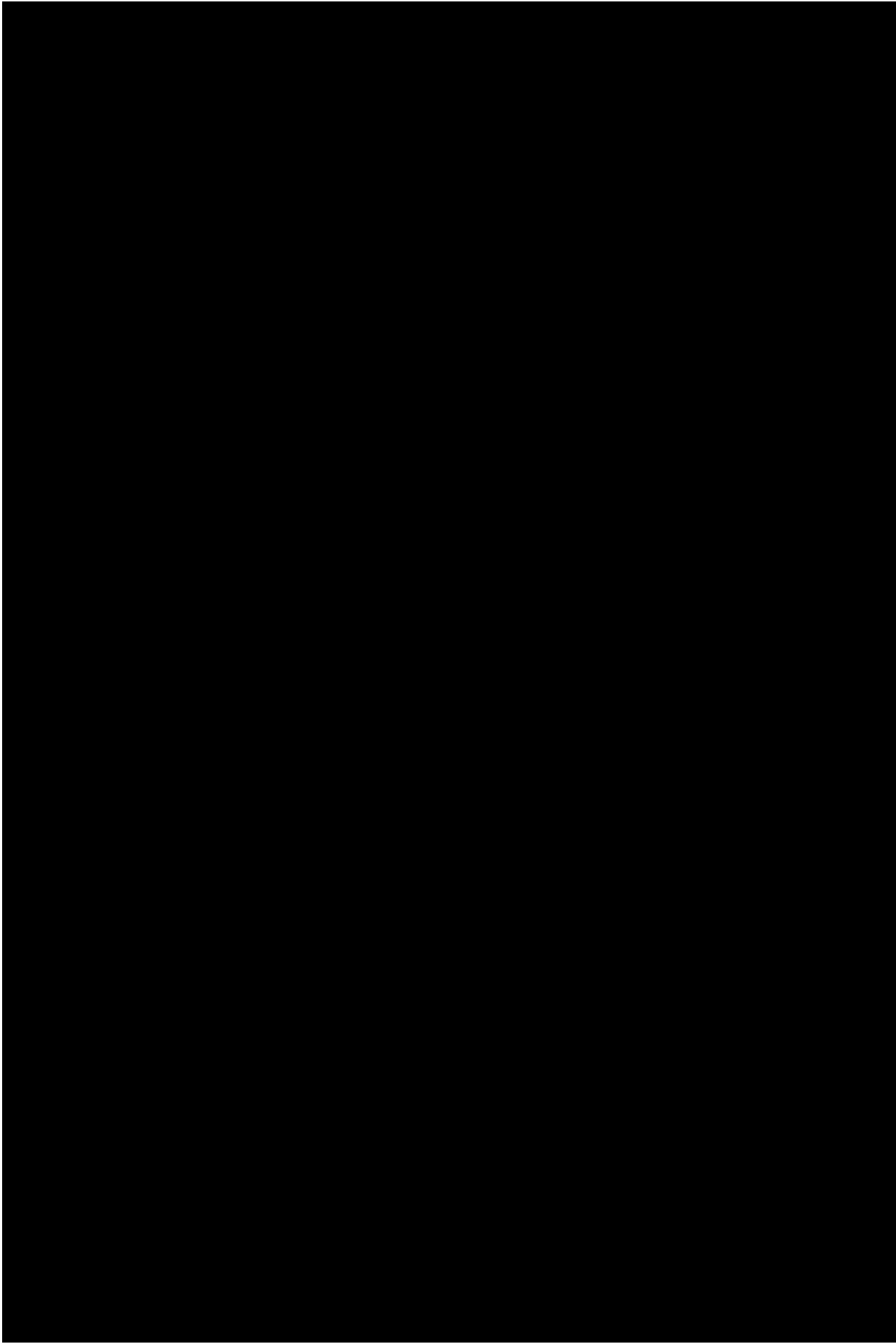
Name of Secretary/other Director in full

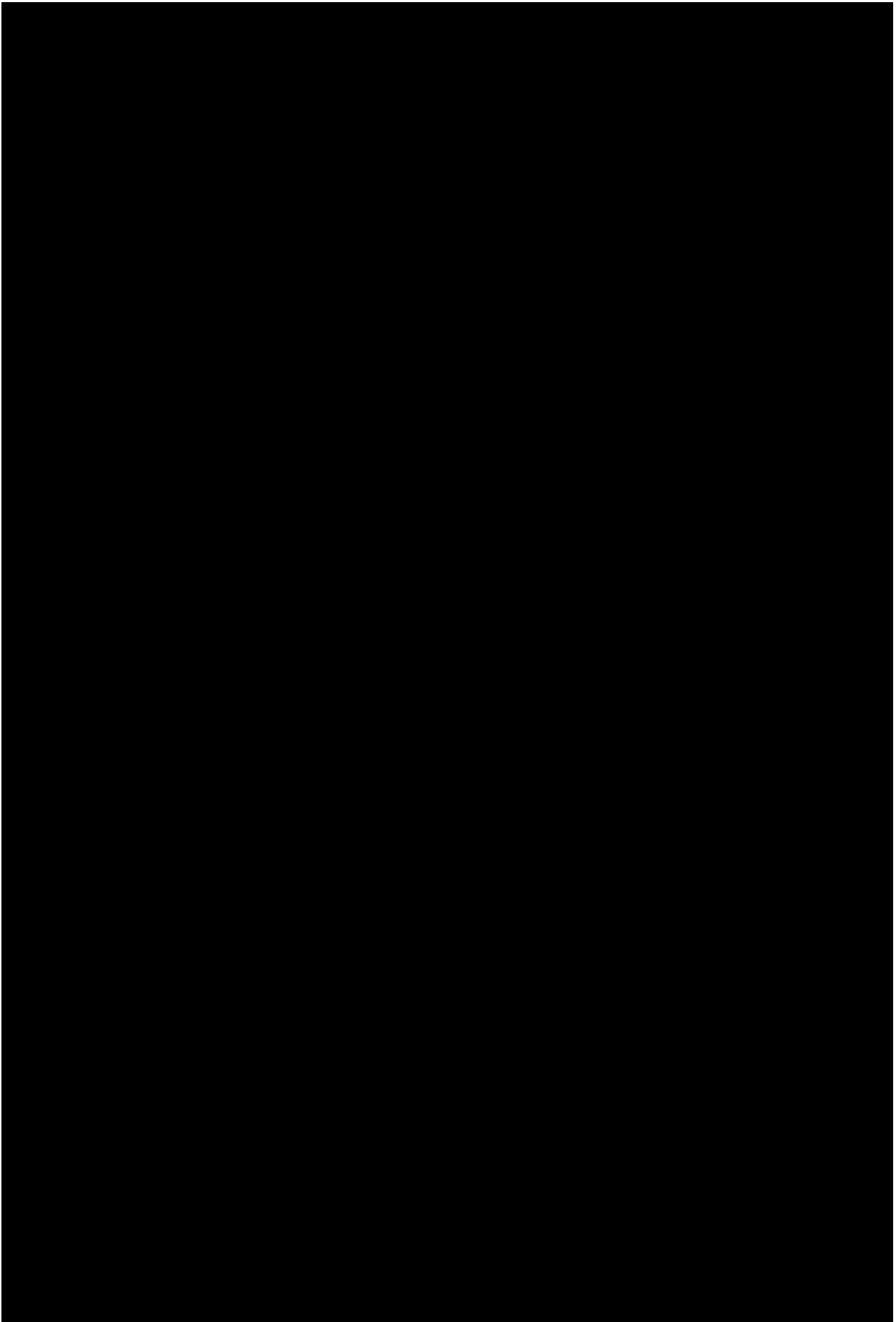
SCHEDULE 7

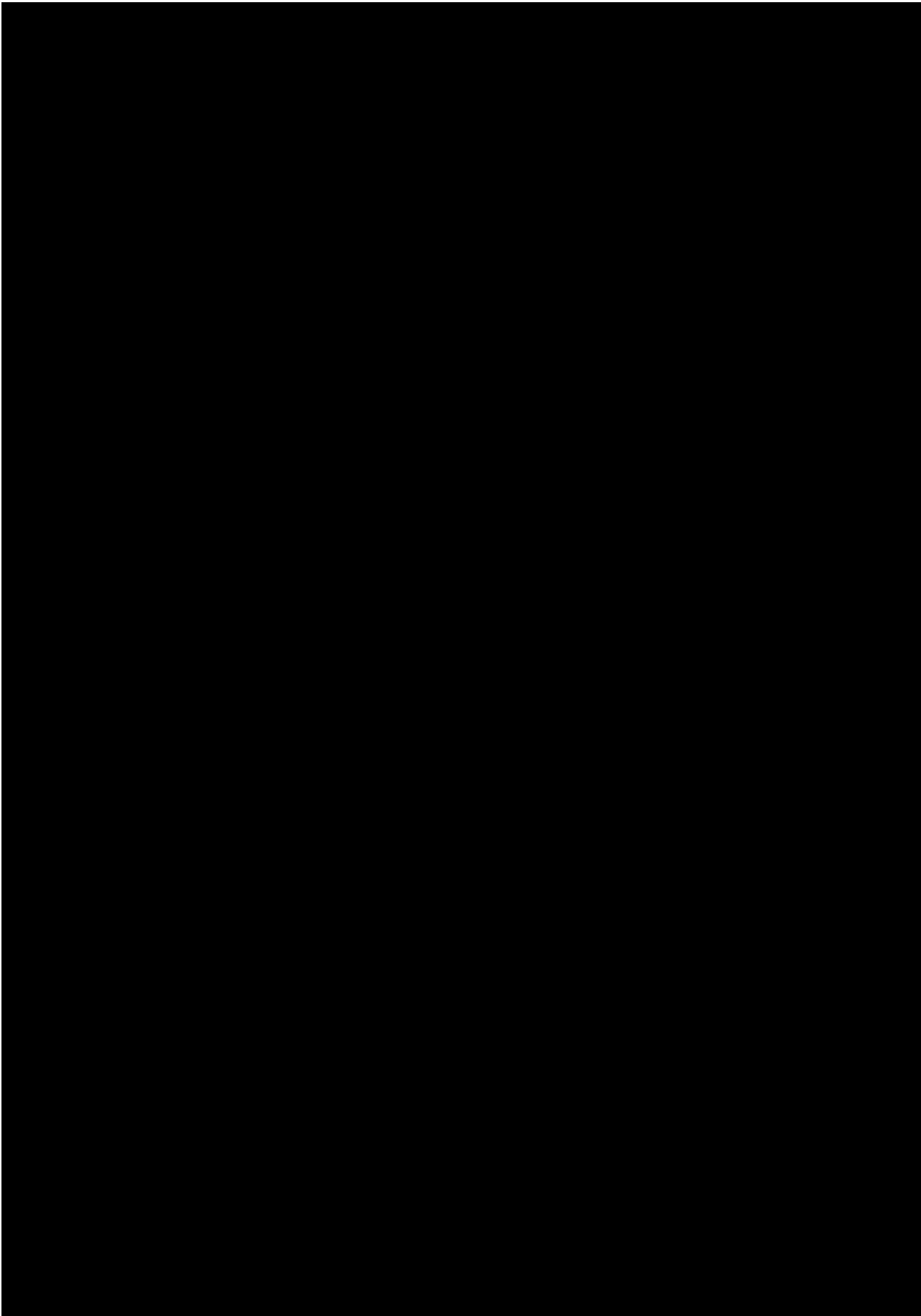


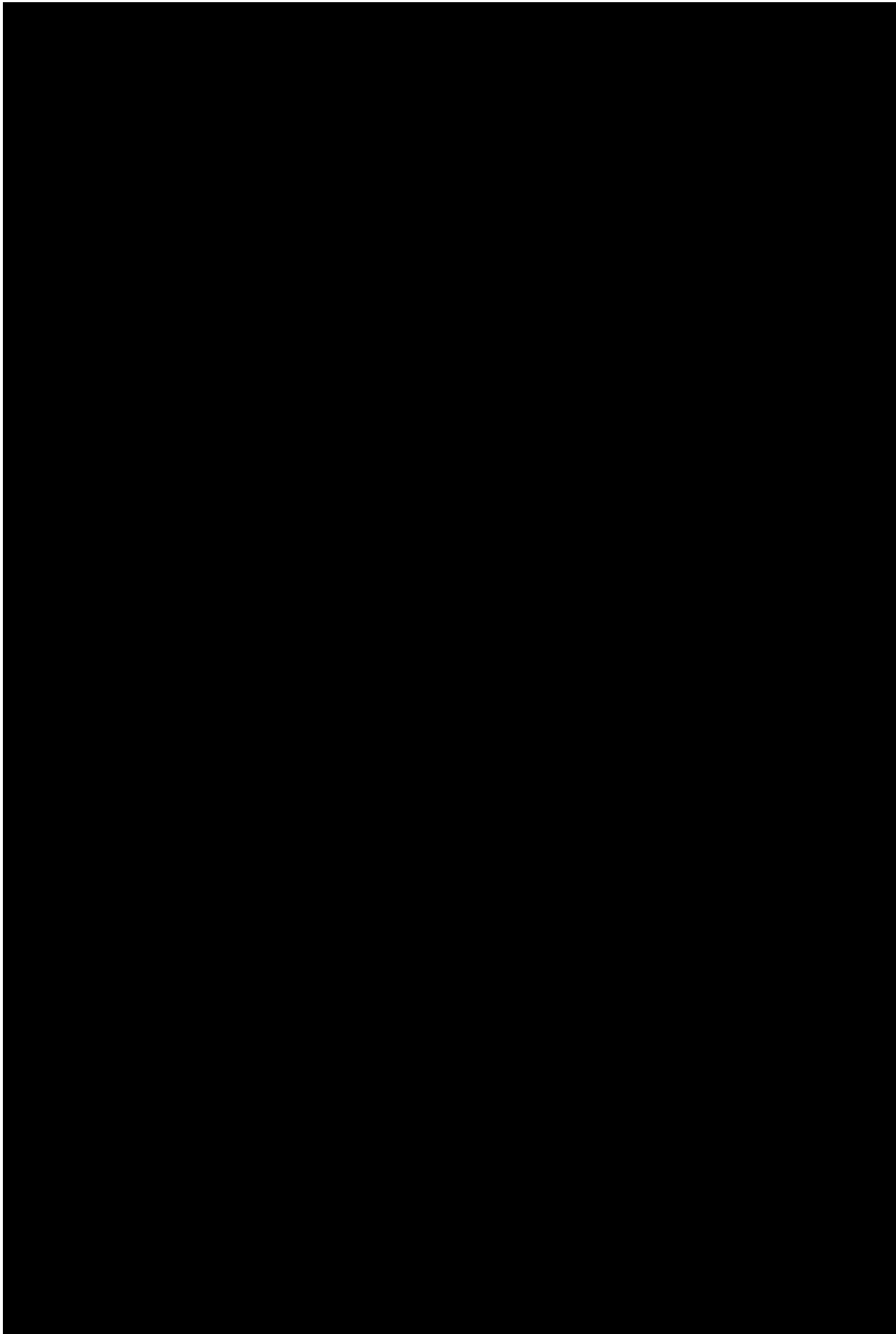


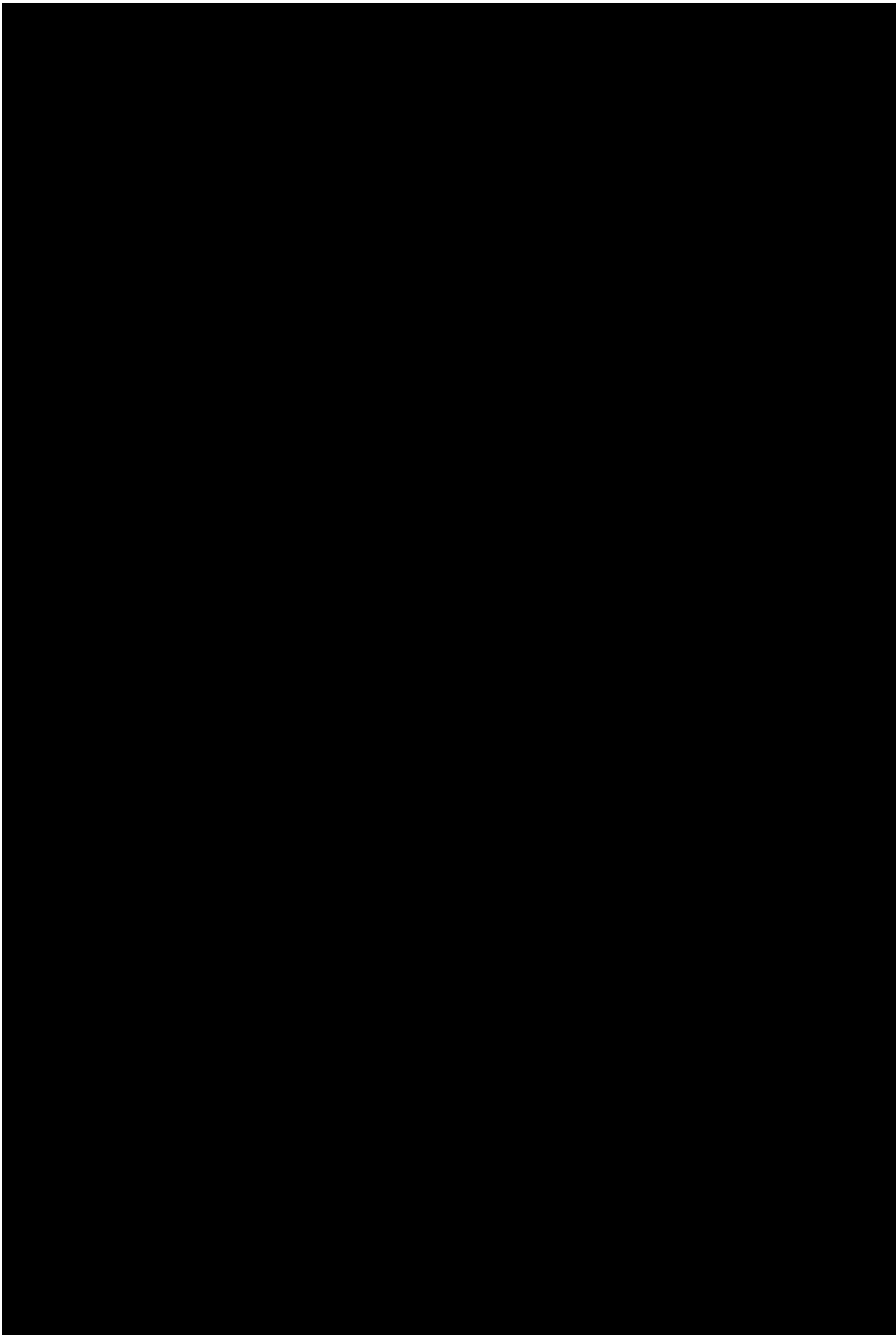


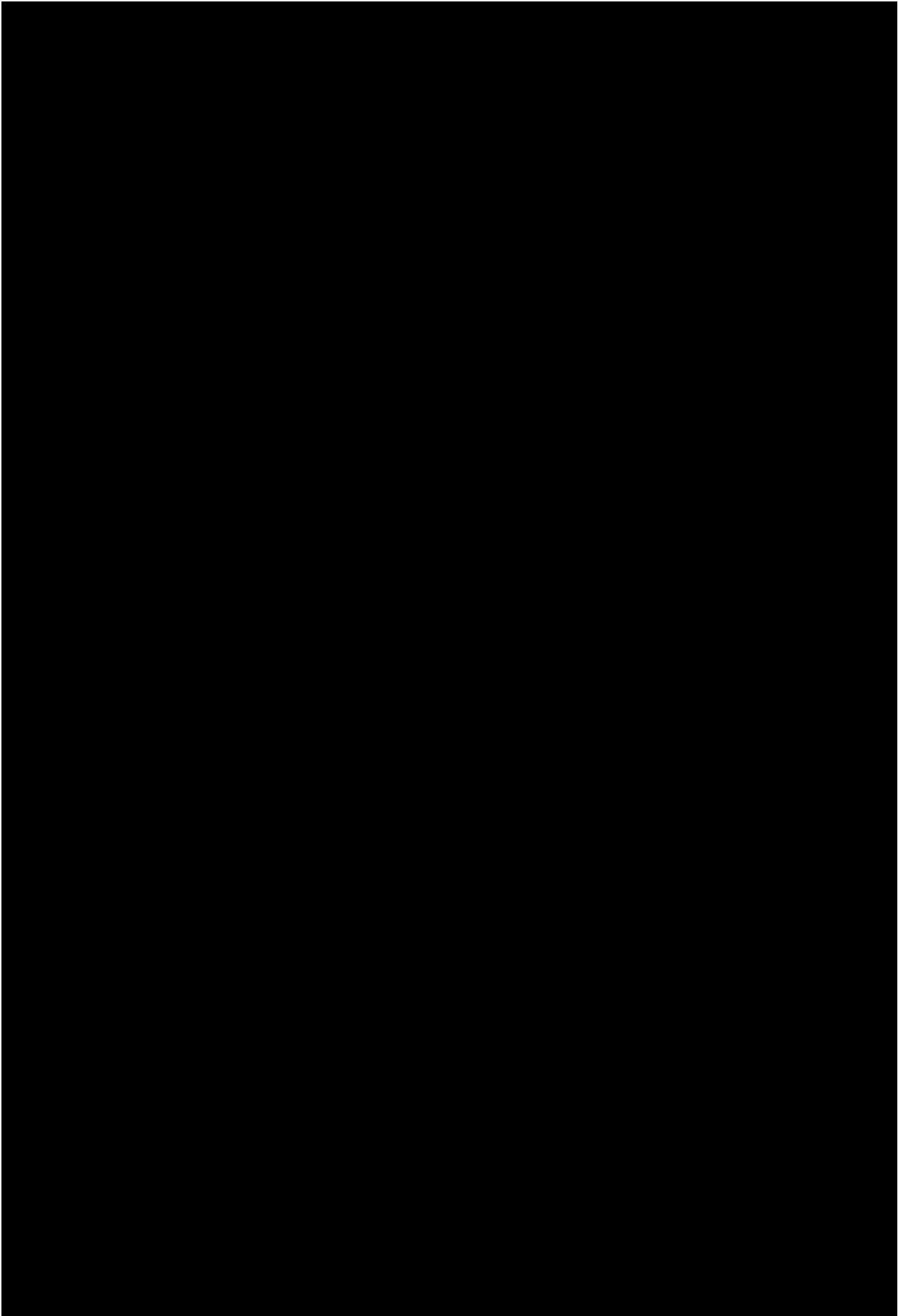


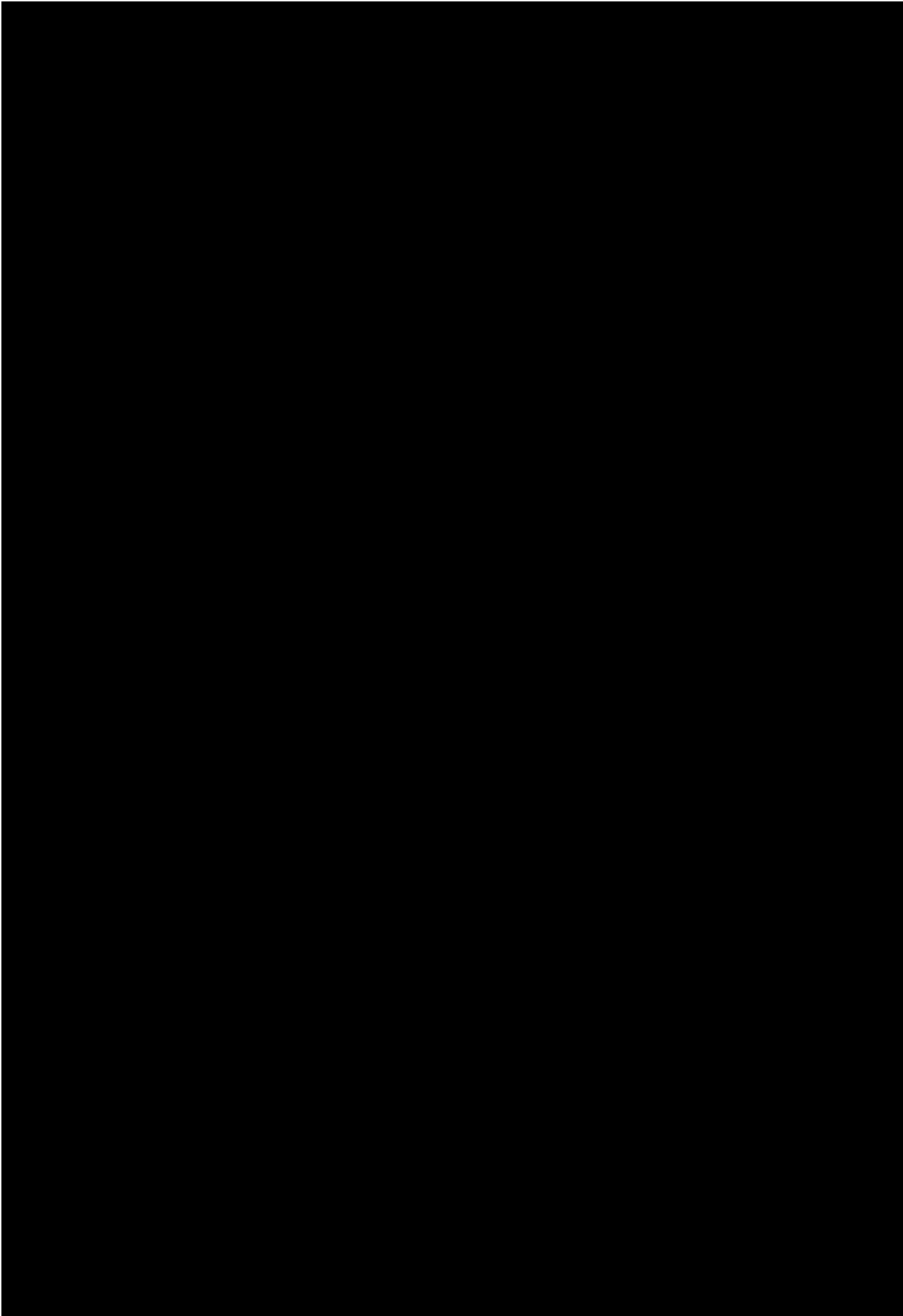


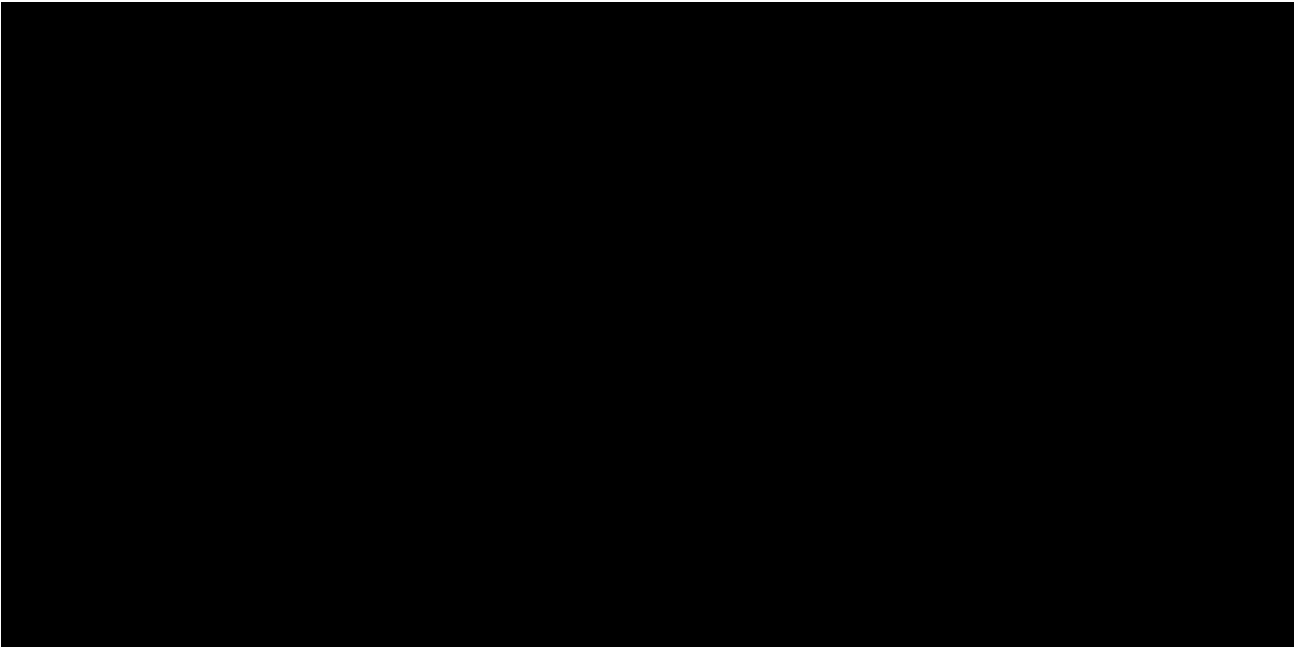


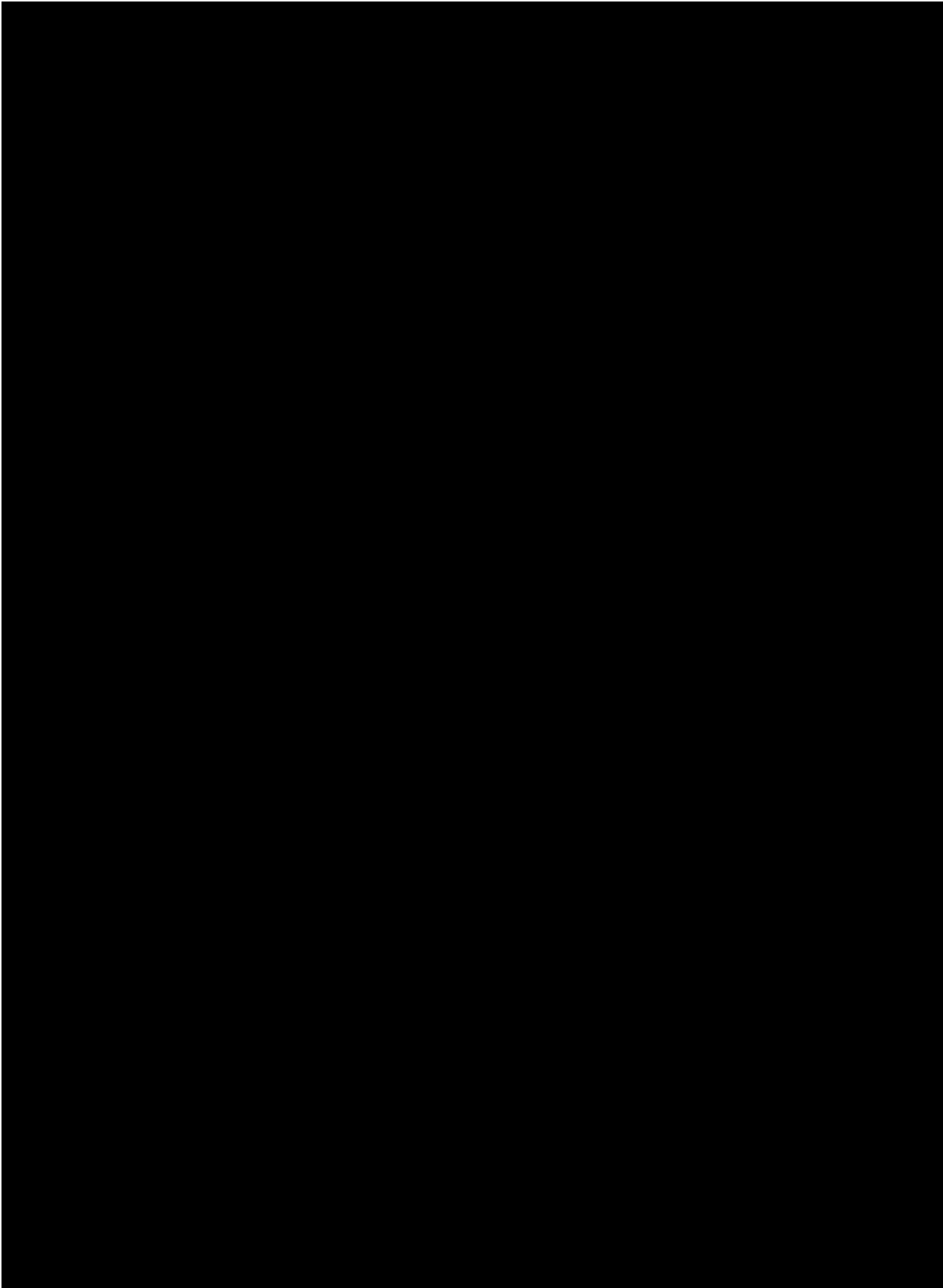






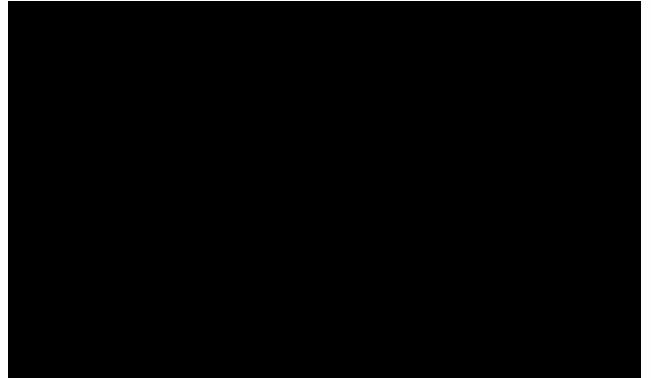
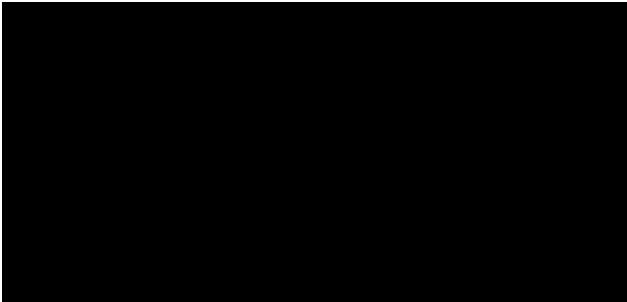




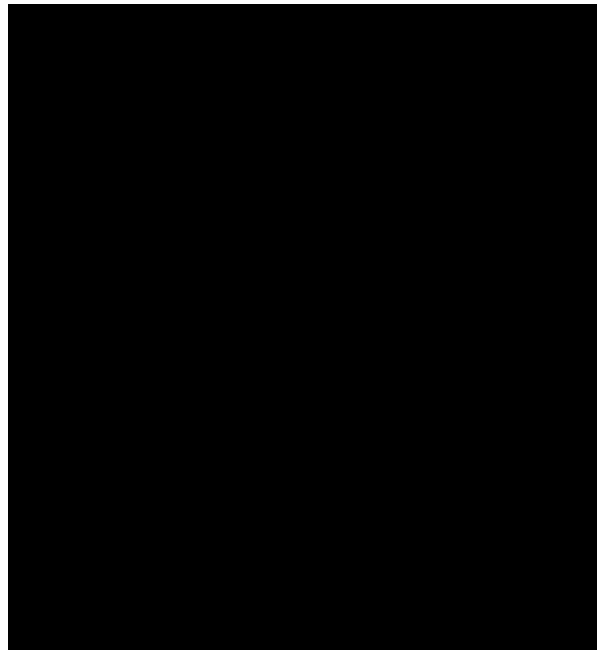
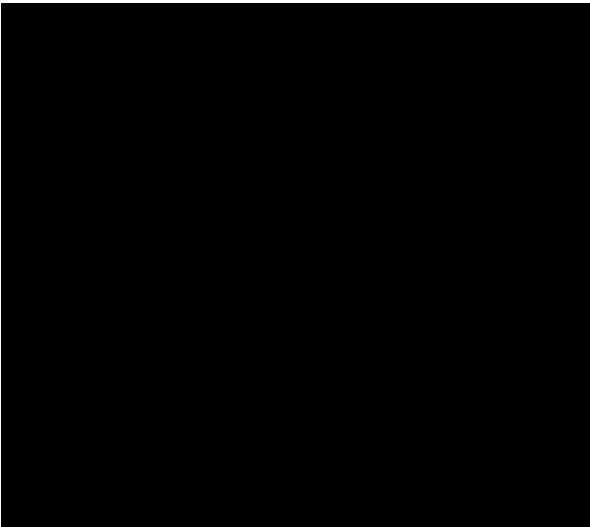


EXECUTED as a deed.

Executed by Sydney Metro (ABN 12 354 063 515) by its authorised delegate in the presence of:



Signed sealed and delivered for and on behalf of **CPB Contractors Pty Limited (ABN 98 000 893 667)** by its Attorneys under a Power of Attorney dated 4 October 2018 (and the Attorneys declare that the Attorneys have not received any notice of the revocation of such Power of Attorney) in the presence of:



Executed by UGL Engineering Pty Ltd (ABN 96 096 365 972) in accordance with section 127 of the *Corporations Act 2001* (Cth):



Executed by Advisian Pty Ltd (ABN 50 098 008 818) in accordance with section 127 of the *Corporations Act 2011* (Cth)

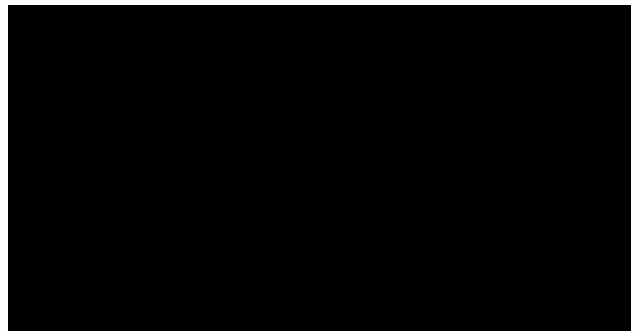
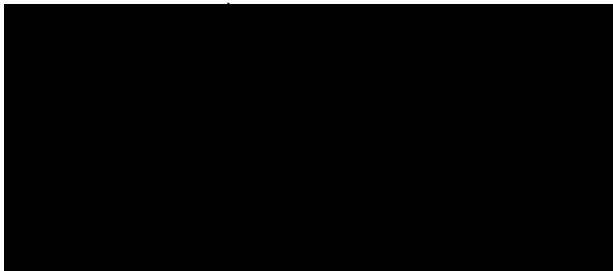


EXHIBIT 1

