



Execution version

## **SYDNEY METRO CITY & SOUTHWEST**

### **Southwest Metro – Corridor Intrusion Detection System (CIDS) and Object Detection System (ODS)**

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**Design, Supply and Install Contract**

**Contract Number: SMC-21-0456**

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Between

**Sydney Metro**

ABN 12 354 063 515

**(PRINCIPAL)**

and

**UGL Engineering Pty Limited**

ABN 96 096 365 972

**(CIDS/ODS CONTRACTOR)**

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EXHIBIT A SWTC

EXHIBIT B SWM Fencing Stage 2/3 Design Documentation

EXHIBIT C Principal's Insurance Policies

EXHIBIT D Information Documents and Materials

**Parties**

1. **Sydney Metro** (ABN 12 354 063 515), a NSW 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**).
2. **UGL Engineering Pty Limited** (ABN 96 096 365 972), located at Level 8, 40 Miller Street, North Sydney NSW 2060 (**CIDS/ODS Contractor**).

**Recitals**

- A The Principal is procuring Sydney Metro City & Southwest on behalf of the NSW government and the people of New South Wales.
- B Following completion of a request for tenders process, the Principal selected the CIDS/ODS Contractor as the successful tenderer for the delivery of the Works.
- C The Principal and the CIDS/ODS Contractor now wish to enter into this Contract to set out the terms on which the CIDS/ODS Contractor will:
- (a) design, supply, construct, deliver, install, integrate, test, commission and complete the Works and otherwise carry out the CIDS/ODS Contractor's Activities;
  - (b) interface and co-ordinate the CIDS/ODS Contractor's Activities with the activities of the Interface Contractors; and
  - (c) hand over the Works to the Principal.

**It is agreed as follows****1. Definitions and Interpretation****1.1 Definitions**

In this Contract, unless the context otherwise indicates:

**"Accepted Defect"** means a Defect accepted by the Principal under clause 11.2(b).

**"Accreditation"** means accreditation (including provisional accreditation, conditions or restrictions in respect of accreditation or any variation to the accreditation) under Part 3 of the Rail Safety National Law (or an exemption from same).

**"Additional Third Party Agreement"** has the meaning given in clause 3.15(a)(iii).

**"Additional Track Possession or Power Isolation"** has the meaning given in clause 10.8(e).

**"Agreed Defect"** means a Defect (other than a Minor Defect) that:

- (a) the Principal and the CIDS/ODS Contractor agree in writing; or
- (b) the Principal's Representative otherwise directs,

does not need to be rectified in order to achieve Construction Completion of a Portion.

**"AMB Authorisation"** means an authorisation issued by the AMB to a legal entity which verifies that it has the relevant systems in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any specified conditions of the authorisation.

**"AMB Charter"** means the document which identifies the AMB's objectives, functions, powers and governance and the duties of Rail Transport Agencies and TAOs in relation to the AMB (as amended from time to time), a copy of which can be found on <https://www.transport.nsw.gov.au/industry/asset-management-branch>.

**"AMB Requirements"** has the meaning assigned to it in the AMB Charter.

**"Anti-slavery Commissioner"** means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

**"Appointed Principal Contractor"** has the meaning given in clause 3.14(b)(ii)A.

**"Appointed Principal Contractor's Contract Management Plans"** means, in respect of the relevant Appointed Principal Contractor:

- (a) the Appointed Principal Contractor's Project Health and Safety Management Plan;
- (b) the Appointed Principal Contractor's Construction Environmental Management Plan; and
- (c) any other plan nominated by the Principal's Representative from time to time,

each as updated from time to time and provided to the CIDS/ODS Contractor.

**"ARTC"** means Australian Rail Track Corporation Limited ABN 75 081 455 754.

**"Asset Lifecycle"** has the meaning assigned to it in the AMB Charter.

**"Asset Lifecycle Services"** means the aspects of the CIDS/ODS Contractor's Activities which relate to the Asset Lifecycle of Transport Assets.

**"Asset Management Branch" or "AMB"** means the independent unit of that name (formerly the Asset Standards Authority) established within Transport for NSW whose functions include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets for the Asset Lifecycle. Information about the AMB and the network and asset standards can be found on <https://www.transport.nsw.gov.au/industry/asset-management-branch>.

**"Asset Management Information"** means the information and documents relating to the operation and maintenance of the assets forming the Works as required by Appendix F06 of the SWTC.

**"Associates"** means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative, but excludes:
  - (i) the Independent Certifier;
  - (ii) the Environmental Representative;
  - (iii) the CIDS/ODS Contractor, each entity that comprises the CIDS/ODS Contractor and its Subcontractors;
  - (iv) any Interface Contractors and their respective subcontractors;
  - (v) the Operator and its subcontractors; and
  - (vi) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (v) above; and
- (b) in respect of the CIDS/ODS Contractor, its Subcontractors, each entity that comprises the CIDS/ODS Contractor, the Parent Company Guarantors and any of the respective employees, agents, contractors or officers of the CIDS/ODS Contractor or its Subcontractors or the Parent Company Guarantors (excluding the Independent Certifier and its employees, agents, consultants and officers).

**"ATSB"** means the Australian Transport Safety Bureau constituted under the *Transport Safety Investigation Act 2003* (Cth).

**"Authorised User"** has the meaning given in clause 6.11(e).

**"Authority"** includes:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes AMB);
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the CIDS/ODS Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of, any Utility Services, excluding the Operator.

**"Authority Approval"** means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be) to:

- (a) carry out the CIDS/ODS Contractor's Activities including for the avoidance of doubt all things required for conducting work within the Rail Corridor or affecting rail operations; or
- (b) occupy and use for its intended purpose the completed Works or a completed Portion,

and for the avoidance of doubt includes:

- (c) the Planning Approval; and
- (d) the EPL.

**"Bankstown Line"** means the railway line between Sydenham and Bankstown operated, as at the date of this Contract, by Sydney Trains for railway passenger services and associated infrastructure.

**"Business Day"** means any day other than a Saturday, Sunday, public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

**"CCU"** means Construction Compliance Unit, the unit established within NSW Industrial Relations to monitor compliance with and receive reports of alleged breaches of the NSW Guidelines.

**"Chain of Responsibility Provisions"** refers to any section of the Heavy Vehicle National Law under which the CIDS/ODS Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle National Law).

**"Change in Authority Approval"** means a change:

- (a) in an Authority Approval which is in existence as at the date of this Contract; and
- (b) which occurs after the date of this Contract.

**"Change in Codes and Standards"** means a change in the Codes and Standards taking effect after the date of this Contract, excluding a change in the Codes and Standards which, as at the date of this Contract:

- (a) was published or of which public notice had been given (even as a possible change in the Codes and Standards) in substantially the same form as the change in the Codes and Standards eventuating after the date of this Contract; or
- (b) a party experienced and competent in the delivery of works and services similar to the Works or the CIDS/ODS Contractor's Activities (as applicable) would have reasonably foreseen or anticipated.

**"Change in Control"** means, in respect of an entity, any event such that a change occurs in the Control of that entity.

**"Change in Law"** means (if it takes effect after the date of this Contract):

- (a) a change in an existing Law (other than a change in an Authority Approval or a Pandemic Change in Law); or
- (b) a new Law (other than a new Authority Approval or a Pandemic Change in Law)

but excludes:

- (c) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes;
- (d) a change in an existing Law or a new Law which:
  - (i) was caused or contributed to by any act or omission of the CIDS/ODS Contractor; or
  - (ii) as at the date of this Contract:
    - A. was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law) in substantially the same form as the change in an existing Law or new Law eventuating after the date of this Contract; or
    - B. in the case of paragraph (a) or (b) above, a person experienced and competent in the delivery of works and services similar to the CIDS/ODS Contractor's Activities would have reasonably foreseen or anticipated; and
- (e) a Pandemic Change in Law.

**"CIDS/ODS Contract Documents"** means the documents listed in item 6 of Schedule 1.

**"CIDS/ODS Contractor's Activities"** means all things or tasks which the CIDS/ODS Contractor is, or may be, required to do to comply with its obligations under this Contract, including:

- (a) the design, manufacture, transportation, installation, testing, Commissioning and hand-over of the Works;
- (b) the provision of Temporary Works and Construction Plant;
- (c) the Trial;
- (d) the Interim Support Services;
- (e) the Post Construction Completion Activities; and
- (f) anything incidental or ancillary to the obligations in paragraphs (a) to (e).

**"CIDS/ODS Contractor's Background IP"** means any Intellectual Property developed by the CIDS/ODS Contractor or its Associate independently of this

Contract and used in relation to the CIDS/ODS Contractor's Activities or otherwise provided or made available to the Principal under this Contract, including any modifications or enhancements to such Intellectual Property.

**"CIDS/ODS Contractor's Program"** means the program prepared and provided by the CIDS/ODS Contractor in accordance with clause 13.3, as developed and updated in accordance with clause 13.3 from time to time.

**"CIDS/ODS Contractor's Representative"** means the person notified to the Principal's Representative in accordance with clause 12.4(a) as being the CIDS/ODS Contractor's Representative.

**"CIDS/ODS O&M Principles"** means the principles set out in Schedule 45.

**"CIDS/ODS"** means the corridor intruder detection system and object detection system to be installed by the CIDS/ODS Contractor

**"Claim"** includes any claim, demand, action, proceeding or suit of any kind whatsoever for an increase in the Contract Sum, for payment of money (including damages), for an extension of time to a Date for Construction Completion or a Date for Milestone Achievement or for any other form of relief:

- (a) under, arising out of, or in any way in connection with, this Contract, including any direction of the Principal's Representative;
- (b) arising out of, or in any way in connection with, the CIDS/ODS Contractor's Activities or the Works or either party's conduct prior to the date of this Contract; or
- (c) otherwise at Law or in equity including:
  - (i) under or for breach of statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution, including restitution based on unjust enrichment.

**"Codes and Standards"** means:

- (a) the relevant building codes (including the National Construction Code), Standards Australia codes, Asset Management Branch (AMB) or Asset Standards Authority (ASA) standards, and standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract (including the Disability (Access to Premises – Buildings) Standards 2010), including any specified or required by this Contract;
- (b) the NSW Guidelines, Environmental Management Guidelines (4<sup>th</sup> edition) (December 2019), Work Health and Safety Management Guidelines (6<sup>th</sup> edition) (December 2019), Training Management Guidelines (February 2009), Quality Management Guidelines (4<sup>th</sup> edition) (December 2019), GREP and any other NSW Government guidelines and requirements specified or required by this Contract; and

- (c) if (and to the extent) the codes and standards referred to in paragraphs (a) or (b) are irrelevant, then relevant international codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract.

**"Collateral Warranty Deed Poll"** means a deed poll in substantially the same form as Schedule 37.

**"Commissioning"** has the meaning given to that term in the SWTC.

**"Commonwealth"** means the Commonwealth of Australia.

**"Completion"** means the stage in the execution of the CIDS/ODS Contractor's Activities when:

- (a) Construction Completion has been achieved in respect of each Portion;
- (b) the CIDS/ODS Contractor has carried out and passed all tests which are required under this Contract to be carried out and passed;
- (c) the CIDS/ODS Contractor has:
  - (i) completed all Post Construction Completion Activities;
  - (ii) corrected:
    - A. all Agreed Defects and Minor Defects that are listed in the Notice of Construction Completion with respect to each Portion; and
    - B. all Defects identified after Construction Completion of each Portion;
  - (iii) executed a certificate in the form of Schedule 30 and provided it to the Principal's Representative and the Independent Certifier;
  - (iv) obtained all Authority Approvals that it is required under this Contract to obtain which:
    - A. were not obtained before Construction Completion of the last Portion to reach Construction Completion; or
    - B. are to be obtained prior to Completion,and provided such Authority Approvals to the Principal's Representative;
  - (v) provided the training referred to in Appendix C02 of the SWTC to the reasonable satisfaction of the Principal's Representative; and
  - (vi) given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all Asset Management Information (including as-built drawings) which:



- A. was not required by this Contract to be given to the Principal's Representative before Construction Completion of the relevant Portion; and
  - B. has not been rejected by the Principal's Representative in accordance with clause 12.10(c)(ii); and
- (d) the CIDS/ODS Contractor has done everything else which is stated to be a condition precedent to Completion, or which the CIDS/ODS Contractor is otherwise expressly required by this Contract to do prior to Completion being achieved.

**"Completion Payment Claim"** means a payment claim lodged by the CIDS/ODS Contractor in accordance with clause 14.9.

**"Concept Design"** means the design documentation submitted by the CIDS/ODS Contractor as part of its Tender, as set out in Appendix H01 of the SWTC.

**"Condition Precedent"** means a condition precedent set out in Schedule 2.

**"Condition Precedent Deadline Date"** means the date which is 10 Business Days after the date of this Contract or such other date agreed between the parties.

**"Configuration Management Framework"** means the framework established by the AMB from time to time for configuration management.

**"Consequential Loss"** means any:

- (a) loss of income, loss of revenue, loss of profit, loss of rent, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or
- (b) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent.

**"Construction and Site Management Plan"** has the meaning given to that term in the SWTC.

**"Construction Completion"** means, in respect of a Portion, the stage in the execution of the CIDS/ODS Contractor's Activities, excluding Post Construction Completion Activities, in respect of that Portion when:

- (a) the Portion is complete in accordance with this Contract except for any Accepted Defects, Agreed Defects and Minor Defects;
- (b) the CIDS/ODS Contractor has:
  - (i) carried out and passed all tests that:
    - A. are required under this Contract to be carried out and passed before the Portion reaches Construction Completion; or

- B. must necessarily be carried out and passed before the Portion can be used for its intended purpose and to verify that the Portion is in the condition this Contract requires the Portion to be in at Construction Completion;
- (ii) without limiting clause 3.3(c)(v), obtained all Authority Approvals that it is required under this Contract to obtain before Construction Completion of the Portion and provided such Authority Approvals to the Principal's Representative;
  - (iii) given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all documents and information in respect of the installation, testing, commissioning, completion, use and maintenance of the Portion which:
    - A. are required by this Contract to be given to the Principal's Representative before Construction Completion of the Portion; or
    - B. must necessarily be handed over before the Portion can be used for its intended purpose,including copies of all documentation in accordance with the requirements of the SWTC;
  - (iv) executed a certificate in the form of Schedule 28 for the Portion and provided it to the Principal's Representative and the Independent Certifier;
  - (v) removed all Construction Plant from the parts of the Site that relate to that Portion, other than any Construction Plant necessary to facilitate the handover of that Portion to the Principal (or its nominee) or which is required to be retained on the Site in accordance with clause 10.4(c) (where approved by the Principal's Representative in accordance with clause 10.4(c));
  - (vi) in respect of any Extra Land occupied or used in connection with that Portion, provided the Principal's Representative with:
    - A. properly executed releases on terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or
    - B. if the relevant owner or occupier, or other person having an interest in that Extra Land, has failed or refused to execute such a release within 15 Business Days after it was provided by the CIDS/ODS Contractor to the owner, occupier or other person:
      - 1. copies of all correspondence between the CIDS/ODS Contractor and the owner, occupier or other person; and

2. evidence that the condition of the Extra Land satisfies the requirements of this Contract;
  - (vii) removed all rubbish, surplus materials and Temporary Works from the relevant parts of the Site and Extra Land relevant to that Portion in accordance with clause 10.4(b);
  - (viii) provided the Principal with all spare parts, consumables and special tools as required by the SWTC; and
  - (ix) in respect of the first Portion to achieve Construction Completion only, executed the Collateral Warranty Deed Poll and provided it to the Principal's Representative;
- (c) the Independent Certifier has issued a certificate in the form of Schedule 24 in respect of all Design Stage 3 Design Documentation which has been provided to the Independent Certifier by the Principal under clause 6.3(d); and
- (d) the CIDS/ODS Contractor has done everything else which is stated to be a condition precedent to Construction Completion of that Portion, or which the CIDS/ODS Contractor is otherwise expressly required by this Contract to do prior to Construction Completion of that Portion being achieved.

**"Construction Environmental Management Plan"** means the plan of that name prepared by the Appointed Principal Contractor which is required to be implemented by the CIDS/ODS Contractor pursuant to the SWTC.

**"Construction Plant"** means equipment, appliances, machinery and things used in the execution of the CIDS/ODS Contractor's Activities but not forming part of the Works.

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

- (a) at a concentration above the concentration at which the substance (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorinated biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals (and includes any "Hazardous Chemical" as defined in the WHS Legislation).

**"Contract"** means this contract between the Principal and the CIDS/ODS Contractor in respect of the Works, the Temporary Works and the CIDS/ODS Contractor's Activities.

**"Contract Documentation"** means all documentation in computer readable or written forms brought into (or required to be brought into) existence as part of, or for the purpose of, performing the CIDS/ODS Contractor's Activities (after the date of this Contract) including:

- (a) Design Documentation;
- (b) Contract Management Plans;
- (c) Asset Management Information; and
- (d) all plans, manuals, programs and other documents,

and for the avoidance of doubt, does not include any of the CIDS/ODS Contractor's Background IP.

**"Contract Management Plan"** has the meaning given to that term in the SWTC.

**"Contract Sum"** means the Original Contract Price increased or decreased by the amounts by which this Contract requires the Contract Sum to be increased or decreased.

**"Control"** has the meaning given in the Corporations Act.

**"Corporations Act"** means the *Corporations Act 2001* (Cth).

**"Corridor Works Contractor"** means the unincorporated joint venture between John Holland Pty Ltd (ABN 11 004 282 268) and Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000).

**"COVID-19"** means the disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020, or any future forms or strains of the disease known as Coronavirus (COVID-19).

**"Critical Domestic Materials"** means:

- (a) CCTV poles; and
- (b) solar panels and related accessories.

**"Crown Building Work"** has the meaning given to that term in section 6.1 of the EP&A Act.

**"Date for Construction Completion"** means, in respect of a Portion:

- (a) at the date of this Contract, the applicable date specified as the Date for Construction Completion for that Portion in Schedule 3; or
- (b) where, in respect of that Portion, an extension of time for Construction Completion is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting from that extension of time.

**"Date for Milestone Achievement"** means, in respect of a Milestone:

- (a) at the date of this Contract, the applicable date specified as the date for Milestone Achievement for that Milestone in Schedule 3; or
- (b) where, in respect of that Milestone, an extension of time for Milestone Achievement is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting from that extension of time.

**"Date of Construction Completion"** means, in respect of a Portion, the date notified in the Notice of Construction Completion for that Portion as the date Construction Completion was achieved.

**"Date of Milestone Achievement"** means, in respect of a Milestone, the date notified in the Notice of Milestone Achievement for that Milestone as the date Milestone Achievement was achieved.

**"Date of Shutdown"** has the meaning given to that term in clause 13.2(b).

**"Day 1 Clauses"** means clauses 1 (Definitions and Interpretation), 2 (Conditions Precedent), 3.2 (Subcontracts), 3.7 (Unconditional Undertakings and Parent Company Guarantee), 3.3(a) and 3.3(c) (Compliance with Law), 3.15 (Third Party Agreements), 4.7 (Information Documents and Materials), 16.2 (Indemnity), 16.5 (Contract Works (Material Damage) Insurance), 16.6 (Public and Products Liability Insurance), 16.7 (CIDS/ODS Contractor's Insurance Obligations), 16.9(a) (Period of Insurance), 17 (Liability), 19 (Disputes), 20 (General), 21 (Representations and warranties), 22 (Notification of Claims), 23 (General Provisions Relating to GST), 24 (TfNSW's Statement of Business Ethics) and 25 (NSW Guidelines) and any other clauses or schedules required to have commenced in order to give effect to those clauses.

**"Defect"** means any:

- (a) defect, deficiency, fault, error or omission in the Works or Temporary Works, including cracking, subsidence, shrinkage and movement outside the required tolerances; or
- (b) other aspect of the Works, Temporary Works or the CIDS/ODS Contractor's Activities that is not in accordance with the requirements of this Contract, including non-compliances, non-conformances and non-conformities.

**"Defects Rectification Period"** means the period stated in item 1 of Schedule 1, as extended by clause 11.6.

**"Design Documentation"** means all:

- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models, samples, prototypes, calculations, drawings, shop drawings, digital records, business rules, system processes and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means; and

(b) computer software,

which are required for the performance of the CIDS/ODS Contractor's Activities, or which the CIDS/ODS Contractor or any other person creates in performing the CIDS/ODS Contractor's Activities.

**"Design Stage"** means each of Design Stage 1, Design Stage 2 and Design Stage 3.

**"Design Stage 1"** means stage 1 of the development of the Design Documentation as described in Appendix F01 of the SWTC.

**"Design Stage 2"** means stage 2 of the development of the Design Documentation as described in Appendix F01 of the SWTC.

**"Design Stage 3"** means stage 3 of the development of the Design Documentation as described in Appendix F01 of the SWTC.

**"Dispute"** has the meaning given to that term in clause 19.1.

**"Document"** means any document (including any Design Documentation) which is required to be submitted for the review of the Principal's Representative under this Contract.

**"Draft Third Party Agreement"** has the meaning given to that term in clause 3.15(a)(ii).

**"Environment"** means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and
- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

**"Environmental Law"** means any Law concerning the Environment and includes Laws concerning:

- (a) the carrying out of uses, works or development, the erection of a building or the subdivision of land (including the EP&A Act);
- (b) emissions of substances into the atmosphere, water and land;
- (c) Pollution and Contamination of the atmosphere, water and land;
- (d) production, use, handling, storage, transportation and disposal of:
  - (i) waste;
  - (ii) hazardous substances; and

- (iii) dangerous goods;
- (e) threatened, endangered and other flora and fauna species;
- (f) conservation, heritage and natural resources; and
- (g) the health and safety of people,

whether made or in force before or after the date of this Contract.

**"Environmental Liabilities"** means any of the following liabilities arising before the expiration or termination of this Contract:

- (a) all costs, expenses, losses, damages, fines or penalties associated with undertaking the remediation of any Contamination ordered or required by any Authority or court of any land or building;
- (b) any compensation or other monies that an Authority or court requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all costs, charges and expenses incurred in complying with an Environmental Law; and
- (e) all other Claims, costs, expenses, losses, damages, fines or penalties payable under in respect of an Environmental Law.

**"Environmental Representative"** means the person identified in item 2 of Schedule 1 as appointed by the Principal and defined by the Planning Approval, or any replacement notified to the CIDS/ODS Contractor by the Principal's Representative.

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

**"EPL"** means an environment protection licence issued under the *Protection of the Environment Operations Act 1997* (NSW).

**"Excepted Risk"** means:

- (a) each of the following:
  - (i) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage;
  - (ii) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) (other than a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth)); and
  - (iii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

in each case occurring within Australia and only to the extent not caused by the CIDS/ODS Contractor or its Associates; and

- (b) in respect of any CIDS/ODS installed by the CIDS/ODS Contractor, malicious or accidental damage to the CIDS/ODS during the period between installation and the Date of Construction Completion of the relevant Portion, but only to the extent not caused or contributed to by the CIDS/ODS Contractor or its Associates.

**"Excluded Claim"** means any claim:

- (a) with respect to a Change in Law under clause 3.3(d);
- (b) arising out of a Pandemic Change in Law or Pandemic Relief Event under clause 3.20;
- (c) for a Variation directed in accordance with clause 9.2 or a direction by the Principal's Representative to which clause 22.1 applies;
- (d) for an extension of time under clause 13.9; or
- (e) for payment under clause 14, including claims under clauses 14.9 and 14.11.

**"Existing Operations"** means:

- (a) all infrastructure (including existing infrastructure, infrastructure that is under construction and Utility Services) which:
  - (i) does not form part of any Interface Work or infrastructure that is the subject of a Project Cooperation and Integration Deed;
  - (ii) is the subject of a Third Party Agreement (other than an Additional Third Party Agreement); and
  - (iii) is owned, operated or under the control of an Existing Operator; and
- (b) the businesses and operations undertaken by an Existing Operator, on or in the vicinity of the Site.

**"Existing Operator"** means:

- (a) ARTC;
- (b) TAHE;
- (c) Sydney Trains;
- (d) NSW Trains;
- (e) Ausgrid, being the statutory State owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW);
- (f) Jemena Limited ABN 95 052 167 405;
- (g) Sydney Water Corporation ABN 49 776 225 038;



- (h) TfNSW;
- (i) Telstra Corporation Limited ABN 33 051 775 556 and other telecommunication operators;
- (j) Transdev Sydney Pty Limited ABN 34 096 046 052;
- (k) local councils; and
- (l) any other person who owns, operates or controls any infrastructure (including existing infrastructure, infrastructure that is under construction and the Utility Services) or undertakes any business or operation on or in the vicinity of the Site,

and any of their Related Bodies Corporate and contractors.

**"Expert"** means the person appointed to determine a Dispute pursuant to clause 19.5.

**"Extra Land"** has the meaning given in clause 4.5(a).

**"Final Certificate"** means the certificate issued by the Principal's Representative pursuant to clause 15.10(b).

**"Final Completion"** means the stage in the execution of the CIDS/ODS Contractor's Activities when the obligations of the CIDS/ODS Contractor pursuant to this Contract have been discharged and all Defects Rectification Periods (including any extension under clause 11.6) have expired and the CIDS/ODS Contractor has rectified all Defects in accordance with the Contract.

**"Final Design Documentation"** means Design Stage 3 Design Documentation that in accordance with clause 6:

- (a) has not been rejected by the Principal;
- (b) has been certified by the TAO (if applicable);
- (c) in respect of Design Stage 3 Design Documentation which is provided to the Independent Certifier under clause 6.3(d), has been certified by the Independent Certifier; and
- (d) in respect of Design Documentation that relates to construction work that requires NAC Gate 3 approval:
  - (i) the NAC CCR Package submitted by the CIDS/ODS Contractor in respect of that Design Documentation has been accepted by the NAC as satisfying the NAC Requirements; or
  - (ii) the CIDS/ODS Contractor has completed all NAC Required Actions in respect of that Design Documentation.

**"Final Payment Claim"** means a payment claim lodged by the CIDS/ODS Contractor in accordance with clause 14.11.

**"Financial Assessment"** has the meaning given to that term in clause 12.13(a).

**"Force Majeure Event"** means:

- (a) an Excepted Risk;
- (b) a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia;
- (c) an earthquake occurring within Australia;
- (d) a flood which might at the date of this Contract be expected to occur less frequently than once every 100 years (based on the 1:100 year average recurrence interval flood event) occurring within Australia; or
- (e) a fire or explosion resulting from any event referred to in paragraphs (a), (c) or (d) above,

which:

- (f) is beyond the reasonable control of the CIDS/ODS Contractor and its Associates; and
- (g) prevents or delays the CIDS/ODS Contractor from performing the CIDS/ODS Contractor's Activities, where that event or the consequence of that event does not arise from any act or omission of the CIDS/ODS Contractor or its Associates (including from any breach by the CIDS/ODS Contractor or its Associates of a CIDS/ODS Contract Document).

**"General Conditions"** means clauses 1 to 25 of this Contract.

**"Good Industry Practice"** means that degree of skill, care, prudence, foresight and practice which would reasonably be expected of a skilled and experienced person, engaged in the same or a similar type of undertaking as that of the CIDS/ODS Contractor, as the case may be, under the same or similar circumstances as the performance of the CIDS/ODS Contractor's Activities or the delivery of the Works and the Temporary Works.

**"Greenhouse Data"** means all data, information, records and reports of the type that a registered corporation or any other person may be required or entitled to provide under the NGER Legislation, including as to:

- (a) greenhouse gas emissions, energy production or energy consumption; and
- (b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project,

relating to any aspect of any of the CIDS/ODS Contractor's Activities or the activities of any of the CIDS/ODS Contractor's personnel in connection with the CIDS/ODS Contractor's Activities.

**"GREP"** means the NSW Government Resource Efficiency Policy.

**"GST" or "Good and Services Tax"** means the tax payable on taxable supplies under the GST Legislation.

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

**"GST Legislation"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

**"Hand Back"** occurs in respect of a Track Possession when the CIDS/ODS Contractor provides Sydney Trains (or Sydney Trains provides the CIDS/ODS Contractor) with the relevant documentation for hand back of a Track Possession as required by the Network Rules and Sydney Trains possession management processes.

**"Heavy Vehicle National Law"** means the *Heavy Vehicle National Law (NSW) No. 42a* and all associated regulations.

**"IDAR Panel"** means the Independent Dispute Avoidance and Resolution Panel constituted under the IDAR Panel Agreement, referred to in clause 19.

**"IDAR Panel Agreement"** means the agreement which appears in Schedule 43.

**"IDAR Panel Agreement Accession Deed Poll"** means an accession deed poll substantially in the form of Schedule 1 of the IDAR Panel Agreement.

**"Impact Date"** has the meaning given to that term in clause 3.20(e)(i)A.

**"Incident"** means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the CIDS/ODS Contractor's Activities including:
  - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW, ONRSR or any other work health and safety regulator;
  - (ii) loss of containment, escape of or migration of Contamination off-Site and into the Environment;
  - (iii) an occurrence or set of circumstances as a consequence of which pollution (air, water, noise or land) or an adverse environmental impact has occurred or is likely to occur;
  - (iv) any fire or dangerous event on the Site or Extra Land;
  - (v) a security breach;
  - (vi) any unauthorised removal of trees;
  - (vii) a non-compliance with an Authority Approval;
  - (viii) any public complaint; or

- (ix) any incident defined in the Sydney Metro Principal Contractor Health and Safety Standard; or
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

- (c) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and
- (d) a "notifiable incident" under the WHS Legislation and a "notifiable occurrence" under the Rail Safety National Law.

**"Independent Certifier"** means the person or persons appointed to be the Independent Certifier by the Principal, the CIDS/ODS Contractor and the Operator under the Independent Certifier Deed.

**"Independent Certifier Deed"** means the deed titled "Sydney Metro City & Southwest Independent Certification of the CIDS/ODS Works - Independent Certifier Deed" to be entered into between the Principal, the CIDS/ODS Contractor, the Operator and the Independent Certifier in the form set out in Schedule 40.

**"Information Documents and Materials"** means:

- (a) the items specified in Exhibit D; and
- (b) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the CIDS/ODS Contractor unless expressly identified as forming part of this Contract,

including anything which is expressly stated by this Contract to form part of the Information Documents and Materials.

**"Initial CIDS/ODS Contractor's Program"** means the program in Schedule 38.

**"Initial Pandemic Management Plan"** means the initial Pandemic Management Plan required to be provided by the CIDS/ODS Contractor pursuant to the SWTC.

**"Initial Payment"** means the initial payment to be made to the CIDS/ODS Contractor in accordance with Clause 14, of the amount stated in Schedule 4.

**"Insolvency Event"** means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Contract for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual is made bankrupt;

- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
  - (ii) the corporation enters a deed of company arrangement or composition with creditors;
  - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
  - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
  - (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
  - (vi) a sequestration order or winding up order is made in respect of the corporation;
  - (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
  - (viii) a mortgagee of any property of the corporation takes possession of that property; or
  - (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

**"Inspection"** includes auditing, surveillance, monitoring, testing, review, examination and measuring.

**"Institution"** means any:

- (a) authorised deposit taking institution holding an authority to carry on banking business in Australia under the terms of the *Banking Act 1959* (Cth); or
- (b) insurance company which is regulated by the Australian Prudential Regulatory Authority and has the Required Rating.

**"Integrated Factory Acceptance Tests"** or **"IFAT"** has the meaning given to that term in the SWTC.

**"Intellectual Property"** means all rights in copyright, inventions (including patents and innovation patents), registered and unregistered trademarks or name, registered and registrable designs, confidential information, trade secrets, technical data and know how, circuit layout rights, and all other protected rights of intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

**"Interface Contractor"** means an Other Contractor that is carrying out, or that will carry out, Interface Work, including those contractors:

- (a) listed in item 3 of Schedule 1; or
- (b) otherwise identified by the Principal's Representative as an Interface Contractor.

**"Interface Contractor Cooperation and Integration Deed"** means a deed to be entered into between the Principal, the CIDS/ODS Contractor and an Interface Contractor substantially in the form of either Schedule 39 or Schedule 40, as directed by the Principal.

**"Interface Work"** means any activities undertaken by an Interface Contractor which interface with or affect or are affected by the CIDS/ODS Contractor's Activities, the Works or the Temporary Works, including those described in the SWTC.

**"Interface Works Change"** means any change, modification or variation to the Interface Works after the date of this Contract, including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them, but not including a change, modification or variation that the relevant Interface Contractor is entitled to make to the design of the relevant Interface Works under the relevant Interface Works Contract without the Principal's consent where following any such change, modification or variation, the Interface Works will continue to comply with the requirements of the relevant Interface Works Contract.

**"Interface Works Contract"** means any contract entered into between the Principal and an Interface Contractor in respect of Interface Work.

**"Interim Support Services"** has the meaning given to that term in the SWTC and includes the activities referred to in section 2.3.7 of the SWTC.

**"Investigative Authority"** means any Authority having a statutory right to investigate the CIDS/ODS Contractor's Activities or any activities of the Principal which are affected by the CIDS/ODS Contractor's Activities, including ATSB, ONRSR and OTSI.

**Key Plant and Equipment** means the following key plant, equipment and goods (including all associated equipment, spare parts and accessories):

- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**"Law"** means:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the National Construction Code, any other building codes or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Authority Approvals (including any condition or requirement under them).

**"LD Cap"** means the amount set out in item 22 of Schedule 1.

**"Manufacturing and Procurement Plan"** means the Contract Management Plan of that name.

**"Master Interface Protocols Deed Poll"** means a deed poll in substantially the same form as Schedule 41.

**"Milestone"** means a milestone specified in Table 2 of Schedule 3.

**"Milestone Achievement"** means, in respect of a Milestone, the stage in the execution of the CIDS/ODS Contractor's Activities when the specified parts of the Works as set out in Table 2 of Schedule 3 have achieved the level of completion required for that Milestone in Table 2 of Schedule 3 except for any Accepted Defects.

**"Milestone Performance Payment"** means an amount identified as a Milestone Performance Payment in Table 3 of Schedule 3.

**"Minor Defect"** means a Defect which, at Construction Completion:

- (a) is capable of being corrected:
  - (i) after the relevant part of the Works have been handed over to the Principal (or its nominee); and
  - (ii) without:
    - A. causing unreasonable delay or disruption to the activities that are to be performed by any Interface Contractor within the Site; or
    - B. prejudicing the convenient intended use of the Portion; and
- (b) the Independent Certifier determines (acting reasonably) that the CIDS/ODS Contractor has reasonable grounds for not promptly correcting prior to handover of the Works to the Principal (or its nominee),

but does not include an Accepted Defect or an Agreed Defect.

**"Minor Non-Compliance"** has the meaning given to that term in clause 6.6(c)(i)B.1)a).

**"Mitigation Measure"** means a measure, action, standard or precaution to mitigate the impact of the Works as specified in:

- (a) the Sydney Metro City & South West Chatswood to Bankstown Preferred Infrastructure Report located on the NSW Department of Planning and Environment website <http://www.planning.nsw.gov.au>; and
- (b) Schedule 6.

**"Modern Slavery"** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

**"Modern Slavery Laws"** means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2019* (Cth).



**"Modern Slavery Offence"** has the same meaning as in the *Modern Slavery Act 2018* (NSW), and includes an offence listed from time to time in Schedule 2 to the *Modern Slavery Act 2018* (NSW).

**"Modern Slavery Practice"** includes any one or more of the following:

- (a) using any form of forced or child labour or deceptive recruitment practices;
- (b) requiring personnel to work excessive hours in the performance of, or in connection with, this Contract;
- (c) save for short periods where legally required to do so for the purposes of administering employment, retaining the passports and/or identity documents of personnel or any potential personnel;
- (d) denying personnel the right to terminate their employment or join or form, or discouraging personnel from joining or forming, a trade union if they so desire;
- (e) save where required by Law, paying wages to any individual other than personnel; and
- (f) if any personnel are migrant workers, providing migrant workers with any lesser entitlements than given to local employees.

**"Moral Rights"** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship conferred by the *Copyright Act 1968* (Cth) or any Law outside Australia and rights of a similar nature anywhere in the world, that exists now or in the future.

**"MS Information"** means any information as to any risks of, and controls in place to mitigate, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals (as applicable).

**"NAC CCR Package"** means a package of documentation meeting the requirements set out in section 2.9 of Appendix F01 of the SWTC.

**"NAC Required Actions"** has the meaning given in clause 6.7(d)(ii).

**"NAC Requirements"** means the requirements set out in the SWTC including section 2.9 of Appendix F01 of the SWTC.

**"National Construction Code"** means the *National Construction Code 2019* published by the Australian Building Codes Board.

**"Network Assurance Committee"** or **"NAC"** means the network assurance committee established by the Principal to manage configuration changes for the Sydney Metro delivery office in accordance with the Configuration Management Framework.

**"Network Rules"** means the rules, systems and procedures relating to railway operations established or adopted by Sydney Trains in its capacity as a rail

infrastructure manager to ensure the safety of its railway operations for the purposes of sections 52(3)(c) and 52(4)(c) (Duties of rail transport operators) of the Rail Safety National Law which are available at <https://railsafe.org.au/> or as otherwise advised by the Principal.

**"NGER Legislation"** means *National Greenhouse and Energy Reporting Act 2007* (Cth), related regulations and legislative instruments.

**"Nominated Member"** has the meaning given in clause 19.3(b).

**"Non-Project Party Liability"** means a liability or claim:

- (a) that the Principal incurs to or from a party who is not:
  - (i) an Associate of the Principal; or
  - (ii) a party to a CIDS/ODS Contract Document or a Third Party Agreement; and
- (b) for which the third party can make or could have made a bona fide claim in respect of which it has a cause of action at Law, or under contract with the CIDS/ODS Contractor or any of its Associates, directly against the CIDS/ODS Contractor rather than against the Principal.

**"Notice of Completion"** means a notice in the form of Schedule 31 issued by the Independent Certifier pursuant to clause 15.4(b)(i).

**"Notice of Construction Completion"** means a notice in the form of Schedule 29 issued by the Independent Certifier pursuant to clause 15.3(e)(i).

**"Notice of Milestone Achievement"** means a notice issued by the Principal's Representative pursuant to clause 15.2(e)(iii).

**"NSW Guidelines"** has the meaning given in clause 25.1.

**"NSW Procurement Board"** means the board established under section 164 of the *Public Works and Procurement Act 1912* (NSW).

**"NSW Rail Assets"** has the meaning assigned to it in the AMB Charter.

**"NSW Trains"** means the corporation by that name constituted by part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

**"O&M Manual"** means the operation and maintenance manuals forming part of the Asset Management Information not rejected by the Principal's Representative under clause 12.10(c)(ii).

**"OCC"** has the meaning given to that term in the SWTC.

**"ONRSR"** means the Office of the National Rail Safety Regulator constituted under the Rail Safety National Law.

**"Open Book Basis"** means the provision of pricing, costing and other information reasonably required by the Principal in order to enable an assessment of actual costs in a clear, transparent and fully auditable manner.

**"Operator"** means:

- (a) the TSOM Contractor; or
- (b) any other entity that the Principal engages to operate and, if required by the Principal, maintain Sydney Metro City & Southwest or any part of it.

**"Operator Cooperation and Integration Deed"** means a deed to be entered into between the Principal, the CIDS/ODS Contractor and the Operator substantially in the form of Schedule 40.

**"Option"** means an option referred to in Schedule 19.

**"Original Contract Price"** means the amount set out in item 4 of Schedule 1, which is, and all components of which are, exclusive of GST.

**"Other Contractor"** means any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work on or about the Site, other than the CIDS/ODS Contractor and its Subcontractors of any tier involved in the CIDS/ODS Contractor's Activities.

**"OTSI"** means the Office of Transport Safety Investigations constituted under the *Transport Administration Act 1988* (NSW).

**"Overhead Costs"** means the costs referable to the items described in Part B of Schedule 13.

**"Pandemic"** means:

- (a) COVID-19; and
- (b) any other infectious disease that is declared as a pandemic by the World Health Organisation after the date of this Contract.

**"Pandemic Change in Law"** means (if it takes effect after the date of this Contract):

- (a) a change in (including any extension, repeal, revocation or expiry of) an existing Pandemic Law (other than a change in an Approval);
- (b) a new Pandemic Law (other than a new Approval),

but excludes an amendment, repeal or change of an existing Pandemic Law or a new Pandemic Law:

- (c) in respect of Taxes;
- (d) which was caused or contributed to by an act or omission of the CIDS/ODS Contractor or its Associates; or

- (e) which, as at the date of this Contract was published or of which public notice had been given (even as a possible amendment, repeal or change of an existing Pandemic Law or a possible new Pandemic Law or judgment) in substantially the same form as the change in an existing Pandemic Law or new Pandemic Law eventuating after the date of this Contract,

but in each case which delays the CIDS/ODS Contractor in achieving Milestone Achievement of a Milestone or Construction Completion of a Portion (as applicable) by at least one full day and subject to the CIDS/ODS Contractor demonstrating to the Principal that it has complied and is complying with the Pandemic Management Plan.

**"Pandemic Construction Site Closure"** means a full day closure of the Construction Site which:

- (a) occurs after the date of this Contract;
- (b) occurs as a result of an outbreak of COVID-19 or other Pandemic;
- (c) has been closed in compliance with the CIDS/ODS Contractor's Pandemic Management Plan; and
- (d) has a material impact on the CIDS/ODS Contractor's Activities.

**"Pandemic Costs"** has the meaning given to that term in clause 3.20(e)(iii).

**"Pandemic Direction"** means a direction, order, requirement, declaration or exercise of a power by a relevant Authority in New South Wales or in any other Australian jurisdiction in response to COVID-19 or another Pandemic which the CIDS/ODS Contractor is required to implement in order to comply with its obligations at Law, including:

- (a) a public health order or direction issued by a relevant Authority under the *Public Health Act 2010* (NSW) or the equivalent public health legislation in another Australian jurisdiction;
- (b) the exercise of powers or issuing of directions or requirements by a relevant Authority under the *Biosecurity Act 2015* (Cth);
- (c) the exercise of powers or issuing of directions pursuant to a declaration of an emergency as a 'state of disaster' or a declaration of a 'state of emergency'; or
- (d) the exercise of powers or issuing of directions analogous or with a similar effect to those contemplated in paragraphs (a) – (c).

**"Pandemic Law"** means any Law or direction by an Authority in Australia under a Law (including any Pandemic Direction):

- (a) arising out of or directly related to COVID-19; or
- (b) which is otherwise connected with or applicable to any Pandemic.

**"Pandemic Management Plan"** means the Contract Management Plan referred to as the Pandemic Management Plan in the SWTC.

**"Pandemic Mitigation Measures"** means the measures set out in Schedule 46.

**"Pandemic Relief Event"** means any of the following occurring after the date of this Contract:

- (a) a Pandemic Subcontractor's Plant Closure;
- (b) a full day delay in the supply of any Key Plant and Equipment as a result of:
  - (i) Australian quarantine restrictions; or
  - (ii) a closure of the Australian international border or any other international border,

where such quarantine restrictions or border closures are introduced after the date of this Contract as a result of a Pandemic and have a material adverse impact on the CIDS/ODS Contractor's Activities; or

- (c) a Pandemic Construction Site Closure,

but in each case:

- (d) which delays the CIDS/ODS Contractor in achieving Milestone Achievement of a Milestone or Construction Completion of a Portion (as applicable) by at least one full day per event and subject to the CIDS/ODS Contractor demonstrating to the Principal that it has complied and is complying with the Pandemic Management Plan; and
- (e) excluding a Pandemic Relief Event that arises from a Pandemic Change in Law (which shall be treated as a Pandemic Change in Law).

**"Pandemic Relief Event Construction Site Allowance"** has the meaning given to that term in clause 3.20(e)(i)B.

**"Pandemic Subcontractor's Plant Closure"** means the full day closure of a Subcontractor's plant or factory:

- (a) located within Australia where that plant or factory supplies Critical Domestic Materials to the CIDS/ODS Contractor; or
- (b) located outside of Australia where that plant or factory supplies Key Plant and Equipment to the CIDS/ODS Contractor,

as a result of a Pandemic which:

- (c) occurs after the date which is the later of the date of execution of the relevant Subcontract and the date of this Contract;
- (d) has been closed in compliance with a "pandemic management plan" prepared by the relevant Subcontractor; and
- (e) has a material impact on the CIDS/ODS Contractor's Activities.

**"Parent Company Guarantee"** means the form of deed which appears in Schedule 20.

**"Parent Company Guarantor"** means the entity referred to in item 16 of Schedule 1.

**"Payment Breakdown Schedule"** means Schedule 4.

**"Payment Claim Date"** means each of the following dates:

- (a) prior to the time for submission of the Final Payment Claim, the 20th day of each month (or if this day is not a Business Day, the next Business Day after this day);
- (b) for the Completion Payment Claim, within the time required by clause 14.9; and
- (c) for the Final Payment Claim, within the time required by clause 14.11.

**"PDCS"** means the Principal's web based TeamBinder project data and collaboration system including any of its functionalities as required by the Principal, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 20.1(b).

**"Peak Hours"** means the hours between 0600 and 0900 and 1600 and 1800 respectively on Monday to Friday (excluding public holidays).

**"Permitted Use"** means the installation, testing, commissioning and completion of the Works, the carrying out of the CIDS/ODS Contractor's Activities and the performance by the CIDS/ODS Contractor of its other obligations under this Contract.

**"Planning Approval"** means:

- (a) the Project Planning Approval (Sydenham to Bankstown);
- (b) any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning (acting in their capacity as determining authority) under the EP&A Act in respect of the CIDS/ODS Contractor's Activities; and
- (c) any Mitigation Measures and statement of commitments that are required to be complied with or fulfilled in the documents referred to in paragraphs (a) and (b).

**"POEO Act"** means *Protection of the Environment Operations Act 1997* (NSW).

**"Pollution"** has the meaning given to "pollution" in the Dictionary to the *POEO Act*.

**"Portion"** means a part of the CIDS/ODS Contractor's Activities or Works, as described in Schedule 3 or as determined or directed under clause 15.7.

**"Post Construction Completion Activities"** means those CIDS/ODS Contractor's Activities to be performed by the CIDS/ODS Contractor after the Date of Construction Completion of each Portion and prior to Completion, as described in Schedule 12.

**"PPS Act"** means the *Personal Property Securities Act 2009* (Cth).

**"PPS Law"** means:

- (a) the *PPS Act* and any regulations made at any time under the *PPS Act*, as amended from time to time; and
- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph(a).



**"Principal's Design Review Period"** means 20 Business Days commencing on the date on which the Principal's Representative is provided with any Design Documentation under clause 6.3.

**"Principal's Design Re-Review Period"** means, where the CIDS/ODS Contractor is required to re-submit any Design Documentation in accordance with clauses 6.6(b)(ii)A, 6.6(b)(v), 6.6(c)(ii)A, 6.6(c)(iv) or 6.9(c):

- (a) 5 Business Days (if the CIDS/ODS Contractor has taken 5 Business Days or less to re-submit the Design Documentation); or
- (b) 10 Business Days (otherwise).

**"Principal's Representative"** means:

- (a) the person nominated in item 5 of Schedule 1; or
- (b) any other person appointed as a replacement from time to time by the Principal under clause 12.2,

and includes any appointee under clause 12.3.

**"Principal's Vision Statement"** means the Principal's vision statement, namely "Transforming Sydney" available at <https://www.sydneymetro.info/sites/default/files/2021-09/Transforming-Sydney-2021.pdf>

**"Progress Claim"** has the meaning given in clause 14.2(c)(iii).

**"Prohibited Subcontractor"** means:

- (a) any Subcontractor:
  - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in;
  - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in; or
  - (iii) that is the subject of a current investigation by the Independent Commission Against Corruption as to whether it has engaged in,

corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or

- (b) any Subcontractor employing an employee in respect of whom paragraph (a)(i), (a)(ii) or (a)(iii) apply.

**"Project Cooperation and Integration Deed"** means each of:

- (a) each Interface Contractor Cooperation and Integration Deed; and
- (b) the Operator Cooperation and Integration Deed.

**Project Health and Safety Management Plan** means the plan of that name prepared by the Appointed Principal Contractor which is required to be implemented by the CIDS/ODS Contractor pursuant to the SWTC.

**"Project Planning Approval (Sydenham to Bankstown)"** means the approval granted by the Minister for Planning under section 5.19 of the EP&A Act dated 12 December 2018, including all conditions to such approval and all documents incorporated by reference, as modified from time to time.

**"Project Values"** means the values that will guide the delivery of Sydney Metro City & Southwest, being safety and wellbeing, collaboration, integrity, innovation, excellence and achievement.

**"Pure Economic Loss"** means Consequential Loss, other than Consequential Loss arising out of or in connection with:

- (a) any illness or personal injury to, or death of, any person;
- (b) the loss or destruction of (whether total or partial) or damage to any real or personal property; or
- (c) loss of use of or access to any real or personal property where such loss of use or access is caused by the CIDS/ODS Contractor's wrongful act or omission or breach of this Contract and the CIDS/ODS Contractor:
  - (i) recovers its liability for that loss under any insurance policy effected by the Principal under clause 16.5 or 16.6 or an insurance policy required to be effected by the CIDS/ODS Contractor under this Contract (as applicable); or
  - (ii) is indemnified or entitled to be indemnified for its liability for that loss under an insurance policy that the CIDS/ODS Contractor is required to effect under this Contract (up to the limit of indemnity specified in item 23 of Schedule 1 in respect of the professional indemnity insurance),

or would have recovered or been indemnified or entitled to be indemnified (as applicable) for its liability for that loss but for:

- (iii) the operation of any policy retention, deductible or excess that the CIDS/ODS Contractor is required to bear under this Contract; or
- (iv) any act or omission of the CIDS/ODS Contractor or its Associates including any failure by the CIDS/ODS Contractor to:



- A. diligently pursue a claim under the relevant policy of insurance;
- B. comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
- C. comply with its insurance obligations under this Contract.

**"Rail Assets"** means trains, stations, track (including all structural elements associated with the track), signalling equipment, all cabling, overhead electricity lines, poles and other assets in the Rail Corridor.

**"Rail Corridor"** means the area containing the Rail Tracks, rail junctions, level crossings, station buildings, platforms, signal boxes, tunnels, bridges and other associated structures. This area is often defined by railway boundary fencing and in the absence of such fencing, is defined by a physical boundary (i.e. tunnel, building or retaining walls) or everywhere within 15 metres of the outermost rails.

**"Rail Infrastructure Manager"** has the meaning given to that term in the Rail Safety National Law.

**"Rail Safety National Law"** means the *Rail Safety National Law (NSW)*, as defined in the *Rail Safety (Adoption of National Law) Act 2012 (NSW)*, and any associated regulations.

**"Rail Safety Regulations"** means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012 (NSW)*.

**"Rail Transport Agency"** means the Principal, TfNSW (and each of its divisions), TAHE, Sydney Trains and NSW Trains.

**"Rail Transport Operator"** has the meaning given to that term in the Rail Safety National Law.

**"Railway Track"** or **"Rail Track"** or **"Track"** or **"Line"** means the rails fastened on sleepers or transoms and founded on ballast or bridge decking or concrete slab, associated signalling and overhead wiring components (in electrified areas).

**"Related Body Corporate"** has the meaning given in section 9 of the Corporations Act.

**"Related Entity"** has the same meaning given in section 9 of the Corporations Act.

**"Relevant Matters"** has the meaning given to that term in clause 12.14(a).

**"Required Rating"** means a credit rating or financial strength rating of at least A- by Standard & Poor's (Australia) Pty Ltd 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 Investor Services, Inc, an equivalent rating with another reputable rating agency.

**"Resolution Institute"** means the Resolution Institute Australia.

**"Revised Allocation"** has the meaning given to that term in clause 3.15(c)(ii).

**"Rolling Stock Operator"** has the meaning given to that term in the Rail Safety National Law.

**"Safety Management System"** has the meaning given to that term in the Rail Safety National Law.

**"Scheduled Date for Shutdown"** means [REDACTED].

**"Security Interest"** has the meaning given to that term in clause 20.19(a).

**"Shutdown"** occurs when Sydney Trains ceases to operate passenger rail services on the Bankstown Line.

**"Site"** means:

- (a) the lands and other places described in the Site Access Schedule; and
- (b) any other lands and places made available to the CIDS/ODS Contractor by the Principal for the purpose of this Contract.

**"Site Access Schedule"** means Schedule 35.

**"Site Conditions"** means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Site and any Extra Land or their surroundings including:

- (a) valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, Hazardous Chemical (as defined in the WHS Legislation) or other spoil or waste;
- (f) topography of the Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (i) the Environment, water and weather or climatic conditions, or the effects of the Environment, water and weather or climatic conditions, including rain, surface

water runoff and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions;

(j) any adjoining property; and

(k) [REDACTED].

**"SMNW Operator"** means:

- (a) NRT Pty Ltd (ACN 166 610 313) in its personal capacity and in its capacity as trustee of the NRT Unit Trust and its subcontractors; or
- (b) any other entity that the Principal engages to operate and, if required by the Principal, maintain Sydney Metro Northwest or any part of it.

**"SOP Act"** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

**"SOP Regulation"** means the *Building and Construction Industry Security of Payment Regulation 2020* (NSW).

**"State Indemnified Party"** means:

- (a) the Principal;
- (b) each other Rail Transport Agency; and
- (c) any other Authority that owns or operates rail infrastructure in connection with the Stations.

**"Statement of Business Ethics"** means TfNSW's Statement of Business Ethics, which may be obtained from TfNSW and is located at: [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au).

**"Subcontract"** includes an agreement for supply of goods or services (including professional services and plant hire) or both.

**"Subcontractor"** means:

- (a) for the purposes of clauses 3.21(a)(ii)A, 14.8(c), 20.11(f), 1.1 and 1.1, any person who enters into a contract in connection with the CIDS/ODS Contractor's Activities with the CIDS/ODS Contractor; and
- (b) otherwise, any person (including a consultant or a supplier of goods or services including professional services and plant hire) who enters into a contract in connection with the CIDS/ODS Contractor's Activities with the CIDS/ODS Contractor or whose subcontract is in connection with any part of the Works or the CIDS/ODS Contractor's Activities and is in a chain of contracts where the ultimate contract is with the CIDS/ODS Contractor.

**"Support Services"** means, in respect of a Support Services Contract, all services, things and other tasks which the CIDS/ODS Contractor is, or may be required to perform, under that Support Services Contract.

**"Support Services Contract"** has the meaning given to that term in clause 3.19(a).

**"Sustainability Management Plan"** has the meaning given to that term in the SWTC.

**"SWM Designer"** means Metron T2M (the unincorporated joint venture between Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289) and Mott MacDonald Australia Pty Ltd (ABN 13 134 120 353)).

**"SWM Fencing AFC Design Documentation"** has the meaning given to that term in clause 8.1(b).

**"SWM Fencing Stage 2/3 Design Documentation"** means the design documentation for the SWM Fencing Works set out in Exhibit B.

**"SWM Fencing Works"** means the physical works to be constructed by a SWM Fencing Works Contractor in accordance with the SWM Fencing Works Contract, including the construction of new infrastructure and modifications to existing infrastructure at the Bankstown Line stations.

**"SWM Fencing Works Contract"** means a contract between the Principal and the SWM Fencing Works Contractor for the provision of the SWM Fencing Works.

**"SWM Fencing Works Contractor"** means any entity that is engaged by the Principal to carry out the SWM Fencing Works.

**"SWM Fencing Works Defects"** means:

- (a) any defect, deficiency, fault, error or omission in the SWM Fencing Works; and
- (b) any:
  - (i) cracking, shrinkage, movement or subsidence in the SWM Fencing Works; or
  - (ii) other aspect of the SWM Fencing Works,

which is not in accordance with the requirements of the relevant SWM Fencing AFC Design Documentation,

which will:

- (c) cause the CIDS/ODS Contractor to incur additional cost;
- (d) delay the performance of the CIDS/ODS Contractor's Activities;
- (e) affect any warranty provided by the CIDS/ODS Contractor under this Contract; or
- (f) prevent the CIDS/ODS Contractor from complying with its obligations under this Contract,

but does not include any of the matters in paragraphs (a) or (b) of this definition to the extent they are within the SWM Fencing Works Tolerances.

**"SWM Fencing Works Tolerances"** means the permitted tolerances for certain aspects of the SWM Fencing Works, as set out in the SWTC and the SWM Fencing AFC Design Documentation.

**"SWM Finishing Works"** means all things, works and materials that the SWM Finishing Works Contractor must, in accordance with the SWM Finishing Works Contract, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro City & Southwest.

**"SWM Finishing Works Contract"** means a contract between the Principal and the SWM Finishing Works Contractor for the provision of the SWM Finishing Works.

**"SWM Finishing Works Contractor"** means any entity that is engaged by the Principal to carry out the SWM Finishing Works.

**"SWM Station Works Contractor"** means:

- (a) with respect to Marrickville Station, Canterbury Station and Lakemba Station, the unincorporated joint venture comprising Haslin Constructions Pty Limited (ABN 85 051 102 124) and Stephen Edwards Constructions Pty Ltd (ABN 65 001 824 139);
- (b) with respect to Dulwich Hill Station, Campsie Station and Punchbowl Station, Downer EDI Works Pty Ltd (ABN 66 008 709 608);
- (c) with respect to Hurlstone Park Station, Belmore Station and Wiley Park Station, Downer EDI Works Pty Ltd (ABN 66 008 709 608); and
- (d) with respect to Bankstown Station, the unincorporated joint venture between John Holland Pty Ltd (ABN 11 004 282 268) and Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000).

**"SWTC"** means the Scope of Works and Technical Criteria for the Works described in Exhibit A.

**"Sydney Metro City & Southwest"** means the railway line from Chatswood to Bankstown, including:

- (a) the upgrade and conversion of the existing Bankstown line to metro standard, the stabling yard and maintenance depot at Marrickville, stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure; and
- (b) the integration of Sydney Metro Northwest to form a single end to end metro system from Cudgegong Road to Bankstown.

**"Sydney Metro City & Southwest Strategic Objectives"** means the objectives set out in section 1.2 of the SWTC.

**"Sydney Metro Northwest"** means the railway line from Chatswood to Tallawong, including the stabling yard and maintenance depot at Tallawong Road, the stations, tunnels, viaducts, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure.

**"Sydney Metro Principal Contractor Health and Safety Standard"** means the document referred to as the "Sydney Metro Principal Contractor Health and Safety Standard (SM-PS-ST-221)" in the SWTC, or any document issued from time to time which amends or substitutes this document, a copy of which is included in electronic form in Schedule 44.

**"Sydney Metro Trains Facility (South)"** has the meaning given to that term in the SWTC.

**"Sydney Metro Trains Facility (North)"** means the stabling and maintenance facility at Rouse Hill.

**"Sydney Trains"** means the corporation by that name constituted by section 36 of the *Transport Administration Act 1988* (NSW).

**"Sydney Trains' Representative"** means the person nominated in item 7 of Schedule 1 (or any other person appointed by Sydney Trains as a replacement from time to time and notified to the Principal and the CIDS/ODS Contractor).

**"System Integration and Acceptance Test"** has the meaning given in Appendix F07 of the SWTC.

**"Systems Integration Plan"** has the meaning given to that term in the SWTC.

**"TAHE"** means Transport Asset Holding Entity of New South Wales, a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

**"Taxes"** means income, stamp, indirect or other taxes levies, imposts, deductions, charges, duties (including import duty), compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

**"Technical Management Plan"** has the meaning given to that term in the SWTC.

**"Technically Assured Organisation"** or **"TAO"** means a legal entity to whom the AMB has issued an AMB Authorisation.

**"Temporary Works"** means any temporary works required to be carried out or provided by the CIDS/ODS Contractor for the purpose of the execution of the CIDS/ODS Contractor's Activities but not forming part of the Works.

**"Tender"** means the response provided by a Tenderer to the Principal's invitation to submit a tender to undertake the CIDS/ODS Contractor's Activities.

**"Tenderer"** means an entity or entities that submitted a Tender for the CIDS/ODS Contractor's Activities.

**"Testing and Commissioning Plan"** has the meaning given to that term in the SWTC.

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

**"Third Party"** means a party to a Third Party Agreement other than the Principal.

**"Third Party Agreement"** means:

- (a) an agreement contained in Schedule 7;
- (b) any Draft Third Party Agreement or Additional Third Party Agreement which the CIDS/ODS Contractor must comply with pursuant to clause 3.15; and
- (c) any other agreement that the Principal from time to time informs the CIDS/ODS Contractor constitutes a 'Third Party Agreement'.

**"Track Possession"** means a period during which the CIDS/ODS Contractor has access to Rail Track for the purpose of carrying out the CIDS/ODS Contractor's Activities including for the purpose of rectifying Defects.

**"Transport Assets"** has the meaning assigned to it in the AMB Charter.

**"Trial Activities"** means those activities required to be carried out by the CIDS/ODS Contractor to perform and complete the Trial as further described in clause 7 and section 2.3.2 of the SWTC.

**"Trial Location"** has the meaning given to that term in clause 7.1(a).

**"Trial Material"** has the meaning given to that term in clause 7.2(b)(i)F;

**"Trial Period"** means a period of 3 months commencing on the Date of Milestone Achievement with respect to Milestone 1.

**"Trial Systems"** means the trial systems required to be installed by the CIDS/ODS Contractor as part of the Trial Activities pursuant to clause 7.

**"TSOM Contract"** means a contract between the Principal and the TSOM Contractor for the provision of the TSOM Works and the operation and maintenance of Sydney Metro City & Southwest.

**"TSOM Contractor"** means the entity that is engaged by the Principal to carry out the TSOM Works and the operation and maintenance of Sydney Metro City & Southwest.

**"TSOM Works"** means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the TSOM Contractor must, in accordance with the TSOM Contract, design, construct, manufacture, install, test and commission for the purposes of completing the Sydney Metro City & Southwest, including equipment, systems (including all information systems, central control systems and communications systems), hardware and software, rolling stock, platform screen doors and control centre.

**"Urgent Defect"** means a Defect which poses or creates an actual or potential risk to the health or safety of any person or of loss of or damage to property.

**"Utility Service"** means any service utility, service facility or item of public or private infrastructure, including for the provision or measurement of water, electricity, gas, fuel, telephone, drainage, stormwater, sewerage, industrial waste disposal and

electronic communications service (including power, electricity, gas, water, sewerage and telecommunications and all pipes, wires, cables, ducts and other conduits in connection with them).

**"Variation"** means any change to the Works, the Temporary Works or the CIDS/ODS Contractor's Activities including:

- (a) any addition or increase to, or decrease, omission or deletion from, the Works, the Temporary Works or the CIDS/ODS Contractor's Activities;
- (b) any change to the character or quality, or demolition or removal, of any material or work; or
- (c) any change to the levels, lines, positions or dimensions of any part of the Works or the Temporary Works,

but it excludes any changes to the Works, the Temporary Works or the CIDS/ODS Contractor's Activities that are required as a result of the exercise of an Option by the Principal's Representative under clause 9.3.

**"Variation Order"** has the meaning given in clause 9.2.

**"Variation Proposal Request"** has the meaning given in clause 9.1.

**"WHS"** means work health and safety.

**"WHS Accreditation Scheme"** means the Work Health and Safety Accreditation Scheme referred to in section 43 of the *Federal Safety Commissioner Act 2022* (Cth).

**"WHS Guidelines"** means the NSW Government Work Health and Safety Management Guidelines (6<sup>th</sup> edition) (December 2019) or any document issued from time to time which amends or substitutes this document.

**"WHS Legislation"** means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works.

**"Wilful Misconduct"** means an act or failure to act by a party or its Associates that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

**"Workplace Relations Management Plan"** means the plan described in the NSW Guidelines developed in relation to the Works.

**"Works"** means the whole of the physical works, including:

- (a) any changes to the Works that are required solely as a result of the exercise of an Option by the Principal's Representative under clause 9.3; and



- (b) all Variations to the Works,

that the CIDS/ODS Contractor must design, supply, install, test, commission, integrate and hand over to the Principal (or its nominee) under this Contract.

## 1.2 Interpretation

In this Contract unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Contract includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
- (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Contract or to any other deed, agreement, document or instrument is deemed to include a reference to this Contract or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
- (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Contract;
- (i) a reference to:

- (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Contract; and
  - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) subject to clause 4.7, a reference to this Contract includes all Schedules and Exhibits;
- (k) where any 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;
- (l) for the purposes of clauses 13.11, 13.12, 13.13 and 13.14:
- (i) any extension of time to any Date for Construction Completion or Date for Milestone Achievement (as applicable) stated in days; or
  - (ii) any reference to "day",
- will include only those days indicated in item 8 of Schedule 1, or otherwise approved by the Principal's Representative, as working days;
- (m) for all purposes (other than as set out in clause 1.2(l), or where otherwise designated as a Business Day), "day" means calendar day;
- (n) for the avoidance of doubt, a reference to an Other Contractor includes an Interface Contractor;
- (o) a reference to "\$" is to Australian currency;
- (p) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Contract or any part;
- (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;
- (r) the interpretations of:
- (i) the terms CIDS/ODS Contractor's Activities, Works, Temporary Works, Site, Date for Construction Completion, Date of Construction Completion, Construction Completion and Defects Rectification Period;
  - (ii) clauses 4.1 (Access), 4.5 (Land in Addition to the Site), 10.4 (Cleaning Up), 11 (Defects), 13 (Time and Progress), 14.2 (Payment Claims), 15 (Milestone Achievement, Construction Completion and Completion) and 16 (Care of the Works, Risks and Insurance); and
  - (iii) the SWTC (including its component parts),

will apply separately to each Portion (including any Portion determined under clause 15.7) and references therein to any of the terms in clause 1.2(r)(i) will mean so much of the CIDS/ODS Contractor's Activities, Works, Temporary Works or Site as is comprised, or associated with, in the relevant Portion;

- (s) any reference to "intended purpose" in this Contract will be read as referring to the intended use or intended purpose having regard to any intended use or intended purpose stated in, contemplated by or reasonably ascertainable from the SWTC;
- (t) words and terms defined in the GST Legislation have the same meaning in clauses concerning GST;
- (u) on the basis that the Principal is notionally liable to pay GST under the GST Legislation, a reference in this Contract to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement;
- (v) if a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled; and
- (w) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply;
- (x) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply; and
- (y) any reference to the Works or any part of them remaining at, or being capable of remaining at all relevant times fit for their purpose or fit for their intended purpose will be read as being subject to:
  - (i) the Principal, Operator and their respective Associates operating and maintaining the Works in accordance with the O&M Manual; and
  - (ii) reasonable or specified fair wear and tear given the requirements as to durability of the Works.

### **1.3 Ambiguous terms**

- (a) If the Principal's Representative considers, or if the CIDS/ODS Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in the Contract (including in any Schedule or Exhibit), then unless clause 1.4(a) applies, the Principal's Representative must direct the interpretation of this Contract which the CIDS/ODS Contractor must follow.

- (b) The Principal's Representative, in giving a direction in accordance with clause 1.3(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Contract.
- (c) To the extent that the CIDS/ODS Contractor reasonably considers that complying with a direction from the Principal's Representative under clause 1.3(b):
  - (i) imposes greater or different obligations to the obligations that the CIDS/ODS Contractor would otherwise have to comply with under this Contract;
  - (ii) causes the CIDS/ODS Contractor to incur additional costs; or
  - (iii) causes any delay to the performance of the CIDS/ODS Contractor's Activities or the Works,

then the CIDS/ODS Contractor may issue a written notice to the Principal's Representative requesting the Principal's Representative issue a 'Variation Proposal Request' pursuant to clause 9.1(a).
- (d) Subject to clause 1.3(e), upon receipt of a notice from the CIDS/ODS Contractor under clause 1.3(c), the Principal must issue a 'Variation Proposal Request' pursuant to clause 9.1(a).
- (e) The Principal is not required to comply with clause 1.3(d) to the extent the ambiguity, inconsistency or discrepancy arises as a result of, or in between, any document that has been created, prepared, developed or updated by the CIDS/ODS Contractor.

#### **1.4 Order of Precedence**

- (a) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Contract then:
  - (i) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the SWTC, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and
  - (ii) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in item 9 of Schedule 1 applies.
- (b) The documents which comprise this Contract are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Works comply with this Contract and are fit for their intended purposes.

## 1.5 Deed Poll by CIDS/ODS Contractor

The CIDS/ODS Contractor must, within 10 Business Days of the date of this Contract, provide the Principal's Representative with an executed deed poll in the form set out in Schedule 33 in favour of the Principal and Sydney Trains.

## 1.6 Authorities

- (a) This Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
  - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
  - (ii) the AMB to exercise any of its functions and powers pursuant to the AMB Charter.
- (b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or AMB do, or fail to do or purport to do, pursuant to their respective functions and powers either as a TAO or under any legislation or the AMB Charter, will be deemed not to be an act or omission by the Principal under this Contract (including a breach of contract) and the Principal will have no liability to the CIDS/ODS Contractor in relation thereto.

## 1.7 Achievement of the Project Values

- (a) Each party will, subject to and in accordance with this Contract, perform its obligations under this Contract having regard to the achievement of:
  - (i) the Sydney Metro City & Southwest Strategic Objectives; and
  - (ii) the Principal's Vision Statement.
- (b) Each party will adhere to and uphold the Project Values and work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this Contract.
- (c) The obligations under clause 1.7(b) will not affect the exercise of a right or discretion under this Contract by the Principal or the Principal's Representative.

## 1.8 Electronic files

Where this Contract refers to an electronic file on a separate disc or other electronic storage device which forms part of this Contract, those electronic files are contained in the disc or other electronic storage device identified in Schedule 44.

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## 2. Conditions Precedent

### 2.1 Commencement of obligations

The rights and obligations of the parties under this Contract will not commence unless and until each of the Conditions Precedent have been satisfied (or waived under

clause 2.3), except for those under the Day 1 Clauses which will commence on the date of this Contract.

## **2.2 Satisfaction of conditions precedent**

- (a) The parties must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be for the benefit of the other party (or for the benefit of both parties) by the relevant Condition Precedent Deadline Date.
- (b) When a party is of the opinion that a Condition Precedent has been satisfied it must give the other party notice of its opinion.
- (c) The party receiving a notice given under clause 2.2(b) must promptly notify the other party whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.
- (d) If the party receiving a notice given under clause 2.2(b) fails to give the other party a notice under clause 2.2(c) within 5 Business Days, the Condition Precedent will be deemed to have been satisfied.
- (e) Upon the satisfaction (or waiver under clause 2.3) of all Conditions Precedent, the parties must promptly acknowledge in writing that all conditions precedent have been satisfied (or waived).

## **2.3 Waiver of conditions precedent**

A Condition Precedent is waived if, and only if:

- (a) where the Condition Precedent is included for the benefit of a particular party, that party gives notice of the waiver of the Condition Precedent to the other party; and
- (b) where the Condition Precedent is included for the benefit of both parties, both parties agree in writing to waive the Condition Precedent.

## **2.4 Condition Precedent Deadline Date**

- (a) If a Condition Precedent has not been satisfied (or waived under clause 2.3) by 5.00 pm on the Condition Precedent Deadline Date, then the party listed as the "Benefiting Party" in Schedule 2 in respect of that Condition Precedent (or, if both parties are the "Benefiting Party" in respect of that Condition Precedent, either party) may give notice in writing to the other party that it is terminating this Contract if the Condition Precedent in question is not satisfied (or waived under clause 2.3) within the period specified in its notice (which must not be less than 2 Business Days).
- (b) If a party gives notice under clause 2.4(a) and the Condition Precedent in question is not satisfied (or waived under clause 2.3) within the period specified in that notice (or such longer period as the parties may agree) then this Contract will terminate upon the expiry of that period.
- (c) If this Contract is terminated pursuant to this clause 2.4:

- (i) each of the other CIDS/ODS Contract Documents will be taken to have terminated at the time this Contract is terminated;
- (ii) the Principal must return all unconditional undertakings provided by the CIDS/ODS Contractor within 10 Business Days after the date of termination of this Contract; and
- (iii) no party will have any Claim against any other party under or in respect of the CIDS/ODS Contract Documents or in respect of the reimbursement of costs or expenses or otherwise in connection with Sydney Metro City & Southwest, except for any Claim in relation to a breach of any Day 1 Clause.

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### **3. CIDS/ODS Contractor's obligations**

#### **3.1 General**

The CIDS/ODS Contractor:

- (a) must execute the CIDS/ODS Contractor's Activities, including design, manufacture, transport, install, test, commission and hand over the Works and each Portion, in accordance with this Contract;
- (b) warrants that the Works, the Temporary Works and each Portion will upon Construction Completion be, and thereafter be capable of remaining, fit for their intended purposes;
- (c) warrants that it is both competent and experienced in work of the type, complexity and scale of the Works;
- (d) must exercise all reasonable skill, care and diligence in the performance of the CIDS/ODS Contractor's Activities;
- (e) must, unless otherwise agreed by the Principal's Representative in writing, employ the person or persons specified in item 18 of Schedule 1, including the CIDS/ODS Contractor's Representative, in the performance of the CIDS/ODS Contractor's Activities;
- (f) must use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the CIDS/ODS Contractor's Activities; and
- (g) must liaise, cooperate and confer with the Principal and others as directed by the Principal.

#### **3.2 Subcontracts**

- (a) Subject to clause 3.2(b), the CIDS/ODS Contractor may enter into Subcontracts for the vicarious performance of its obligations under this Contract.

- (b) The CIDS/ODS Contractor must not enter into any Subcontract:
- (i) with:
    - A. a Prohibited Subcontractor; or
    - B. an initial subcontract price equal to or over the amount specified in item 10 of Schedule 1 without the prior written approval of the Principal's Representative (which may be conditional but which will not be unreasonably withheld); or
  - (ii) for the parts of the Works specified in item 11 of Schedule 1 without the prior written approval of the Principal's Representative to the relevant subcontractor (which may be conditional but which will not be unreasonably withheld).

Any request by the CIDS/ODS Contractor for approval to subcontract under this clause 3.2(b) must be in writing and include such details as may be required by the Principal's Representative, including details of:

- (iii) the proposed Subcontract conditions, if requested by the Principal; and
- (iv) the proposed Subcontractor's capacity to undertake the relevant work, past performance in undertaking similar work, safety (including work health, safety and rehabilitation issues and providing evidence of compliance with clause 3.2(g)), environmental compliance (including any environmental management system) and other performance, management systems and proposed safe working procedures.

Within 10 Business Days after a request by the CIDS/ODS Contractor for approval, the Principal's Representative will advise the CIDS/ODS Contractor whether the request is approved (and, if approved, any relevant conditions) or not and, where it is not approved, the reasons why approval is not given.

- (c) The CIDS/ODS Contractor must ensure that each Subcontractor referred to in item 12 of Schedule 1:
- (i) effects and maintains professional indemnity insurance which:
    - A. covers the Subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Subcontractor or its Subcontractors in carrying out the work under the relevant Subcontract;
    - B. covers the Subcontractor for liability to the Principal or the CIDS/ODS Contractor for the relevant minimum amount listed in item 13 of Schedule 1;
    - C. unless the Subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and



- D. remains in place at least until the expiration of a 7 year period from completion of the relevant Subcontract works or professional services; and
- (ii) is obliged under the relevant Subcontract to comply with clause 16.8(c) of this Contract in relation to the insurance referred to in clause 3.2(c)(i).
- (d) The CIDS/ODS Contractor will be:
  - (i) fully responsible for the CIDS/ODS Contractor's Activities despite subcontracting the carrying out of any part of the CIDS/ODS Contractor's Activities; and
  - (ii) vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the CIDS/ODS Contractor's Activities.
- (e) The CIDS/ODS Contractor must:
  - (i) without limiting clause 17.5(d), ensure that each of its Subcontracts that has an initial subcontract price of the amount specified in item 14 of Schedule 1 or more includes provisions to the effect set out in Schedule 9 and a clause to the same effect as this clause 3.2(e)(i) that is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative;
  - (ii) not, without the prior written approval of the Principal's Representative (which must not be unreasonably withheld or delayed), direct a variation under a Subcontract with an initial subcontract price less than the amount specified in item 10 of Schedule 1 where the effect of such a direction would be to increase the subcontract price to or over the amount specified in item 10 of Schedule 1;
  - (iii) where a Subcontractor is to carry out design work or other professional services, unless not required by the Principal's Representative, procure that Subcontractor to execute a deed in the form of Schedule 10 and provide this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor;
  - (iv) ensure that each Subcontractor (and their Subcontractors) executes a Confidentiality Undertaking in the form of Schedule 5 and provides this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor;
  - (v) procure that each of its Subcontractors:
    - A. engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in item 15 of Schedule 1; or

- B. in respect of the categories of work set out in item 15 of Schedule 1 (regardless of subcontract price),

executes a deed in the form of Schedule 18 and provides this to the Principal's Representative within 5 Business Days of being engaged by the CIDS/ODS Contractor; and

- (vi) in respect of all Subcontracts in which it holds retention money from the Subcontractor, comply with all requirements under the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW).
- (f) The CIDS/ODS Contractor must, as a condition precedent to Construction Completion of a Portion, procure and provide the Principal's Representative with those warranties described in Schedule 14 or elsewhere in this Contract from relevant Subcontractors undertaking or supplying the work or items the subject of the warranty.

These warranties:

- (i) must be in the form set out in Schedule 15 and must be in favour of, and directly enforceable against the relevant Subcontractor by, the Principal, the Operator and any other entity nominated by the Principal's Representative from time to time; and
- (ii) will not derogate from any rights that the Principal may have against the CIDS/ODS Contractor in respect of the subject matter of these warranties.
- (g) The CIDS/ODS Contractor must:
- (i) ensure that, if any Law, including in the State or Territory in which the Works are situated or the Works are carried out (as the case may be), require that:
- A. a person:
- 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
  - 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
- B. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;

- (ii) not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of clause 3.2(g)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (iii) if requested by the Principal's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the CIDS/ODS Contractor or Subcontractor (as the case may be) commences such work.

### 3.3 Compliance with Law

- (a) Subject to clause 3.3(c)(i), the CIDS/ODS Contractor must in carrying out the CIDS/ODS Contractor's Activities:
  - (i) comply (and ensure that its Associates comply) with, and ensure that the Works and the Temporary Works comply with, all applicable Law;
  - (ii) not do, or fail to do (and ensure that its Associates do not do, or fail to do), anything that may cause the Principal to be in breach of any Law;
  - (iii) give all notices and pay all fees, bonds and other amounts which it is required to pay in respect of the performance of its obligations under this Contract and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;
  - (iv) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it (or its Associates);
  - (v) at all times conform and comply with, and ensure that the Works and the Temporary Works conform and comply with, all Codes and Standards; and
  - (vi) not engage in any fraud, bribery or corruption.
- (b) Where there is a Change in Codes and Standards:
  - (i) the CIDS/ODS Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Change in Codes and Standards containing:
    - A. details of the Change in Codes and Standards; and
    - B. an estimate of the CIDS/ODS Contractor's increased or decreased costs of complying with the Change in Codes and Standards including sufficient information to support the estimate; and

- (ii) if a notice is given by the CIDS/ODS Contractor which complies with clause 3.3(b)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:
  - A. direct the CIDS/ODS Contractor to disregard the Change in Codes and Standards; or
  - B. direct a Variation under clause 9.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 9.4.

If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards the CIDS/ODS Contractor must comply with the change and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the change.

- (c) The CIDS/ODS Contractor must:
  - (i) obtain all Authority Approvals required for the execution of the CIDS/ODS Contractor's Activities and occupation and use of the completed Works or Portions (and for that purpose prepare and submit all applications and associated documents to relevant Authorities), except for those Authority Approvals specified in Schedule 6 that either:
    - A. were obtained by the Principal prior to the date of this Contract; or
    - B. will be obtained by the Principal after the date of this Contract where required;
  - (ii) unless otherwise expressly specified in Schedule 6, comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the CIDS/ODS Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, including the Planning Approval, to comply with, satisfy, carry out and fulfil;
  - (iii) in respect of any:
    - A. Authority Approvals which are to be obtained by the Principal after the date of this Contract; or
    - B. conditions and requirements of Authority Approvals which pursuant to Schedule 6 are to be satisfied or fulfilled by the Principal,

provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to obtain the Authority Approvals or satisfy or fulfil the conditions and requirements;
  - (iv) for the purpose of obtaining all Authority Approvals as required by clause 3.3(c)(i), prepare all associated studies and reports required because of

the design of the Works and the Temporary Works proposed by the CIDS/ODS Contractor; and

- (v) as a condition precedent to Construction Completion of a Portion, ensure that it has:
  - A. obtained all Authority Approvals it is required to obtain under this Contract;
  - B. complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Contract;
  - C. without limiting clauses 3.3(c)(v)A and 3.3(c)(v)B, complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including obtaining the approval of any person for anything) under this Contract; and
  - D. unless it is included in Schedule 6 as an Authority Approval which the Principal will obtain, obtained and supplied to the Principal's Representative certification that the Works or the Portion, as designed and built, comply with the requirements of the National Construction Code to the extent applicable,

including for the avoidance of doubt any Authority Approvals, conditions or requirements which must be obtained, carried out or fulfilled to enable the Principal and any Rail Transport Agency to occupy and use the relevant Portion for its intended purpose.

- (d) Where there is a Change in Law that results in a change to, an addition to or omission from the Works:
  - (i) if either party wishes this clause 3.3(d) to apply, then that party must, within 15 Business Days of the Change in Law, give a written notice to the other and the Principal's Representative stating that clause 3.3(d) applies and containing details of the Change in Law including, where the notice is given by the CIDS/ODS Contractor, its impact on the CIDS/ODS Contractor's costs of carrying out the CIDS/ODS Contractor's Activities and any effect it will have on the CIDS/ODS Contractor's Program;
  - (ii) if such a notice is given the Principal's Representative will determine:
    - A. where the Change in Law decreases the CIDS/ODS Contractor's costs of carrying out the CIDS/ODS Contractor's Activities in compliance with that Change in Law, a reasonable amount as the amount of the decrease; or
    - B. where the Change in Law increases the CIDS/ODS Contractor's costs of carrying out the CIDS/ODS Contractor's Activities in compliance with that Change in Law, the amount of the additional costs reasonably and necessarily incurred by the CIDS/ODS

Contractor on the basis that the CIDS/ODS Contractor took all reasonable steps to mitigate those increased costs,

and the Contract Sum will be increased or decreased by that amount;  
and

(iii) the CIDS/ODS Contractor must comply with the Change in Law.

(e) If a Change in Authority Approval occurs which necessitates a Variation, the CIDS/ODS Contractor must:

(i) if the relevant Authority Approval was obtained by the Principal, within 15 Business Days of the date on which the CIDS/ODS Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or

(ii) otherwise within 15 Business Days of the Change in Authority Approval taking effect,

notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Authority Approval necessitates a Variation. If the CIDS/ODS Contractor gives such a notice and the Change in Authority Approval does necessitate a Variation the Principal's Representative will direct a Variation under clause 9.2(a) after which relevant adjustments will be made under clause 9.4.

(f) Other than as set out in clause 3.3(e), the CIDS/ODS Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:

(i) any Change in Authority Approval;

(ii) an Authority Approval obtained or issued or which otherwise takes effect after the date of this Contract;

(iii) a change in an Authority Approval after the date of this Contract; or

(iv) any:

A. assumptions the CIDS/ODS Contractor makes; or

B. failure by the CIDS/ODS Contractor to adequately satisfy itself,

as to what work methodologies and Temporary Works might be permissible under all Authority Approvals.

(g) Notwithstanding clause 3.3(e), if:

(i) any further environmental impact assessment is required under Part 4 or Division 5.1 of the EP&A Act (or their equivalents) in connection with the CIDS/ODS Contractor's Activities;

- (ii) the Principal determines that it is necessary to carry out any further environmental impact assessment under Part 5 of the EP&A Act (or its equivalent) in connection with the CIDS/ODS Contractor's Activities;
- (iii) an Authority Approval is modified or amended under the EP&A Act; or
- (iv) a new Authority Approval is issued under the EP&A Act in respect of the CIDS/ODS Contractor's Activities, either in substitution for or replacement of a Planning Approval or otherwise or any such new Authority Approval is modified under the EP&A Act,

arising out of or in connection with:

- (v) a Variation requested by the CIDS/ODS Contractor; or
- (vi) any failure by the CIDS/ODS Contractor to comply with its obligations under this Contract,

then the Principal will have no liability to the CIDS/ODS Contractor in relation to any such events and any actions or additional work arising out of or in connection with any such events, irrespective of who is required to, or does, carry out any such assessment.

### 3.4 Legal Challenge to Authority Approval

- (a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for an Authority Approval or a modification of an Authority Approval, performance of the CIDS/ODS Contractor's Activities or the Works, or compliance with any Authority Approval under:

- (i) the *Environmental Planning and Assessment Act 1979* (NSW);
- (ii) the *Protection of the Environment Operations Act 1997* (NSW);
- (iii) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
- (iv) any other Law,

the CIDS/ODS Contractor must continue to perform its obligations under this Contract unless, as a result of that legal challenge, proceedings or action, it is otherwise:

- (v) ordered or directed by an Authority;
  - (vi) ordered by a court or tribunal; or
  - (vii) directed by the Principal or the Principal's Representative.
- (b) Subject to clause 3.4(c), the Principal must pay the CIDS/ODS Contractor the additional costs reasonably and necessarily incurred by the CIDS/ODS Contractor as a direct result of:
    - (i) an Authority order referred to in clause 3.4(a)(v);

- (ii) a court or tribunal order referred to in clause 3.4(a)(vi); or
- (iii) a direction by the Principal or Principal's Representative referred to in clause 3.4(a)(vii),

to the extent that such Authority order, court or tribunal order, or direction prevents the CIDS/ODS Contractor from achieving Construction Completion of a Portion by the relevant Date for Construction Completion or Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement. The CIDS/ODS Contractor's entitlement under this clause 3.4(b) will be its only right to payment arising out of or in any way in connection with an Authority order or direction, court or tribunal order or direction by the Principal or Principal's Representative in accordance with clause 3.4(a)(v), 3.4(a)(vi) or 3.4(a)(vii) (as applicable).

- (c) Clause 3.4(b) does not apply to the extent that a legal challenge, proceedings or action of the kind referred to in clause 3.4(a) is brought or upheld due to the CIDS/ODS Contractor's non-compliance with its obligations under this Contract or any Authority Approval.

### **3.5 Utility Services**

- (a) The CIDS/ODS Contractor must:
  - (i) obtain and pay for any Utility Service it needs to perform its obligations under this Contract;
  - (ii) assume the risk of the existence, location, condition and availability of all Utility Services required for the execution of the CIDS/ODS Contractor's Activities;
  - (iii) despite any other provision in the Contract to the contrary, ensure that no Utility Services are:
    - A. damaged or destroyed; or
    - B. disconnected, disrupted, interfered with or interrupted during normal operating hours,
 by reason of the performance of the CIDS/ODS Contractor's Activities;
  - (iv) cooperate and coordinate with the owners of all Utility Services, and implement their requirements as part of the CIDS/ODS Contractor's Activities and must consult with and keep the Principal fully informed as to the CIDS/ODS Contractor's dealings with the Authorities providing the Utility Services; and
  - (v) indemnify the Principal against any claim, damages, expense, costs, loss, liability, fine or penalty the Principal suffers or incurs arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to any Utility Service arising out of or in any way in connection with the CIDS/ODS Contractor's Activities, provided that



the CIDS/ODS Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or its Associates contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.

- (b) The CIDS/ODS Contractor agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Construction Completion, Milestone Achievement or Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of the CIDS/ODS Contractor's Activities.

### **3.6 Crown Building Work**

- (a) The CIDS/ODS Contractor must, in relation to any part of the Works that is Crown Building Work, certify (on behalf of the Principal) as required by section 6.28 of the EP&A Act.
- (b) Any certification under clause 3.6(a) will not lessen or otherwise affect:
  - (i) the CIDS/ODS Contractor's other liabilities or responsibilities under this Contract or otherwise according to Law; or
  - (ii) the Principal's rights against the CIDS/ODS Contractor, whether under this Contract or otherwise according to Law.

### **3.7 Unconditional Undertakings and Parent Company Guarantee**

- (a) Without limiting clause 3.7(d), the unconditional undertakings to be provided under this clause 3.7 are for the purpose of ensuring the due and proper performance by the CIDS/ODS Contractor of its obligations under this Contract.
- (b) The CIDS/ODS Contractor must give the Principal:
  - (i) on or before the Condition Precedent Deadline Date, one or more unconditional undertakings which in aggregate are equal to ■■■ of the Original Contract Price; and
  - (ii) as a pre-condition to commencement of work on the Site, one or more further unconditional undertakings which in aggregate are equal to ■■■ of the Original Contract Price so that, subject to its right of recourse, the Principal then holds unconditional undertakings which are in aggregate equal to ■■■ of the Original Contract Price.
- (c) Each unconditional undertaking to be provided under this clause 3.7 or clause 14.7(b) must:
  - (i) be in the form of Schedule 11 (or such other form approved by the Principal);
  - (ii) be in favour of the Principal;

- (iii) be issued by an Institution that:
    - A. is approved by the Principal; and
    - B. at all times maintains the Required Rating;
  - (iv) be payable at an office of the issuer in Sydney (or such other place approved by the Principal);
  - (v) not have an expiry date; and
  - (vi) where required by Law, be duly stamped at the cost of the CIDS/ODS Contractor.
- (d) Subject to its rights to have recourse to the unconditional undertakings and subject to clauses 1.1, 18.10 and 18.12, the Principal must:
- (i) within 20 Business Days after the Date of Milestone Achievement with respect to Milestone 4, release so much of the unconditional undertakings provided by the CIDS/ODS Contractor under clause 3.7(b) as may be then held by the Principal, so that it then holds █████ of the Original Contract Price;
  - (ii) within 20 Business Days after the expiration of all the Defects Rectification Periods (excluding any extensions under clause 11.6), release so much of the unconditional undertakings provided by the CIDS/ODS Contractor under clause 3.7(b) as may be then held by the Principal, to such amount as the Principal's Representative determines to be reasonable, having regard to the work to which the remaining Defects Rectification Periods (including any extensions under clause 11.6) apply; and
  - (iii) within 20 Business Days after the date of the Final Certificate, release the balance of the unconditional undertakings provided by the CIDS/ODS Contractor under clause 3.7(b) as may be then held by the Principal.
- (e) The Principal:
- (i) may have recourse to any unconditional undertaking provided under this clause 3.7 or clause 14.7(b) at any time;
  - (ii) is not obliged to pay the CIDS/ODS Contractor interest on:
    - A. any unconditional undertaking; or
    - B. the proceeds of any unconditional undertaking if it is converted into cash; and
  - (iii) does not hold the proceeds referred to in clause 3.7(e)(ii)B on trust for the CIDS/ODS Contractor.
- (f) The CIDS/ODS Contractor must not take any steps to injunct or otherwise restrain:

- (i) any issuer of any unconditional undertaking provided under this clause 3.7 or clause 14.7(b) from paying the Principal pursuant to the unconditional undertaking;
- (ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 3.7 or clause 14.7(b) or receiving payment under any such unconditional undertaking; or
- (iii) the Principal using the money received under any unconditional undertaking provided under this clause 3.7 or clause 14.7(b).

### **3.8 Long Service Leave Levy**

Before commencing any construction work under this Contract (including any construction of Temporary Works), the CIDS/ODS Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service leave levy in respect of the CIDS/ODS Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 3.8(a).

### **3.9 Co-operation and co-ordination with Interface Contractors**

- (a) Without limiting the CIDS/ODS Contractor's obligations under the Project Cooperation and Integration Deeds, the CIDS/ODS Contractor:
  - (i) acknowledges that:
    - A. the Interface Work forms part of Sydney Metro City & Southwest;
    - B. the CIDS/ODS Contractor's Activities interface with the Interface Work;
    - C. Interface Contractors will be executing work on parts of the Site or Extra Land, or adjacent to the Site or Extra Land, at the same time as the CIDS/ODS Contractor is performing the CIDS/ODS Contractor's Activities;
    - D. the Principal may grant the Interface Contractors a non-exclusive licence to use and occupy the Site to carry out the Interface Works;
    - E. it may require certain design and work methodology input from Interface Contractors to coordinate the design of the Works and Temporary Works with the Interface Work;
    - F. Interface Contractors may require the CIDS/ODS Contractor to provide design and work methodology information to them to coordinate the design of the Interface Work with the Works and

Temporary Works, and this must be provided in a timely manner by the CIDS/ODS Contractor; and

- G. any delay in the performance of the CIDS/ODS Contractor's Activities or in the CIDS/ODS Contractor providing information to, or co-operating and co-ordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the CIDS/ODS Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, losses and damages; and

(ii) must at all times:

- A. permit Interface Contractors (if the CIDS/ODS Contractor's consent or authority is required) to execute the Interface Work on the applicable parts of the Site or Extra Land, or on any adjacent property to the Site or Extra Land:

- 1) at the same time as the CIDS/ODS Contractor is performing the CIDS/ODS Contractor's Activities; and
- 2) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose must not interfere with access to those parts of the Site or Extra Land, or property adjacent to or in the vicinity of the Site or Extra Land, required by that Interface Contractor for the purpose of carrying out their work;

- B. protect the Works and Temporary Works from accidental damage by Interface Contractors;
- C. fully co-operate with the Interface Contractors, and do everything reasonably necessary to facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative;
- D. carefully coordinate and interface the CIDS/ODS Contractor's Activities with the Interface Work and for this purpose:
  - 1) make proper allowance in all programs for the Interface Work;
  - 2) review all programs provided by Interface Contractors and confirm that they adequately allow for the CIDS/ODS Contractor's Activities and the interfaces of the Interface Work with the CIDS/ODS Contractor's Activities;
  - 3) monitor the progress of the Interface Work;

- 4) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement or progress of the CIDS/ODS Contractor's Activities or the achievement of Milestone Achievement of any Milestone, Construction Completion of any Portion or Completion;
  - 5) provide the Interface Contractors with sufficient information about the current and expected CIDS/ODS Contractor's Activities to assist them to coordinate their Interface Work with the CIDS/ODS Contractor's Activities; and
  - 6) it must cooperate, meet with, liaise, and share information so that the CIDS/ODS Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- E. perform the CIDS/ODS Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- F. be responsible for coordinating the CIDS/ODS Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, the Interface Contractors' personnel and Interface Work, including providing to the Principal's Representative copies of work method statements for those parts of the Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- G. work directly with Interface Contractors where required to provide all necessary information to Interface Contractors in respect of the Works and Temporary Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with this Contract, including the SWTC;
- H. attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others each 10 Business Days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- I. when information is required from an Interface Contractor, provide reasonable written notice which must be at least 10 days (except in special circumstances) or any longer period of notice required under the SWTC to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;

- J. ensure that any written notice given under clause 3.9(a)(ii) provides the Interface Contractor with the longest possible time for the provision of the information;
  - K. when any information is requested by Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Works, the Temporary Works or the CIDS/ODS Contractor's Activities:
    - 1) provide the information to the Interface Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor provided that this time period is reasonable; and
    - 2) ensure and warrant (as at the date the information is provided) that the information provided is accurate; and
  - L. use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
    - 1) the provision of information;
    - 2) the obtaining of information;
    - 3) the adequacy of information provided to, or received from, Interface Contractors;
    - 4) the compatibility of the Works and Temporary Works with the Interface Work;
    - 5) coordination in accordance with this clause 3.9(a); and
    - 6) technical issues with the information provided to, or received from, Interface Contractors;
- (iii) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Contract or otherwise have an adverse effect upon the CIDS/ODS Contractor's Activities; and
- (iv) acknowledges that the Principal will ensure that conditions similar to those in this clause 3.9(a) applying to the CIDS/ODS Contractor will apply to all the Interface Contractors engaged by the Principal that are working on the Site other than Sydney Trains (and any contractors appointed by Sydney Trains).
- (b) Where the CIDS/ODS Contractor has complied with all its obligations in clause 3.9, the CIDS/ODS Contractor must promptly give the Principal's

Representative written notice of any interface issue or dispute with any Interface Contractor.

- (c) Upon receipt of the CIDS/ODS Contractor's notice under clause 3.9(b):
  - (i) the Principal's Representative must promptly convene a meeting between the CIDS/ODS Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by the Principal's Representative);
  - (ii) the Principal's Representative must work in good faith with the CIDS/ODS Contractor and the Interface Contractor to resolve the issues or dispute; and
  - (iii) the CIDS/ODS Contractor must work in good faith with the Principal's Representative and the Interface Contractor to resolve the issues or dispute.
- (d) The CIDS/ODS Contractor:
  - (i) acknowledges and agrees that:
    - A. the Interface Contractors will require access to the Site in order to perform their obligations under their respective contracts with the Principal;
    - B. without limiting the CIDS/ODS Contractor's rights under clauses 4.6A, 8.4, 13.8 and 13.14, no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the CIDS/ODS Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative); and
    - C. subject to clauses 4.6A, 8.4, 13.8 and 13.14, the Principal will not be liable upon any Claim by the CIDS/ODS Contractor arising out of or in any way in connection with:
      - 1) the Interface Contractors carrying out their work; or
      - 2) any act or omission of an Interface Contractor; and
  - (ii) not used.

### **3.10 Cooperation and Integration Deeds**

- (a) The CIDS/ODS Contractor must:
  - (i) within 5 Business Days after receipt of a request from the Principal's Representative, provide to the Principal:
    - A. the Operator Cooperation and Integration Deed; and

- B. an Interface Contractor Cooperation and Integration Deed with any Interface Contractor nominated by the Principal,
  - each duly executed by the CIDS/ODS Contractor in the number of counterparts required by the Principal; and
  - (ii) at all relevant times comply with the terms of the Project Cooperation and Integration Deeds.
- (b) If the Principal makes a request under clause 3.10(a)(i) for the CIDS/ODS Contractor to execute:
  - (i) an Operator Cooperation and Integration Deed to which the Operator will be party; or
  - (ii) an Interface Contractor Cooperation and Integration Deed to which any Interface Contractor nominated by the Principal will be party,

the Principal must, within 20 Business Days of receiving the executed documents from the CIDS/ODS Contractor, itself execute, and procure that the Operator or the relevant Interface Contractor nominated by the Principal (as applicable) executes, the relevant document.

### **3.11 Master Interface Protocols Deed Poll**

- (a) The CIDS/ODS Contractor must:
  - (i) on or before the Condition Precedent Deadline Date, provide to the Principal the Master Interface Protocols Deed Poll, duly executed by the CIDS/ODS Contractor; and
  - (ii) at all relevant times comply with the terms of the Master Interface Protocols Deed Poll.
- (b) The Principal will procure that the Operator and each Interface Contractor (other than Sydney Trains) nominated by the Principal executes a Master Interface Protocols Deed Poll.

### **3.12 Collateral Warranty Deed Poll**

Without prejudice to the CIDS/ODS Contractor's obligations to execute a Collateral Warranty Deed Poll as a condition precedent to Construction Completion of the first Portion to achieve Construction Completion, the CIDS/ODS Contractor must, within 5 Business Days of receipt of a request from the Principal, give the Principal's Representative an executed Collateral Warranty Deed Poll.

### **3.13 Incident Management Reporting**

- (a) The CIDS/ODS Contractor must identify clear guidelines for responding to any Incident arising from the performance of the CIDS/ODS Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the SWTC.



- (b) Should an Incident occur which:
- (i) is reportable under any relevant Law, the CIDS/ODS Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the SWTC; and
  - (ii) relates to rail safety, the CIDS/ODS Contractor must notify the Principal and any relevant Rail Transport Agency management centre or the nearest network control officer.
- (c) In relation to any environmental or safety incident involving Contamination, Pollution or other waste that is caused by the performance of the CIDS/ODS Contractor's Activities, the CIDS/ODS Contractor must:
- (i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination, Pollution or other waste arising from the Incident;
  - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
  - (iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) If the CIDS/ODS Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Contract, immediately terminate the Contract by written notice to the CIDS/ODS Contractor.
- (e) Without prejudice to the Principal's other rights under this Contract, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the CIDS/ODS Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation) to take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be entitled to recover its reasonable costs and expenses from the CIDS/ODS Contractor as a debt due from the CIDS/ODS Contractor to the Principal.
- (f) Without prejudice to the Principal's other rights under this Contract, the Principal's Representative may issue a direction under clause 13.15 requiring the CIDS/ODS Contractor to suspend the carrying out of the whole or any part of the CIDS/ODS Contractor's Activities in the event:
- (i) of any Incident involving:
    - A. a significant spill of Contamination;
    - B. any accident or release of Contamination which it believes may pose a danger to health, life or property; or

C. any actual damage or harm to the Environment or a significant risk of harm to the Environment; or

(ii) any safety incident occurs which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to SafeWork NSW, ONRSR or other work health and safety regulator) or damage to property.

If the CIDS/ODS Contractor causes or contributes to the occurrence of an Incident, the Principal will not be liable upon any Claim by the CIDS/ODS Contractor for any cost, expense, loss, delay, disruption or penalty arising out of or in connection with:

(iii) any suspension of the CIDS/ODS Contractor's Activities due to a direction to suspend issued, or for the failure to issue a notice to suspend, in the circumstances set out in this clause 3.13(f); and

(iv) complying with a direction issued under clause 3.13(h), including complying with the steps which the Principal's Representative directs that the CIDS/ODS Contractor must take before the Principal's Representative will issue a direction to recommence the CIDS/ODS Contractor's Activities.

(g) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.13(f), the CIDS/ODS Contractor may not recommence the CIDS/ODS Contractor's Activities in respect of the part of the CIDS/ODS Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the CIDS/ODS Contractor permitting the CIDS/ODS Contractor to recommence the CIDS/ODS Contractor's Activities affected by the notice to suspend.

(h) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.13(f) the Principal's Representative may also direct the CIDS/ODS Contractor as to the steps which the CIDS/ODS Contractor must take before the Principal's Representative will issue a direction pursuant to clause 13.15 permitting the CIDS/ODS Contractor to recommence the CIDS/ODS Contractor's Activities affected by the notice to suspend. In these circumstances the CIDS/ODS Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the CIDS/ODS Contractor has complied with the requirements of the direction issued under this clause 3.13(h) will the Principal's Representative issue a direction to the CIDS/ODS Contractor permitting the CIDS/ODS Contractor to recommence the CIDS/ODS Contractor's Activities affected by the notice to suspend.

(i) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 3.13(f), as a debt due and payable from the CIDS/ODS Contractor to the Principal.

### 3.14 Principal Contractor

- (a) In this clause 3.14 the terms 'construction work' and 'principal contractor' have the same meanings assigned to those terms under the WHS Legislation.
- (b) Subject to clause 3.14(d), the parties acknowledge and agree that:
  - (i) the CIDS/ODS Contractor (or any of its subcontractors) will not be engaged by the Principal as the principal contractor in respect of the construction work involved in the CIDS/ODS Contractor's Activities; and
  - (ii) prior to being provided with access to any part of the Site under clause 4.1, the Principal will provide the CIDS/ODS Contractor with written notice setting out details of:
    - A. the person who has been engaged as the principal contractor by the Principal in respect of all construction work carried out by or on behalf of the Principal on that part of the Site ("**Appointed Principal Contractor**"); and
    - B. the period of the Appointed Principal Contractor's engagement.
- (c) The CIDS/ODS Contractor:
  - (i) acknowledges that each Appointed Principal Contractor is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on the relevant part of the Site during the relevant period;
  - (ii) must comply with any exercise by the relevant Appointed Principal Contractor of such authority as is necessary to enable the Appointed Principal Contractor to discharge the duties imposed on a principal contractor by the WHS Legislation; and
  - (iii) must provide the Appointed Principal Contractor with an executed site interface deed poll in favour of the Appointed Principal Contractor in the form set out in the relevant Project Cooperation and Integration Deed (where that person is an Interface Contactor) or otherwise substantially in the same form as that set out in Part A of Schedule 32.
- (d) Not used.

### 3.15 Third Party Agreements

- (a) The parties acknowledge and agree that:
  - (i) the Principal has entered or will enter into the Third Party Agreements;
  - (ii) the terms and conditions of the Third Party Agreements identified in Schedule 7 as "Draft" (each a "**Draft Third Party Agreement**") have not been finalised between the Principal and the relevant third party;

- (iii) there may be additional Third Party Agreements which the Principal may, in its absolute discretion, enter into (each an "**Additional Third Party Agreement**"); and
- (iv) the CIDS/ODS Contractor has been given copies of and has reviewed the Third Party Agreements executed at the date of this Contract and the Draft Third Party Agreements and will comply with its obligations under:
  - A. this clause 3.15(a) and the Principal's obligations under the Third Party Agreements executed at the date of this Contract; and
  - B. the Draft Third Party Agreements,  
  
other than those identified in Schedule 8 for the Principal to perform.
- (b) The CIDS/ODS Contractor must, at its own cost, comply (and ensure that its Associates comply) with its obligations in Schedule 8 and must not cause (and ensure that its Associates do not cause) the Principal to be in breach of any Third Party Agreements.
- (c) After the date of this Contract, the Principal must promptly give the CIDS/ODS Contractor a copy of:
  - (i) the final (and, where applicable, executed) version of any Draft Third Party Agreement or Additional Third Party Agreement (as applicable); and
  - (ii) amendments (if any) to Schedule 8 arising out of the execution of any Draft Third Party Agreement or any Additional Third Party Agreement (as applicable) ("**Revised Allocation**").
- (d) The CIDS/ODS Contractor must carry out its obligations under this Contract on the basis of the final version of the Draft Third Party Agreements or any Additional Third Party Agreement (as applicable) and the Revised Allocation.
- (e) To the extent that the terms of the final version of any Draft Third Party Agreement or any Additional Third Party Agreement impose greater or different obligations on the CIDS/ODS Contractor or restrict the rights that the CIDS/ODS Contractor would have otherwise had and cause the CIDS/ODS Contractor to incur more or less cost than it would otherwise have had in complying with the terms of this Contract, the CIDS/ODS Contractor will be entitled to:
  - (i) be paid the additional costs reasonably and necessarily incurred by the CIDS/ODS Contractor as a direct result of the circumstances referred to in this clause 3.15(e), as determined by the Principal's Representative; and
  - (ii) claim an extension of time to any relevant Date for Construction Completion or Date for Milestone Achievement (as applicable) in accordance with clause 13.

- (f) Except to the extent expressly stated otherwise in this Contract, the CIDS/ODS Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in any way in connection with any acts or omissions of Third Parties or their respective employees, agents, contractors or officers.
- (g) Despite any other term of this Contract, but without limiting clause 3.15(e):
- (i) the parties acknowledge that the following documents are still under development:
- A. Scope of Works and Access Schedule for Southwest Metro – CIDS/ODS between the Principal, TAHE and Sydney Trains; and
- B. Licence for Permitted Use of Shared Corridor between RailCorp (now TAHE) and the Principal,
- (Developing Third Party Agreements); and**
- (ii) to the extent that:
- A. the CIDS/ODS Contractor is unable to gain sufficient access to the Site for the purposes of the CIDS/ODS Contractor's Activities, at the times required by the CIDS/Contractor in accordance with the CIDS/ODS Contractor's Program, as a result of or in connection with the Developing Third Party Agreements; or
- B. the final version of the Developing Third Party Agreements, include obligations on the CIDS/ODS Contractor that require an increased level of resourcing,
- then the Principal must direct a Variation.

### 3.16 Existing Operations

- (a) The CIDS/ODS Contractor acknowledges that:
- (i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the CIDS/ODS Contractor's Activities;
- (ii) the access ways to the Site are used by Existing Operators and other persons and will not be available exclusively to the CIDS/ODS Contractor; and
- (iii) in using these access ways the CIDS/ODS Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) The CIDS/ODS Contractor bears the risk of coordinating its access to the Site with any other relevant party (including Existing Operators) that use the access ways to the Site.

- (c) Without limiting any other obligations of the CIDS/ODS Contractor, the CIDS/ODS Contractor must:
- (i) to the extent reasonably possible in performing the CIDS/ODS Contractor's Activities, not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Site or the Existing Operations or block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, pedal cycle paths, or other facilities associated with the Existing Operations and comply with the Principal's reasonable directions in relation to them;
  - (ii) comply with the Principal's reasonable directions in connection with:
    - A. the Existing Operations (including access to and use of the Site); and
    - B. workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any WHS Legislation;
  - (iii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
  - (iv) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on the Site;
  - (v) ensure that in carrying out and completing the CIDS/ODS Contractor's Activities, the Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Works, when completed, to fully comply with the requirements of this Contract; and
  - (vi) immediately:
    - A. repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the CIDS/ODS Contractor's Activities; and
    - B. when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 3.16(c) are complied with.
- (d) Except to the extent expressly permitted by this Contract, the CIDS/ODS Contractor must:
- (i) not disrupt, interrupt or interfere in any way with the Existing Operations;

- (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the CIDS/ODS Contractor's Activities in accordance with this Contract; and
  - (iii) program and coordinate the CIDS/ODS Contractor's Activities under this Contract in accordance with Good Industry Practice and so as to minimise the effect that the carrying out of the CIDS/ODS Contractor's Activities under this Contract has on the Existing Operations.
- (e) The CIDS/ODS Contractor must ensure that its Associates at all times comply with this clause 3.16.

### **3.17 Contract Management Plans**

- (a) The CIDS/ODS Contractor must:
- (i) develop the Contract Management Plans as required by the SWTC;
  - (ii) ensure that each Contract Management Plan is consistent with the relevant Initial Contract Management Plan (as applicable);
  - (iii) update the Contract Management Plans as required by the SWTC or as directed by the Principal's Representative; and
  - (iv) comply with:
    - A. the Contract Management Plans; and
    - B. to the extent that any Contract Management Plan is not finalised, the relevant Initial Contract Management Plan (as applicable) as if it was the relevant Contract Management Plan.
- (b) Without limiting clause 3.17(a) or its other obligations under this Contract, the CIDS/ODS Contractor must:
- (i) provide each Appointed Principal Contractor with all input and assistance (including all relevant information, documents, details and data relating to the CIDS/ODS Contractor's Activities) required to enable the Appointed Principal Contractor to prepare or update (as applicable) each Appointed Principal Contractor's Contract Management Plan, as reasonably requested by the Principal's Representative or the Appointed Principal Contractor; and
  - (ii) carry out the CIDS/ODS Contractor's Activities in accordance with the Appointed Principal Contractor's Contract Management Plans insofar as each plan relates to the CIDS/ODS Contractor's Activities or the Works.

### **3.18 O&M Manual**

The CIDS/ODS Contractor must:

- (a) develop the O&M Manual as required by the SWTC;

- (b) submit a draft O&M Manual to the Principal's Representative under clause 12.10 at least 180 Business Days prior to the estimated date on which Completion will be achieved; and
- (c) submit the final O&M Manual to the Principal's Representative under clause 12.10 at least 90 Business Days prior to the estimated date on which Completion will be achieved.

### 3.19 Support Services Contract

- (a) The CIDS/ODS Contractor makes a standing offer to enter into negotiations with the Operator to agree the terms and conditions of a support services contract under which the CIDS/ODS Contractor will be required to maintain and support the CIDS/ODS installed by the CIDS/ODS Contractor under this Contract ("**Support Service Contract**"), as per the CIDS/ODS O&M Principles set out in Schedule 45.
- (b) Without limiting clause 3.9, the CIDS/ODS Contractor must fully cooperate and work with the Operator in good faith to agree and enter into a Support Services Contract based on the CIDS/ODS O&M Principles set out at Schedule 45.
- (c) The CIDS/ODS Contractor acknowledges and agrees that:
  - (i) any Support Services Contract will be an independent agreement between the CIDS/ODS Contractor and the Operator and will continue in accordance with its terms until it has been terminated or fully discharged;
  - (ii) the Operator is solely responsible for any and all Support Services procured by the Operator under the Support Services Contract;
  - (iii) the Principal will not be liable for the acts or omissions of the Operator including any liability for moneys owing to the CIDS/ODS Contractor under the Support Services Contract;
  - (iv) the Principal does not guarantee that the Operator will accept the offer made by the CIDS/ODS Contractor under clause 3.19(a); and
  - (v) the CIDS/ODS Contractor may not make any Claim against the Principal on the basis that the Operator has not accepted the offer made by the CIDS/ODS Contractor under clause 3.19(a).

### 3.20 Pandemic Changes in Law and Pandemic Relief Events

- (a) **(Acknowledgements)**
  - (i) The parties acknowledge that:
    - A. as at the date of this Contract:
      - 1) COVID-19 exists; and
      - 2) the precise nature, extent, impact and duration of COVID-19 is unknown; and



- B. after the date of this Contract, future Pandemics may occur and that the nature, extent, impact and duration of any such future Pandemic is unknown.
  - (ii) The CIDS/ODS Contractor acknowledges and warrants that:
    - A. the Initial Pandemic Management Plan includes:
      - 1) all mitigation measures (including the Pandemic Mitigation Measures) that the CIDS/ODS Contractor is implementing with respect to COVID-19, including those in response to any and all Pandemic Laws in response to or which are applicable to COVID-19 in effect on the date of this Contract; and
      - 2) the COVID-19 related baseline assumptions on which the Contract Sum and the CIDS/ODS Contractor's Program are based; and
    - B. the Contract Sum, the CIDS/ODS Contractor's Program and other elements of its tender contain sufficient allowance for the impact of all Pandemic Laws in response to which are applicable to COVID-19 on the CIDS/ODS Contractor's Activities (including the Pandemic Mitigation Measures) in effect on the date of this Contract.
  - (iii) Except as stated in this clause 3.20 and clause 13.9, the CIDS/ODS Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the impact of any Pandemic, any Pandemic Laws, any Pandemic Change in Law or any Pandemic Relief Events on the CIDS/ODS Contractor's Activities.
- (b) **(Contract Management Plans and other measures)**

The CIDS/ODS Contractor must:

- (i) without limiting clause 3.2, provide the Principal's Representative with a copy of each Subcontract for the supply of Critical Domestic Materials as soon as reasonably practicable after such Subcontract is entered into;
- (ii) ensure that all relevant Contract Management Plans take COVID-19 and any other future Pandemic, all Pandemic Laws and all Pandemic Relief Events into account for the period during which the Pandemic Laws and Pandemic Relief Events remain in force or effect and relevant to the CIDS/ODS Contractor's Activities;
- (iii) proactively monitor the potential impacts of COVID-19 and any future Pandemic and all Pandemic Laws and Pandemic Relief Events on the CIDS/ODS Contractor's Activities;
- (iv) implement mitigation measures to minimise any potential impact of COVID-19 and any future Pandemic and all Pandemic Laws and

Pandemic Relief Events on the CIDS/ODS Contractor's Activities, including:

- A. as set out in the relevant updated Contract Management Plans and otherwise consistent with Good Industry Practice;
- B. as set out in the Pandemic Mitigation measures; and
- C. sequencing the CIDS/ODS Contractor's Activities and employing construction methodologies and practices that minimise the impacts of COVID-19 and any future Pandemic and all Pandemic Laws and Pandemic Relief Events on the CIDS/ODS Contractor's Activities.

(c) **(Early warning)**

Without limiting clauses 3.20(d) and 13, where there is a Pandemic Change in Law or the CIDS/ODS Contractor considers that a Pandemic Relief Event has occurred, the CIDS/ODS Contractor must promptly (and in any event within 5 Business Days of becoming aware of the Pandemic Change in Law or Pandemic Relief Event) give the Principal's Representative notice in writing, together with detailed particulars of the following;

- (i) details of the Pandemic Change in Law or Pandemic Relief Event;
- (ii) the likely duration of Pandemic Change in Law or Pandemic Relief Event and the impact of the Pandemic Change in Law or Pandemic Relief Event on the CIDS/ODS Contractor's Activities;
- (iii) the CIDS/ODS Contractor's plan to deal with the consequences of the Pandemic Change in Law or Pandemic Relief Event which must as a minimum include details of the steps that the CIDS/ODS Contractor will take to:
  - A. avoid, mitigate, resolve or to otherwise manage the relevant effect of the Pandemic Change in Law or Pandemic Relief Event;
  - B. minimise any delay to the CIDS/ODS Contractor's Activities caused by the Pandemic Change in Law or Pandemic Relief Event;
  - C. minimise any additional cost to the Principal in respect of the Pandemic Change in Law or Pandemic Relief Event; and
- (iv) such other information as the Principal's Representative may require (acting reasonably).

(d) **(Claims in relation to Pandemic Changes in Law or Pandemic Relief Events)**

- (i) Without limiting clause 13, where there is a Pandemic Change in Law or Pandemic Relief Event and the CIDS/ODS Contractor wishes to claim an adjustment to the Contract Sum or an extension to any Date for Milestone

Achievement or Date for Construction Completion (as applicable) on account of the Pandemic Change in Law or Pandemic Relief Event the CIDS/ODS Contractor must, within 10 Business Days after the commencement of the Pandemic Change in Law or Pandemic Relief Event:

- A. give a written notice to the Principal stating that this clause 3.20(d) applies and containing details of the Pandemic Change in Law or Pandemic Relief Event;
- B. the CIDS/ODS Contractor's plan to deal with the consequences of the Pandemic Change in Law or Pandemic Relief Event, including:
  - 1) details of the steps the CIDS/ODS Contractor will take to avoid, mitigate, resolve or otherwise manage the effects of the Pandemic Change in Law or in dealing with the Pandemic Relief Event and mitigate any extra costs incurred by the CIDS/ODS Contractor in carrying out the CIDS/ODS Contractor's Activities in compliance with the Pandemic Change in Law or Pandemic Relief Event; and
  - 2) an updated Pandemic Management Plan addressing the impacts of the Pandemic Change in Law; and
- C. the other information required by clause 13.9 (as applicable), and clause 3.20(d)(iii) or clause 13.8 to 13.12 will apply (as applicable).

(ii) Without limiting clause 13, where there is a Pandemic Change in Law or Pandemic Relief Event and the Principal wishes to claim a decrease to the Contract Sum on account of the Pandemic Change in Law or Pandemic Relief Event:

- A. the Principal's Representative must give written notice to the CIDS/ODS Contractor which:
  - 1) contains details of the Pandemic Change in Law or Pandemic Relief Event; and
  - 2) states that the Principal considers there to be an adjustment to the Contract Sum on account of the Pandemic Change in Law or Pandemic Relief Event; and
- B. within 10 Business Days after receiving the Principal's Representative's notice, the CIDS/ODS Contractor must provide the documents and information referred to in clause 3.20(d)(i)B, and thereafter clause 3.20(d)(iii) will apply.

(iii) If:

- A. the CIDS/ODS Contractor gives notice under clause 3.20(d)(i)A and provides the Principal with the documents and information referred to in clause 3.20(d)(i)B; or
- B. the Principal's Representative gives notice under clause 3.20(d)(ii)A,

the Principal's Representative will determine:

- C. where the Pandemic Change in Law or Pandemic Relief Event increases the costs of the CIDS/ODS Contractor carrying out the CIDS/ODS Contractor's Activities, the amount of the additional costs reasonably and necessarily incurred by the CIDS/ODS Contractor in implementing the changes required to the measures set out in the then current Pandemic Management Plan, on the basis that the CIDS/ODS Contractor took all reasonable steps to mitigate those increased costs; or
- D. where the Pandemic Change in Law or Pandemic Relief Event decreases the costs of the CIDS/ODS Contractor carrying out the CIDS/ODS Contractor's Activities, a reasonable amount reflecting the changes being required to the measures set out in the then current Pandemic Management Plan as the amount of the decrease,

and , subject to clause 3.20(d)(iv), the Contract Sum will be increased or decreased by that amount.

- (iv) Without limiting clause 13.12, the CIDS/ODS Contractor's entitlement to an adjustment to the Contract Sum or extension to any Date for Milestone Achievement or Date for Construction Completion (as applicable) in connection with a Pandemic Change in Law or Pandemic Relief Event will be reduced to the extent that:
  - A. the CIDS/ODS Contractor could have avoided or lessened the additional costs or the delay by implementing the measures set out in the Pandemic Mitigation Measures and the Initial Pandemic Management Plan; or
  - B. the CIDS/ODS Contractor has saved any costs or achieved any productivity gains in respect of the CIDS/ODS Contractor's Activities as a result of the Pandemic Change in Law or Pandemic Relief Event.
- (v) Without limiting any other provision of this Contract, the CIDS/ODS Contractor must, every 3 months or otherwise promptly upon request, provide to the Principal's Representative a detailed breakdown, on a transparent and Open Book Basis, of any:
  - A. Claims for an adjustment to the Contract Sum pursuant to clause 3.20(d) in connection with any Pandemic Change in Law or Pandemic Relief Event; and

- B. program impacts of any Pandemic Change in Law or Pandemic Relief Event on the CIDS/ODS Contractor's Activities.
- (vi) Upon request by the Principal's Representative from time to time, the CIDS/ODS Contractor must submit to the Principal's Representative a cost assessment by an assessor nominated by the Principal's Representative of any Claims for an adjustment to the Contract Sum in connection with Pandemic Changes in Law and Pandemic Relief Events under this clause 3.20, and must provide on an Open Book Basis any information or records requested by the independent cost assessor in relation to such costs.
- (vii) The Principal may submit the updated Pandemic Management Plan and updated Pandemic Mitigation Measures and any other information provided by the CIDS/ODS Contractor pursuant to clause 3.20(d)(i)B to an independent expert appointed by the Principal for that expert to determine whether the updated Pandemic Management Plan and updated Pandemic Mitigation Measures and any other information provided by the CIDS/ODS Contractor pursuant to clause 3.20(d)(i)B complies with the requirements of this Contract.
- (viii) The CIDS/ODS Contractor must comply with all Pandemic Changes in Law.
- (e) **(Pandemic Relief Event Allowances)**
- (i) Despite any other provision of this Contract but subject to clause 3.20(e)(ii), the CIDS/ODS Contractor is not entitled to claim;
- A. an adjustment to the Contract Sum or any extension of time in respect of any Pandemic Relief Event that occurs prior to the date which is 12 weeks after the date of this Contract (**Impact Date**); and
- B. without limiting clause 3.20(e)(i), any additional costs incurred by the CIDS/ODS Contractor in relation to a Pandemic Construction Site Closure until the costs arising directly as a result of a Pandemic Construction Site Closure exceed the amount listed in item 16A of Schedule 1 per event (**Pandemic Relief Event Construction Site Allowance**).
- (ii) In the case of a Pandemic Relief Event that occurred prior to the Impact Date but continues thereafter:
- A. the CIDS/ODS Contractor will be entitled to an adjustment to the Contract Sum or an extension of time, for the impact on the CIDS/ODS Contractor's Activities caused by the Pandemic Relief Event in respect of the period after the Impact Date only; and
- B. the CIDS/ODS Contractor will not be entitled to make any Claim in respect of any increased costs or delay it suffered or incurred prior to the Impact Date.

- (iii) The CIDS/ODS Contractor has the onus of establishing that:
- A. the adjustment to the Contract Sum arising directly as a result of a Pandemic Construction Site Closure have exceeded the Pandemic Relief Event Construction Site Allowance; and
  - B. the costs incurred by the CIDS/ODS Contractor arising directly as a result of Pandemic Relief Events have occurred after the Impact Date,

**(Pandemic Costs)** and the CIDS/ODS Contractor must keep adequate records of all such costs claimed under this clause 3.20 that have accrued against those allowances and time periods, and must provide such records to the Principal on request.

- (iv) The CIDS/ODS Contractor must provide a monthly report to the Principal setting out the Pandemic Costs that the CIDS/ODS Contractor considers to have, up to the date of the report, accrued against the Pandemic Relief Event Construction Site Allowance.

(f) **(No duty to review or impact on rights)**

- (i) The Principal owes no duty to the CIDS/ODS Contractor to review any documents or information submitted by the CIDS/ODS Contractor under this clause 3.20 for errors, omissions or compliance with this Contract.
- (ii) No review of, comments on, rejection of or failure to comment on or reject any claim, report or other information submitted by the CIDS/ODS Contractor under this clause 3.20 by the Principal:
  - A. is evidence of the Principal's acceptance that the relevant adjustment to the Contract Sum set out in the claim, report or other information have properly accrued towards the Pandemic Relief Event Construction Site Allowance;
  - B. is an admission of liability; or
  - C. will lessen or otherwise affect:
    - 1) the CIDS/ODS Contractor's liabilities or responsibilities under this Contract or otherwise according to Law; or
    - 2) the Principal's rights against the CIDS/ODS Contractor, whether under this Agreement or otherwise according to Law.

### 3.21 Modern Slavery

- (a) The CIDS/ODS Contractor warrants that:
- (i) it is not aware (including through the making of reasonable inquiries), of any Modern Slavery occurring within its operations or supply chain (or in those of any entity it owns or controls); and

- (ii) at the date of this Contract:
  - A. it (and any entity it owns or controls or Subcontractors) has not been convicted of any Modern Slavery Offence; and
  - B. it is not aware of any circumstance within its operations (or in those of any entity it owns or controls) that could give rise to an official investigation or prosecution of a Modern Slavery Offence.
- (b) The CIDS/ODS Contractor agrees that it must:
  - (i) at all times:
    - A. comply, and take reasonable steps to ensure any entity it owns or controls complies, with the Modern Slavery Laws; and
    - B. take reasonable steps (including developing strategies, due diligence processes and training) to ensure that:
      - 1) Modern Slavery is not occurring (whether directly or indirectly) in the operations and supply chains of the CIDS/ODS Contractor and any entity it owns or controls; and
      - 2) it (and any entity it owns or controls) does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery;
  - (ii) provide to the Principal any MS Information and other assistance, as reasonably requested by the Principal (and within the time required by the Principal), to enable the Principal to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Principal (including a third party on behalf of the Principal) or the NSW Audit Office, providing reasonable access to the Principal's or NSW Audit Officer's auditors to interview the CIDS/ODS Contractor's personnel and disclosing the source, place and country of origin of goods, plant, equipment and other materials and work or services being procured or supplied under or in connection with this Contract;
  - (iii) comply with any policies, procedures, investigations or additional conditions relating to Modern Slavery notified in writing by the Principal to the CIDS/ODS Contractor from time to time during the term of this Contract; and
  - (iv) without limiting the CIDS/ODS Contractor's obligations at Law, at all times during the performance of the CIDS/ODS Contractor's Activities and for a period of seven (7) years after Construction Completion of the last Portion to achieve Construction Completion, the CIDS/ODS Contractor must:

- A. maintain; and
- B. promptly upon request from the Principal, give the Principal access to, and/or copies of,

a complete set of records in the possession or control of the CIDS/ODS Contractor to trace, so far as practicable, the supply chain of all goods and services provided under this Contract and to enable the Principal to assess the CIDS/ODS Contractor's compliance with this clause 3.21.

- (c) The CIDS/ODS Contractor must not (and must ensure any entity it owns or controls does not) at any time engage in any Modern Slavery Practice.
- (d) If the CIDS/ODS Contractor is a 'reporting entity' for the purposes of any Modern Slavery Law, it must provide to the Principal a copy of any report or statement (unredacted) it has prepared under the Modern Slavery Law within 7 days of providing that report or statement in accordance with the Modern Slavery Law, and otherwise, promptly upon the Principal's request.
- (e) If the CIDS/ODS Contractor becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the CIDS/ODS Contractor must take reasonable steps to respond to and remedy the occurrence, including in accordance with any internal Modern Slavery strategy and procedures of the CIDS/ODS Contractor and any relevant code of practice, code of conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board. The CIDS/ODS Contractor must immediately notify the Principal in writing of the actual or suspected occurrence of Modern Slavery and the steps it is taking to respond to and remedy the occurrence, which must be satisfactory to the Principal.
- (f) The CIDS/ODS Contractor must promptly notify the Principal in writing if it becomes aware of any change in the CIDS/ODS Contractor's operations or supply chain (including in respect of any entity that it owns or controls) which may:
  - (i) give rise to a position where any information (including any MS Information) that has been provided by the CIDS/ODS Contractor to the Principal under this clause 3.21 is incorrect, inadequate or incomplete; or
  - (ii) otherwise put the CIDS/ODS Contractor in breach of this clause 3.21 or result in any inconsistency with any of the original attestations or warranties given by the CIDS/ODS Contractor under this clause 3.21,

and if the CIDS/ODS Contractor gives notice under this clause 3.21(f) the CIDS/ODS Contractor must thereafter promptly provide any further information that may be requested by the Principal.

- (g) The CIDS/ODS Contractor must take reasonable steps to ensure all subcontracts of the whole or part of this Contract contain Modern Slavery



provisions that are reasonably consistent with the provisions in this clause 3.21, having regard to the nature and origin of the procurement.

- (h) The CIDS/ODS Contractor consents to the Principal sharing MS Information obtained from the CIDS/ODS Contractor in respect of Modern Slavery pursuant to this clause 3.21 with any other NSW Government agency or entity and, without limiting any other provision of this clause 3.21, the CIDS/ODS Contractor:
- (i) agrees that the communication of MS Information to any NSW Government agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
  - (ii) releases and indemnifies the Principal and the State of New South Wales from and against any claim (of any kind or nature) in respect of any matter arising out of such communications, including the use of the MS Information by the recipient.

## **4. The Site and location of the Works**

### **4.1 Access**

- (a) The CIDS/ODS Contractor acknowledges and agrees that access to the Site will be provided progressively to the CIDS/ODS Contractor as set out in the Site Access Schedule.
- (b) Subject to clause 4.1(c) and any other provision of this Contract affecting access, the Principal must:
  - (i) give, or ensure the CIDS/ODS Contractor has, access to the Site by the dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Site, then by the last day of that period); and
  - (ii) once access to a part of the Site is provided to the CIDS/ODS Contractor, thereafter continue to allow, or ensure that the CIDS/ODS Contractor is continued to be allowed, access to that part of the Site in accordance with the Site Access Schedule.
- (c) The CIDS/ODS Contractor acknowledges and agrees that:
  - (i) access to the Site or any part thereof will not confer on the CIDS/ODS Contractor a right to management and control of that part of the Site;
  - (ii) the Principal is not obliged to give the CIDS/ODS Contractor access to any part of the Site until the CIDS/ODS Contractor has:
    - A. complied with clause 3.7(b) and clause 1.1 of this Contract;
    - B. submitted the Construction and Site Management Plan, the Manufacturing and Procurement Plan, the Testing and Commissioning Plan and Systems Integration Plan, as required by

- the SWTC, to the Principal's Representative under clause 12.10 and the Principal's Representative has not rejected the proposed Construction and Site Management Plan, Manufacturing and Procurement Plan, Testing and Commissioning Plan and Systems Integration Plan within 15 Business Days after such submission in accordance with clause 12.10(c);
- C. complied with clause 3.17(b)(i) with respect to each Appointed Principal Contractor's Contract Management Plan;
  - D. effected the insurance policies required under clause 16.7;
  - E. complied with clause 16.7 with respect to each insurance policy;
  - F. provided the Principal's Representative with an executed deed poll in the form set out in Part A of Schedule 32 in favour of the relevant Appointed Principal Contractor;
  - G. complied with any requirements to access that part of the Site referred to in clause 4.1(g); and
  - H. complied with any other restrictions on access in the SWTC;
- (iii) the Principal is not obliged to provide, and the CIDS/ODS Contractor will not be given, exclusive access to the Site;
  - (iv) the Principal is not obliged to carry out any work or provide any facilities to the CIDS/ODS Contractor which may be necessary to enable the CIDS/ODS Contractor to obtain access to the Site or carry out the CIDS/ODS Contractor's Activities;
  - (v) the Principal and others will engage Other Contractors to work upon or in the vicinity of the Site and Extra Land at the same time as the CIDS/ODS Contractor;
  - (vi) without limiting or otherwise restricting any other provision under this Contract, the CIDS/ODS Contractor is responsible for all costs arising from or in connection with accessing any railway services or stations;
  - (vii) the CIDS/ODS Contractor:
    - A. must access the Site only at the points of entry and exit and using the routes for ingress and egress set out in the Planning Approval or as otherwise notified by the Appointed Principal Contractor;
    - B. acknowledges that the Principal has not secured rights of access over the routes for ingress and egress set out in the Planning Approval; and
    - C. except as expressly provided for in this Contract, is responsible, at its own cost and risk, for obtaining access to and from, and securing rights of ingress to and egress from, the Site and the Extra Land to perform the CIDS/ODS Contractor's Activities;

- (viii) the Principal may, but is not obliged to, provide the CIDS/ODS Contractor access to the whole or part of the Site prior to the dates set out in the Site Access Schedule (or if a period is specified in relation to access to a part of the Site, then prior to the first day of that period);
  - (ix) the purpose of granting early access to the Site under clause 4.1(c)(viii) is to allow the CIDS/ODS Contractor to commence the CIDS/ODS Contractor's Activities early so as to mitigate any delays the CIDS/ODS Contractor may incur in reaching Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement or Construction Completion of a Portion by the relevant Date for Construction Completion (as applicable) and the CIDS/ODS Contractor must use that access to the Site to commence the CIDS/ODS Contractor's Activities and optimise the additional time; and
  - (x) the purpose of the Principal's Representative giving advance notice of delays to Site access under clause 4.1(b)(i) is to allow the CIDS/ODS Contractor to take measures to avoid, mitigate or minimise the effect of the delay on the CIDS/ODS Contractor's Program and the CIDS/ODS Contractor's ability to achieve Milestone Achievement of each Milestone by the relevant Date for Milestone Achievement and Construction Completion of each Portion by the relevant Date for Construction Completion (as applicable).
- (d) The Principal's obligations under clause 4.1(a) and 4.1(b) in respect of each part of the Site will cease:
- (i) where the Site Access Schedule specifies that access to the Site for the purposes of this clause 4.1 is provided for a particular period, on the date specified in the Site Access Schedule; or
  - (ii) upon the issue of a Notice of Construction Completion in respect of the final Portion occupying that part of the Site,

except to the extent required to allow the CIDS/ODS Contractor to comply with its obligations during the Defects Rectification Periods or to undertake Post Construction Completion Activities. Any such access is subject to the CIDS/ODS Contractor:

- (iii) complying with:
  - A. the requirements of the applicable Project Cooperation and Integration Deeds; or
  - B. where the CIDS/ODS Contractor has not entered into a Project Cooperation and Integration Deed with the relevant Interface Contractor, the site access and work, health and safety procedures of that Interface Contractor; and
  - C. any requirements to access that part of the Site referred to in clause 4.1(g); and

- (iv) executing and complying with a deed poll substantially in the form set out in Part A of Schedule 32 in favour of the relevant principal contractor for the site.
- (e) Failure by the Principal to give access as required by clause 4.1(b) will not be a breach of this Contract but will entitle the CIDS/ODS Contractor to:
  - (i) an extension of time to any relevant Date for Construction Completion or Date for Milestone Achievement under clause 13.11 if the requirements of that clause are satisfied; and
  - (ii) claim the additional costs reasonably and necessarily incurred by the CIDS/ODS Contractor as a direct result of the delay in accordance with clause 13.14.
- (f) The CIDS/ODS Contractor's entitlement under clause 4.1(e)(ii) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to give access as required by clauses 4.1(a), 4.1(b)(i) or 4.1(b)(ii).
- (g) The CIDS/ODS Contractor must:
  - (i) not use the Site for any purpose other than the Permitted Use without the prior written consent of the Principal's Representative; and
  - (ii) comply with:
    - A. any conditions of access that apply to an area of the Site as specified in the Site Access Schedule; and
    - B. the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Site as recorded in the register maintained by NSW Land Registry Services under the *Real Property Act 1900* (NSW).

## 4.2 Change of Site Access Schedule

- (a) If the Principal considers that it will not be able to provide the CIDS/ODS Contractor with access to any part of the Site in accordance with clause 4.1(b)(i), the Principal's Representative must, as soon as reasonably practicable after forming that opinion and in any event by no later than one month before the relevant date set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Site, then by no later than one month before the first day of that period), give the CIDS/ODS Contractor written notice that the Principal will not be able to provide the CIDS/ODS Contractor with such access.
- (b) If the Principal issues a notice pursuant to clause 4.2(a):
  - (i) the CIDS/ODS Contractor agrees that it will take all reasonable steps to mitigate any increased costs and minimise the effect of the failure on the

CIDS/ODS Contractor's Program as a result of the Principal's failure to provide the CIDS/ODS Contractor with such access; and

- (ii) the Principal must:
  - A. as soon as reasonably practicable, issue a Variation Proposal Request to the CIDS/ODS Contractor setting out the new dates for the relevant part of the Site Access Schedule; and
  - B. subsequently issue a Variation Order confirming the new dates for the relevant part of the Site Access Schedule and clause 9.1(c) will not apply.
- (c) Any Variation Proposal Request and subsequent Variation Order issued by the Principal's Representative pursuant to clause 4.2(b)(ii)B will be assessed and valued in accordance with clause 9 of this Contract.

### **4.3 Temporary Works**

The CIDS/ODS Contractor must carry out all Temporary Works required to execute the CIDS/ODS Contractor's Activities so that the Temporary Works will be fit for their intended purpose.

### **4.4 Access Conditions**

At all times when being given access to the Site or a part of the Site under clause 4.1, the CIDS/ODS Contractor:

- (a) must carry out the CIDS/ODS Contractor's Activities on and adjacent to the Site or that part in a manner that does not put the health or safety of persons at risk and prevents injury or death;
- (b) must not impede the continuous safe passage of the public, road and railway system users on existing roads, footpaths, access ways, cycleways and Rail Tracks affected by the CIDS/ODS Contractor's Activities in accordance with this Contract;
- (c) must, subject to clauses 4.1 and 4.8, the SWTC and any relevant Law, limit access to the Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Site as part of the CIDS/ODS Contractor's Activities; and
- (d) must not impede access or Utility Services to private property without the consent of the Principal's Representative and the relevant owner or occupier.

### **4.5 Land in Addition to the Site**

The CIDS/ODS Contractor must:

- (a) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site, including any land owned by a Rail Transport Agency, which is necessary or which it may require for the purposes of carrying out the CIDS/ODS Contractor's Activities ("**Extra Land**");

- (b) at its own cost carry out all activities and procure all Utility Services necessary to make the Extra Land suitable for use by the CIDS/ODS Contractor;
- (c) as a condition precedent to Construction Completion of a Portion:
  - (i) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
  - (ii) provide to the Principal's Representative:
    - A. unless not required by the Principal's Representative, a properly executed certificate in the form of Schedule 17 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Extra Land; and
    - B. if the CIDS/ODS Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the CIDS/ODS Contractor to the effect that the owner or occupier, or other person having an interest has failed or refused to execute such a release within 15 Business Days after it being provided by the CIDS/ODS Contractor to the owner, occupier or other person together with copies of all correspondence with the Authorities and the owner, occupier or other person and evidence that the CIDS/ODS Contractor has complied with the requirements of the relevant Authorities and the owner, occupier or other person of the Extra Land; and
- (d) indemnify the Principal against any damage, expense, loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with a claim by the owner or occupier of, or any other person having any interest in any Extra Land, provided that the CIDS/ODS Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or an Associate of the Principal contributed to the damage, expense, loss, cost or liability.

#### **4.6 Site Conditions**

- (a) Without limiting clauses 4.6A, 8.4, 13.8 and 13.14, the CIDS/ODS Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this Contract, the CIDS/ODS Contractor:
  - (i) examined this Contract, and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the CIDS/ODS Contractor or its Associates for the purpose of tendering;
  - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this Contract;

- (iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all of its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the CIDS/ODS Contractor's Activities;
  - (iv) informed itself of:
    - A. all matters relevant to the employment of labour at the Site; and
    - B. all industrial matters relevant to the Site;
  - (v) was given the opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:
    - A. relating to the subject matter of Information Documents and Materials; and
    - B. for construction purposes and otherwise;
  - (vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this Contract, the Information Documents and Materials, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender, the performance of its obligations and its potential liabilities under this Contract; and
  - (vii) undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this Contract and assume the obligations and potential risks and liabilities which it imposes on the CIDS/ODS Contractor.
- (b) Without limiting or otherwise affecting clauses 4.6(c), 4.6(d), and 4.6A, the Principal makes no representation and gives no warranty to the CIDS/ODS Contractor or its Associates in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the CIDS/ODS Contractor's Activities or otherwise in respect of the condition of:
    - A. the Site, Extra Land or their surroundings; or
    - B. any structure or other thing on, under, above or adjacent to the Site or Extra Land;
  - (ii) the adequacy or suitability of the Site or the Extra Land for the CIDS/ODS Contractor's Activities; or
  - (iii) the existence, location, condition or availability of any Utility Services on, under, above, adjacent to or related to the Site or Extra Land.

(c) Subject to clauses 4.6A, 8.4, 13.8 and 13.14, the CIDS/ODS Contractor accepts:

- (i) the Site and any Extra Land; and
- (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Site and any Extra Land,

in their present condition from time to time subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:

- (iii) all loss, delay or disruption it suffers or incurs; and
- (iv) any adverse effect on the Works, the Temporary Works or the CIDS/ODS Contractor's Activities,

arising out of, or in any way in connection with all defects and Site Conditions encountered in performing the CIDS/ODS Contractor's Activities and releases the Principal from all Claims, costs, liabilities, expenses, losses or damages in connection with such matters.

(d) Subject to clause 4.6A, 8.4, 13.8 and 13.14, the CIDS/ODS Contractor must design, supply and install the Works and Temporary Works in accordance with this Contract and will not be relieved of its obligations under this Contract, irrespective of:

- (i) the Site Conditions encountered in performing the CIDS/ODS Contractor's Activities; and
- (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
  - A. the Site or any Extra Land, the Environment or their surroundings; or
  - B. any structure or other thing on, above or adjacent to, or under the surface of, the Site or any Extra Land, the Environment or their surroundings.

**4.6A**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

**4.7 Information Documents and Materials**

- (a) Whether or not any Information Documents and Materials or any part thereof form an Exhibit to this Contract, the CIDS/ODS Contractor acknowledges that:
  - (i) the Information Documents and Materials or part thereof do not form part of this Contract and that clause 4.7(c) applies to the Information Documents and Materials or part thereof; and
  - (ii) where Information Documents and Materials or any part thereof form an Exhibit to this Contract, they do so only for the purposes of identification of that document or part thereof.
  
- (b) Without limiting clause 4.7(c):
  - (i) the CIDS/ODS Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents and Materials, and the Information Documents and Materials do not form part of this Contract; and
  - (ii) the Principal will not be liable upon any Claim by the CIDS/ODS Contractor arising out of or in any way in connection with:

- A. the provision of, or the purported reliance upon, or use of the Information Documents and Materials to or by the CIDS/ODS Contractor or any other person to whom the Information Documents and Materials are disclosed; or
  - B. a failure by the Principal to provide any other information, data or documents to the CIDS/ODS Contractor.
- (c) The CIDS/ODS Contractor:
  - (i) warrants that it did not in any way rely upon:
    - A. any information, data, representation, statement or document made, or provided to the CIDS/ODS Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
    - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,  
  
for the purposes of entering into this Contract except to the extent that any such information, statement or document forms part of this Contract;
  - (ii) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
  - (iii) acknowledges that it is aware that the Principal has entered into this Contract relying upon:
    - A. the warranties, acknowledgements and agreements in clauses 4.7(c)(i) and 4.7(c)(ii); and
    - B. the agreements and acknowledgements in the CIDS/ODS Contractor's Tender.
- (d) The CIDS/ODS Contractor releases and indemnifies the Principal from and against:
  - (i) any claim against the Principal by, or liability of the Principal to, any person; or
  - (ii) (without being limited by clause 4.7(d)(i)) any costs, expenses, losses or damages suffered or incurred by the Principal,  
  
arising out of or in any way in connection with:
    - (iii) the provision of, or the purported reliance upon, or use of the Information Documents and Materials, as referred to in clauses 4.7(b) and 4.7(c)(i), to or by the CIDS/ODS Contractor or its Associates or any other person to whom the Information Documents and Materials are disclosed by the CIDS/ODS Contractor or its Associates or a failure by the Principal to

provide any information, data or documents to the CIDS/ODS Contractor (other than any information, data or documents which the Principal is required to provide to the CIDS/ODS Contractor by the terms of this Contract);

- (iv) any breach by the CIDS/ODS Contractor of this clause 4.7; or
- (v) the Information Documents and Materials being relied upon or otherwise used by the CIDS/ODS Contractor or by any other person to whom the Information Documents and Materials are disclosed by the CIDS/ODS Contractor, in the preparation of any information or document.

#### **4.8 Principal's Right to Access and Inspect**

Subject to clause 4.9, the CIDS/ODS Contractor must:

- (a) without limiting clauses 4.4 and 4.5, minimise disruption or inconvenience to:
  - (i) the Principal, Sydney Trains, other occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Site and Extra Land, including any occupation or use of the Works, a Portion or a part thereof under clause 15.7; and
  - (ii) others having a right of access to the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land; and
- (b) at all times:
  - (i) give the Principal's Representative, the Principal, Sydney Trains and any person authorised by the Principal's Representative, the Principal or Sydney Trains access to:
    - A. the Works and the Temporary Works;
    - B. the Site or any Extra Land; or
    - C. any other areas where the CIDS/ODS Contractor's Activities are being carried out,

including unobstructed vehicular access through the Site or any Extra Land; and
  - (ii) provide the Principal, the Principal's Representative and Sydney Trains with every reasonable facility necessary for the Inspection of the CIDS/ODS Contractor's Activities, including the CIDS/ODS Contractor's compliance with the Authority Approvals.

## 4.9 Principal not in Control

The CIDS/ODS Contractor and Principal acknowledge that nothing in this Contract including the right to inspect pursuant to clause 4.8 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

- (a) the Principal has any management or control over the CIDS/ODS Contractor's Activities or the Site or Extra Land; or
- (b) the Principal has any responsibility for any act or omission by the CIDS/ODS Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Authority Approvals or this Contract.

## 5. Compliance

### 5.1 Quality of Work

The CIDS/ODS Contractor must in carrying out the CIDS/ODS Contractor's Activities use the materials and standard of workmanship required by this Contract, and otherwise comply with this Contract in the execution of the CIDS/ODS Contractor's Activities. In the absence of any other requirement, the CIDS/ODS Contractor must use suitable new materials and ensure that all workmanship and materials are fit for their intended purpose.

### 5.2 SWTC

The CIDS/ODS Contractor must comply with the requirements of the SWTC.

### 5.3 Environmental Management

The CIDS/ODS Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of the SWTC for so long as any CIDS/ODS Contractor's Activities are carried out;
- (b) carry out the CIDS/ODS Contractor's Activities in accordance with the Appointed Principal Contractor's Construction Environmental Management Plan (as provided by the relevant Appointed Principal Contractor and updated from time to time) insofar as it relates to the CIDS/ODS Contractor's Activities or the Works;
- (c) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the SWTC in relation to environmental management on the Site and Extra Land; and
- (d) use, and be able to demonstrate the use of, ecologically sustainable development principles (including any Sydney Metro sustainability initiatives under the Sustainability Management Plan) in the design, supply and installation of the Works, the Temporary Works and all other CIDS/ODS Contractor's Activities.

## 5.4 WHS Management

The CIDS/ODS Contractor must:

- (a) hold and maintain an WHS management system for so long as any CIDS/ODS Contractor's Activities are carried out that complies with the WHS Guidelines and the SWTC;
- (b) carry out the CIDS/ODS Contractor's Activities in accordance with the Appointed Principal Contractor's Project Health and Safety Management Plan (as provided by the Appointed Principal Contractor and updated from time to time) insofar as it relates to the CIDS/ODS Contractor's Activities or the Works; and
- (c) supervise any Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the SWTC in relation to the WHS management on the Site and Extra Land.

## 5.5 No Relief from Obligations

The CIDS/ODS Contractor will not be relieved from any of its liabilities or responsibilities under this Contract (including under clause 11 or otherwise according to Law) nor will the rights of the Principal whether under this Contract or otherwise according to Law be limited or otherwise affected, by:

- (a) the implementation of, and compliance with, any management system or plan by the CIDS/ODS Contractor;
- (b) compliance with the Contract Management Plans by the CIDS/ODS Contractor;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative, particularly those concerning or relating to the CIDS/ODS Contractor proceeding past any hold point or witness point identified in the SWTC or otherwise directed by the Principal's Representative;
- (d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, particularly whilst participating in any hold point or witness point procedure, including where such a failure is the result of a negligent act or omission; or
- (e) any inspections arranged by the Principal's Representative under the Contract or any related discussions between the CIDS/ODS Contractor's Representative and the Principal's Representative.

## 5.6 Engineering Authorisation

The CIDS/ODS Contractor represents and warrants that if it or any of its Subcontractors will carry out Asset Lifecycle Services that they are a TAO and have obtained AMB Authorisation to carry out the Asset Lifecycle Services.

## 5.7 AMB Compliance

- (a) Without limiting or otherwise restricting clauses 5.7(b) and 5.7(c), if the CIDS/ODS Contractor or its Subcontractors have AMB Authorisation to carry out the Asset Lifecycle Services or obtain that AMB Authorisation prior to Construction Completion, the CIDS/ODS Contractor must:
- (i) ensure that AMB Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the CIDS/ODS Contractor's Activities are carried out; and
  - (ii) on and from the date that AMB Authorisation was granted, comply (and must ensure that its Subcontractors and all personnel for which the CIDS/ODS Contractor is responsible comply) with the conditions of the applicable AMB Authorisation.
- (b) The CIDS/ODS Contractor must (and must ensure that its Subcontractors and all personnel for which the CIDS/ODS Contractor is responsible):
- (i) implement and comply with any AMB Requirements applicable to the Asset Lifecycle Services;
  - (ii) immediately notify the Principal's Representative in writing of any non-compliance with clauses 5.6 and 5.7;
  - (iii) cooperate fully with the AMB in the performance of the AMB's functions;
  - (iv) provide access to premises and resources as reasonably required by the AMB, including so that the AMB can effectively carry out its review, surveillance and audit functions;
  - (v) comply with the directions, instructions and requirements issued by the AMB;
  - (vi) notify the AMB of any matter that could reasonably be expected to affect the exercise of the AMB's functions;
  - (vii) provide the AMB with any information relating to its activities or any documents or other things reasonably required by the AMB in the exercise of its functions; and
  - (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the AMB and to implement and comply with AMB Requirements.
- (c) The CIDS/ODS Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the AMB will be liable upon) any Claim arising out of or in connection with the requirements to obtain, or any delays or failure by the AMB in granting the CIDS/ODS Contractor, or its Subcontractors, AMB Authorisation or the obligation to comply with AMB Requirements with respect to AMB Authorisation.

## 5.8 Sydney Metro Principal Contractor Health and Safety Standard

- (a) The CIDS/ODS Contractor must comply with those parts of the Sydney Metro Principal Contractor Health and Safety Standard (as amended from time to time) set out in Appendix F02 of the SWTC as if it was a principal contractor for the purposes of that standard.
- (b) The CIDS/ODS Contractor acknowledges and agrees that:
  - (i) the Principal will update the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to the CIDS/ODS Contractor's Activities and the Sydney Metro City & Southwest; and
  - (ii) notwithstanding any other provision of this Contract, the CIDS/ODS Contractor will not be entitled to make, and the Principal will not be liable on, any Claim arising out of or in any way in connection with:
    - A. any update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard; or
    - B. any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard as being an obligation of the Principal or an Associate of the Principal).

## 6. Design and Design Documentation

### 6.1 Design obligations

- (a) The CIDS/ODS Contractor must develop the design of the Works and the Temporary Works so that, if the Works are constructed in accordance with the Final Design Documentation, the Works will comply with:
  - (i) the SWTC;
  - (ii) any Variation;
  - (iii) the CIDS/ODS Contractor's fitness for purpose obligations in this Contract; and
  - (iv) the other requirements of this Contract.
- (b) The CIDS/ODS Contractor must cooperate with the Principal's Representative and, if applicable, the Independent Certifier to procure the review of the Design Documentation.
- (c) The Principal will have no liability to the CIDS/ODS Contractor in relation to:

- (i) the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC to carry out the CIDS/ODS Contractor's Activities; and
  - (ii) any omissions, ambiguities, discrepancies or inconsistencies in or between the SWTC and the Planning Approval.
- (d) The Design Documentation prepared by or on behalf of the CIDS/ODS Contractor is required to:
  - (i) satisfy the requirements of the SWTC and the other requirements of this Contract; and
  - (ii) be fit for its intended purpose upon finalisation of the Design Documentation.
- (e) Subject to clause 9.2(a), the CIDS/ODS Contractor's obligations under, and the warranties given in, this Contract will remain unaffected and it will bear and continue to bear full liability and responsibility for the supply, installation, Commissioning, testing and completion of the Works notwithstanding any Variation directed by the Principal's Representative.

## **6.2 CIDS/ODS Concept Design**

- (a) The parties acknowledge and agree:
  - (i) prior to the date of this Contract, the CIDS/ODS Contractor prepared the Concept Design; and
  - (ii) the Concept Design only contains a preliminary design which must be further developed by the CIDS/ODS Contractor in accordance with this Contract.
- (b) The CIDS/ODS Contractor must incorporate the Concept Design into the design for the Works and the Temporary Works.
- (c) The CIDS/ODS Contractor:
  - (i) warrants that the Concept Design comply with the SWTC, the CIDS/ODS Contractor's fitness for purpose obligations in this Contract and the other requirements of this Contract;
  - (ii) remains responsible for ensuring that the Works and the Temporary Works satisfy the SWTC, the CIDS/ODS Contractor's fitness for purpose obligations in this Contract and the other requirements of this Contract despite the Concept Design; and
  - (iii) bears all risks associated with the use of, or reliance upon, the Concept Design in performing its obligations or exercising its rights under this Contract and such use and reliance will not limit or otherwise reduce any of the CIDS/ODS Contractor's obligations under this Contract.



- (d) The Principal will have no liability to the CIDS/ODS Contractor arising out of or in connection with the Concept Design.

### **6.3 Preparation and submission of Design Documentation**

- (a) The CIDS/ODS Contractor must:
- (i) prepare the Design Documentation in the following Design Stages:
    - A. Design Stage 1;
    - B. Design Stage 2; and
    - C. Design Stage 3,
 or as otherwise contemplated by the Technical Management Plan;
  - (ii) submit all Design Documentation (other than design for Temporary Works) to the Principal's Representative:
    - A. in accordance with the SWTC, the Technical Management Plan, and the CIDS/ODS Contractor's Program; and
    - B. in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Principal's Representative and, if applicable, the Independent Certifier a reasonable opportunity to review the submitted Design Documentation;
  - (iii) if requested by the Principal's Representative, provide the Principal's Representative with any Design Documentation for Temporary Works within 5 Business Days of being requested to do so;
  - (iv) ensure the Design Stage 3 Design Documentation submitted is of a level of detail which is sufficient to permit the Independent Certifier and the Principal's Representative to determine whether:
    - A. the Design Documentation complies with this Contract; and
    - B. the Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this Contract; and
  - (v) provide any further information required by the Principal's Representative and the Independent Certifier.
- (b) All Design Documentation submitted pursuant to clause 6.3(a) for:
- (i) Design Stage 1 must be accompanied by a certificate in the form of Schedule 21; and
  - (ii) Design Stage 2 must be accompanied by a certificate in the form of Schedule 22,

from the CIDS/ODS Contractor certifying that the Design Documentation complies with all requirements of this Contract including the SWTC.

- (c) All Design Documentation submitted pursuant to clause 6.3(a) for Design Stage 3 must be accompanied by a certificate in the form of Schedule 23:
  - (i) from the CIDS/ODS Contractor certifying that the Design Documentation:
    - A. complies with all requirements of this Contract including the SWTC; and
    - B. is suitable for construction; and
  - (ii) if applicable, from each Subcontractor that prepared the Design Documentation certifying that the Design Documentation complies with all requirements of its Subcontract and those parts of the SWTC that are relevant to the Subcontractor's scope of work.
- (d) The Principal may, within 1 Business Day of receiving any Design Stage 3 Design Documentation from the CIDS/ODS Contractor, provide to the Independent Certifier the Design Stage 3 Design Documentation (if any) that the Principal requires to be reviewed and certified by the Independent Certifier.

#### **6.4 Explanation of Design Documentation**

The CIDS/ODS Contractor must, whenever it submits Design Documentation for Design Stage 3 pursuant to clause 6.3(a)(ii):

- (a) deliver a design presentation workshop within 5 Business Days of its submission; and
- (b) if required by the Principal's Representative or the Independent Certifier, make available the appropriate design personnel to:
  - (i) explain the Design Documentation; and
  - (ii) provide such information regarding the Design Documentation as the Principal's Representative or the Independent Certifier reasonably requests.

#### **6.5 Distribution of Design Documentation**

- (a) The Principal may distribute, or require the CIDS/ODS Contractor to distribute, the whole or a part of the Design Documentation to third parties including Authorities and Interface Contractors.
- (b) The Principal may, but is not obliged to, take into account the comments of third parties in relation to the Design Documentation when responding to the CIDS/ODS Contractor.
- (c) No comment or instruction from a third party in relation to the design is binding on the Principal, or will have any effect on the obligations of the CIDS/ODS

Contractor under this Contract (unless it is also a direction from the Principal's Representative).

## **6.6 Review of Design Documentation**

### **(a) (Design Stage 1)**

- (i) The Principal's Representative must, within the Principal's Design Review Period, review any Design Stage 1 Design Documentation submitted to it by the CIDS/ODS Contractor and notify the CIDS/ODS Contractor in writing of any actual non-compliance or potential non-compliance with the requirements of this Contract (with detailed reasons).
- (ii) If the Principal's Representative notifies the CIDS/ODS Contractor under clause 6.6(a)(i) that any Design Stage 1 Design Documentation contains an actual non-compliance with the requirements of this Contract:

#### **A. the CIDS/ODS Contractor:**

- 1) must, within 20 Business Days after receiving such notice, give the Principal's Representative a written response:
  - a) which explains how the CIDS/ODS Contractor will address the non-compliance in sufficient detail to satisfy the Principal's Representative that compliance will be achieved prior to submitting the Design Stage 2 Design Documentation; or
  - b) setting out any matters in relation to which it disagrees with the Principal's Representative opinion, together with its reasons for doing so;
- 2) must, prior to submitting any Design Stage 2 Design Documentation that relates to a Design Stage 1 Design Documentation non-compliance, give the Principal's Representative a written statement which explains how the non-compliance has been addressed; and
- 3) is not obliged to respond to any comments received from the Principal's Representative which do not concern a non-compliance; and

**B.** following the receipt of a notice under clause 6.6(a)(ii)A.1)b), the parties will meet in good faith to seek to resolve the disagreement.

### **(b) (Design Stage 2)**

- (i) The Principal's Representative must, within the Principal's Design Review Period, review any Design Stage 2 Design Documentation submitted to it by the CIDS/ODS Contractor and either:

- A. reject a part or all of the Design Documentation (in writing, with detailed reasons, to the CIDS/ODS Contractor) if the Design Documentation:
    - 1) does not comply with the requirements of this Contract; or
    - 2) is not sufficiently complete to enable the Principal's Representative to form a view on whether it is compliant; or
  - B. notify the CIDS/ODS Contractor in writing that the Design Documentation is not rejected, together with a list of:
    - 1) any actual non-compliances or potential non-compliances with the requirements of this Contract (with detailed reasons); and
    - 2) suggested actions that the CIDS/ODS Contractor may take to address those non-compliances prior to submitting the Design Stage 3 Design Documentation.
- (ii) If any Design Stage 2 Design Documentation is rejected by the Principal's Representative under clause 6.6(b)(i)A, the CIDS/ODS Contractor must either:
- A. promptly amend the relevant non-compliant element of the Design Documentation and re-submit it to the Principal's Representative in accordance with clause 6.3, and the process in this clause 6.6(b) will be reapplied to the amended element of the Design Documentation, except that reference to the Principal's Design Review Period will be deemed to be a reference to the Principal's Design Re-Review Period; or
  - B. provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative's opinion that the Design Documentation does not comply with the requirements of this Contract, together with its reasons for doing so.
- (iii) If the CIDS/ODS Contractor gives a notice under clause 6.6(b)(ii)B, the Principal's Representative must, promptly after receipt of the notice, determine and notify the parties as to whether or not the CIDS/ODS Contractor's notice satisfactorily addresses the Principal's Representative's concerns, together with its reasons for forming that opinion and:
- A. if the Principal's Representative considers that the CIDS/ODS Contractor's notice satisfactorily addresses its concerns, it must provide the notice under clause 6.6(b)(i)B; and
  - B. if the Principal's Representative does not consider that the CIDS/ODS Contractor's notice satisfactorily addresses its concerns, the parties will promptly meet in good faith to seek to

resolve the disagreement (whether by a Variation or otherwise) within 10 Business Days of the notice under clause 6.6(b)(ii)B.

- (iv) If the parties are unable to resolve a disagreement contemplated under clause 6.6(b)(iii)B within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the CIDS/ODS Contractor may refer the disagreement for resolution in accordance with clause 19.
- (v) If:
  - A. the parties reach resolution under clause 6.6(b)(iii)B and the CIDS/ODS Contractor is required to resubmit any Design Stage 2 Design Documentation;
  - B. it is determined in accordance with the dispute resolution provisions of this Contract that the CIDS/ODS Contractor is required to resubmit any Design Stage 2 Design Documentation; or
  - C. any Design Stage 2 Design Documentation is the subject of a direction by the Principal's Representative under clause 6.6(d),
 then:
  - D. the CIDS/ODS Contractor must promptly amend the relevant non-compliant element of the Design Stage 2 Design Documentation and re-submit the relevant element to the Principal's Representative in accordance with clause 6.3; and
  - E. the process in clause 6.6(b) will reapply to the amended element of the Design Stage 2 Design Documentation except that the reference to the Principal's Design Review Period under clause 6.6(b)(i) will be deemed to be a reference to the Principal's Design Re-Review Period.
- (vi) If clause 6.6(b)(v) applies, the CIDS/ODS Contractor must:
  - A. immediately cease any Trial Activities that are being carried out in accordance with the relevant non-compliant element(s) of the Design Stage 2 Design Documentation; and
  - B. promptly rectify any such Trial Activities at its cost so that they comply with the requirements of this Contract.
- (vii) If a notice provided by the Principal's Representative under clause 6.6(b)(i)B lists any actual or potential non-compliances:
  - A. the notice may suggest the action that could be taken by the CIDS/ODS Contractor to address the non-compliance; and
  - B. the CIDS/ODS Contractor must, prior to submitting the relevant Design Stage 3 Design Documentation, complete the suggested action, or take any other action the CIDS/ODS Contractor deems

reasonable in the circumstances, to correct the non-compliance to the extent required for the Design Stage 3 Design Documentation to comply with this Contract.

(c) **(Design Stage 3)**

- (i) Subject to clause 6.10, the Principal's Representative must, within the Principal's Design Review Period, review any Design Stage 3 Design Documentation submitted to it by the CIDS/ODS Contractor and either:
- A. reject a part or all of the Design Documentation (in writing, with detailed reasons, to the CIDS/ODS Contractor) if the Design Documentation:
    - 1) does not comply with the requirements of this Contract;
    - 2) is not sufficiently complete to enable the Principal's Representative or, if applicable, the Independent Certifier, to form a view on whether it is compliant; or
  - B. notify the CIDS/ODS Contractor in writing that the Design Documentation is not rejected, together with:
    - 1) a list of:
      - a) any non-compliances which the Principal's Representative and, if applicable, the Independent Certifier considers to be minor non-compliances (**Minor Non-Compliance**); and
      - b) suggested actions that the CIDS/ODS Contractor may take to address those Minor Non-Compliances; and
    - 2) in respect of any Design Stage 3 Design Documentation that was provided to the Independent Certifier under clause 6.3(d), a copy of the certificate issued by the Independent Certifier in the form of Schedule 24 in accordance with the Independent Certifier Deed.
- (ii) Without limiting the CIDS/ODS Contractor's ability to proceed with construction in accordance with clause 6.8, if any Design Stage 3 Design Documentation is rejected by the Principal's Representative under clause 6.6(c)(i)A, the CIDS/ODS Contractor must either:
- A. promptly amend the relevant non-compliant element of the Design Documentation and re-submit it to the Principal's Representative in accordance with clause 6.3, and the process in this clause 6.6(c) will be reapplied to the amended element of the Design Documentation, except that reference to the Principal's Design Review Period will be deemed to be a reference to the Principal's Design Re-Review Period; or

- B. provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative's opinion or, if applicable, the Independent Certifier's opinion that the Design Documentation does not comply with the requirements of this Contract, together with its reasons for doing so.
- (iii) If the CIDS/ODS Contractor gives a notice under:
- A. clause 6.6(c)(ii)B, the Principal's Representative must, promptly after receipt of the notice:
- 1) consult with the Independent Certifier, where appropriate; and
  - 2) determine and notify the parties as to whether or not the CIDS/ODS Contractor's notice satisfactorily addresses the Principal's Representative's or, if applicable, the Independent Certifier's concerns, together with its reasons for forming that opinion and:
    - a) if the Principal's Representative or, if applicable, the Independent Certifier considers that the CIDS/ODS Contractor's notice satisfactorily addresses its concerns, it must provide as part of its notice:
      - (i) the notice under clause 6.6(c)(i)B; and
      - (ii) if applicable, a copy of the certificate issued by the Independent Certifier in the form of Schedule 24 in accordance with the Independent Certifier Deed; or
    - b) if the Principal's Representative does not consider that the CIDS/ODS Contractor's notice satisfactorily addresses its concerns, the parties will promptly meet in good faith to seek to resolve the disagreement (whether by a Variation or otherwise) within 10 Business Days of the notice under clause 6.6(c)(ii)B. If the disagreement is in relation to a non-compliance identified by the Independent Certifier, the Independent Certifier will also attend the relevant meeting.
- B. If the parties are unable to resolve a disagreement contemplated under clause 6.6(c)(iii)A.2)b) within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the CIDS/ODS Contractor may refer the disagreement for resolution in accordance with:
- 1) clause 19; or

- 2) if the dispute is in relation to any non-compliance identified by the Independent Certifier, the Independent Certifier Deed.
- (iv) If:
- A. the relevant parties reach resolution under clause 6.6(c)(iii)B and the CIDS/ODS Contractor is required to resubmit any Design Stage 3 Design Documentation;
  - B. it is determined in accordance with the dispute resolution provisions of this Contract, or, if applicable, the Independent Certifier Deed, that the CIDS/ODS Contractor is required to resubmit any Design Documentation; or
  - C. any Design Stage 3 Design Documentation is the subject of a direction by the Principal's Representative under clause 6.6(d),
- then:
- D. the CIDS/ODS Contractor must promptly amend the relevant non-compliant element of the Design Documentation and re-submit the relevant element to the Principal's Representative in accordance with clause 6.3;
  - E. if applicable, the Principal's Representative will provide the re-submitted Design Documentation to the Independent Certifier; and
  - F. the process in clause 6.6(c) will reapply to the amended element of the Design Documentation except that the reference to the Principal's Design Review Period under clause 6.6(c)(i) will be deemed to be a reference to the Principal's Design Re-Review Period.
- (v) If clause 6.6(c)(iv) applies, the CIDS/ODS Contractor must:
- A. immediately cease construction of any work that is being carried out in accordance with the relevant non-compliant element(s) of the Design Documentation; and
  - B. promptly rectify any such work at its cost so that it complies with the requirements of this Contract.
- (vi) If a notice provided by the Principal's Representative under clause 6.6(c)(i)B lists any Minor Non-Compliances:
- A. the notice may suggest the action that could be taken by the CIDS/ODS Contractor to address the Minor Non-Compliance; and
  - B. the CIDS/ODS Contractor must complete the suggested action, or take any other action the CIDS/ODS Contractor deems reasonable in the circumstances, to correct the Minor Non-Compliance to the extent required for the Design Documentation to comply with this



Contract, within the timeframe (if any) specified in the Principal's Representative's notice and, in any event, as a pre-condition to Construction Completion of each relevant Portion.

- (d) The Principal's Representative may at any time (including after the Principal's Representative has "not rejected" or the Independent Certifier has certified the Design Documentation pursuant to clause 6.6(c)(i)B) direct the CIDS/ODS Contractor to make amendments to the Design Documentation which the Principal considers to be required to ensure the Design Documentation complies with this Contract and, if it does so, clause 6.6(c)(iv)F will apply.
- (e) If the CIDS/ODS Contractor considers that any Design Documentation which is the subject of a direction by the Principal's Representative under clause 6.6(d) constitutes or involves a Variation, the CIDS/ODS Contractor must, if it wishes to make a Claim in relation to the matter, give a notice and submit a claim in accordance with, and otherwise comply with, clause 22.1.
- (f) The Independent Certifier is not required to certify any Design Documentation for Temporary Works or Design Documentation for the Trial Systems.

## **6.7 Network Assurance Committee**

- (a) The CIDS/ODS Contractor must:
  - (i) comply with the requirements of Appendix F01 of the SWTC in relation to the NAC assurance process; and
  - (ii) without limiting clause 6.7(a)(i):
    - A. submit to the Principal's Representative each NAC CCR Package in accordance with the Technical Management Plan; and
    - B. cooperate with and provide all reasonable assistance to the Principal and its Associates to facilitate the review of each NAC CCR Package.
- (b) Within 2 Business Days commencing on the date on which the Principal's Representative is provided with a NAC CCR Package by the CIDS/ODS Contractor under clause 6.7(a)(ii)A., the Principal's Representative must review the NAC CCR Package and either:
  - (i) reject the NAC CCR Package (in writing, with reasons, to the CIDS/ODS Contractor) if the Principal's Representative reasonably considers that the NAC CCR Package is not sufficiently complete to enable the NAC to form a view on whether the NAC CCR Package satisfies the NAC Requirements; or
  - (ii) submit that NAC CCR Package to the NAC in accordance with Appendix F01 of the SWTC.
- (c) If the Principal's Representative rejects a NAC CCR Package under clause 6.7(b)(i), the CIDS/ODS Contractor must promptly amend the NAC CCR

Package and re-submit it to the Principal's Representative in accordance with clause 6.7(a)(ii)A. and clause 6.7(b) will reapply.

- (d) In respect of each NAC CCR Package submitted by the Principal's Representative to the NAC under clause 6.7(b)(ii), within 10 Business Days of submitting the NAC CCR Package to the NAC, the Principal's Representative must give notice to the CIDS/ODS Contractor:
  - (i) that the NAC CCR Package has been accepted;
  - (ii) setting out a list of actions which the CIDS/ODS Contractor must take in order for the NAC CCR Package to satisfy the NAC Requirements ("**NAC Required Actions**"); or
  - (iii) that the NAC CCR Package has been rejected.
- (e) If the Principal's Representative provides a notice under clause 6.7(d)(ii) or clause 6.7(d)(iii), the CIDS/ODS Contractor:
  - (i) must complete the NAC Required Actions (if applicable); and
  - (ii) if the notice is under clause 6.7(d)(iii), must promptly amend and re-submit the NAC CCR Package to the Principal's Representative and the process in clause 6.7(b) to clause 6.7(d) will reapply; and
  - (iii) may provide the Principal's Representative with a notice stating that the NAC CCR Package satisfies the NAC Requirements and setting out any matters in relation to which it disagrees with the need to carry out any of the NAC Required Actions (if applicable), together with its reasons.
- (f) If the CIDS/ODS Contractor gives a notice under clause 6.7(e)(iii), the parties will promptly meet and in good faith seek to resolve the disagreement (whether by a Variation or otherwise) within 10 Business Days of the notice under clause 6.7(e)(iii).
- (g) If the parties are unable to resolve a disagreement contemplated by clause 6.7(e)(iii) within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the CIDS/ODS Contractor may refer the disagreement for resolution in accordance with clause 19.

## 6.8 Design Documentation for manufacture and construction

Unless otherwise approved in writing by the Principal's Representative, the CIDS/ODS Contractor may only use for manufacturing and construction purposes Design Stage 3 Design Documentation submitted to the Principal's Representative under clause 6.3(a)(ii) if the following conditions are met:

- (a) the Principal's Representative has issued the CIDS/ODS Contractor with a notice under clause 6.6(c)(i)B or 20 Business Days have passed from submission of the Design Stage 3 Design Documentation in accordance with clause 6.3(a)(ii);

- (b) the Design Documentation complies with the requirements of any relevant Approval (if applicable); and
- (c) for Design Documentation that relates to construction work that requires NAC Gate 3 approval:
  - (i) the Principal's Representative has given a notice under clause 5.1(d)(i); or
  - (ii) the Principal's Representative has given a notice under clause 5.1(d)(ii) and:
    - A. the CIDS/ODS Contractor has completed all NAC Required Actions set out in the notice; or
    - B. the notice permits the CIDS/ODS Contractor to proceed with construction provided that the NAC Required Actions are completed in due course.

This clause 6.8 does not restrict the use of Design Documentation for Temporary Works or Design Documentation for the Trial Systems for manufacturing and construction purposes.

## **6.9 Design Documentation for Trial Systems**

- (a) After:
  - (i) the Principal's Representative has given notice under clause 6.6(b)(i)B that the Design Stage 2 Design Documentation is not rejected; and
  - (ii) the CIDS/ODS Contractor has:
    - A. addressed any non-compliances in the Design Stage 2 Design Documentation identified by the Principal's Representative in the notice provided pursuant to clause 6.6(b)(i)B; and
    - B. given the Principal's Representative a written statement which explains how the non-compliance has been addressed,

the CIDS/ODS Contractor must use the relevant Design Stage 2 Design Documentation for the purposes of completing the Trial Activities in accordance with the SWTC.

- (b) The Principal's Representative may by written notice require the CIDS/ODS Contractor to resubmit Design Stage 2 Design Documentation to address any non-compliant element of the Design Stage 2 Design Documentation identified during the Trial Period (notwithstanding whether or not the non-compliance element arose or was otherwise identified in Trial Material).
- (c) If the Principal's Representative issues a written notice under clause 6.9(b), the CIDS/ODS Contractor must promptly amend the relevant non-compliant element of the Design Stage 2 Design Documentation and re-submit it to the Principal's Representative in accordance with clause 6.3, and the process

under clause 6.6(b) will be reapplied to the amended element of the Design Documentation (except that the reference to the Principal's Design Review Period will be deemed to be a reference to the Principal's Design Re-Review Period) until the Principal's Representative notifies the CIDS/ODS Contractor under clause 6.6(b)(i)B that:

- (i) the revised Design Stage 2 Design Documentation is not rejected; and
- (ii) any outstanding non-compliances can be addressed prior to submitting Design Stage 3 Design Documentation,

**(Trial Design Notice).**

- (d) Clause 6.9(c) may be reapplied any number of times by the Principal's Representative.
- (e) Without limiting clause 8.1(c), the CIDS/ODS Contractor acknowledges and agrees that it may only submit the Design Stage 3 Design Documentation under clause 6.3 following:
  - (i) completion of the Trial Activities;
  - (ii) expiry of the Trial Period;
  - (iii) provision of the information required to be provided under clause 7.2(b)(ii)H; and
  - (iv) if the Principal's Representative has given a written notice under clause 6.9(b), receipt of a Trial Design Notice.

## **6.10 Amendments to Final Design Documentation**

- (a) Subject to clauses 6.10(b) and 9, if the CIDS/ODS Contractor wishes to amend Final Design Documentation prior to the Date of Construction Completion of a Portion to which the Final Design Documentation relates:
  - (i) the CIDS/ODS Contractor must submit the amended Design Documentation to the Principal's Representative and the Independent Certifier together with:
    - A. the certification referred to in clause 6.3(c); and
    - B. an explanation as to why it is seeking to amend the Final Design Documentation; and
  - (ii) clauses 6.6 to 6.8 will apply as if the Design Documentation is Design Stage 3 Design Documentation.
- (b) The CIDS/ODS Contractor may, at its own risk, use the amended Final Design Documentation submitted in accordance with clause 6.10(a) for manufacturing and construction purposes prior to the expiry of the 20 Business Day period in clause 6.8(a) if:

- (i) the amendment to the Final Design Documentation:
  - A. is minor;
  - B. does not adversely impact the Works or the Temporary Works; and
  - C. is necessary to overcome an issue which:
    - 1) prevents or adversely affects the CIDS/ODS Contractor proceeding with manufacturing and construction; and
    - 2) has arisen or become evident since the Final Design Documentation was submitted to the Principal's Representative; and
- (ii) the Final Design Documentation does not relate to a NAC CCR Package that has been the subject of notice under clause 5.1(d)(i) or clause 5.1(d)(ii).

### 6.11 Assignment and ownership of Intellectual Property

- (a) All Contract Documentation will be the Principal's property.
- (b) By this Contract, the CIDS/ODS Contractor assigns or transfers to the Principal all of its right, title and interest, including all Intellectual Property in or to:
  - (i) the Contract Documentation;
  - (ii) the materials, documents, images, photographs and software (other than processes and methods of working); and
  - (iii) the Works,
 

(collectively called the "**Contract Documentation and Materials**") created by or on behalf of the CIDS/ODS Contractor for or in connection with the CIDS/ODS Contractor's Activities or the Works, so that such right, title and interest throughout the world vests in the Principal immediately and automatically on creation.
- (c) The CIDS/ODS Contractor grants, and will procure from any applicable third party (although in the case of third parties supplying goods, the CIDS/ODS Contractor will use best endeavours to procure) the grant of, an irrevocable, perpetual, non-exclusive, royalty free, fully assignable licence (including the right to sub-license) to use all Intellectual Property in or relating:
  - (i) to the extent not assigned under clause 6.11(b), the Contract Documentation and Materials;
  - (ii) to the Temporary Works and Construction Plant and the processes and methods of working relevant to the CIDS/ODS Contractor's Activities (collectively called the "**Contract Processes**"); and
  - (iii) the CIDS/ODS Contractor's Background IP in relation to the CIDS/ODS,

for:

- (iv) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the CIDS/ODS Contractor's Activities or the Works or the Temporary Works;
- (v) any purpose associated with further development of the Site; and
- (vi) any other purpose connected with transport projects in New South Wales,

which licence is effective immediately and will survive termination of this Contract on any basis.

- (d) For the purposes of clause 6.11(c), the Principal's use of the Contract Documentation and Materials and the Contract Processes includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation and Materials or the Contract Processes or part of the Works or Temporary Works to which the Contract Documentation and Materials or the Contract Processes or any other work provided by the CIDS/ODS Contractor under this Contract relates:
  - (i) with or without attribution of authorship;
  - (ii) in any medium; and
  - (iii) in any context and in any way it sees fit.
- (e) The CIDS/ODS Contractor agrees to, and will procure any applicable third party to, do such things as reasonably requested by the Principal to assist the Principal and its licensees, assignees and successors and their licensees, and any other person authorised by it (each an "**Authorised User**") to obtain, perfect, enforce or defend its (or their) interest in the Intellectual Property assigned or licensed (as applicable) to the Principal under this Contract.
- (f) The Principal grants to the CIDS/ODS Contractor a royalty free licence (including the right to sublicense) to use:
  - (i) the SWTC; and
  - (ii) the Intellectual Property assigned to the Principal under clause 6.11(b),solely to the extent necessary to enable the CIDS/ODS Contractor to perform the CIDS/ODS Contractor's Activities.
- (g) The CIDS/ODS Contractor represents and warrants that:
  - (i) neither the grant of the rights granted to the Principal under this Contract, nor their use by the Principal or any Authorised User infringes or will infringe the rights, including the Intellectual Property or Moral Rights, of or duties owed to any third party; and

- (ii) the Intellectual Property assigned or licensed to the Principal under this Contract are complete and they are the only Intellectual Property necessary or desirable to enable the Principal, and any Authorised User, to fully enjoy and exercise all rights granted to it under this Contract.
- (h) Without limiting clause 6.11(g), where any action or claim for infringement or alleged infringement of any Intellectual Property results in the use or enjoyment by the Principal or any Authorised User of the Contract Documentation and Materials, the Contract Processes, the CIDS/ODS Contractor's Activities or the Works or any part of them, being disrupted, impaired or adversely affected, the CIDS/ODS Contractor must at its own expense and at the Principal's option:
- (i) procure for the benefit of the Principal and its Authorised Users the right to continue to use and exercise the rights granted to the Principal under this clause 6.11 in accordance with this Contract; or
  - (ii) modify or replace any relevant Contract Documentation and Materials, Contract Processes, CIDS/ODS Contractor's Activities or Works or any part of them so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, Contract Processes, CIDS/ODS Contractor's Activities or Works or relevant part of them in respect of which Intellectual Property is assigned or licensed pursuant to this clause 6.11 will:
    - A. comply with the requirements of this Contract; and
    - B. not limit or otherwise affect the Principal's rights, or the CIDS/ODS Contractor's ability to comply with its obligations, under this Contract or otherwise according to Law.
- (i) The CIDS/ODS Contractor must:
- (i) indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with:
    - A. a breach by the CIDS/ODS Contractor of any warranty set out in this clause 6.11; or
    - B. any actual or alleged infringement of any Intellectual Property in connection with the Contract Documentation and Materials, Contract Processes, CIDS/ODS Contractor's Activities or Works or relevant part of them;
  - (ii) ensure that all Subcontracts between the CIDS/ODS Contractor and all Subcontractors for design and documentation contain provisions to the same effect as clause 6.11(b);
  - (iii) obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such Subcontractors for design and documentation; and

- (iv) where requested by the Principal's Representative, obtain such an acknowledgement from other Subcontractors.

## 6.12 Delivery Up of Contract Documentation

If this Contract is frustrated or terminated the CIDS/ODS Contractor must:

- (a) immediately deliver the original and all sets and copies of all Contract Documentation (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to the Principal; and
- (b) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation.

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## 7. Trial

### 7.1 Trial

- (a) The CIDS/ODS Contractor must give written notice to the Principal's Representative:
  - (i) no less than 60 Business Days; and
  - (ii) 20 Business Days,

prior to the date on which it proposes to commence the Trial Activities at the nominated location on the Sydney Metro Northwest (**Trial Location**).
- (b) The CIDS/ODS Contractor must carry out the Trial Activities in accordance with this Contract including by installing and commissioning the Trial Systems at the Trial Location and carrying out the performance tests in accordance with Appendix F07 of the SWTC during the Trial Period.
- (c) The CIDS/ODS Contractor must complete IFAT testing of the Trial Systems and satisfy all other performance test requirements in accordance with the requirements of the SWTC.
- (d) The CIDS/ODS Contractor acknowledges and agrees that:
  - (i) upon completion of the Trial Period:
    - A. the Trial Systems must be retained in the Trial Location until removal of the Trial Systems from the Trial Location in accordance with clause 7.1(d)(ii); and
    - B. the CIDS/ODS Contractor will be responsible for operating and maintaining the Trial Systems, at its cost;
  - (ii) no earlier than 60 days prior to the Date for Construction Completion of Portion 1, the CIDS/ODS Contractor must, at its cost and as a precondition to Construction Completion:



- A. remove the Trial Systems from the Trial Location; and
- B. make good any damage to the Trial Location caused by the CIDS/ODS Contractor, such that the Trial Location is in the same order, repair and condition as it was in prior to the CIDS/ODS Contractor commencing the Trial Activities on the Trial Location, but only to the extent such reinstatement is necessary due to damage caused by the CIDS/ODS Contractor's Activities as determined by the Principal's Representative.

## 7.2 Co-operation and co-ordination with SMNW Operator

- (a) Prior to the commencement of the Trial Activities, the CIDS/ODS Contractor must liaise with the SMNW Operator to:
  - (i) coordinate access to the Trial Location (including access routes, unloading of equipment and provision of adequate materials handling and temporary storage areas) as required to carry out its installation, commissioning and testing activities for the purposes of performing the Trial Activities; and
  - (ii) coordinate the CIDS/ODS Contractor's Activities with any works being carried out by the SMNW Operator as notified by the Principal's Representative.
- (b) The CIDS/ODS Contractor:
  - (i) acknowledges and agrees that:
    - A. nothing in this clause 7.2 limits the CIDS/ODS Contractor's obligations under clause 3.9;
    - B. the Trial Activities will interface with the activities of the SMNW Operator;
    - C. it may require certain design and work methodology input from the SMNW Operator to perform the Trial Activities and to coordinate the design of the Trial Systems;
    - D. in relation to the carrying out of the Trial Activities by the CIDS/ODS Contractor, and subject to the CIDS/ODS Contractor's rights under clauses 4.6A, 8.4, 13.8 and 13.14, the Principal will not be liable upon any Claim by the CIDS/ODS Contractor arising out of or in any way in connection with:
      - 1) the SMNW Operator carrying out its work; or
      - 2) any act or omission of the SMNW Operator;
    - E. it bears all costs associated with clause 7.2(b)(ii)F; and
    - F. clause 6.11 will apply to all material in any form (whether visible or not), including documents, recordings on disc or any other form of

storage, reports, products, equipment, information, data, software, tools, diagrams and plans, and includes all releases, updates and amendments to the original material owned or created by the CIDS/ODS Contractor or its licensors arising out of or in any way in connection with the Trial Activities (**Trial Material**);

- G. the Trial Material and any other material arising out of in any way in connection with the Trial Activities including the results of any tests required to be carried out during the Trial Period and any information required by the Principal under clause 7.2(a)(ii), may be used by the Principal's Representative or, if applicable, the Independent Certifier, for its review of the Design Stage 2 Design Documentation and Design Stage 3 Design Documentation under clause 6.6; and
- H. any access to the Trial Location in accordance with clause 7.2(a)(i) will be subject to the CIDS/ODS Contractor:
  - 1) complying with the SMNW Operator's reasonable site access and work health and safety procedures; and
  - 2) executing a deed poll in favour of the SMNW Operator and the Appointed Principal Contractor in the form set out in Part B of Schedule 32;

(ii) must:

- A. cooperate with the SMNW Operator, and do everything reasonably necessary to facilitate the execution of the SMNW Operator's activities, including providing the SMNW Operator with such assistance as may be reasonably directed by the Principal's Representative;
- B. ensure that the Trial Activities are carried out in a way that minimises any disruption, interference or adverse impact on or to, and without unreasonably disrupting or interfering with, or adversely impacting on, the SMNW Operator's activities, including by compromising the security of the Trial Location;
- C. liaise with the SMNW Operator and use reasonable efforts to schedule the Trial Activities at a time and in a way that minimises the impact on the SMNW Operator's activities;
- D. provide the SMNW Operator with sufficient information about the Trial Activities to assist the SMNW Operator to coordinate its activities with the Trial Activities;
- E. work directly with the SMNW Operator where required to complete the Trial Activities and provide all necessary information to the SMNW Operator in respect of the design of the Trial Systems;

- F. when accessing the Trial Location, observe all reasonable safety and security constraints notified by the SMNW Operator;
  - G. if required by the Principal, immediately repair and make good or replace (as deemed appropriate by the Principal's Representative) any damage to the Sydney Metro Northwest such that the relevant part of Sydney Metro Northwest is in the same order, repair and condition as it was in prior to the CIDS/ODS Contractor commencing the Trial Activities, but only to the extent such damage arises out of or in any way in connection with the CIDS/ODS Contractor's Activities (as determined by the Principal's Representative); and
  - H. when any information is required by the Principal pursuant to clause 7.2(a)(ii), including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the SMNW Operator's activities with the Trial Activities:
    - 1) provide the information to the Principal's Representative or the SMNW Operator (with a copy to the Principal's Representative), within the time requested by the Principal, provided that this time is reasonable; and
    - 2) ensure and warrant that the information provided is accurate as at the date provided;
- (iii) must promptly advise the Principal's Representative of all matters arising out of any liaison with the SMNW Operator that may involve a change to the Trial Activities or otherwise have an adverse effect upon the ability of the CIDS/ODS Contractor to comply with this clause 7; and
- (iv) must:
- A. cooperate with the SMNW Operator in relation to the SMNW Operator's compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
  - B. not put the SMNW Operator in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;
  - C. comply with all reasonable requirements of the SMNW Operator in relation to compliance with the SMNW Operator's Accreditation; and
  - D. not do anything (or fail to do anything) which jeopardises the SMNW Operator's Accreditation, including anything that may be grounds for the ONRSR to suspend or revoke (in whole or in part), or impose or vary conditions or restrictions on, the SMNW Operator's Accreditation.

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## 8. Southwest Metro Fencing Works

### 8.1 Southwest Metro Fencing Design Documentation

- (a) Prior to the date of this Contract, the Principal procured the SWM Fencing Stage 2/3 Design Documentation.
- (b) The Principal must provide the CIDS/ODS Contractor with a copy of the relevant parts of the 'approved for construction' design documentation for the SWM Fencing Works ("**SWM Fencing AFC Design Documentation**"), promptly following receipt by the Principal, together with a written notice that the Principal considers that either:
  - (i) any difference between the SWM Fencing Stage 2/3 Design Documentation and the SWM Fencing AFC Design Documentation does not give rise to a Variation; or
  - (ii) any difference between the SWM Fencing Stage 2/3 Design Documentation and the SWM Fencing AFC Design Documentation gives rise to a Variation.
- (c) The CIDS/ODS Contractor must not submit to the Principal's Representative under clause 6.3(a)(ii) any Design Stage 3 Design Documentation which interfaces with the SWM Fencing Works until the Principal has provided a copy of the SWM Fencing AFC Design Documentation to the CIDS/ODS Contractor in accordance with clause 8.1(b), unless otherwise agreed by the Principal's Representative in writing. The SWM Fencing AFC Design Documentation must be provided to the CIDS/ODS Contractor by the date agreed between the parties within 10 Business Days of this Contract, and the Principal agrees that such date must reasonably enable the CIDS/ODS Contractor to meet the CIDS/ODS Contractor's Program.
- (d) If:
  - (i) clause 8.1(b)(i) applies:
    - A. the Principal's Representative will direct the CIDS/ODS Contractor to proceed with the CIDS/ODS Contractor's Activities on the basis of the SWM Fencing AFC Design Documentation;
    - B. the CIDS/ODS Contractor must comply with the Principal's Representative's direction; and
    - C. the CIDS/ODS Contractor's only entitlement against the Principal in respect of the difference between the SWM Fencing Stage 2/3 Design Documentation and the SWM Fencing AFC Design Documentation will arise in accordance with clause 22.1; or
  - (ii) clause 8.1(b)(ii) applies, then the Principal's Representative:
    - A. may issue a Variation Proposal Request under clause 9.1(a); and

B. must issue a Variation Order under clause 9.2,

in respect of the required changes to the Works arising out of the difference between the SWM Fencing Stage 2/3 Design Documentation and the SWM Fencing AFC Design Documentation. Such a Variation will be the CIDS/ODS Contractor's only entitlement against the Principal except for any additional entitlement claimed by the CIDS/ODS Contractor pursuant to clause 22.1 in respect of any difference between the SWM Fencing Stage 2/3 Design Documentation and the SWM Fencing AFC Design Documentation not taken into account in the Variation directed by the Principal.

## 8.2 SWM Fencing Works as-built drawings

- (a) The Principal may, in its absolute discretion, provide the CIDS/ODS Contractor with a copy of as-built drawings for the relevant parts of the SWM Fencing Works submitted by the relevant SWM Fencing Works Contractor to the Principal.
- (b) If the Principal provides the CIDS/ODS Contractor with any as-built drawings pursuant to clause 8.2(a), the CIDS/ODS Contractor must review the as-built drawings and, within 10 Business Days after the date on which the CIDS/ODS Contractor received the as-built drawings, provide written notice to the Principal setting out details of any difference between the as-built drawings and the SWM Fencing AFC Design Documentation (excluding any deviations within the SWM Fencing Works Tolerances). To the extent any difference constitutes a SWM Fencing Works Defect, the provisions of clause 8.4 will apply.

## 8.3 Inspection of SWM Fencing Works

- (a) If the CIDS/ODS Contractor wishes to inspect any part of the completed SWM Fencing Works, the CIDS/ODS Contractor must submit a written request to the Principal's Representative a minimum of 10 Business Days in advance of the date it wishes to carry out the inspection (or such other period of time as the Principal's Representative may agree).
- (b) The Principal's Representative must facilitate all reasonable requests by the CIDS/ODS Contractor to inspect the SWM Fencing Works. Any such access is subject to the CIDS/ODS Contractor:
  - (i) complying with:
    - (A) the requirements of the applicable Project Cooperation and Integration Deeds; or
    - (B) where the CIDS/ODS Contractor has not entered into a Project Cooperation and Integration Deed with the relevant Interface Contractor, the site access and work, health and safety procedures of that Interface Contractor; and
    - (C) any requirements to access that part of the Site referred to in clause 4.1(g); and

- (ii) executing and complying with a deed poll substantially in the form set out in Part A of Schedule 32 in favour of the relevant principal contractor for the site.
- (c) The Principal's Representative (or its nominee) may attend any inspection of the SWM Fencing Works by the CIDS/ODS Contractor.

#### **8.4 SWM Fencing Works Defects**

- (a) If the CIDS/ODS Contractor discovers any defect, omission or other matter in or connected with any SWM Fencing Works that it considers to be a SWM Fencing Works Defect, the CIDS/ODS Contractor must promptly (and in any event, within 15 Business Days of any inspection referred to in clause 8.3(a), unless such defect, omission or other matter could not have been reasonably detected during the inspection, in which case, within 15 Business Days of discovering such defect, omission or other matter) notify the Principal's Representative in writing, providing full particulars of the alleged SWM Fencing Works Defect.
- (b) The CIDS/ODS Contractor must provide the Principal's Representative with any additional information reasonably requested in relation to the alleged SWM Fencing Works Defect.
- (c) If the CIDS/ODS Contractor gives the Principal a notice under clause 8.4(a) in respect of an alleged SWM Fencing Works Defect, the Principal's Representative must, within 10 Business Days of receiving the CIDS/ODS Contractor's notice under clause 8.4(a) or any additional information under clause 8.4(b) (as applicable) or such longer period as the parties may agree (acting reasonably), issue a notice to the CIDS/ODS Contractor that contains one of the following:
  - (i) an undertaking by the Principal to procure the rectification of the SWM Fencing Works Defect by the relevant SWM Fencing Works Contractor or an Other Contractor;
  - (ii) implementation of the Variation procedure contained in clause 9 to explore whether the CIDS/ODS Contractor could:
    - (A) rectify the SWM Fencing Works Defect; or
    - (B) modify the Works or the CIDS/ODS Contractor's Activities to accommodate the impact (if any) of the SWM Fencing Works Defect on the Works; or
  - (iii) a notification to the CIDS/ODS Contractor that the Principal does not consider the alleged defect to be a SWM Fencing Works Defect.

#### **8.5 No liability**

Subject to clause 8.4(c), the CIDS/ODS Contractor will not be entitled to:

- (a) make (nor will the Principal be liable upon) any Claim arising out of or in any way in connection with the SWM Fencing Works, including in relation to the

SWM Fencing Works being unsuitable, unsatisfactory or detrimental for the proper execution of the Works or the carrying out of the CIDS/ODS Contractor's Activities in accordance with this Contract; or

- (b) any relief from any obligation under this Contract,

to the extent that the SWM Fencing Works are constructed in accordance with the SWM Fencing AFC Design Documentation (including any deviations within the SWM Fencing Works Tolerances).

## **9. Variations**

### **9.1 Proposed Variations**

- (a) At any time prior to the expiry of the Defects Rectification Period (but without limiting clauses 11 and 16.4) the Principal's Representative may issue a document titled "Variation Proposal Request" to the CIDS/ODS Contractor, which will set out details of a proposed Variation that the Principal is considering.
- (b) Within 10 Business Days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative (acting reasonably), the CIDS/ODS Contractor must provide the Principal's Representative with a written notice in which the CIDS/ODS Contractor sets out:
- (i) the CIDS/ODS Contractor's proposed adjustments to the Contract Sum and the Payment Breakdown Schedule, to be determined on the basis of:
- A. the prices and rates set out in Part A of Schedule 13 (where applicable or where it is otherwise reasonable to use them for valuing the Variation); or
- B. to the extent clause 9.1(b)(i)A does not apply, the reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit), to be increased by the following percentage of that amount:
- 1) where the proposed adjustment to the Contract Sum is an increase, the relevant percentage set out in item 17 of Schedule 1 in respect of clause 9.4(b)(ii)A which will be in total satisfaction of all the CIDS/ODS Contractor's Overhead Costs and profit; or
  - 2) where the proposed adjustment to the Contract Sum is a decrease, the relevant percentage set out in item 17 of Schedule 1 in respect of clause 9.4(b)(ii)B of the total amount for off-site Overhead Costs (as described in Part B of Schedule 13) and profit;

- (ii) the effect (if any) that the proposed Variation will have on the CIDS/ODS Contractor's Program (including any extension of time required to a Date for Construction Completion or Date for Milestone Achievement (if any) and the measures the CIDS/ODS Contractor proposes to take to avoid, mitigate or minimise the effect of the proposed Variation on the CIDS/ODS Contractor's Program);
  - (iii) any Approvals required to implement the proposed Variation, and the effect of the proposed Variation on any existing Approvals or the CIDS/ODS Contractor's ability to comply with those Approvals;
  - (iv) the effect (if any) which the proposed Variation will have on the CIDS/ODS Contractor's ability to satisfy its obligations under this Contract (including any warranties given by the CIDS/ODS Contractor under this Contract) or exercise its rights under this Contract;
  - (v) the CIDS/ODS Contractor's view on the likely impact of the proposed Variation on any Interface Works, including whether the CIDS/ODS Contractor considers that an Interface Works Change will, or is likely to, be required to enable the proposed Variation to be implemented or as a consequence of the proposed Variation and if so, any change that could be made to the proposed Variation (including any change to the timing of the proposed Variation or to the manner in which the Variation is proposed to be implemented) to reduce or avoid the impact of the proposed Variation on the relevant Interface Works; and
  - (vi) such other details as may be reasonably required by the Principal's Representative.
- (c) The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

## 9.2 Variation Orders

- (a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 9.1, the Principal's Representative may at any time prior to expiry of the Defects Rectification Period (but without limiting clauses 11 and 16.4) direct the CIDS/ODS Contractor to carry out a Variation by issuing a written document titled "Variation Order", in which the Principal's Representative will state one of the following:
  - (i) the proposed adjustments to the Contract Sum and the Payment Breakdown Schedule set out in the CIDS/ODS Contractor's notice under clause 9.1 are agreed and the Contract Sum and Payment Breakdown Schedule will be adjusted accordingly; or
  - (ii) any adjustment to the Contract Sum will be determined under clause 9.4(b).
- (b) Provided the Variation is not a substantial or fundamental change to the SWTC or the Works and the Variation is directed prior to Construction Completion, there is no limitation on the power of the Principal's Representative to direct a



Variation, and no Variation or direction to carry out a Variation will invalidate this Contract.

- (c) Provided the Variation is not a substantial or fundamental change to the SWTC or the Works and the Variation is directed prior to Construction Completion, the CIDS/ODS Contractor must comply with a "Variation Order" irrespective of:
  - (i) the nature, extent or value of the work the subject of the Variation;
  - (ii) the location or timing (including the impact on any Date for Construction Completion or Date for Milestone Achievement) of the work involved in the Variation; or
  - (iii) any Dispute related to the Variation.
- (d) The CIDS/ODS Contractor's entitlement (if any) to an extension of time and delay costs arising out of or in connection with a Variation will be dealt with under clause 13 and not this clause 9. The valuation of Variations under clause 9.4 will include any amount for costs incurred by the CIDS/ODS Contractor as a result of any disruption caused by the Variation.
- (e) Except as directed in a Variation Order or where the Principal's Representative approves a Variation proposed by the CIDS/ODS Contractor under clause 9.6(c), the CIDS/ODS Contractor will not be entitled to vary or change the Works or the Temporary Works.

### 9.3 Options

The Principal's Representative may, by written notice given to the CIDS/ODS Contractor at any time within the period stated in Schedule 19, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the CIDS/ODS Contractor must perform their obligations under this Contract on the basis that the Contract Sum, the SWTC and the provisions of this Contract will be adjusted as set out in Schedule 19 for the relevant Option.

For the avoidance of doubt:

- (a) the Principal is not under any obligation whatsoever to exercise; and
- (b) the CIDS/ODS Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising,

any Option.

Where the Principal does not exercise its discretion to exercise an Option, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

The exercise of an Option by the Principal's Representative under this clause 9.3 will not:

- (c) relieve the CIDS/ODS Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);

(d) limit or otherwise affect the Principal's rights against the CIDS/ODS Contractor or the CIDS/ODS Contractor's rights against the Principal (including those arising out of any warranties given under this Contract); or

(e) entitle the CIDS/ODS Contractor to an extension of time,

whether under this Contract or otherwise according to any Law.

#### 9.4 Valuation

Subject to clauses 19 and 22, the Contract Sum and the Payment Breakdown Schedule will be adjusted for all Variations that have been directed by the Principal's Representative by:

(a) to the extent that clause 9.2(a)(i) applies, the agreed amount as specified in the Variation Order; or

(b) to the extent that clause 9.2(a)(ii) applies, an amount in respect of the Variation to be determined by the Principal's Representative on the basis of:

(i) the prices and rates set out in Part A of Schedule 13 (where applicable or where it is otherwise reasonable to use them for valuing the Variation); or

(ii) to the extent clause 9.4(b)(i) does not apply, reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit) to be agreed between the parties, or failing agreement, determined by the Principal's Representative, which will be increased by the following percentage of that amount:

A. where the adjustment to the Contract Sum is to be an increase, the relevant percentage set out in item 17 of Schedule 1 in respect of clause 9.4(b)(ii)A which will be in total satisfaction of all the CIDS/ODS Contractor's Overhead Costs and profit; or

B. where the adjustment to the Contract Sum is to be a decrease, the relevant percentage set out in item 17 of Schedule 1 in respect of clause 9.4(b)(ii)B of the total amount for off-site Overhead Costs (as described in Part B of Schedule 13) and profit,

provided however that where the Principal's Representative has issued a Variation Proposal Request, the CIDS/ODS Contractor's entitlement under this clause 9.4(b) will not be greater than any amount set out in the CIDS/ODS Contractor's notice under clause 9.1; and

(c) to the extent clause 4.2(b)(ii) applies, the adjustment to the Contract Sum and the Payment Breakdown Schedule will be reduced to the extent the CIDS/ODS Contractor failed to comply with its obligations under clause 4.2(b)).

#### 9.5 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any part of the Works:

- (a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) the Principal will not be liable upon any Claim by the CIDS/ODS Contractor arising out of or in any way in connection with any work being omitted or deleted from the CIDS/ODS Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work; and
- (c) the adjustment to the Contract Sum arising from the work that has been omitted or deleted will be valued in accordance with clause 9.4.

## 9.6 CIDS/ODS Contractor initiated Variations

- (a) The CIDS/ODS Contractor may propose a Variation by giving written notice to the Principal's Representative with:
  - (i) details of:
    - A. the proposed Variation;
    - B. the reason for the proposed Variation;
    - C. the time within, and the manner in which, the CIDS/ODS Contractor proposes to implement the proposed Variation;
    - D. the effect (if any) of the proposed Variation on the CIDS/ODS Contractor's Activities, including the CIDS/ODS Contractor's Program and the Dates for Construction Completion and Dates for Milestone Achievement;
    - E. the cost effect of assessing and carrying out the proposed Variation, including:
      - 1) where the proposed Variation will involve additional costs, any increased costs;
      - 2) where the proposed Variation will lead to cost savings, the cost savings that the CIDS/ODS Contractor expects to arise from the Variation; and
      - 3) the effect the proposed Variation will have on any operating and maintenance costs; and
    - F. the effect (if any) that the proposed Variation will have on any Interface Works, including whether an Interface Works Change will, or is likely to, be required to enable the proposed Variation to be implemented, or as a consequence of the proposed Variation; and

- (ii) a written statement stating that the proposed Variation:
  - A. will not adversely affect:
    - 1) the functional integrity of any of the elements of the CIDS/ODS Contractor's Activities; or
    - 2) the CIDS/ODS Contractor's ability to satisfy its obligations under this Contract (including any warranties given by the CIDS/ODS Contractor under this Contract and the performance standards required by this Contract); and
  - B. is consistent with and complies with the conditions and requirements of the Planning Approval.
- (b) On receiving a notice under clause 9.6(a), the Principal may give written notice to the CIDS/ODS Contractor requesting any other information and supporting documentation the Principal reasonably requires. The CIDS/ODS Contractor must, at its cost, provide the requested information or documentation to the Principal's Representative within 10 Business Days of receiving the request.
- (c) Subject to clause 9.6(d), the Principal's Representative:
  - (i) (in its absolute discretion) may, by notice in writing, approve or reject any Variation the CIDS/ODS Contractor proposes; and
  - (ii) will be under no obligation to approve any such Variation for the convenience of, or to assist, the CIDS/ODS Contractor.
- (d) Prior to giving any direction under clause 9.6(c), the Principal's Representative may seek to negotiate with the CIDS/ODS Contractor over the level of cost increase or savings arising from the proposed Variation. If the parties agree in writing upon a different level of cost increase or savings, the CIDS/ODS Contractor's notice will be deemed to be amended by the inclusion of this different level of cost increase or savings in place of the original cost increase or savings notified by the CIDS/ODS Contractor.
- (e) If the Principal's Representative gives a direction under clause 9.6(c) approving a Variation proposed by the CIDS/ODS Contractor, the CIDS/ODS Contractor must perform its obligations under this Contract in accordance with the approved Variation but until such time, the CIDS/ODS Contractor must continue to carry out the CIDS/ODS Contractor's Activities and otherwise comply with its obligations under this Contract.
- (f) Unless otherwise agreed, where a proposed Variation that results in a cost saving is approved by the Principal's Representative, there will be a reduction in the Contract Sum and the Payment Breakdown Schedule by [REDACTED] of the reduction in costs specified by the CIDS/ODS Contractor in the CIDS/ODS

Contractor's notice under clause 9.6(a) (as deemed amended pursuant to clause 9.6(d) if applicable).

- (g) The CIDS/ODS Contractor will:
- (i) bear all costs associated with proposing a Variation under clause 9.6(a), including:
    - A. any amounts reasonably incurred by the Principal, including any amounts that are payable to any Interface Contractor or the Operator in assessing the proposed Variation (such costs to be a debt due from the CIDS/ODS Contractor to the Principal); and
    - B. any amounts that are payable by the CIDS/ODS Contractor or the Principal to any Interface Contractor(s) under any Project Cooperation and Integration Deeds or any other contracts entered into between the Principal and an Interface Contractor; and
  - (ii) unless otherwise agreed and except as provided for in clause 9.6(f):
    - A. where a proposed Variation is approved by the Principal's Representative, bear all costs associated with carrying out the proposed Variation; and
    - B. not be entitled to make any Claim against the Principal arising out of or in connection with the Variation.

## 9.7 Consultation with Interface Contractors

Without limiting clause 3.9, if the CIDS/ODS Contractor becomes aware that a Variation will, or is likely to, impact on any Interface Works or necessitate an Interface Works Change, then prior to:

- (a) submitting a written notice in accordance with clause 9.1(b); or
- (b) proposing a Variation in accordance with clause 9.6(a),

the CIDS/ODS Contractor must:

- (c) notify the relevant Interface Contractor(s) of the proposed Variation; and
- (d) work closely and iteratively with the relevant Interface Contractor(s) in good faith regarding the scope and design of the proposed Variation (and, where applicable, the corresponding Interface Works Change) in order to reduce the overall cost to the Principal of implementing the Variation.

## 9.8 CIDS/ODS Contractor's Entitlements

Subject to clauses 13.8 and 13.14, and for the avoidance of doubt, without limiting the CIDS/ODS Contractor's rights under clauses 3.3, 3.4, 4.6A, 8.4, 22.1, this clause 9 is an exhaustive code of the CIDS/ODS Contractor's rights in any way in connection with any Variation. The CIDS/ODS Contractor waives all rights at Law to make any Claim

against the Principal in any way in connection with any of the matters set out in this clause 9 otherwise than in accordance with the terms of this Contract.

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## **10. Construction**

### **10.1 Construction**

- (a) The CIDS/ODS Contractor must construct and hand over to the Principal (or its nominee) the Works and construct the Temporary Works:
  - (i) in accordance with:
    - A. subject to clause 10.1(b):
      - 1) the SWTC; and
      - 2) the Final Design Documentation;
    - B. any direction of the Principal's Representative given or purported to be given under a provision of this Contract; and
    - C. the other requirements of this Contract; and
  - (ii) so that they are fit for their intended purposes.
- (b) If there is any ambiguity, discrepancy or inconsistency between this Contract (including the SWTC) and any Design Documentation which has been prepared by the CIDS/ODS Contractor and not rejected by the Principal's Representative under clause 12.10, then, unless otherwise directed by the Principal's Representative, the requirements of this Contract will prevail.
- (c) The CIDS/ODS Contractor must submit to the Principal's Representative a Certificate of Construction Compliance in the form of Schedule 25:
  - (i) at monthly intervals during the construction work;
  - (ii) at Milestone Achievement of each Milestone;
  - (iii) at Construction Completion of each Portion; and
  - (iv) at Completion.

### **10.2 All Work Included**

The CIDS/ODS Contractor:

- (a) warrants it has allowed for the provision of;
- (b) must undertake and provide; and
- (c) will not be entitled to make, and the Principal will not be liable upon, any Claim except as otherwise provided for in this Contract, relating to the provision of,

all Construction Plant, Temporary Works, labour, materials and other work necessary to execute the CIDS/ODS Contractor's Activities, whether or not expressly mentioned in this Contract or anticipated by the CIDS/ODS Contractor, and agrees that all such Construction Plant, Temporary Works, labour, materials and work forms part of the CIDS/ODS Contractor's Activities.

### **10.3 Co-operation with Other Contractors**

Without limiting or being limited by clause 3.9, the CIDS/ODS Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully coordinate and interface the CIDS/ODS Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the CIDS/ODS Contractor's Activities so as to minimise any interfering with, disrupting or delaying the work of Other Contractors.

### **10.4 Cleaning Up**

In carrying out the CIDS/ODS Contractor's Activities, the CIDS/ODS Contractor must:

- (a) keep the Site, Extra Land and the Works clean and tidy and free of refuse;
- (b) regularly remove all rubbish, litter, graffiti and surplus material from the Site and Extra Land including, prior to the Date of Shutdown, at the end of each day; and
- (c) as a condition precedent to Construction Completion of any Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site and Extra Land or the part of the Site or Extra Land relevant to the Works or the Portion, except where the retention of any of these are required for the correction of Defects during the Defects Rectification Period and this is approved in writing by the Principal's Representative.

### **10.5 Safety**

- (a) The CIDS/ODS Contractor must carry out the CIDS/ODS Contractor's Activities:
  - (i) safely and in a manner that does not put the health and safety of persons at risk; and
  - (ii) in a manner that protects property.
- (b) If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the CIDS/ODS Contractor's Activities:
  - (i) the Principal's Representative may direct the CIDS/ODS Contractor to change its manner of working or to cease working; and

- (ii) the CIDS/ODS Contractor must, at its cost, comply with any direction by the Principal's Representative under clause 10.5(b)(i).
- (c) The CIDS/ODS Contractor must:
  - (i) ensure that in carrying out the CIDS/ODS Contractor's Activities:
    - A. it complies with all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), Codes and Standards, Australian Standards, and other requirements of this Contract for work health, safety and rehabilitation management;
    - B. all Subcontractors comply with the requirements referred to in this clause 10.5 and their respective obligations under all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and Chain of Responsibility Provisions), Codes and Standards, Australian Standards and other requirements of this Contract for work health, safety and rehabilitation management; and
    - C. it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
  - (ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the CIDS/ODS Contractor's Activities, unless otherwise directed by the Principal;
  - (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
  - (iv) provide the Principal's Representative with the written assurances obtained pursuant to clause 10.5(c)(iii), together with written assurance(s) from the CIDS/ODS Contractor about the CIDS/ODS Contractor's ongoing compliance with the WHS Legislation;
  - (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 12.5, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 10.5), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the CIDS/ODS Contractor's compliance with the WHS Legislation;
  - (vi) consult, cooperate and coordinate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;



- (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Works and the Temporary Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
  - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
  - (ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 10.5.
- (d) Without limiting clause 20.13 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Works, the Environment, other property or the health or safety of people.
- (e) If the action taken by the Principal is action which the CIDS/ODS Contractor was required to take under this Contract but did not take, the amount of any penalty, fine, damage, expense, cost (including any reasonable legal fees), loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:
- (i) taking the action contemplated in this clause 10.5(e); or
  - (ii) the CIDS/ODS Contractor's failure to take that action,
- will, except to the extent prohibited by Law, be a debt due from the CIDS/ODS Contractor to the Principal.
- (f) If the CIDS/ODS Contractor is carrying out "building work" (as defined in section 6 the *Federal Safety Commissioner Act 2022* (Cth)), the CIDS/ODS Contractor:
- (i) warrants that it is accredited under the WHS Accreditation Scheme; and
  - (ii) must comply with all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while "building work" (as defined in section 6 of the *Federal Safety Commissioner Act 2022* (Cth)) is carried out.

## 10.6 Construction Plant and Materials Removal

Except for the purpose of achieving Construction Completion of a Portion as contemplated by clause 10.4(c), the CIDS/ODS Contractor must not remove from the Site or the CIDS/ODS Contractor's Activities any:

- (a) significant materials or major items of Construction Plant; or
- (b) materials or Construction Plant specified in any written notice issued by the Principal's Representative,

without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

## 10.7 Rail Safety

- (a) Without limiting any other clause in this Contract, the CIDS/ODS Contractor must comply, and ensure that its Associates comply, with the Rail Safety National Law and the Principal's reasonable requirements in relation to rail safety.
- (b) The CIDS/ODS Contractor acknowledges that:
- (i) the CIDS/ODS Contractor's Activities and the Works are being undertaken for the purpose of constructing a railway;
  - (ii) relevant to the CIDS/ODS Contractor's Activities:
    - A. the Principal holds Accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and
    - B. the following entities hold Accreditation under the Rail Safety National Law as a Rail Transport Operator:
      - 1) the Principal;
      - 2) Sydney Trains; and
      - 3) the Operator; and
    - (iii) to the extent that the CIDS/ODS Contractor's Activities comprise Railway Operations (as that term is defined in the Rail Safety National Law), for the purposes of the Rail Safety National Law it carries out those CIDS/ODS Contractor's Activities for and on behalf of:
      - A. the Principal under the Principal's Accreditation;
      - B. Sydney Trains under Sydney Trains' Accreditation; and
      - C. the Operator under the Operator's Accreditation,
 as the case may be (together, the "**Applicable Accreditations**").
- (c) The CIDS/ODS Contractor must ensure that it does not do anything or fail to do anything that would cause:
- (i) the Principal; or
  - (ii) where Sydney Trains or the Operator holds Accreditation under the Rail Safety National Law as a Rail Transport Operator and the CIDS/ODS Contractor's Activities comprise Railway Operations (as that term is defined in the Rail Safety National Law) that are being carried out for or on behalf of Sydney Trains or the Operator (as applicable),
- to be in breach of the Rail Safety National Law and Rail Safety Regulations.

- (d) In carrying out any part of the CIDS/ODS Contractor's Activities which require Accreditation as a Rail Infrastructure Manager or Rail Transport Operator, the CIDS/ODS Contractor must:
- (i) comply with all conditions of the Applicable Accreditations as a Rail Infrastructure Manager or Rail Transport Operator (as applicable) and the Safety Management System (as applicable);
  - (ii) not do anything or fail to do anything that may cause the Principal, Sydney Trains or the Operator to breach their obligations under the Rail Safety National Law; and
  - (iii) ensure that the Subcontractors engaged in or in connection with the CIDS/ODS Contractor's Activities comply with clauses 10.7(d)(i) and 10.7(d)(ii).
- (e) In carrying out any part of the CIDS/ODS Contractor's Activities which require Accreditation as a Rolling Stock Operator, the CIDS/ODS Contractor must:
- (i) ensure that the CIDS/ODS Contractor, or one of its Subcontractors, holds the necessary Accreditation for that part of the CIDS/ODS Contractor's Activities; and
  - (ii) comply with the conditions of that Accreditation.
- (f) Without limiting or otherwise affecting any other provision under this Contract, the CIDS/ODS Contractor must, and must ensure that its Subcontractors, comply with all obligations under the Rail Safety National Law including entering into interface agreements required by Part 3 of the Rail Safety National Law in respect of any part of the CIDS/ODS Contractor's Activities which require Accreditation as a Rolling Stock Operator.
- (g) The CIDS/ODS Contractor must liaise and cooperate with the Principal and any other Rail Transport Operator and provide any reasonable assistance and documentation to the Principal, or any other Rail Transport Operator, as such party may require in relation to safety matters.
- (h) Without limiting clause 10.7(g), the CIDS/ODS Contractor must provide the Principal with copies of all notices, reports and other correspondence given or received by the CIDS/ODS Contractor under or in connection with the Rail Safety National Law and the Rail Safety Regulations:
- (i) relating to the CIDS/ODS Contractor's Activities; or
  - (ii) which may adversely affect the ability of the CIDS/ODS Contractor to perform the CIDS/ODS Contractor's Activities,
- promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given or received by the CIDS/ODS Contractor).

- (i) Without limiting clause 10.7(f), the CIDS/ODS Contractor must ensure that all persons engaged by the CIDS/ODS Contractor in or in connection with the CIDS/ODS Contractor's Activities:
  - (i) are competent to carry out the work for which they are engaged for the purposes of section 52 of the Rail Safety National Law; and
  - (ii) comply with their obligations under the Rail Safety National Law (including under section 56 of the Rail Safety National Law).
- (j) The CIDS/ODS Contractor must and must ensure that its Subcontractors:
  - (i) promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
  - (ii) cooperate with and respond to any lawful requests made by any Investigative Authority, within the time requested; and
  - (iii) do not hinder or delay any Investigative Authority in carrying out its duties.
- (k) Compliance by the CIDS/ODS Contractor with its obligations under this clause 10.7 does not discharge the CIDS/ODS Contractor from complying with its other obligations under the Contract and is not evidence of compliance by the CIDS/ODS Contractor with its other obligations under the Contract.
- (l) To the extent not prohibited by Law, the CIDS/ODS Contractor must indemnify the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in any way in connection with the CIDS/ODS Contractor's failure to comply with this clause 10.7.
- (m) Wherever referred to in this clause 10.7, "**Operator**" means the Operator or one or more of its core contractors.

## 10.8 Track Possessions

- (a) The table in Schedule 36 identifies the available Track Possessions (with power isolations) as at the date of this Contract.
- (b) The Principal will liaise with any relevant Rail Transport Agency to procure for the benefit of the CIDS/ODS Contractor the Track Possessions as set out in Schedule 36.
- (c) The CIDS/ODS Contractor must:
  - (i) coordinate the CIDS/ODS Contractor's Activities with the calendar of available Track Possessions (including any Track Possession provided as an alternative to a cancelled Track Possession as referred to in paragraph (a)(ii) of items 19 and 20 of Schedule 1) and make proper allowances in all programs for the calendar of available Track Possessions; and

- (ii) set out in each version of the CIDS/ODS Contractor's Program the Track Possessions that it proposes to utilise in carrying out the Works.
- (d) The CIDS/ODS Contractor acknowledges that it will not have exclusive access to any Track the subject of a Track Possession and must:
  - (i) without limiting clauses 3.9 or 10.3, coordinate its activities with whoever else is sharing the relevant Track Possession; and
  - (ii) allow any relevant Rail Transport Agency and Other Contractors to pass through any Track the subject of the relevant Track Possession.
- (e) If the CIDS/ODS Contractor requires a Track Possession or power isolation in addition to the Track Possessions identified in clause 10.8(a) for the performance of the CIDS/ODS Contractor's Activities ("**Additional Track Possession or Power Isolation**") and requires the Principal to liaise with the relevant Rail Transport Agency in this regard, it must provide no less than:
  - (i) 52 weeks' prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weekend; or
  - (ii) 26 weeks' prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weeknight,

and identify whether a power isolation is required during the requested Additional Track Possession or Power Isolation.
- (f) Following receipt of a request for an Additional Track Possession or Power Isolation under clause 10.8(e), the Principal may assist the CIDS/ODS Contractor to obtain the requested Additional Track Possession or Power Isolation, but is under no obligation to do so and in no way guarantees that the requested Additional Track Possession or Power Isolation will be granted by any relevant Rail Transport Agency.
- (g) The CIDS/ODS Contractor acknowledges and agrees that it will bear the risk and cost of, and resulting from, any request by the CIDS/ODS Contractor for an Additional Track Possession or Power Isolation under clause 10.8(e).
- (h) If an Additional Track Possession or Power Isolation is granted by a Rail Transport Agency, the CIDS/ODS Contractor must make the necessary arrangements for the Additional Track Possession or Power Isolation in accordance with F02 of the SWTC.
- (i) The CIDS/ODS Contractor must effectively and efficiently utilise each Track Possession.
- (j) The CIDS/ODS Contractor acknowledges and agrees that:
  - (i) the Principal or any relevant Rail Transport Agency may alter or cancel any Track Possession, power isolation or Additional Track Possession or Power Isolation at any time;

- (ii) it bears the risk and cost of the alteration or cancellation of any Additional Track Possession or Power Isolation; and
- (iii) its only remedy for the alteration or cancellation by the Principal or any relevant Rail Transport Agency of a Track Possession or power isolation referred to in clause 10.8(a) is set out in clause 13.8 and paragraph (a) of item 19 of Schedule 1 and clause 13.14 and paragraph (a) of item 20 of Schedule 1.

## 10.9 Indemnity for delays to rail services

- (a) The CIDS/ODS Contractor must:
  - (i) Hand Back the relevant part of the Rail Corridor by the scheduled end of each Track Possession;
  - (ii) not cause any delay to rail services;
  - (iii) in the event of an emergency, cease to occupy the relevant part of the Rail Corridor within a reasonable period of the emergency occurring; and
  - (iv) immediately notify Sydney Trains' Representative (with a copy to the Principal's Representative) if the CIDS/ODS Contractor anticipates it may be late in vacating the Rail Corridor.
- (b) Subject to clause 10.9(d) and clause 10.9(f), the CIDS/ODS Contractor must indemnify the Principal against all costs, expenses, losses or damages suffered or incurred by the Principal (including arising out of or in any way in connection with any claim by Sydney Trains or TAHE against the Principal or any liability of the Principal to Sydney Trains or TAHE) if:
  - (i) the CIDS/ODS Contractor is late in achieving Hand Back of the relevant part of the Rail Corridor that is the subject of a Track Possession; or
  - (ii) there is a delay to rail services arising out of or in connection with the CIDS/ODS Contractor's Activities.

The maximum liability which the CIDS/ODS Contractor will have to the Principal pursuant to this clause 10.9(b) for each event described in clauses 10.9(b)(i) or 10.9(b)(ii) will be determined on the basis of the maximum period by which any train was delayed by the event or late return of a Track Possession calculated by applying the following rates:

- (iii) [REDACTED] for each hour or part thereof that elapses during Peak Hours:
  - A. between the time that the relevant part of the Rail Corridor the subject of the Track Possession was scheduled to end and the Hand Back of the Track Possession; or
  - B. while the delay to rail services arising out of or in connection with the CIDS/ODS Contractor's Activities is subsisting; and
- (iv) [REDACTED] per hour or part thereof that elapses outside of Peak Hours:

- A. between the time that the relevant part of the Rail Corridor the subject of the Track Possession was scheduled to end and the Hand Back of the Track Possession; or
  - B. while the delay to rail services arising out of or in connection with the CIDS/ODS Contractor's Activities is subsisting.
- (c) Clause 10.9(b) sets out the Principal's sole and exclusive remedy for loss as a result of an event described in clause 10.9(b)(i) or 10.9(b)(ii).
- (d) The CIDS/ODS Contractor's liability to indemnify the Principal under clause 10.9(b) will be reduced proportionally to the extent that any act or omission of the Principal, its Associates, Sydney Trains or TAHE contributed to the costs, expenses, losses or damages.
- (e) A delay to the commencement of a Track Possession will not:
- (i) affect the CIDS/ODS Contractor's liability to indemnify the Principal under clause 10.9(b); or
  - (ii) constitute an act or omission of the Principal, its Associates, Sydney Trains or TAHE for the purposes of clause 10.9(d).

■ [REDACTED]

■ [REDACTED]

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## 11. Defects

### 11.1 Defects Liability

- (a) If during the Defects Rectification Period, any Defect is found in the Works (whether or not it is the subject of a notice under clause 11.2), the CIDS/ODS Contractor must rectify such Defect and any damage to the Works to the extent caused by the Defect.
- (b) Without limiting clause 11.1(a), the CIDS/ODS Contractor must:
  - (i) use its best endeavours to correct all Minor Defects and Agreed Defects identified in a Notice of Construction Completion for any Portion as soon as possible after the Date of Construction Completion for that Portion; and
  - (ii) ensure that all Minor Defects and Agreed Defects identified in a Notice of Construction Completion for any Portion are corrected within 21 days after the Date of Construction Completion for that Portion.

- (c) When rectifying any Defects (including any Minor Defects or Agreed Defects) which existed at the Date of Construction Completion of a Portion, the CIDS/ODS Contractor must do so:
- (i) at times and in a manner which causes as little inconvenience to the occupants or users of the Portion, Utility Services (or any access to them) and the adjacent community as is reasonably possible;
  - (ii) if an Interface Contractor has taken possession of the relevant part of the Site, in accordance with the reasonable requirements of the relevant Interface Contractor in relation to access and site safety; and
  - (iii) in accordance with its obligations under the Project Cooperation and Integration Deeds.

## 11.2 Defect Notification

If at any time prior to the expiration of any Defects Rectification Period, the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the CIDS/ODS Contractor a direction which identifies the Defect and does one or more of the following:

- (a) requires the CIDS/ODS Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;
- (b) advises the CIDS/ODS Contractor that the Principal will accept the work, or any part of it, despite the Defect; or
- (c) in respect of:
  - (i) any Defect to which clause 11.3(b) applies; or
  - (ii) any Defect which the Principal's Representative considers to be an Urgent Defect,

advises the CIDS/ODS Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a change or variation under its contract with the Principal to overcome the Defect, or any part of it.

## 11.3 Rectification of Defect

If a direction is given under clause 11.2(a):

- (a) the CIDS/ODS Contractor must rectify the Defect (or the part of it notified):
  - (i) within the times specified in the Principal's Representative's direction or at such other times agreed with the Principal's Representative;
    - A. in accordance with the requirements of the operators of the Works, including the Operator;



- B. so as to minimise the impact on the use of relevant part of the Works or the Portion;
  - C. in a manner which causes as little inconvenience as possible to:
    - 1) the activities of any Interface Contractor; or
    - 2) users of the Works or the Portion or the public, any Utility Service or any access to the Works or the Portion;
  - D. if an Interface Contractor has taken possession of the relevant part of the Site, in accordance with the reasonable requirements of the relevant Interface Contractor in relation to access and site safety; and
  - E. in accordance with its obligations under the Project Cooperation and Integration Deeds; and
- (b) if the CIDS/ODS Contractor does not comply with clause 11.3(a)(i), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the CIDS/ODS Contractor with respect to the Defect under this Contract or otherwise at Law, give the CIDS/ODS Contractor a direction under clause 11.2(c)(ii) and have the rectification work carried out at the CIDS/ODS Contractor's expense, and the cost of the rectification work incurred by the Principal will be a debt due from the CIDS/ODS Contractor to the Principal.

The CIDS/ODS Contractor must pay the Principal all costs incurred by the Principal in providing access to the Works or a Portion, or arranging the availability of any resources (including the resources of any other Rail Transport Agency), as may be necessary for the CIDS/ODS Contractor to rectify any Defect during the Defects Rectification Period.

#### **11.4 No Claim for Correction of Defect**

Where a direction is given under clause 11.2(a), the CIDS/ODS Contractor will not be entitled to make a Claim against the Principal for rectifying the Defect (or the part notified) and must bear all costs, losses and expenses suffered or incurred in rectifying the Defect.

#### **11.5 Acceptance of Work**

If a direction is given under clause 11.2(b):

- (a) where the value to the Principal of the Works is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified), the Contract Sum will be reduced by the amount determined by the Principal's Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Works; or

- (b) where the value to the Principal of the Works increases because of the acceptance of the Defect (or the part notified):
  - (i) the Principal's Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Works; and
  - (ii) the Contract Sum will:
    - A. be reduced by the amount determined by the Principal's Representative, where that amount is negative; and
    - B. not be changed where the amount determined by the Principal's Representative is positive.

## **11.6 Extension of Defects Rectification Period**

If:

- (a) the Principal's Representative gives the CIDS/ODS Contractor a notice under clause 11.2(a) during any Defects Rectification Period; and
- (b) the CIDS/ODS Contractor rectifies the Defect (or the part notified),

the relevant Defects Rectification Period for the work required by the notice will be extended by the period set out in item 1 of Schedule 1, commencing upon completion of the rectification of the Defect (or the part notified).

## **11.7 Defect Rectification by Other Contractor**

Where a direction is given under clause 11.2(c):

- (a) without limiting or otherwise affecting clauses 3.9 or 10.3, the CIDS/ODS Contractor must not impede the Other Contractor from having sufficient access to the Site or Extra Land to rectify the Defect or carry out the change or variation under its contract with the Principal (as applicable); and
- (b) without limiting any other right of the Principal, any rectification costs incurred by the Principal in respect of the Other Contractor rectifying the Defect will be a debt due from the CID/ODS Contractor to the Principal.

## **11.8 Rights Not Affected**

Neither the Principal's rights, nor the CIDS/ODS Contractor's liability, whether under this Contract or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Rectification Period, will be in any way affected or limited by:

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 11 or any other provision of this Contract;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or

- (c) any notice or direction of the Principal's Representative under clause 11.2.

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## 12. Administration

### 12.1 Principal's Representative

- (a) The Principal must ensure that at all times until Final Completion there is a Principal's Representative. The CIDS/ODS Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.
- (b) A discretion (including an absolute or sole discretion), power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Contract if exercised or made (or if it is not exercised or made) by the Principal's Representative:
- (i) independently;
  - (ii) after consultation with the Principal and its advisers; or
  - (iii) as directed by the Principal.
- (c) Any control or influence exercised by the Principal over the Principal's Representative does not:
- (i) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
  - (ii) entitle the CIDS/ODS Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.
- (d) The CIDS/ODS Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Contract.
- (e) Except where this Contract otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.
- (f) Without limiting the CIDS/ODS Contractor's rights under this Contract:
- (i) the Principal will not be liable upon any Claim by the CIDS/ODS Contractor arising out of or in connection with any direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to clause 19 or is unreasonable (other than in accordance with the corrected determination); and

- (ii) the CIDS/ODS Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a Notice of Issue in accordance with clause 19.3.

## **12.2 Replacement of the Principal's Representative**

The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the CIDS/ODS Contractor of that appointment.

Any substitute Principal's Representative appointed under this clause 12.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

## **12.3 Delegation of Functions**

- (a) The Principal's Representative may:
  - (i) by written notice to the CIDS/ODS Contractor appoint persons to exercise any of the Principal's Representative's functions under this Contract;
  - (ii) not appoint more than one person to exercise the same function under this Contract; and
  - (iii) revoke any appointment under clause 12.3(a)(i) by notice in writing to the CIDS/ODS Contractor.
- (b) The Principal's Representative may continue to exercise a function under this Contract despite appointing another person to exercise the function under clause 12.3(a)(i).
- (c) All references in this Contract to the Principal's Representative include a reference to an appointee appointed under clause 12.3(a)(i).

## **12.4 CIDS/ODS Contractor's Personnel**

- (a) The CIDS/ODS Contractor must notify the Principal's Representative in writing of the name of the CIDS/ODS Contractor's Representative (who at the date of this Contract is the relevant person listed in item 18 of Schedule 1) and of any subsequent changes.
- (b) The CIDS/ODS Contractor must:
  - (i) employ the individuals nominated by the CIDS/ODS Contractor and listed in item 18 of Schedule 1 in the positions specified in item 18 of Schedule 1 or equivalent positions;
  - (ii) subject to clause 12.4(b)(iii), not replace the individuals referred to in clause 12.4(b)(i) without the Principal's Representative's prior written approval which will not be unreasonably withheld; and

- (iii) if any of the individuals referred to in clause 12.4(b)(i):
  - A. dies;
  - B. becomes unable to continue in their positions due to illness;
  - C. resigns from the employment of the CIDS/ODS Contractor (other than to accept other employment with the CIDS/ODS Contractor or any Related Body Corporate of the CIDS/ODS Contractor; or
  - D. becomes the subject of a direction under clause 12.4(c),

replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative.
- (c) The Principal's Representative may, at its absolute discretion and without being obliged to give any reasons, by notice in writing direct the CIDS/ODS Contractor to remove any person (including a person referred to in clause 12.4(a) or clause 12.4(b)) from the Site and the CIDS/ODS Contractor's Activities. The CIDS/ODS Contractor must then cease to engage that person in the CIDS/ODS Contractor's Activities and must appoint a replacement.
- (d) The CIDS/ODS Contractor must ensure that any person the subject of a direction under clause 12.4(c) is not again employed in the CIDS/ODS Contractor's Activities or on the Site.
- (e) Any direction under clause 12.1(a) will be deemed to have been given to the CIDS/ODS Contractor if given to the CIDS/ODS Contractor's Representative. Matters within the knowledge of the CIDS/ODS Contractor's Representative will be deemed to be within the knowledge of the CIDS/ODS Contractor.

## 12.5 Site Meetings

The CIDS/ODS Contractor must convene meetings :

- (a) prior to the Date of Construction Completion of the last Portion to reach Construction Completion:
  - (i) at weekly or such longer intervals as may be directed in writing by the Principal's Representative; and
  - (ii) on the Site or such other place (or places) as the Principal's Representative may direct; and
- (b) after the Date of Construction Completion of the last Portion to reach Construction Completion until all Defects Rectification Periods (including any extension under clause 11.6) have expired:
  - (i) at monthly intervals or at such other intervals as may otherwise be agreed by the parties; and
  - (ii) in the Principal's Representative's absolute discretion, either:

- A. on the Site or such other place (or places) as the Principal's Representative may direct; or
- B. virtually using an online video conferencing platform, facilitated by the CIDS/ODS Contractor.

## 12.6 Independent Certifier

- (a) The Independent Certifier will be engaged on the terms of the Independent Certifier Deed.
- (b) The Independent Certifier is obliged to act independently of the Principal, the CIDS/ODS Contractor and their respective Associates.
- (c) Both parties must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
  - (i) to attend meetings; and
  - (ii) access to all premises,
 as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.
- (d) All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (e) The Principal's Representative may provide comments to the Independent Certifier in respect of the CIDS/ODS Contractor's Activities.

## 12.7 Effect of Independent Certifier decisions

- (a) No certification or determination by the Independent Certifier will:
  - (i) constitute an approval by the Principal of the CIDS/ODS Contractor's performance of its obligations under this Contract;
  - (ii) be taken as an admission or evidence that the Works or Temporary Works or any other matters certified or determined by the Independent Certifier comply with this Contract; or
  - (iii) prejudice any rights or powers of the Principal under this Contract or otherwise according to Law, including any rights which the Principal may have in respect of Defects in the Works.
- (b) No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier:
  - (i) is an act or omission by the Principal (including a breach of contract) under or in connection with the CIDS/ODS Contract Documents; or

- (ii) without limiting clause 12.7(a), will give rise to any liability of the Principal to the CIDS/ODS Contractor.

## 12.8 Environmental Representative

The CIDS/ODS Contractor acknowledges and agrees that:

- (a) the Principal has appointed the Environmental Representative as required by an Authority Approval;
- (b) the Environmental Representative:
  - (i) is independent of the parties;
  - (ii) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
  - (iii) shall advise the Principal and the Principal's Representative on the CIDS/ODS Contractor's compliance with the Planning Approval; and
  - (iv) shall have the authority and independence to:
    - A. direct the CIDS/ODS Contractor as to; or
    - B. advise the Principal's Representative to direct the CIDS/ODS Contractor as to,
      - reasonable steps the CIDS/ODS Contractor must take to avoid or minimise unintended or adverse environmental impacts;
- (c) it must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 12.8(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 12.8(c) and none of the Principal, the Principal's Representative or the Environmental Representative will be liable upon any Claim arising out or in any way in connection with such directions.

## 12.9 Industrial Relations

The CIDS/ODS Contractor must in carrying out the CIDS/ODS Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations for the CIDS/ODS Contractor's Activities;
- (b) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
- (c) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and

any relevant Law, for all employees engaged in any capacity by any person in connection with the CIDS/ODS Contractor's Activities, are always observed in full;

- (d) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the CIDS/ODS Contractor's Activities;
- (e) without limiting clauses 3.3 and 25, comply with all the requirements of the NSW Guidelines;
- (f) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the CIDS/ODS Contractor as part of the Contract Management Plans, in accordance with the SWTC and clause 12.10;
- (g) prepare, document and implement a project Workplace Relations Management Plan which must be based on the draft outline Workplace Relations Management Plan (if any) submitted with the CIDS/ODS Contractor's Tender;
- (h) not commence any work on the Site or Extra Land until the Workplace Relations Management Plan has been submitted to the Principal's Representative and the Principal's Representative has not rejected it under clause 12.10;
- (i) submit to the Principal's Representative, before beginning work on the Site or Extra Land, a statement detailing:
  - (i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
  - (ii) the names of each award or enterprise agreement that is likely to cover the CIDS/ODS Contractor and Subcontractors involved in the CIDS/ODS Contractor's Activities; and
  - (iii) the names of those responsible for coordinating industrial relations for the CIDS/ODS Contractor's Activities;
- (j) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the CIDS/ODS Contractor's Activities;
- (k) before beginning work on the Site or Extra Land, submit a statement on the CIDS/ODS Contractor's letterhead and signed by an authorised person, attesting to the CIDS/ODS Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
  - (i) payment of remuneration to employees;
  - (ii) annual leave provisions;
  - (iii) Long Service Leave Payment Scheme registration;



- (iv) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
  - (v) workers' compensation insurance, including self-insurance arrangements;
  - (vi) superannuation fund membership and contributions; and
  - (vii) over-award payments such as redundancy fund contributions; and
- (l) continue to provide during the CIDS/ODS Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the CIDS/ODS Contractor's Activities.

If the CIDS/ODS Contractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the CIDS/ODS Contractor under clause 12.9(i).

The industrial relations requirements contained in this Contract and the NSW Guidelines:

- (m) are in addition to, but are not in substitution for, any requirements of Law; and
- (n) do not limit the powers of the Principal or the liabilities and responsibilities of the CIDS/ODS Contractor.

The CIDS/ODS Contractor warrants and acknowledges that it has allowed in the Original Contract Price for all the costs and expenses involved with complying with all the requirements of this Contract relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

#### **12.10 Submission for Review by the Principal's Representative**

- (a) The CIDS/ODS Contractor must submit each Document (other than any Design Documentation, which must be submitted in accordance with clause 6.3(a)(ii)):
  - (i) in accordance with the times stated in this Contract or otherwise progressively and in a timely manner to ensure that the CIDS/ODS Contractor's Activities are commenced, progressed and completed by the times required under this Contract, and by the times or within the periods:
    - A. identified in the CIDS/ODS Contractor's Program which is not rejected by the Principal's Representative; or
    - B. in the absence of a time or period in the CIDS/ODS Contractor's Program, required by the Principal's Representative; and

- (ii) under cover of a written notice entitled "Submit for Review", which identifies:
    - A. the Document; and
    - B. the provision of this Contract under which the Document is submitted.
- (b) A Document will be deemed not to have been submitted to the Principal's Representative under clause 12.10(a) unless and until:
  - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
  - (ii) the CIDS/ODS Contractor has otherwise complied with this clause 12.10, in addition to any other requirement of this Contract relating to the submission of that Document.
- (c) The Principal's Representative may, after the submission of a Document which satisfies the requirements of clause 12.10(b):
  - (i) review the Document, or any resubmitted Document, prepared and submitted by the CIDS/ODS Contractor; and
  - (ii) where submitted or resubmitted, including in accordance with a program which has not been rejected by the Principal's Representative, within 15 Business Days of submission by the CIDS/ODS Contractor of such Document or resubmitted Document:
    - A. reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this Contract, stating the nature of the non-compliance;
    - B. make comments on the Document; or
    - C. notify the CIDS/ODS Contractor that it has no (or has no further) comments to make.
- (d) If any Document submitted under clause 12.10(a):
  - (i) is rejected or deemed to be rejected, the CIDS/ODS Contractor must submit an amended Document to the Principal's Representative within 10 Business Days of the date of such rejection or deemed rejection and this clause 12.10 will re-apply; or
  - (ii) is not rejected and the Principal's Representative responds to the submission with comments, the CIDS/ODS Contractor must respond to the comments within 10 Business Days or such other period as may be directed by the Principal's Representative.

If the CIDS/ODS Contractor fails to respond to the Principal's Representative's comments within this period in a manner satisfactory to the Principal's Representative the Document will be deemed to be rejected.

- (e) Without limiting clause 6.8, the CIDS/ODS Contractor must not commence construction of any part of the Works to which any Document (other than the CIDS/ODS Contractor's Program) submitted to the Principal's Representative applies, unless the Principal's Representative has had the period referred to in clause 12.10(c)(ii) to review the Document and has not rejected the Document or made any comments on the Document (except in the case where the CIDS/ODS Contractor has responded to the Principal's Representative's comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 12.10(d)).
- (f) The CIDS/ODS Contractor must not amend for construction purposes any Document that has:
  - (i) been submitted to the Principal's Representative; and
  - (ii) not been rejected or not had comments made about it under clause 12.10(c)(ii),unless the CIDS/ODS Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 12.10 will re-apply.
- (g) The Principal's Representative does not assume or owe any duty of care or other responsibility to the CIDS/ODS Contractor to review, or in reviewing, a Document submitted by the CIDS/ODS Contractor, including for errors, omissions or non-compliance with this Contract.
- (h) The CIDS/ODS Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the CIDS/ODS Contractor of any errors, omissions or non-compliance with the requirements of this Contract in any Document submitted.
- (i) No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Document prepared by the CIDS/ODS Contractor, or any other direction by the Principal's Representative in connection with the Document, will:
  - (i) constitute a direction to carry out a Variation pursuant to clause 9.2, unless it is in a written document titled "Variation Order" and describes the nature of the Variation in accordance with clause 9.2(a);
  - (ii) relieve the CIDS/ODS Contractor from or alter its liabilities or obligations, whether under this Contract or otherwise according to any Law; or
  - (iii) limit or otherwise affect the Principal's rights against the CIDS/ODS Contractor, whether under this Contract or otherwise according to any Law.
- (j) In considering any Document, the Principal's Representative may provide copies of the Document to, and consult with and take into account any views or requirements of, the Independent Certifier, any Interface Contractor and/or any relevant Authority.

- (k) Unless otherwise advised by the Principal's Representative, the CIDS/ODS Contractor must submit the number of copies of a Document stated in this Contract, or if no number is stated then:
  - (i) an electronic version (in both pdf and native formats) via the PDCS, which must be virus free; and
  - (ii) 1 printed version.

### **12.11 Work Method**

Whether or not this Contract prescribes a particular work method or a work method is otherwise a part of this Contract or reviewed or approved (expressly or impliedly) by the Principal's Representative, the fact that any work method that the CIDS/ODS Contractor adopts or proposes to adopt is impractical or impossible or that the CIDS/ODS Contractor, with or without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle the CIDS/ODS Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause the Contract to be frustrated.

### **12.12 Exchange of Information between Government Agencies**

The CIDS/ODS Contractor authorises the Principal and its Associates to make information concerning the CIDS/ODS Contractor (including any information provided under clause 12.13 and any MS Information provided under clause 3.21) available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the CIDS/ODS Contractor to the Principal and any information relating to the CIDS/ODS Contractor's performance under this Contract.

The CIDS/ODS Contractor acknowledges that any information about the CIDS/ODS Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the CIDS/ODS Contractor future opportunities for NSW government work.

The CIDS/ODS Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the CIDS/ODS Contractor's performance under this Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

### **12.13 Financial Assessment**

Without limiting or otherwise restricting clause 12.12, the CIDS/ODS Contractor acknowledges and agrees that:

- (a) the Principal may, during the term of the Contract, either itself, or through the engagement of private sector service providers, undertake ongoing financial

assessments ("**Financial Assessment**") of the CIDS/ODS Contractor and any Subcontractors;

- (b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the date of commencement of the Works; and
- (c) it must, if requested by the Principal's Representative, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment.

#### **12.14 National Greenhouse and Energy Reporting Act 2007 (Cth)**

The CIDS/ODS Contractor acknowledges and agrees that:

- (a) if any of the CIDS/ODS Contractor's Activities, or the activities of any of the CIDS/ODS Contractor's personnel, in connection with the CIDS/ODS Contractor's Activities (the "**Relevant Matters**") constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the CIDS/ODS Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, despite the operation of clause 12.14(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the CIDS/ODS Contractor, the CIDS/ODS Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the CIDS/ODS Contractor;
- (c) if the Principal requests it, the CIDS/ODS Contractor must provide Greenhouse Data to the Principal's Representative:
  - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the CIDS/ODS Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
  - (ii) otherwise as requested by the Principal from time to time;
- (d) the CIDS/ODS Contractor must also provide to the Principal's Representative all Greenhouse Data and other information which the CIDS/ODS Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the CIDS/ODS Contractor provides that Greenhouse Data or other information to that other person;

- (e) the CIDS/ODS Contractor must:
  - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the CIDS/ODS Contractor to discharge its obligations under this clause 12.14, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
  - (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 12.14 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) nothing in this clause 12.14 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the CIDS/ODS Contractor may have regarding the provision of Greenhouse Data to any Authority.

## **12.15 Waste Reduction and Purchasing Policy**

The CIDS/ODS Contractor must:

- (a) use its best endeavours to reduce wastage and increase the use of recycled materials in accordance with the GREP; and
- (b) provide reports to the Principal's Representative in such format and within such times as may be required by the Principal's Representative for the use by the Principal in complying with its GREP obligations to report performance.

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## **13. Time and Progress**

### **13.1 Rate of Progress**

- (a) The CIDS/ODS Contractor must:
  - (i) immediately commence, and thereafter regularly and diligently progress the CIDS/ODS Contractor's Activities;
  - (ii) proceed with the CIDS/ODS Contractor's Activities with due expedition and without delay; and
  - (iii) achieve:
    - A. Construction Completion of each Portion by the relevant Date for Construction Completion; and

B. Milestone Achievement of each Milestone by the relevant Date for Milestone Achievement.

- (b) Without limiting the CIDS/ODS Contractor's rights under the SOP Act, the CIDS/ODS Contractor must not suspend the progress of the whole or any part of CIDS/ODS Contractor's Activities except where directed by a court or by the Principal's Representative under clause 13.15.
- (c) Without limiting the next paragraphs of this clause 13.1 or clause 13.5, the CIDS/ODS Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the CIDS/ODS Contractor to carry out the CIDS/ODS Contractor's Activities in accordance with this Contract.
- (d) The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this Contract.
- (e) The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 13.1, direct in what order and at what time the various stages or parts of the CIDS/ODS Contractor's Activities must be performed. If the CIDS/ODS Contractor can reasonably comply with the direction, the CIDS/ODS Contractor must do so. If the CIDS/ODS Contractor cannot reasonably comply, the CIDS/ODS Contractor must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 13.1 unless the direction is in writing and expressly states that it is a direction under this clause 13.1.
- (f) If compliance with a written direction expressly stated to be pursuant to this clause 13.1 causes the CIDS/ODS Contractor to necessarily incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued as if it were a Variation except where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the CIDS/ODS Contractor to comply with its obligations under this Contract.
- (g) Such costs shall be the CIDS/ODS Contractor's sole entitlement, and the CIDS/ODS Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 13.1.

## 13.2 Shutdown

- (a) The Principal's Representative must give the CIDS/ODS Contractor's Representative:
  - (i) 12 months';
  - (ii) 6 months'; and
  - (iii) 3 months',

prior notice of the estimated date of Shutdown, including whether there is likely to be any change to the Scheduled Date for Shutdown.

- (b) The Date of Shutdown is:
  - (i) the Scheduled Date for Shutdown; or
  - (ii) such other date as notified to the CIDS/ODS Contractor in writing by the Principal's Representative, which date must not be less than 120 days after the date of the notice.

### **13.3 The CIDS/ODS Contractor's Programming Obligations**

The CIDS/ODS Contractor must:

- (a) based on the Initial CIDS/ODS Contractor's Program, prepare and provide a CIDS/ODS Contractor's Program that complies with and includes the details required by this Contract and any requirements of the Principal's Representative. The parties acknowledge and agree that the Initial CIDS/ODS Contractor's Program is deemed to have been submitted to the Principal's Representative for review under clause 12.10 and not been rejected by the Principal's Representative;
- (b) submit the CIDS/ODS Contractor's Program to the Principal's Representative for its review in accordance with clause 12.10 at any time required by the SWTC;
- (c) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the CIDS/ODS Contractor's Activities within 5 Business Days of receipt of such a direction;
- (d) update, revise and submit to the Principal's Representative an updated CIDS/ODS Contractor's Program:
  - (i) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative in accordance with clause 13.11, the actual progress made by the CIDS/ODS Contractor, Variations and any other changes to the CIDS/ODS Contractor's Activities but excluding claims for extensions of time to any Date for Construction Completion or Date for Milestone Achievement which have been submitted by the CIDS/ODS Contractor to the extent that they have not been granted by the Principal's Representative; and
  - (ii) on a monthly basis or whenever directed to do so by the Principal's Representative (except that the Principal may not give such a direction any more frequently than once in any 30 day period);
- (e) prepare and provide for the Principal's Representative's information only versions of all CIDS/ODS Contractor's Programs prepared in accordance with clause 13.3(d) that also allow for those claims for an extension of time that have been made by the CIDS/ODS Contractor in accordance with clause 13.9 but to



which the Principal's Representative has not yet responded in accordance with clause 13.11;

- (f) comply with the requirements of the Principal's Representative and its other obligations under this Contract in preparing and using programs, including the requirements in clause 12.10; and
- (g) not depart from the current version of the CIDS/ODS Contractor's Program that has been submitted to the Principal's Representative for review under clause 12.10 and not been rejected by the Principal's Representative within 15 Business Days.

#### **13.4 CIDS/ODS Contractor not Relieved**

Without limiting clause 12.10, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the CIDS/ODS Contractor's Program) prepared by the CIDS/ODS Contractor, by the Principal's Representative in connection with the program, will:

- (a) relieve the CIDS/ODS Contractor from or alter its liabilities or obligations under this Contract, including the obligation under clause 13.1;
- (b) evidence or constitute notification of a delay or the claiming of or the granting of an extension of time to any Date for Construction Completion or Date for Milestone Achievement or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the CIDS/ODS Contractor's Activities; or
- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Contract.

#### **13.5 Compression by CIDS/ODS Contractor**

If the CIDS/ODS Contractor chooses to compress the CIDS/ODS Contractor's Activities or otherwise accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the CIDS/ODS Contractor to achieve Construction Completion of a Portion before the relevant Date for Construction Completion or Milestone Achievement of a Milestone before the relevant Date for Milestone Achievement (as applicable);
- (b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) the CIDS/ODS Contractor does so at its own cost and risk.

### **13.6 Importance of Milestone Achievement and Construction Completion on Time**

The CIDS/ODS Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 13.1 to enable Interface Contractors to carry out and complete the activities of the Interface Contractors within the time required by their respective Interface Works Contracts, including so as to enable the Principal to pursue improved public transport in Sydney; and
- (b) that the Date for Construction Completion of any Portion or the Date for Milestone Achievement of any Milestone will only be extended in accordance with clause 13.11 or clause 13.13, or when so determined under clause 19.

### **13.7 Risk and Notice of Delay**

- (a) Except as expressly provided for in clause 13.11, the CIDS/ODS Contractor accepts the risk of all delays in, and disruption to, the carrying out of the CIDS/ODS Contractor's Activities and performance of its obligations under this Contract both before and after any Date for Construction Completion or Date for Milestone Achievement.
- (b) The CIDS/ODS Contractor must, within 5 Business Days of the commencement of an occurrence causing any delay or which is likely to cause delay, give the Principal's Representative written notice of:
  - (i) any delay or likely delay to the carrying out of the CIDS/ODS Contractor's Activities;
  - (ii) details of the cause; and
  - (iii) how any Date of Construction Completion or Date of Milestone Achievement (as applicable) is likely to be affected (if at all).

### **13.8 Entitlement to Claim Extension of Time**

- (a) If the CIDS/ODS Contractor is, or will be, delayed on or prior to the Date for Construction Completion of a Portion or the Date for Milestone Achievement of a Milestone by reason of:
  - (i) an act or omission of the Principal or the Principal's Representative, including any breach of this Contract or Variation directed by the Principal's Representative under clause 9 but excluding any:
    - A. CIDS/ODS Contractor initiated Variation that is approved by the Principal's Representative under clause 9.6(c)(i); or
    - B. act or omission of the Principal or the Principal's Representative authorised or permitted by this Contract; or
  - (ii) a cause set out in item 19 of Schedule 1,

in a manner that will delay it from achieving Construction Completion of a Portion by the relevant Date for Construction Completion or Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement (as applicable), the CIDS/ODS Contractor may claim an extension of time to the relevant Date for Construction Completion or Date for Milestone Achievement (as applicable).

- (b) If the CIDS/ODS Contractor is, or will be, delayed from achieving:
- (i) Construction Completion of a Portion after the relevant Date for Construction Completion; or
  - (ii) Milestone Achievement of a Milestone after the relevant Date for Milestone Achievement,

(as applicable) by reason of:

- (iii) an act or omission of the Principal or the Principal's Representative, including any breach of this Contract or Variation directed by the Principal's Representative under clause 9 but excluding any:
  - A. CIDS/ODS Contractor initiated Variation that is approved by the Principal's Representative under clause 9.6(c)(i);
  - B. act or omission of the Principal or the Principal's Representative authorised or permitted by this Contract, or
- (iv) a cause set out in Item 19 of Schedule 1,

in a manner which will delay it in achieving Construction Completion of the Portion or Milestone Achievement of the Milestone (as applicable), the CIDS/ODS Contractor may claim an extension of time to the relevant Date for Construction Completion or Date for Milestone Achievement (as applicable).

### **13.9 Claim for Extension of Time**

To claim an extension of time the CIDS/ODS Contractor must:

- (a) within 20 Business Days after the CIDS/ODS Contractor's initial notice under clause 13.7(b), submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Construction Completion or Date for Milestone Achievement (as applicable), which:
  - (i) gives detailed particulars of the:
    - A. delay and the occurrence causing the delay; and
    - B. activities that are critical to the maintenance of progress in the execution of the CIDS/ODS Contractor's Activities;
  - (ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:

- A. conditions precedent to an extension of time in clause 13.10 have been met; and
  - B. occurrence actually delayed or will delay it in achieving Construction Completion or Milestone Achievement (as applicable) in the manner described in clause 13.8; and
- (iii) attaches an updated CIDS/ODS Contractor's Program which complies with the requirements of clause 13.3(e); and
- (b) if the effects of the delay continue for more than 20 Business Days after the commencement of the occurrence causing the delay and the CIDS/ODS Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
- (i) every 20 Business Days after the first written claim made under clause 13.9(a) (or such other period as may be approved by the Principal's Representative in writing);
  - (ii) within 10 Business Days after the end of the effects of the delay; and
  - (iii) containing the information required by clause 13.9(a) (except to the extent otherwise directed by the Principal's Representative).

The Principal's Representative may, within 10 Business Days of receiving the CIDS/ODS Contractor's claim or further claim for an extension of time for Construction Completion or Milestone Achievement (as applicable), by written notice to the CIDS/ODS Contractor, request relevant additional information in relation to the claim or further claim. The CIDS/ODS Contractor must, within 10 Business Days of receiving such request, provide the Principal's Representative with the relevant information requested.

### **13.10 Conditions Precedent to Extension of Time**

It is a condition precedent to the CIDS/ODS Contractor's entitlement to an extension of time to any relevant Date for Construction Completion or Date for Milestone Achievement that:

- (a) the CIDS/ODS Contractor gives the notices and claims required by clauses 13.7(b) and 13.9 as required by those clauses;
- (b) the CIDS/ODS Contractor complies with any request for additional information under clause 13.9 within the time required;
- (c) the cause of the delay is beyond the reasonable control of the CIDS/ODS Contractor; and
- (d) the CIDS/ODS Contractor is actually, or will be, delayed in achieving Construction Completion or Milestone Achievement (as applicable):
  - (i) on or prior to the Date for Construction Completion of the relevant Portion or the Date for Milestone Achievement of the relevant Milestone (as

applicable) by reason of one or more of the causes set out in clause 13.8(a) in the manner described in clause 13.8(a); or

after the Date for Construction Completion of the relevant Portion or the Date for Milestone Achievement of the relevant Milestone (as applicable) by reason of one or more of the causes set out in clause 13.8(b) in the manner described in clause 13.8(b). If the CIDS/ODS Contractor fails to comply with the conditions precedent in this clause 13.10:

- (e) the Principal will not be liable upon any Claim by the CIDS/ODS Contractor; and
- (f) the CIDS/ODS Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

### **13.11 Extension of Time**

- (a) Subject to clause 13.12, if the conditions precedent in clause 13.10 have been satisfied, the Principal's Representative must determine the reasonable extension of time to the Date for Construction Completion of a Portion or the Date for Milestone Achievement of a Milestone (as applicable) to which the CIDS/ODS Contractor is entitled either:
    - (i) within 15 Business Days after the latest of the:
      - A. CIDS/ODS Contractor's written claim under clause 13.9(a)(ii); and
      - B. provision by the CIDS/ODS Contractor of any additional information regarding the claim required under clause 13.9,
    - (ii) in the case of an ongoing delay, within 15 Business Days after receiving a claim with complies with:
      - A. clause 13.9(a);
      - B. clause 13.9(b)(i); or
      - C. clause 13.9(b)(ii),
- by giving the CIDS/ODS Contractor:
- (iii) written notice of the determination which includes the extension of time granted and the adjusted Date for Construction Completion or Date for Milestone Achievement (as applicable), with reasons where the extension of time granted is for a shorter period of time than that claimed by the CIDS/ODS Contractor; or
  - (iv) if no extension is granted, written notice of that decision, with reasons.

- (b) A failure of the Principal's Representative to grant a reasonable extension of time to the Date for Milestone Achievement or Date for Construction Completion within the relevant 15 Business Day period will not cause an affected Date for Milestone Achievement or Date for Construction Completion to be set at large, but nothing in this clause 13.11 will prejudice any right of the CIDS/ODS Contractor to damages.

### **13.12 Reduction in Extension of Time**

The Principal's Representative will reduce any extension of time to the relevant Date for Construction Completion or Date for Milestone Achievement (as applicable) it would otherwise have determined under clause 13.11 to the extent that:

- (a) the CIDS/ODS Contractor or any of its Associates caused or contributed to the delay;
- (b) the CIDS/ODS Contractor failed to take all reasonably practicable steps necessary to preclude the cause of the delay or to avoid or minimise the consequences of the delay;
- (c) a delay caused by an Excusable Cause of Delay and a delay caused other than by an Excusable Cause of Delay occurred at the same time and the CIDS/ODS Contractor would have been delayed even if the Excusable Cause of Delay had not occurred; or
- (d) the CIDS/ODS Contractor failed to comply with:
  - (i) a Project Cooperation and Integration Deed; or
  - (ii) its obligations under this Contract in connection with the Interface Contractors,

and such failure caused or contributed to the delay the subject of the CIDS/ODS Contractor's claim.

For the purposes of clause 13.12(c), "Excusable Cause of Delay" means:

- (e) on or prior to the Date for Construction Completion of a Portion or Date for Milestone Achievement of a Milestone (as applicable), a delay caused by one or more of the causes set out in clause 13.8(a) in the manner described in clause 13.8(a); or
- (f) after the Date for Construction Completion of a Portion or Date for Milestone Achievement of a Milestone (as applicable), a delay caused by one or more of the causes set out in clause 13.8(b) in the manner described in clause 13.8(b).

### **13.13 Unilateral Extensions**

- (a) Whether or not the CIDS/ODS Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Construction Completion or Date for Milestone Achievement (as applicable), or is entitled to be, or has been, granted an extension of time to any relevant Date for Construction Completion or Date for Milestone Achievement (as applicable) under clause

13.11, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the CIDS/ODS Contractor and the Principal, unilaterally extend any Date for Construction Completion or Date for Milestone Achievement by any period specified in a notice to the CIDS/ODS Contractor and the Principal.

- (b) The Principal's Representative is not required to exercise its discretion under this clause 13.13 for the benefit of the CIDS/ODS Contractor.
- (c) The discretion to grant an extension of time under this clause 13.13 may only be exercised by the Principal's Representative and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 19 or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert, the IDAR Panel or any arbitrator or court).

### **13.14 Delay Damages**

- (a) For each day by which:

- (i) the Date for Construction Completion of a Portion; or
- (ii) the Date for Milestone Achievement of Milestone 1; or
- (iii) the Date for Milestone Achievement of Milestone 2,

is extended due to a cause set out in item 20 of Schedule 1, the CIDS/ODS Contractor will be entitled to be paid the additional costs reasonably and necessarily incurred by the CIDS/ODS Contractor as a direct result of the delay the subject of the extension of time (as determined by the Principal's Representative) up to but not exceeding the maximum daily amount set out item 21 in Schedule 1.

- (b) The amounts payable pursuant to this clause 13.14 will be a limitation upon the Principal's liability to the CIDS/ODS Contractor for any delay or disruption that:
  - (i) the CIDS/ODS Contractor encounters in carrying out the CIDS/ODS Contractor's Activities; and
  - (ii) arises out of, or in any way in connection with, the breach of this Contract by the Principal,

and the CIDS/ODS Contractor will not be entitled to make, nor will the Principal be liable upon, any Claim in these circumstances other than for the amount which is payable by the Principal under this clause 13.14.

### **13.15 Suspension**

The Principal's Representative may direct the CIDS/ODS Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the CIDS/ODS Contractor's Activities. Nothing in this clause limits the Principal's rights under clause 3.13.

If the suspension under this clause 13.15 arises in the circumstance set out in clause 3.13(f) then clauses 3.13(f) and 3.13(g) will apply, otherwise where it arises as a result of:

- (a) the CIDS/ODS Contractor's failure to carry out its obligations in accordance with this Contract (including under clause 5.6 or clause 5.7 or where the CIDS/ODS Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or AMB compliance in accordance with this Contract or where any process, procedure, test method, calculation, analysis or report required by this Contract has resulted in or will result in a non-conformance), the CIDS/ODS Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the CIDS/ODS Contractor's failure to perform its obligations in accordance with this Contract:
  - (i) a direction to suspend under this clause 13.15 will entitle the CIDS/ODS Contractor to:
    - A. subject to clause 13.15A, be paid by the Principal the additional costs reasonably and necessarily incurred by it as a direct result of the suspension as determined by the Principal's Representative; and
    - B. an extension of time to any relevant Date for Construction Completion or Date for Milestone Achievement (as applicable) where it is otherwise so entitled under this clause 13;
  - (ii) the CIDS/ODS Contractor must take all steps possible to mitigate the additional costs incurred by it as a result of the suspension; and
  - (iii) the CIDS/ODS Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 13.15(b) and, to the extent applicable, clause 13.15A.

**13.15A**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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


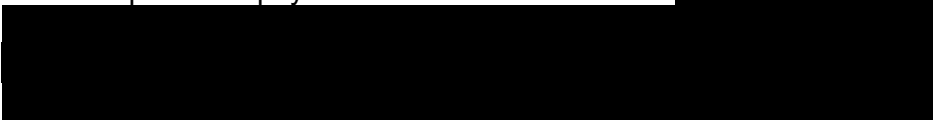
### 13.16 Compression

- (a) The Principal's Representative may direct the CIDS/ODS Contractor to compress the CIDS/ODS Contractor's Activities by taking those measures which are necessary:
  - (i) if the CIDS/ODS Contractor makes a claim under clause 13.9, to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve (as applicable):
    - A. Milestone Achievement of a Milestone by the relevant Date for Milestone Achievement; or
    - B. Construction Completion of a Portion by the relevant Date for Construction Completion; or
  - (ii) to complete the CIDS/ODS Contractor's Activities in advance of the dates for completion of those activities shown on the CIDS/ODS Contractor's Program, including to achieve (as applicable):
    - A. Milestone Achievement of a Milestone prior to the relevant Date for Milestone Achievement; or
    - B. Construction Completion of a Portion prior to the relevant Date for Construction Completion,

provided it is reasonably possible for the CIDS/ODS Contractor to perform the proposed acceleration.
- (b) The Principal's Representative will have the right to direct that the CIDS/ODS Contractor's Activities be compressed by means of overtime, additional crews, additional shifts, resequencing of the CIDS/ODS Contractor's Activities, or otherwise, whether or not the CIDS/ODS Contractor's Activities are progressing without delay or in accordance with the CIDS/ODS Contractor's Program.

- (c) Prior to carrying out any compression of the CIDS/ODS Contractor's Activities, the CIDS/ODS Contractor must provide the Principal's Representative with a plan for such compression, including:
- (i) the methodology required for an effective and economical compression of the CIDS/ODS Contractor's Activities; and
  - (ii) where the compression is pursuant to a direction under this clause 13.16, an estimate of the additional direct costs for complying with the direction, including sufficient information to support the estimate.
- (d) In respect of a direction given by the Principal's Representative under clause 13.16(a)(i):
- (i) the Principal's Representative may give such a direction whether or not the cause of delay for which the CIDS/ODS Contractor has made its claim under clause 13.9 entitles the CIDS/ODS Contractor to an extension of time to any relevant Date for Milestone Achievement or Date for Construction Completion;
  - (ii) the Principal's Representative may at any time by notice in writing withdraw any direction given under clause 13.16(a)(i), after which the CIDS/ODS Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the CIDS/ODS Contractor made a claim under clause 13.9;
  - (iii) any extension in accordance with clause 13.16(d)(ii) will be determined having regard to the effect which the compression of the CIDS/ODS Contractor's Activities taken by the CIDS/ODS Contractor prior to the withdrawal of the direction has had on mitigating the delay which is the subject of the claim for an extension of time made by the CIDS/ODS Contractor under clause 13.9;
  - (iv) if the Principal's Representative's direction to compress under clause 13.16(a)(i) only applies to part of a delay, the CIDS/ODS Contractor's entitlement to any extension of time which it otherwise would have had if a direction to compress had not been given under clause 13.16(a)(i), will only be reduced to the extent to which the direction to compress requires the CIDS/ODS Contractor to compress to overcome the delay; and
  - (v) the Principal must pay the CIDS/ODS Contractor [REDACTED], noting however that the profit in this clause 13.16(d)(v) will not apply in the circumstance where the direction is due to delay caused by the CIDS/ODS Contractor (that is, the CIDS/ODS Contractor is to be kept whole but will not be entitled to additional profit where the direction is necessary, due to CIDS/ODS Contractor's delay), provided that where the direction to compress is subsequently withdrawn

under clause 13.16(d)(ii), the CIDS/ODS Contractor will only be entitled to additional payment in relation to the compression:

- A. if the withdrawal was not caused or contributed to by the CIDS/ODS Contractor; and
  - B. in respect of the period up to the date of withdrawal of the direction.
- (e) In respect of a direction given by the Principal's Representative under clause 13.16(a)(ii):
- (i) the direction may specify revised Dates for Milestone Achievement, and/or Dates for Construction Completion as a consequence of the acceleration. Those revised dates may be earlier than the then current Dates for Milestone Achievement and Dates for Construction Completion;
  - (ii) where the CIDS/ODS Contractor considers that such a direction constitutes a Variation, the CIDS/ODS Contractor must give the Principal's Representative notice under and in accordance with clause 22.1;
  - (iii) the CIDS/ODS Contractor must comply with such a direction except to the extent:
    - A. it is not reasonably possible for the CIDS/ODS Contractor to perform the proposed acceleration; and
    - B. the CIDS/ODS Contractor, in a notice required under clause 22.1, gives a detailed explanation of the reasons why it is not reasonably possible for the CIDS/ODS Contractor to perform the proposed acceleration;
  - (iv) the Principal's Representative may, at any time, by notice in writing to the CIDS/ODS Contractor withdraw such a direction;
  - (v) the Principal must pay the CIDS/ODS Contractor   
  
but only to the extent that:
    - A. the need for acceleration is not related to, or a consequence of, any breach of the Contract by the CIDS/ODS Contractor (for example, a failure to reach Milestone Achievement by the Date for Milestone Achievement); and
    - B. the direction was not, in effect:
      - 1) a direction to the CIDS/ODS Contractor to perform the CIDS/ODS Contractor's Activities in accordance with the Contract (other than this clause), or consistently with the Contract;

- 2) a direction to the CIDS/ODS Contractor to take corrective action to rectify any non-compliance with the requirements of this Contract; or
  - 3) related to rectification of a Defect.
- (f) The CIDS/ODS Contractor will not be entitled to make any Claim, and releases and waives any entitlement it may have to a Claim, against the Principal in respect of any compression of the CIDS/ODS Contractor's Activities, except as provided for under this clause 13.16.

## **14. Payment**

### **14.1 CIDS/ODS Contractor's Payment Entitlements**

- (a) Subject to clause 14.6, clause 20.12 and any other right to set-off that the Principal may have, the Principal must pay the CIDS/ODS Contractor the Contract Sum and any other amounts expressly payable by the Principal to the CIDS/ODS Contractor under this Contract, in accordance with the procedure in this clause 14.
- (b) The Payment Breakdown Schedule sets out (among other things):
  - (i) those parts of the CIDS/ODS Contractor's Activities which must be completed before the CIDS/ODS Contractor may claim a progress payment with respect to that part;
  - (ii) the payment the CIDS/ODS Contractor may claim for each progress payment; and
  - (iii) any limitations or other constraints on the CIDS/ODS Contractor's ability to make claims for payment.

In addition to the Payment Breakdown Schedule, clause 14.2(d) sets out further payment constraints that are to apply.

- (c) The Contract Sum is not subject to rise and fall.

### **14.2 Payment Claims**

- (a) The CIDS/ODS Contractor may give the Principal's Representative a claim for payment on account of the Contract Sum and any other amount expressly payable by the Principal to the CIDS/ODS Contractor under the Contract on or after each Payment Claim Date.
- (b) The CIDS/ODS Contractor agrees that each Payment Claim Date is the date on and from which the CIDS/ODS Contractor is entitled to make a Progress Claim for the purposes of the *SOP Act* (including section 13(1B) of the *SOP Act*).

- (c) Each claim for payment must:
- (i) generally follow the form of the Payment Breakdown Schedule and otherwise be in such form as the Principal's Representative reasonably requires;
  - (ii) include all the evidence reasonably required by the Principal's Representative of the amount of work completed in accordance with this Contract and the amount payable;
  - (iii) for each monthly claim pursuant to clause 14.2 (a "**Progress Claim**"), set out the amount claimed:
    - A. for work completed in accordance with the Contract and incorporated in the Works or to which clause 14.7 applies, to the end of the previous month and details of how the amount has been calculated;
    - B. subject to clause 14.2(d)(iii), on account of the Milestone Performance Payments to which the CIDS/ODS Contractor is entitled as at the relevant Payment Claim Date; and
    - C. in respect of Interim Support Services or Post Construction Completion Activities performed during the previous month (if any); and
  - (iv) include such further information and evidence in respect of the payment claim as is reasonably required by the Principal's Representative.
- (d) The CIDS/ODS Contractor may not include in any payment claim under this clause 14 any amount:
- (i) for the provision of Asset Management Information until all of the information has been submitted to the Principal in accordance with the Contract and to the satisfaction of the Principal;
  - (ii) in respect of a Claim which is barred by clause 22.6 or any other provision of this Contract;
  - (iii) in respect of a Milestone Performance Payment unless the relevant part of the CIDS/ODS Contractor's Activities to which the Milestone Performance Payment relates has been completed to the satisfaction of the Principal's Representative;
  - (iv) which this Contract provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any events or conditions identified in the Payment Breakdown Schedule);
  - (v) in respect of which the CIDS/ODS Contractor has failed to provide supporting information as required by this Contract; or
  - (vi) for work which is not in accordance with this Contract.

- (e) The CIDS/ODS Contractor may include a claim for the Initial Payment in its first Progress Claim submitted under this clause 14.2.

### 14.3 Payment Statements

The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 14.2, a Completion Payment Claim under clause 14.9 or a Final Payment Claim under clause 14.11, issue to the CIDS/ODS Contractor and the Principal a payment statement which identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and which sets out:

- (a) its determination of the value of the CIDS/ODS Contractor's Activities carried out in accordance with this Contract, using the methodology in clause 14.2(c)(iii) where the payment statement relates to a Progress Claim;
- (b) the amount already paid to the CIDS/ODS Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under this Contract, including under clauses 14.6, 14.7, 14.8 and 20.12;
- (d) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the CIDS/ODS Contractor on account of the Contract Sum and which the Principal proposes to pay to the CIDS/ODS Contractor or the amount which the Principal's Representative believes to be then payable by the CIDS/ODS Contractor to the Principal; and
- (e) if the amount in clause 14.3(d) is less than the amount claimed in the Progress Claim, Completion Payment Claim or Final Payment Claim:
  - (i) the reason why the amount in clause 14.3(d) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim; and
  - (ii) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works or CIDS/ODS Contractor's Activities covered by the payment statement has been satisfactorily carried out in accordance with this Contract.

Failure by the Principal's Representative to set out in a payment statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the CIDS/ODS Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.

Where the Principal has notified the CIDS/ODS Contractor in accordance with clause 23(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the CIDS/ODS Contractor to the Principal, the CIDS/ODS Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative give the Principal's Representative a tax invoice (which complies with the GST Law) for the amount of the payment statement.

#### 14.4 Payment

- (a) Where, pursuant to clause 14.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Principal to the CIDS/ODS Contractor, the Principal must, within 15 Business Days of receipt of the payment claim to which the payment statement relates, pay the CIDS/ODS Contractor the amount set out in the payment statement referred to in clause 14.3.
- (b) Where, pursuant to clause 14.3(d), the Principal's Representative sets out in a payment statement an amount payable by the CIDS/ODS Contractor to the Principal, the CIDS/ODS Contractor must, within 5 Business Days of the Principal's Representative issuing the payment statement under clause 14.3, pay the Principal the amount set out in the payment statement referred to in clause 14.3.

#### 14.4A Initial Payment

- (a) The CIDS/ODS Contractor may submit to the Principal a payment claim in accordance with clause 14.2 for the Initial Payment after the date of this Contract.
- (b) The Principal will pay to the CIDS/ODS Contractor the Initial Payment [REDACTED] of the date of the CIDS/ODS Contractor's claim under clause 14.4A(a).
- (c) From the first Progress Claim issued after the Progress Claim for the Initial Payment, the Principal will be entitled to deduct from the amount to which the CIDS/ODS Contractor would have otherwise been entitled under clause 14.4 for each Progress Claim submitted by the CIDS/ODS Contractor in accordance with clause 14.2 an amount equal to [REDACTED] (or lesser amount for the final deduction) until the Principal has recovered an amount equal to the Initial Payment.
- (d) Without limiting any other provision of this Contract, if this Contract is terminated for any reason prior to the date that the Principal has recovered an amount equal to the Initial Payment under clause 14.4A(c), the Principal will be entitled to recover such unrecovered amount as a debt due and payable, and on demand by the Principal, such unrecovered amount must be paid by the CIDS/ODS Contractor to the Principal [REDACTED].



## 14.5 Payment on Account

A payment of moneys under clause 14.4(a) is not:

- (a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Contract;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the CIDS/ODS Contractor's performance or compliance with this Contract,

but is only to be taken as payment on account.

## 14.6 Provision of documentation and other requirements

The value of the construction work carried out by the CIDS/ODS Contractor, and the amount of the progress payment to which the CIDS/ODS Contractor is entitled, will be:

- (a) no more than ■■■ of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the CIDS/ODS Contractor has:
  - (i) complied with clause 1.5;
  - (ii) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 3.7;
  - (iii) provided the Principal's Representative with:
    - A. a statutory declaration by the CIDS/ODS Contractor, or where the CIDS/ODS Contractor is a corporation, by a representative of the CIDS/ODS Contractor who is in a position to know the facts attested to, in the form of Schedule 16, made out not earlier than the date of the payment claim;
    - B. where clause 10.1(c) applies, a CIDS/ODS Contractor's Certificate of Construction Compliance, in the form of Schedule 25; and
    - C. where clause 14.16(k) applies, the statement and the evidence (if any) required to be provided by the CIDS/ODS Contractor pursuant to that clause;
  - (iv) in relation to any unfixed plant and materials which the CIDS/ODS Contractor proposes to claim in a payment claim, provided the evidence and documents required by, and otherwise satisfied the requirements of, clause 14.7;
  - (v) effected or procured to be effected the insurances required to be effected by the CIDS/ODS Contractor by clause 16.7 and (if requested) provided evidence of this to the Principal's Representative; and

- (vi) done everything else that it is required to do under this Contract before being entitled to make a payment claim or receive payment; and
- (b) no more than ■■■ of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the CIDS/ODS Contractor has provided the updated CIDS/ODS Contractor's Program required by clause 13.3(d).

Any amount withheld by the Principal under this clause 14.6 must be paid within 10 Business Days after the CIDS/ODS Contractor has complied with the relevant obligation.

#### **14.7 Unfixed Plant and Materials**

The CIDS/ODS Contractor is only entitled to make a claim for payment for plant or materials intended for incorporation in the Works but not yet incorporated, and the Principal is only obliged to make payment for such plant or materials in accordance with clause 14.4(a) if:

- (a) the CIDS/ODS Contractor provides evidence of:
  - (i) ownership of the plant or materials;
  - (ii) identification and labelling of the plant and materials as the property of the Principal; and
  - (iii) adequate and secure storage and protection;
- (b) security acceptable to the Principal's Representative in the form of the unconditional undertaking in Schedule 11 issued by an Institution approved by the Principal in an amount equal to the payment claimed for the unfixed plant and materials has been provided by the CIDS/ODS Contractor to the Principal;
- (c) the plant and materials are on the Site or are available for immediate delivery to the Site;
- (d) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative;
- (e) the condition of the unfixed plant and materials has been confirmed in an inspection by the Principal's Representative; and
- (f) if the PPS Law applies, the CIDS/ODS Contractor has registered a Security Interest in the unfixed plant and materials in favour of the Principal in accordance with clause 20.19.

The only such unfixed plant or materials to be allowed for in a payment statement are those that have become or (on payment) will become the property of the Principal. Upon a payment against a payment statement that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest in the Principal.

The security provided in accordance with clause 14.7(b) will be released once the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose.

#### **14.8 Payment of Employees and Subcontractors**

- (a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the CIDS/ODS Contractor must give the Principal's Representative a statutory declaration in accordance with clause 14.6(a)(iii)A.
- (b) If any moneys are shown as unpaid in the CIDS/ODS Contractor's statutory declaration under clause 14.6(a)(iii)A, the Principal may withhold the moneys so shown until the CIDS/ODS Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the CIDS/ODS Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order (exclusive of GST) to the employee or Subcontractor, and the amount paid will be a debt due from the CIDS/ODS Contractor to the Principal.
- (d) If the Principal receives notice of any Insolvency Event in relation to the CIDS/ODS Contractor the Principal will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the CIDS/ODS Contractor.
- (e) Nothing in this clause 14.8 limits or otherwise affects the Principal's right under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

#### **14.9 Completion Payment Claim**

No later than 20 Business Days after the issue of the Notice of Completion, but subject to clause 14.6, the CIDS/ODS Contractor may lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating:

- (a) the Contract Sum;
- (b) all payments received on account of the Contract Sum; and
- (c) the balance, if any, due to the CIDS/ODS Contractor.

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Completion Payment Claim the CIDS/ODS Contractor must lodge with the Principal's Representative a **"First Statement of Outstanding Claims"**. The First Statement of Outstanding Claims must identify all Claims that the CIDS/ODS Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the CIDS/ODS Contractor's Activities, the Works or this Contract which occurred prior to the date of submission of the Completion Payment Claim.

The Completion Payment Claim and First Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the CIDS/ODS Contractor's Activities, the Works or this Contract up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and First Statement of Outstanding Claims.

#### **14.10 Release after Completion Payment Claim**

The CIDS/ODS Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the CIDS/ODS Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:

- (a) has been included in the Completion Payment Claim or First Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with clause 14.9; and
- (b) has not been barred under another provision of this Contract.

#### **14.11 Final Payment Claim**

No later than 20 Business Days after the date of Final Completion, but subject to clause 14.6, the CIDS/ODS Contractor may lodge with the Principal's Representative a payment claim marked "Final Payment Claim" stating:

- (a) the Contract Sum;
- (b) all payments received on account of the Contract Sum; and
- (c) the balance, if any, due to the CIDS/ODS Contractor.

The Final Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Final Payment Claim the CIDS/ODS Contractor must lodge with the Principal's Representative a **"Second Statement of Outstanding Claims"**. The Second Statement of Outstanding Claims must identify all Claims that the CIDS/ODS Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the CIDS/ODS Contractor's Activities, the Works or this Contract which occurred prior to the date of submission of the Final Payment Claim.

The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the

CIDS/ODS Contractor's Activities, the Works or this Contract up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.

#### **14.12 Release after Final Payment Claim**

The CIDS/ODS Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the CIDS/ODS Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:

- (a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 14.11;
- (b) any defence or counterclaim against the Principal;
- (c) any claims from third parties (other than the CIDS/ODS Contractor's Subcontractors) which were not known to the CIDS/ODS Contractor at the time of the Final Payment Claim or the Second Statement of Outstanding Claims; and
- (d) has not been barred under another provision of this Contract.

#### **14.13 Interest**

If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable thereon from but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.

The rate of interest will be the rate from time to time prescribed for judgement debts under the *Uniform Civil Procedure Rules 2005* (NSW). Interest will be compounded at six monthly intervals.

This will be the party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

#### **14.14 Correction of Payment Statements**

The Principal's Representative may, in any payment statement:

- (a) correct any error; and
- (b) modify any assumptions or allowances made,

in any previous payment statement issued by the Principal's Representative.

#### 14.15 Costs Allowed by CIDS/ODS Contractor

Unless otherwise provided in this Contract, it is agreed that the CIDS/ODS Contractor has, and will be deemed to have, allowed in the Original Contract Price for and will be wholly responsible for the payment of:

- (a) without limiting clause 23, all customs duties, tariffs and similar taxes (other than GST) and charges paid or payable on all items that are:
  - (i) intended to be used for, or that are to be incorporated into, the Works; or
  - (ii) otherwise used for the CIDS/ODS Contractor's Activities;
- (b) any long service leave levy which may be payable in respect of the CIDS/ODS Contractor's Activities or the Works;
- (c) all royalties, licence fees and similar payments for Intellectual Property in respect of:
  - (i) the items that are intended to be used for, or that are to be incorporated into, the Works; and
  - (ii) all Contract Documentation; and
- (d) all fluctuations in the value of the Australian dollar against other currencies.

The CIDS/ODS Contractor will have no entitlement to any increase in the Contract Sum or otherwise to make any Claim against the Principal in respect of any of those amounts, whatever they may actually be.

#### 14.16 Security of Payment Act

- (a) The CIDS/ODS Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the *SOP Act*, including a payment claim under the *SOP Act*, is provided to the Principal's Representative at the same time.
- (b) In responding to the CIDS/ODS Contractor under the *SOP Act*, the Principal's Representative acts as the agent of the Principal and the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (c) If, within the time allowed by the *SOP Act* for the service of a payment schedule by the Principal, the Principal does not:
  - (i) serve the payment schedule itself; or
  - (ii) notify the CIDS/ODS Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,

then a payment statement issued by the Principal's Representative under this Contract which relates to the period relevant to the payment schedule will be

taken to be the payment schedule for the purpose of the *SOP Act* (whether or not it is expressly stated to be a payment schedule).

- (d) For the purposes of this Contract and the *SOP Act* (including sections 9 and 10 of the *SOP Act*), the amount of:
- (i) the progress payment to which the CIDS/ODS Contractor is entitled under this Contract; and
  - (ii) the "progress payment" (as defined in the *SOP Act*) calculated in accordance with this Contract to which the CIDS/ODS Contractor is entitled in respect of this Contract,

will be the amount certified by the Principal's Representative in a payment statement under clause 14.3 less any amount the Principal may elect to retain, deduct, withhold, apply or set off in accordance with this Contract.

- (e) If an adjudication occurs under the *SOP Act* and the Principal has paid an adjudicated amount to the CIDS/ODS Contractor:
- (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 14.3;
  - (ii) if it is subsequently determined pursuant to the Contract that the CIDS/ODS Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the CIDS/ODS Contractor to the Principal which the CIDS/ODS Contractor must pay to the Principal upon demand and in respect of which the CIDS/ODS Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
  - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the CIDS/ODS Contractor to the Principal upon demand and in respect of which the CIDS/ODS Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (f) For the purposes of section 17(3) of the *SOP Act*, the CIDS/ODS Contractor irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the *SOP Act*) for any adjudication application it may make under the *SOP Act* in respect of the subject matter of this Contract.
- (g) Without limiting clauses 14.8 or 20.12, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act*.
- (h) If the Principal withholds from money otherwise due to the CIDS/ODS Contractor any amount that is less than or equal to the amount claimed to be

owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act*, then:

- (i) the Principal may plead and rely upon Division 2A of Part 3 of the *SOP Act* as a defence to any claim for the money by the CIDS/ODS Contractor from the Principal; and
  - (ii) the period during which the Principal retains money due to the CIDS/ODS Contractor pursuant to an obligation under Division 2A of Part 3 of the *SOP Act* will not be taken into account for the purpose of determining:
    - A. any period for which money owed by the Principal to the CIDS/ODS Contractor has been unpaid; and
    - B. the date by which payment of money owed by the Principal to the CIDS/ODS Contractor must be made.
- (i) The CIDS/ODS Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act*.
- (j) Any amount paid by the Principal pursuant to section 26C of the *SOP Act* will be a debt due from the CIDS/ODS Contractor to the Principal.
- (k) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act* and the CIDS/ODS Contractor:
- (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
  - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,
- then the CIDS/ODS Contractor must so notify the Principal within 5 Business Days of the occurrence of the event in clause 14.16(k)(i) or clause 14.16(k)(ii) (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).
- (l) If the CIDS/ODS Contractor holds retention monies from any of its Subcontractors, the CIDS/ODS Contractor must:
- (i) comply with the requirements of Division 2 of the *SOP Regulation*; and
  - (ii) provide the Principal's Representative with a copy of any notification that the CIDS/ODS Contractor gives to the Secretary (as defined in the *SOP Act*) pursuant to Division 2 of the *SOP Regulation* within 24 hours of providing such notification.



- (m) The CIDS/ODS Contractor indemnifies and must keep indemnified the Principal against any liability, claim, damages, expense, costs or loss suffered or incurred by the Principal arising out of a suspension by a Subcontractor of work which forms part of the CIDS/ODS Contractor's Activities pursuant to the *SOP Act* unless and except to the extent that the suspension is due to non-payment by the Principal of an amount that is due and payable under this Contract.
- (n) Nothing in this Contract will be construed to:
  - (i) make any act or omission of the Principal in contravention of the *SOP Act* (including failure to pay an amount becoming due under the *SOP Act*) a breach of this Contract (unless the Principal would have been in breach of this Contract if the *SOP Act* had no application); or
  - (ii) subject to clause 14.16(n)(i), give to the CIDS/ODS Contractor rights under this Contract which extend or are in addition to rights given to the CIDS/ODS Contractor by the *SOP Act* in respect of any act or omission of the Principal in contravention of the *SOP Act*.

#### **14.17 Title**

Title in each item forming part of the Works will pass progressively to the Principal on the earlier of payment for that item or delivery of that item to the Site. Risk in all such items remains with the CIDS/ODS Contractor in accordance with clause 16.

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## **15. Milestone Achievement, Construction Completion and Completion**

### **15.1 Progressive Inspection and Testing**

- (a) At any time prior to Construction Completion of a Portion, the Principal's Representative may direct that any materials or work forming part of the CIDS/ODS Contractor's Activities in respect of that Portion be tested. The CIDS/ODS Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the CIDS/ODS Contractor's Activities or Works as may be required. On completion of any test the CIDS/ODS Contractor must make good the CIDS/ODS Contractor's Activities or Works so that they fully comply with this Contract.
- (b) The Principal's Representative may direct that any part of the CIDS/ODS Contractor's Activities or the Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.
- (c) The tests prescribed in this Contract must be conducted by the CIDS/ODS Contractor as and when provided for in this Contract, or may be conducted by the Principal's Representative or a person (that may include the CIDS/ODS Contractor) nominated by the Principal's Representative.

- (d) Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.
- (e) Unless otherwise stated in this Contract, before conducting a test under this Contract, the Principal's Representative or the CIDS/ODS Contractor must give not less than two Business Days' notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.
- (f) Without prejudice to any other rights or remedies under this Contract, if the CIDS/ODS Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.
- (g) Each party must promptly make the results of tests available to the other and to the Principal's Representative.
- (h) Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing must be valued under clause 9.4 and must be borne by the Principal or paid by the Principal to the CIDS/ODS Contractor unless:
  - (i) this Contract provides that the CIDS/ODS Contractor must bear the costs or the test is one which the CIDS/ODS Contractor was required to conduct other than pursuant to a direction under clause 15.1;
  - (ii) the test shows that the material or work is not in accordance with this Contract;
  - (iii) the test is in respect of a part of the CIDS/ODS Contractor's Activities or the Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
  - (iv) the test is consequent upon a failure of the CIDS/ODS Contractor to comply with a requirement of this Contract.
- (i) Where the extra costs in clause 15.1(h) are not to be borne by the Principal, they will be borne by the CIDS/ODS Contractor and will be a debt due from the CIDS/ODS Contractor to the Principal or paid by the CIDS/ODS Contractor to the Principal on demand.

## 15.2 Milestone Achievement

- (a) The CIDS/ODS Contractor must, in respect of each Milestone, give the Principal's Representative:
  - (i) 1 month; and
  - (ii) 1 week,
 written notice of the estimated Date of Milestone Achievement of the Milestone.

- (b) Within 5 Business Days after receipt of a notice referred to in clause 15.2(a)(i) in respect of Milestone 1, Milestone 2 or Milestone 4, and subject to clause 15.2(g), the Principal's Representative and the CIDS/ODS Contractor's Representative must jointly inspect the CIDS/ODS Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days after a joint inspection referred to in clause 15.2(b), the Principal's Representative must give the CIDS/ODS Contractor a notice either:
  - (i) containing a list of items which it believes must be completed before Milestone Achievement of the Milestone is reached; or
  - (ii) stating that it believes the CIDS/ODS Contractor is so far from reaching Milestone Achievement of the Milestone that it is not practicable to issue a list as contemplated in clause 15.2(c)(i).
- (d) When the CIDS/ODS Contractor considers it has achieved Milestone Achievement of the Milestone, the CIDS/ODS Contractor must notify the Principal's Representative in writing and provide an executed certificate in the form of Schedule 26. Within 5 Business Days after receipt of such a notice in respect of Milestone 1, Milestone 2 or Milestone 4, and subject to clause 15.2(g), the Principal's Representative, the CIDS/ODS Contractor's Representative and any other persons nominated by the Principal's Representative must jointly inspect the CIDS/ODS Contractor's Activities at a mutually convenient time.
- (e) Within 5 Business Days after:
  - (i) in respect of Milestone 1, Milestone 2 or Milestone 4, the joint inspection under clause 15.2(d); or
  - (ii) in respect of Milestone 3, receipt of a notice referred to in clause 15.2(d),  
the Principal's Representative must:
    - (iii) if Milestone Achievement of the Milestone has been reached, provide a written notice to the CIDS/ODS Contractor confirming that Milestone Achievement has been achieved and stating the Date of Milestone Achievement in respect of the Milestone; or
    - (iv) if Milestone Achievement of the Milestone has not been reached, issue a notice to the CIDS/ODS Contractor in which it states:
      - A. the items which remain to be completed before Milestone Achievement of the Milestone; or
      - B. that the CIDS/ODS Contractor is so far from reaching Milestone Achievement of the Milestone that it is not practicable to notify the CIDS/ODS Contractor of the items which remain to be completed as contemplated by clause 15.2(e)(iv)A.

- (f) If the Principal's Representative issues a notice under clause 15.2(e)(iv)B, the CIDS/ODS Contractor must proceed with the CIDS/ODS Contractor's Activities and thereafter when it considers it has reached Milestone Achievement of the Milestone it must give the Principal's Representative written notice to that effect after which clauses 15.2(d) and 15.2(e) will reapply.
- (g) The CIDS/ODS Contractor acknowledges and agrees that:
  - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 15.2, including representatives of the Operator; and
  - (ii) the Operator may provide comments to the Principal's Representative (with a copy to the CIDS/ODS Contractor) in relation to any non-compliance of the CIDS/ODS Contractor's Activities with this Contract.

### 15.3 Construction Completion

- (a) The CIDS/ODS Contractor must, in respect of each Portion, give the Principal's Representative:
  - (i) 1 month; and
  - (ii) 1 week,

written notice of the estimated Date of Construction Completion of the Portion.
- (b) Subject to clause 15.3(g), the Principal's Representative, the CIDS/ODS Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 15.3(a)(i) jointly inspect the CIDS/ODS Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 15.3(b), the Independent Certifier must give the CIDS/ODS 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 CIDS/ODS Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to issue a list as contemplated in clause 15.3(c)(i).
- (d) When the CIDS/ODS Contractor considers it has achieved Construction Completion of the Portion, the CIDS/ODS Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule 28. Subject to clause 15.3(g), the Principal's Representative, the CIDS/ODS Contractor's Representative and the Independent Certifier must jointly inspect the CIDS/ODS Contractor's Activities at a mutually convenient time.
- (e) Within 5 Business Days of the joint inspection under clause 15.3(d), the Independent Certifier must:

- (i) if Construction Completion of the Portion has been achieved, provide to the Principal's Representative and the CIDS/ODS Contractor a document signed by the Independent Certifier in the form in Schedule 29; or
- (ii) if Construction Completion of the Portion has not been achieved, issue a notice to the CIDS/ODS Contractor and the Principal in which it states:
  - A. the items which remain to be completed before Construction Completion of the Portion can be achieved; or
  - B. that the CIDS/ODS Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to notify the CIDS/ODS Contractor of the items which remain to be completed as contemplated by clause 15.3(e)(ii)A.
- (f) If the Independent Certifier issues a notice under clause 15.3(e)(ii) the CIDS/ODS Contractor must proceed with the CIDS/ODS Contractor's Activities and thereafter when it considers it has achieved Construction Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 15.3(d) and 15.3(e) will reapply.
- (g) The CIDS/ODS Contractor acknowledges and agrees that:
  - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 15.3, including representatives of the Operator; and
  - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the CIDS/ODS Contractor) in relation to any non-compliance of the CIDS/ODS Contractor's Activities with this Contract.
- (h) Without affecting the CIDS/ODS Contractor's obligation to achieve Construction Completion of each Portion by the relevant Date for Construction Completion, the parties acknowledge that:
  - (i) no separate Date for Construction Completion of the Works is specified in this Contract;
  - (ii) Construction Completion of the Works is achieved by achieving Construction Completion of all Portions;
  - (iii) Construction Completion of the Works will be taken to have occurred once Construction Completion of all Portions has occurred; and
  - (iv) the Date of Construction Completion of the Works will be taken to be the Date of Construction Completion of the last Portion to reach Construction Completion.

## 15.4 Completion

- (a) When the CIDS/ODS Contractor considers that it has achieved Completion, the CIDS/ODS Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule 30.
- (b) The Independent Certifier must, within 5 Business Days after receipt of a notice under clause 15.4(a) or a notice under clause 15.4(c):
  - (i) if Completion has been achieved, provide to the Principal's Representative and the CIDS/ODS Contractor a document signed by the Independent Certifier in the form in Schedule 31; or
  - (ii) if Completion has not been achieved, issue a notice to the CIDS/ODS Contractor and the Principal in which it states:
    - A. the items which remain to be completed before Completion can be achieved; or
    - B. that the CIDS/ODS Contractor is so far from achieving Completion that it is not practicable to notify the CIDS/ODS Contractor of the items which remain to be completed as contemplated by clause 15.4(b)(ii)A.
- (c) If the Independent Certifier issues a notice under clause 15.4(b)(ii), the CIDS/ODS Contractor must proceed with the CIDS/ODS Contractor's Activities and thereafter, when it considers that it has achieved Completion, it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 15.4(a) and 15.4(b) will reapply.
- (d) The CIDS/ODS Contractor acknowledges and agrees that the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the CIDS/ODS Contractor) in relation to any non-compliance of the CIDS/ODS Contractor's Activities with this Contract:

## 15.5 Unilateral Issue of Notice of Milestone Achievement, Notice of Construction Completion or Notice of Completion

If at any time a notice required to be given by the CIDS/ODS Contractor to the Principal's Representative under clauses 15.2(d), 15.2(f), 15.3(d), 15.3(f), 15.4(a) or 15.4(c) is not given by the CIDS/ODS Contractor yet the Principal's Representative is of the opinion that Milestone Achievement of a Milestone, Construction Completion of any Portion or Completion (as applicable) has been achieved, the Principal's Representative may (as applicable):

- (a) issue a Notice of Milestone Achievement under clause 15.2(e)(iii) for that Milestone; or
- (b) direct the Independent Certifier to issue:

- (i) a Notice of Construction Completion under clause 15.3(e)(i) for the Portion; or
- (ii) a Notice of Completion under clause 15.4(b)(i).

## **15.6 Hand Over upon Construction Completion**

The CIDS/ODS Contractor acknowledges that the Principal will require a progressive handover of the Works. On Construction Completion of each Portion, the CIDS/ODS Contractor must:

- (a) hand control of the relevant Works to the Principal; and
- (b) provide the Principal with all spare parts, consumables and special tools as required by the SWTC.

## **15.7 Part of the Works or a Portion**

- (a) Without limiting clause 15.7(b), further Portions may be created by the Principal's Representative by issuing a written direction to the CIDS/ODS Contractor which clearly identifies for each Portion:
  - (i) the Works and the Temporary Works;
  - (ii) the Date for Construction Completion; and
  - (iii) the respective amounts of liquidated damages,
 all as determined by the Principal's Representative (acting reasonably).
- (b) If part of a Portion has reached a stage equivalent to Construction Completion but another part of the Portion has not reached Construction Completion and the parties cannot agree upon the creation of new Portions, the Principal's Representative may, by written notice to the CIDS/ODS Contractor, determine that the respective parts will be Portions.
- (c) Without limiting clause 15.7(a) or 15.7(b), the Principal may, after the CIDS/ODS Contractor is given written notice by the Principal's Representative, occupy or use any part of a Portion although the whole of the Portion has not reached Construction Completion.
- (d) If the Principal's Representative gives a notice under clause 15.7(b):
  - (i) the Principal must allow the CIDS/ODS Contractor reasonable access to the part of the Portion referred to in the notice and being occupied or used by the Principal, to enable the CIDS/ODS Contractor to bring the Portion of which the area being occupied or used forms part to Construction Completion; and
  - (ii) this will not otherwise limit or affect the obligations of the parties under this Contract, including the obligation of the CIDS/ODS Contractor to achieve Construction Completion of the relevant Portion of which the

area being occupied or used forms part, by the relevant Date for Construction Completion.

## 15.8 Delay Liquidated Damages

- (a) The Principal and the CIDS/ODS Contractor agree and acknowledge that:
- (i) the Principal is pursuing a policy of building Sydney Metro City & Southwest and the Works for purposes that include achieving the objectives set out in section 1.2 of the SWTC; and
  - (ii) the CIDS/ODS Contractor's Activities represent a most important element of the building of Sydney Metro City & Southwest, as a major new public transport link which, together with Sydney Metro Northwest (and their integration), will service the needs of Sydney, including the needs of its workforce and its economy, and will provide frequent rapid transit services to handle projected population increases, create employment both during and after the CIDS/ODS Contractor's Activities, improve the efficiency of the Sydney public transport network and improve the local environment.
- (b) The CIDS/ODS Contractor acknowledges and agrees that its failure to achieve Construction Completion of each Portion by the required Dates for Construction Completion will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.
- (c) Subject to clause 15.8(f), if Construction Completion of a Portion has not occurred by the relevant Date for Construction Completion, the CIDS/ODS Contractor must pay the Principal liquidated damages at the rates stated in Schedule 3 for every day after the relevant Date for Construction Completion up to and including:
- (i) the Date of Construction Completion of the Portion; or
  - (ii) the date that this Contract is terminated under clause 18,
- whichever is first.
- (d) The parties agree that the liquidated damages provided for in Schedule 3:
- (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the CIDS/ODS Contractor to achieve Construction Completion of a Portion by the relevant Date for Construction Completion and do not constitute, nor are they intended to be, a penalty and have been freely agreed to by the CIDS/ODS Contractor; and
  - (ii) will be recoverable from the CIDS/ODS Contractor as a debt immediately due and payable to the Principal.



- (e) If clause 15.8(c) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages (including loss of revenue and loss of profits from the loss of use of the Works) as a result of the CIDS/ODS Contractor failing to achieve Construction Completion of a Portion by the relevant Date for Construction Completion, but the CIDS/ODS Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the CIDS/ODS Contractor would have had if clause 15.8(c) had not been void, invalid or otherwise inoperative.
- (f) The CIDS/ODS Contractor's aggregate liability under clauses 15.8(c) and 15.8(e):
- (i) is limited to the amount set out in clause 17.2(b); and
  - (ii) will be the Principal's sole financial remedy against the CIDS/ODS Contractor for:
    - A. failing to achieve Construction Completion of a Portion by the relevant Date for Construction Completion; and/or
    - B. failing to achieve Milestone Achievement of each Milestone by the relevant Date for Milestone Achievement,

as applicable, and the Principal will not be entitled to make, nor will the CIDS/ODS Contractor be liable upon, any Claim in these circumstances other than for the amount for which the CIDS/ODS Contractor is liable under this clause 15.8 (whether liquidated damages or, under clause 15.8(e), general damages). The sole remedy provision in this clause 15.8(f) relates to the delay itself and does not limit the Principal's rights with respect to an event giving rise to a delay or the consequences of that event (other than the delay) or limit or reduce the CIDS/ODS Contractor's liability for any other acts, omissions or defaults (including the Principal's entitlement to damages other than liquidated damages) with respect to an event giving rise to delay or the consequences of that event.

Further, nothing in this clause 15.8(f) in any way limits the CIDS/ODS Contractor's liability where this Contract is terminated by the Principal under clause 18 or otherwise at Law.

- (g) The CIDS/ODS Contractor acknowledges and agrees that the payment of liquidated damages pursuant to clause 15.8(c) and, where applicable, the payment of common law damages pursuant to clause 15.8(e), will not relieve the CIDS/ODS Contractor of any of its obligations under this Contract.

## **15.9 Effect of Notice of Milestone Achievement, Notice of Construction Completion or Notice of Completion**

- (a) A notice issued under clause 15.2(e)(iii), 15.3(e)(i) or clause 15.4(b)(i) will not:

- (i) constitute approval by the Principal, the Principal's Representative or the Independent Certifier of the CIDS/ODS Contractor's performance of its obligations under this Contract;
  - (ii) be taken as an admission or evidence that the relevant Milestone or Portion (as applicable) complies with the requirements of this Contract; or
  - (iii) prejudice any rights or powers of the Principal, the Principal's Representative or the Independent Certifier.
- (b) Without limiting clause 15.9(a), the parties agree that, in the absence of manifest error on the face of the certification, the Independent Certifier's certification as set out in a Notice of Milestone Achievement, Notice of Construction Completion or Notice of Completion (as applicable) is final and binding on the parties for the purposes only of establishing that Milestone Achievement of the relevant Milestone, Construction Completion of the relevant Portion or Completion (as applicable) has occurred. For the avoidance of doubt, the certification may be disputed by either party in accordance with clause 19 in relation to:
- (i) the date on which Milestone Achievement of the relevant Milestone, Construction Completion of the relevant Portion or Completion (as applicable) has been achieved; or
  - (ii) an extension of a Date for Construction Completion or a Date for Milestone Achievement.

### **15.10 Final Completion**

- (a) When the CIDS/ODS Contractor considers that Final Completion has been reached, it must give the Principal's Representative notice in writing and deliver a Final Payment Claim in accordance with clause 14.11.
- (b) If the Principal's Representative considers that Final Completion has been reached, it will issue a Final Certificate with the payment schedule issued pursuant to clause 14.11.
- (c) The Final Certificate is without prejudice to any of the Principal's rights under this Contract and is not evidence of accord and satisfaction of the CIDS/ODS Contractor's Activities or the Works.

### **15.11 Interim Support Services**

- (a) The CIDS/ODS Contractor must carry out the Interim Support Services in respect of each element of the CIDS/ODS installed by the CIDS/ODS Contractor prior to the Date of Shutdown:
  - (i) from the date that installation of the relevant element of the CIDS/ODS is completed in accordance with the requirements of this Contract until the earlier of:

- A. the Date of Shutdown; and
  - B. the date specified in a notice given by the Principal pursuant to clause 15.11(c),  
**("Interim Support Services Period")**; and
- (ii) in accordance with:
- A. the provisions of this Contract;
  - B. the requirements set out in section 2.3.7 of the SWTC; and
  - C. Good Industry Practice.
- (b) The CIDS/ODS Contractor is entitled to be paid for the Interim Support Services carried out by the CIDS/ODS Contractor during the Interim Support Services Period in accordance with the rates set out in Table 6 of Schedule 4, the Payment Breakdown Schedule.
- (c) At any time after commencement of the Interim Support Services Period, the Principal's Representative may give written notice to the CIDS/ODS Contractor that the CIDS/ODS Contractor is to cease performance of the Interim Support Services in respect of some or all elements of the CIDS/ODS on the date specified in the notice, which date must be at least 3 Business Days after the date on which the CIDS/ODS Contractor receives the notice under this clause 15.11(c).

## **15.12 Post Construction Completion Activities**

- (a) The CIDS/ODS Contractor must:
- (i) perform the Post Construction Completion Activities:
    - A. from the Date of Construction Completion of the first Portion to achieve Construction Completion until the date Completion is achieved;
    - B. in accordance with:
      - 1) the provisions of this Contract;
      - 2) the SWTC;
      - 3) any applicable Laws and Authority Approvals; and
      - 4) Good Industry Practice; and
    - C. without limiting the CIDS/ODS Contractor's obligations under clause 3.9 or the Project Cooperation and Integration Deeds, in an efficient and cooperative manner; and
  - (ii) allocate such resources and staff as is necessary to enable the due and proper performance of the Post Construction Completion Activities.

- (b) The CIDS/ODS Contractor is entitled to be paid for the Post Construction Completion Activities carried out by the CIDS/ODS Contractor in accordance with clause 15.12(a)(i) on the basis of:
- (i) the prices and rates set out in Part A of Schedule 13 (where applicable or where it is otherwise reasonable to use them for valuing the relevant Post Construction Completion Activities); or
  - (ii) to the extent clauses 15.12(b)(i) and 9.1(b)(i)A do not apply, reasonable prices and rates (which are to be exclusive of any amount for Overhead Costs or profit), to be increased by the relevant percentage set out in item 17 of Schedule 1 in respect of clause 9.4(b)(ii)A which will be in total satisfaction of all the CIDS/ODS Contractor's Overhead Costs and profit.

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## **16. Care of the Works, Risks and Insurance**

### **16.1 Care of the Works**

- (a) Except where it arises from an Excepted Risk, and without limiting the generality of the CIDS/ODS Contractor's obligations, the CIDS/ODS Contractor is responsible for the care of and bears the risk of, and indemnifies the Principal against any destruction, loss of, or damage to:
- (i) the CIDS/ODS Contractor's Activities;
  - (ii) the Works;
  - (iii) the Trial Systems;
  - (iv) Temporary Works;
  - (v) Construction Plant;
  - (vi) unfixed plant and materials (whether on or off the Site) the value of which has been included in a payment statement under clause 14.3;
  - (vii) things entrusted to the CIDS/ODS Contractor by the Principal or brought onto the Site by a Subcontractor for the purpose of carrying out the CIDS/ODS Contractor's Activities; and
  - (viii) any Extra Land,
- from the date of this Contract up to and including:
- (ix) with respect to the Trial Systems, the date that the CIDS/ODS Contractor completes the removal of the Trial Systems from the Trial Location in accordance with clause 7.1(d)(ii)A; and
  - (x) otherwise, the Date of Construction Completion of the relevant Portion.
- (b) The CIDS/ODS Contractor must provide the storage and protection reasonably necessary to preserve the things referred to in clause 16.1(a).

- (c) After the Date of Construction Completion of the relevant Portion, the CIDS/ODS Contractor will bear the risk of, and indemnify the Principal against, any destruction, loss of or damage to that part of the Works or other thing, arising from:
- (i) any act or omission of the CIDS/ODS Contractor during the Defects Rectification Periods (including any extension under clause 11.6) or any other CIDS/ODS Contractor's Activities; or
  - (ii) any event which occurred while the CIDS/ODS Contractor was responsible for the care of the relevant part of the Works or other thing under clause 16.1(a) in connection with the CIDS/ODS Contractor's Activities.

## 16.2 Indemnity

- (a) The CIDS/ODS Contractor must indemnify each State Indemnified Party from and against:
- (i) any cost, expense, loss, damage, liability, fine, penalty or other amount incurred or suffered by a State Indemnified Party in respect of:
    - A. loss or destruction of or damage to, or loss of use of or access to (whether total or partial), any State Indemnified Party's real or personal property; or
    - B. any Claim against a State Indemnified Party (including by another State Indemnified Party) or liability a State Indemnified Party may have to a third party in respect of, arising out of or in connection with:
      - 1) loss or destruction of or damage to any real or personal property;
      - 2) the loss of use of or access to (whether total or partial) any real or personal property; or
      - 3) any illness, personal injury to or death of persons,
 to the extent caused by, or arising out of, or in any way in connection with, the CIDS/ODS Contractor's Activities, the Works or the Temporary Works; and
  - (ii) any:
    - A. liability to or Claim by any other person; or
    - B. costs, expenses, losses, damages, fines and penalties suffered or incurred by a State Indemnified Party,

to the extent arising out of, or in any way in connection with:

- C. the CIDS/ODS Contractor's breach of a term of this Contract or any other CIDS/ODS Contract Document or failure of the CIDS/ODS Contractor to otherwise comply with any of its obligations under this Contract or any other CIDS/ODS Contract Document (except that in respect of this clause 16.2(a)(ii)C, notwithstanding the foregoing, the CIDS/ODS Contractor only indemnifies the Principal, and not each State Indemnified Party);
  - D. any fraudulent act or omission by the CIDS/ODS Contractor or any of its Associates (except that in respect of this clause 16.2(a)(ii)D, notwithstanding the foregoing, the CIDS/ODS Contractor only indemnifies the Principal, and not each State Indemnified Party); or
  - E. any Environmental Liabilities arising out of or in connection with any:
    - 1) breach of this Contract by the CIDS/ODS Contractor; or
    - 2) wrongful or reckless act or omission of the CIDS/ODS Contractor or its Associates.
- (b) The CIDS/ODS Contractor's liability to indemnify any State Indemnified Party under this Contract will be reduced proportionally to the extent that a breach of this Contract by the Principal or a negligent act or omission of the Principal, its Associates or any other State Indemnified Party contributed to the liability, claim, costs, expenses, losses, damages, fines or penalties.
- (c) The indemnity in clause 16.2(a) will not:
- (i) exclude any other right of the Principal to be indemnified by the CIDS/ODS Contractor; or
  - (ii) apply to the extent to which the CIDS/ODS Contractor must indemnify the Principal under clause 16.1.

### **16.3 State Indemnified Parties**

- (a) To the extent that the indemnity in clause 16.2 is in favour of a State Indemnified Party other than the Principal, the Principal has sought and obtained that indemnity as agent on behalf of each State Indemnified Party. The Principal may also enforce that indemnity as agent on behalf of each State Indemnified Party.
- (b) If the Principal does not have authority to act as agent on behalf of a State Indemnified Party other than the Principal, then the Principal will be deemed to have sought and obtained that indemnity as trustee for that State Indemnified Party and holds the benefit of that indemnity as trustee. The Principal may also enforce that indemnity as trustee for the benefit of that State Indemnified Party.

- (c) If the indemnity in clause 16.2 is unenforceable to the extent that it is expressed to be given in favour of a State Indemnified Party other than the Principal, all references in this clause 16 to "the State Indemnified Party" or "a State Indemnified Party" will be read as a reference to "the Principal" only.

#### **16.4 Reinstatement**

During the period during which the CIDS/ODS Contractor bears the risk of loss or damage, and while the CIDS/ODS Contractor is responsible for its care, if loss or damage occurs to anything for which the CIDS/ODS Contractor is responsible under clause 16.1, the CIDS/ODS Contractor must:

- (a) subject to clause 16.4(b), promptly replace or otherwise make good the loss or repair the damage; and
- (b) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the CIDS/ODS Contractor, only comply with clause 16.4(a) to the extent directed by the Principal's Representative.

The CIDS/ODS Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk (but subject to clause 16.4(b)), be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 9.4 applied.

#### **16.5 Contract Works (Material Damage) Insurance**

The Principal will effect and maintain contract works (material damage) insurance on the terms of the policy which is included in Exhibit C This insurance will cover the CIDS/ODS Contractor, the Principal, the Principal's Representative and all Subcontractors employed by the CIDS/ODS Contractor in respect of the CIDS/ODS Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted in Exhibit C, and is deemed to satisfy the Principal's obligation to effect insurance. The CIDS/ODS Contractor acknowledges and agrees that prior to the date of this Contract it reviewed and examined Exhibit C and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance included in Exhibit C do not cover every risk to which the CIDS/ODS Contractor or its Associates might be exposed and are subject to deductibles and limits and the CIDS/ODS Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit C; and
- (c) to the extent it bears the risk of the relevant loss or damage under clause 16.1, or is required to indemnify the Principal under clause 16.2, agrees to bear the

cost of any excesses in the insurance policies included in Exhibit C or any insurance taken out under this clause 16.5.

## 16.6 Public and Products Liability Insurance

The Principal will effect and maintain public and products liability insurance on the terms of the policy which is included in Exhibit C. The insurance will cover the CIDS/ODS Contractor, the Principal, the Principal's Representative and all Subcontractors employed by the CIDS/ODS Contractor in respect of the CIDS/ODS Contractor's Activities. [REDACTED]

This insurance is subject to the exclusions, conditions and excesses noted on the policies, and is deemed to satisfy the Principal's obligation to effect insurance. The CIDS/ODS Contractor acknowledges and agrees that prior to the date of this Contract it reviewed and examined Exhibit C and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance included in Exhibit C do not cover every risk to which the CIDS/ODS Contractor or its Associates might be exposed and are subject to deductibles and limits and the CIDS/ODS Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit C; and
- (c) to the extent it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies included Exhibit C, or any insurance taken out under this clause 16.6.

## 16.7 CIDS/ODS Contractor's Insurance Obligations

The effecting of insurance will not limit the liabilities or obligations of a party under any other provision of this Contract.

The CIDS/ODS Contractor must, or in the case of asbestos liability insurance, either the CIDS/ODS Contractor or its specialist asbestos removal Subcontractor must (if required by clause 16.7(a)(iii) below), on or before the Condition Precedent Deadline Date or as otherwise required by this Contract:

- (a) effect and have in place the following insurance with insurers of the Required Rating:
  - (i) workers' compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the CIDS/ODS Contractor's Activities are being performed;



- (ii) plant and equipment insurance, covering physical loss or damage to Construction Plant on the basis of market value in connection with the CIDS/ODS Contractor's Activities;
  - (iii) if the CIDS/ODS Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, asbestos liability insurance;
  - (iv) professional indemnity insurance covering claims for breach of professional duty (whether owed in contract or otherwise) by the CIDS/ODS Contractor or its Subcontractors in carrying out the CIDS/ODS Contractor's Activities;
  - (v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the CIDS/ODS Contractor's Activities, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances, and including:
    - A. insurance against personal injury or death, as required under all applicable Laws; and
    - B. third party property damage;
  - (vi) if the things the care of which the CIDS/ODS Contractor is responsible for under clause 16.1 are in transit (including storage and transshipment) from any place outside of Australia, marine transit insurance on an "all risks" basis, including war, riots, strikes and civil commotion coverage, covering those things until they are delivered to the Site;
  - (vii) any insurance that the CIDS/ODS Contractor is required to obtain by virtue of any Law or Change in Law;
  - (viii) property damage insurance (for replacement value) in respect of all materials fabricated overseas for incorporation into the Works prior to the insurance in clause 16.7(a)(vi) coming into effect; and
  - (ix) any other insurance that the Principal may reasonably require the CIDS/ODS Contractor to obtain (provided that to the extent the Principal issues a notice in writing requiring the CIDS/ODS Contractor to obtain any other insurance, this will be deemed to be a "Variation Proposal Request" issued under clause 9.1(a),  
 for the amounts (if any) referred to in item 23 of Schedule 1;
- (b) ensure the plant and equipment insurance, motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the law and motor vehicle third party property damage insurance):
- (i) covers the Principal, the Principal's Representative (including any appointee under clauses 12.2 and 12.3), the CIDS/ODS Contractor and all its Subcontractors, for their respective rights and interests; and

- (ii) is for an amount in respect of any occurrence referred to in item 23 of Schedule 1;
- (c) ensure the asbestos liability insurance, motor vehicle third party property damage insurance and any insurance required by clause 16.7(a)(vii):
  - (i) covers the Principal, the Principal's Representative (including any appointee under clauses 12.2 or 12.3), the CIDS/ODS Contractor and all its Subcontractors, for their respective rights and interests, and in relation to the asbestos liability insurance, includes the Principal as an additional insured; and
  - (ii) extend to cover:
    - A. liabilities to third parties arising out of the CIDS/ODS Contractor's Activities; and
    - B. loss or damage to property (other than property described in clause 16.1) and the death of or injury to any person (other than liability which the law requires to be covered under a workers' compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the CIDS/ODS Contractor's Activities; and
  - (iii) is for an amount in respect of any occurrence referred to in item 23 of Schedule 1;
- (d) ensure the professional indemnity insurance:
  - (i) covers the CIDS/ODS Contractor for liability to the Principal arising from errors or omissions in:
    - A. design or documentation of the Works and Temporary Works; and
    - B. other professional services,carried out by the CIDS/ODS Contractor or any of its Subcontractors; and
  - (ii) provide:
    - A. cover for any amount in respect of any one claim of; and
    - B. cover for an amount in the aggregate of,  
the amount stated in item 23 of Schedule 1;
- (e) in relation to the workers' compensation insurance or similar insurance:
  - (i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the CIDS/ODS Contractor's employees;

- (ii) ensure that each of its Subcontractors has such workers' compensation insurance or similar insurance covering the Subcontractor's employees; and
- (iii) ensure it insures against liability for death of or injury to persons employed by the CIDS/ODS Contractor as required by any Law for the amount stated in item 23 of Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law; and
- (f) in relation to marine transit insurance, ensure that the policy includes a delayed unpacking clause and a 50:50 clause.

## 16.8 General Insurance Requirements

The CIDS/ODS Contractor must:

- (a) in respect of any insurance policy (including an insurance policy which this Contract requires the CIDS/ODS Contractor to procure to be effected by a Subcontractor) which it is required to effect or procure to be effected, pursuant to this Contract and where required by the Principal's Representative, provide the Principal's Representative (or other person nominated for this purpose by the Principal's Representative) within 5 Business Days of a request with:
  - (i) in respect of workers' compensation, a certificate of currency and any other evidence satisfactory to the Principal's Representative demonstrating that the policy is current and in compliance with the CIDS/ODS Contractor's obligation to insure (or procure insurance), or (where relevant) a licence as a self-insurer or other proof of being a self-insurer under the *Workers Compensation Act 1987* (NSW); and
  - (ii) other than workers' compensation and professional indemnity insurance, a certified copy of the insurance policy and any other evidence which may be reasonably necessary to satisfy the Principal's Representative that the policy is current and complies with the requirements of this Contract;
- (aa) in respect of professional indemnity insurance, within 30 days of the date of this Contract, provide a certificate of currency of the insurance policy to satisfy the Principal's Representative that the policy is current and complies with the requirements of this Contract;
- (b) ensure that (except for professional indemnity or workers' compensation or similar insurance):
  - (i) the Principal receives at least 30 days' notice of any cancellation or material change of any insurance policy effected under clause 16.7;
  - (ii) a notice of claim given to the insurer by the Principal, the CIDS/ODS Contractor or a Subcontractor will be accepted by the insurer as a notice of claim by all insured parties; and

- (iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice in writing to the Principal about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and
- (c) ensure that it:
- (i) does not do anything which prejudices any insurance;
  - (ii) where required, rectifies anything which might prejudice any insurance;
  - (iii) reinstates an insurance policy if it lapses;
  - (iv) does not cancel, vary an insurance policy such that it no longer complies with the CIDS/ODS Contractor's obligations under this clause 16.8 or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
  - (v) immediately notifies the Principal's Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and
  - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

If the CIDS/ODS Contractor fails to:

- (d) provide a certificate of currency of the insurance policy (including a certificate of currency of the insurance policy which this Contract requires the CIDS/ODS Contractor to procure a Subcontractor to effect) which the CIDS/ODS Contractor is required to effect together with evidence satisfactory to the Principal's Representative that the policy is current; or
- (e) effect or procure to be effected insurance which is with insurers of the Required Rating,

as required by clauses 3.2(c), 16.7 or this clause 16.8, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the CIDS/ODS Contractor to the Principal.

## **16.9 Period of Insurance**

The CIDS/ODS Contractor must ensure that the insurances it is required to have in place under this clause 16:

- (a) are in force on or before the Condition Precedent Deadline Date, except for:
  - (i) any asbestos liability insurance required under clause 16.7(a)(iii) which must be in force before any work involving asbestos or asbestos decontamination work commences; and

- (ii) any insurance policy required by clause 16.7(a)(vii) which must be in place before the CIDS/ODS Contractor's Activities covered by such policies commence; and
- (b) are maintained:
  - (i) in the case of the plant and equipment insurance, workers' compensation insurance and motor vehicle insurance, until the Principal's Representative issues a Final Certificate under clause 15.10(b);
  - (ii) in the case of professional indemnity insurance, until at least the period specified in item 24 of Schedule 1 after the date Completion is achieved;
  - (iii) in the case of asbestos liability insurance, marine transit insurance and insurance required under clauses 16.7(a)(viii) and 16.7(a)(ix) for so long as there is a risk that an event covered by the insurance may occur in relation to the Works, the Temporary Works or the CIDS/ODS Contractor's Activities; and
  - (iv) in the case of insurance required under clause 16.7(a)(vii), during the period required by any Law.

#### **16.10 Notice of Potential Claim**

Except where to do so has the potential to prejudice the CIDS/ODS Contractor's right to indemnity under any policy of insurance, the CIDS/ODS Contractor must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by this Contract (except for the professional indemnity and workers' compensation insurance policies) which arises out of or in connection with the Works;
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its Subcontractors similarly inform the CIDS/ODS Contractor and the Principal in respect of occurrences that may give rise to a claim which arises out of or in connection with the Works.

#### **16.11 Cross Liability**

Where this Contract requires insurance to be effected in the name of more than one party, the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) not used;

- (c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

## **16.12 Risk of Deductibles**

The CIDS/ODS Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 16, except to the extent such liability arises due to the fault of the Principal.

## **16.13 Application of insurance proceeds**

Where, prior to the Date of Construction Completion of the last Portion to achieve Construction Completion, the Works or the Temporary Works are damaged or destroyed, all insurance proceeds in respect of that damage or destruction that are payable under any insurances maintained by the Principal in accordance with clauses 16.5 and 16.6 will be:

- (a) paid to the Principal;
- (b) paid by the Principal to the CIDS/ODS Contractor by progress payments under clause 14.2 as and when the CIDS/ODS Contractor reinstates the Works and the Temporary Works; and
- (c) the limit of the CIDS/ODS Contractor's entitlement to payment for reinstatement of the destruction, loss or damage except to the extent the destruction, loss or damage arises from an Excepted Risk.

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## **17. Liability**

### **17.1 Provisions Limiting or Excluding Liability**

Any provision of this Contract which seeks to limit or exclude a liability of the Principal or the CIDS/ODS Contractor is to be construed as doing so only to the extent permitted by Law.

### **17.2 Limit of CIDS/ODS Contractor's Liability**

- (a) Subject to clause 17.4, the CIDS/ODS Contractor's total aggregate liability under or in connection with:
  - (i) this Contract;
  - (ii) any other CIDS/ODS Contract Document; or
  - (iii) any Third Party Agreement,

however caused or arising, whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in contract, in tort (for negligence or otherwise) or on any basis in Law or equity, is limited to an amount equal to [REDACTED] of the Contract Sum.

- (b) The CIDS/ODS Contractor's total aggregate liability to the Principal under clauses 15.8(c) and 15.8(e) is:
  - (i) limited to an amount equal to the LD Cap; and
  - (ii) included in the cap on liability in clause 17.2(a).

### 17.3 Exclusion of Consequential Loss

Subject to clause 17.4, but otherwise despite any other provision of this Contract, the CIDS/ODS Contractor will have no liability whatsoever to the Principal its Associates or any other State Indemnified Party (whether in contract, tort or otherwise) in respect of Consequential Loss incurred or sustained by the Principal, its Associates or any other State Indemnified Party as a result of any act or omission of the CIDS/ODS Contractor (whether negligent or otherwise).

### 17.4 Qualification on Limitation and Exclusion of Liability

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]



- [REDACTED]
- [REDACTED]
- (b) Clause 17.3 does not apply to limit or restrict in any way the CIDS/ODS Contractor's liability:
- (i) to pay liquidated damages under clause 15.8(c) or general damages under clause 15.8(e); or
  - (ii) to indemnify the Principal under clause 10.9(b).
- (c) Any liability which the CIDS/ODS Contractor has under clauses 16.5(c), 16.6(c) and 16.12 will be included in the calculation of the CIDS/ODS Contractor's total aggregate liability under clause 17.2(a).
- (d) Subject to clause 17.4(a)(vii), the CIDS/ODS Contractor will have no liability to the Principal or its Associates in respect of any liability that the Principal or its Associates has to any third party for Pure Economic Loss arising directly as a result of:
- (i) the decision by the State or the Principal to proceed with Sydney Metro City & Southwest; or
  - (ii) the existence or location of Sydney Metro City & Southwest.
- (e) To the extent that the CIDS/ODS Contractor is required to indemnify a State Indemnified Party from and against Consequential Loss due to loss of use or loss of access to real or personal property, the CIDS/ODS Contractor's liability for such Consequential Loss is limited to the extent that the CIDS/ODS Contractor:
- (i) recovers its liability for such Consequential Loss under any insurance policy effected by the Principal under clause 16.5 or 16.6 or an insurance required to be effected by the CIDS/ODS Contractor under this Contract (as applicable); or
  - (ii) is indemnified or entitled to be indemnified for its liability for such Consequential Loss under an insurance policy required to be effected by the CIDS/ODS Contractor under this Contract,
- or would have recovered its liability or been indemnified or entitled to be indemnified for its liability (as applicable) for such Consequential Loss but for:
- (iii) the operation of any deductible or excess that the CIDS/ODS Contractor is required to bear under this Contract; or
  - (iv) any act or omission of the CIDS/ODS Contractor or its Associates including any failure by the CIDS/ODS Contractor to:
    - A. diligently pursue a claim under the relevant policy of insurance;

- B. comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
  - C. comply with its insurance obligations under this Contract.
- (f) The parties acknowledge and agree that this clause 17 is not intended to operate to allow any insurer to deny indemnity or to limit or reduce its liability to indemnify the CIDS/ODS Contractor for Claim, loss or liability otherwise insured.

## 17.5 Proportionate Liability

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of the Principal and the CIDS/ODS Contractor under this Contract with respect to proportionate liability are as specified in this Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
  - (i) the CIDS/ODS Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the CIDS/ODS Contractor (whether in contract, tort or otherwise); and
  - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the CIDS/ODS Contractor (whether in contract, tort or otherwise), the CIDS/ODS Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the CIDS/ODS Contractor which the Principal is not able to recover from the CIDS/ODS Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).
- (d) The CIDS/ODS Contractor must:
  - (i) in each subcontract into which it enters for the carrying out of the work under this Contract or for the supply of materials or services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
  - (ii) require each Subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the carrying out of the work under this Contract, a term that (to the extent permitted

by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

- (e) The CIDS/ODS Contractor must ensure that all policies of insurance covering third party liability it is required by this Contract to effect or maintain (including the professional indemnity policy referred to in clause 16.8):
  - (i) cover the CIDS/ODS Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
  - (ii) do not include a "contractually assumed liability" exclusion (or similar).
- (f) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an expert appointed in accordance with the provisions of this Contract.
- (g) An expert has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the expert.

## **18. Default or Insolvency**

### **18.1 CIDS/ODS Contractor's Default**

If the CIDS/ODS Contractor commits a breach of this Contract referred to below, the Principal may give the CIDS/ODS Contractor a written notice.

The breaches by the CIDS/ODS Contractor to which this clause applies are:

- (a) not commencing or not progressing the CIDS/ODS Contractor's Activities regularly and diligently in accordance with the requirements of this Contract, in breach of clause 13.1;
- (b) suspension of work, or failing to proceed with the CIDS/ODS Contractor's Activities with due expedition and without delay, in breach of clause 13.1;
- (c) failing to provide the security, in breach of clause 3.7;
- (d) failing to provide evidence of insurance, in breach of clause 16;
- (e) failing to use the materials or standards of workmanship required by this Contract, in breach of clause 5.1;
- (f) not complying with any direction of the Principal's Representative made in accordance with this Contract, in breach of clause 12.1(a);

- (g) not complying with the requirements of this Contract regarding the Contract Management Plans in a material respect;
- (h) not complying with its obligations under:
  - (i) the SWTC with regard to the Contract Management Plans; or
  - (ii) the SWTC with regard to technical management;
- (i) not complying with its environmental obligations under this Contract;
- (j) not complying with its obligations under this Contract regarding work health and safety;
- (k) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 3.3; or
- (l) any other failure to comply with a material obligation under the Contract.

## **18.2 Contents of Notice**

A written notice under clause 18.1 must:

- (a) state that it is a notice under clause 18.1;
- (b) specify the alleged breach;
- (c) require the CIDS/ODS Contractor to remedy the breach or, in the case of a notice by the Principal where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and
- (d) specify the time and date by which the CIDS/ODS Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 21 clear days after the notice is given).

## **18.3 Rights of the Principal Following Notice**

If, by the time specified in a notice under clause 18.1, the CIDS/ODS Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the CIDS/ODS Contractor:

- (a) take out of the hands of the CIDS/ODS Contractor the whole or part of the work remaining to be completed; or
- (b) terminate this Contract.

## 18.4 Immediate Termination or Take-Out

If:

- (a) whether or not the CIDS/ODS Contractor is then in breach of this Contract:
  - (i) an Insolvency Event occurs:
    - A. to the CIDS/ODS Contractor; or
    - B. where the CIDS/ODS Contractor comprises more than one person, any one of those persons; or
    - C. to the Parent Company Guarantor; or
  - (ii) the CIDS/ODS Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 3.13;
- (b) the CIDS/ODS Contractor fails to comply with any of its obligations under clause 5.6 or 5.7;
- (c) the aggregate liability of the CIDS/ODS Contractor to the Principal under or in connection with the Contract, the other CIDS/ODS Contract Documents and the Third Party Agreements is equal to or exceeds █████ of the Contract Sum;
- (d) the aggregate liability of the CIDS/ODS Contractor to the Principal under or in connection with clauses 15.8(c) and 15.8(e) is equal to or exceeds:
  - (i) if the Principal and the CIDS/ODS Contractor have agreed in writing to increase the LD Cap to above █████ of the Contract Sum, such increased LD Cap; or
  - (ii) in any other event, █████ of the Contract Sum;
- (e) one of the Parent Company Guarantees provided under clause 3.7 becomes void or voidable or otherwise ceases to be in full force and effect and the CIDS/ODS Contractor has not provided the Principal with a replacement Parent Company Guarantee:
  - (i) duly executed by the same Parent Company Guarantor in accordance with the requirements set out in clause 1.1; and
  - (ii) substantially in the form of Schedule 20 (or such other form approved by the Principal),

within 10 Business Days of the relevant Parent Company Guarantee(s) becoming void or voidable or which otherwise ceased to be in full force and effect;
- (f) a Change in Control occurs in respect of an entity that comprises the CIDS/ODS Contractor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 20.4(a)(iii));

- (g) a Change in Control occurs in respect of a Parent Company Guarantor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 20.4(b)(iii)); or
- (h) the CIDS/ODS Contractor breaches any of its obligations in relation to Modern Slavery as set out in clause 3.21, or any Modern Slavery Law or if the CIDS/ODS Contractor or any entity that it owns or controls commits a Modern Slavery Offence,

then, whether or not the CIDS/ODS Contractor is then in breach of this Contract, the Principal may, without giving a notice under clause 18.1, exercise the right under clause 18.3(a) or 18.3(b).

## **18.5 Principal's Common Rights After Take-Out or Termination**

If:

- (a) the Principal:
  - (i) exercises its rights under clause 18.3(a); or
  - (ii) terminates this Contract under clauses 18.3(b), 18.4 or 18.9;
- (b) the CIDS/ODS Contractor repudiates this Contract and the Principal otherwise terminates this Contract; or
- (c) this Contract is frustrated under the Law,

then:

- (d) the CIDS/ODS Contractor:
  - (i) must novate to the Principal or the Principal's nominee those Subcontracts between the CIDS/ODS Contractor and its Subcontractors that the Principal directs;
  - (ii) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the CIDS/ODS Contractor's attorney to:
    - A. execute, sign, seal and deliver all notices, deeds and documents; and
    - B. undertake actions in the name of the CIDS/ODS Contractor, for the purposes referred to in clause 18.5(d)(i); and
  - (iii) must immediately hand over to the Principal's Representative all copies of:
    - A. any documents provided by the Principal to the CIDS/ODS Contractor;

- B. all Contract Documentation prepared by the CIDS/ODS Contractor to the date on which:
    - 27) the Principal exercises its rights under clauses 18.3(a), 18.3(b), 18.4 or 18.9;
    - 28) the CIDS/ODS Contractor repudiates this Contract and the Principal terminates this Contract; or
    - 29) this Contract is frustrated under the Law, (whether complete or not); and
  - C. any other documents or information in existence that is to be provided to the Principal under the terms of this Contract; and
- (e) the Principal:
- (i) will be entitled to require the CIDS/ODS Contractor to remove from the Site or any area affected by the Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Works;
  - (ii) may complete that work itself or by engaging others (including but not limited to the CIDS/ODS Contractor's Subcontractors);
  - (iii) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site or Extra Land as are owned by the CIDS/ODS Contractor and are reasonably required by the Principal to facilitate completion of the work;
  - (iv) must, if it takes possession of the items referred to in clause 18.5(e)(iii):
    - A. for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the CIDS/ODS Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 19; and
    - B. maintain the Construction Plant, Temporary Works or other things and, subject to clause 18.6, on completion of the work return to the CIDS/ODS Contractor the Construction Plant, Temporary Works and any things taken under clause 18.5(e)(iii) which are surplus;
  - (v) may direct the CIDS/ODS Contractor to store or transport any component of the Works which has not yet been delivered to Site at or to a location directed by the Principal; and
  - (vi) must, if it issues a direction under clause 18.5(e)(v), reimburse the CIDS/ODS Contractor its reasonable costs incurred in storing or transporting the relevant component of the Works.

This clause 18.5 will survive the termination or frustration of this Contract.

## **18.6 Principal's Entitlements after Take-Out**

- (a) If the Principal exercises the right under clause 18.3(a), other than payment for the works properly performed to date, the CIDS/ODS Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the CIDS/ODS Contractor unless a payment becomes due to the CIDS/ODS Contractor under this clause 18.6.
- (b) When work taken out of the hands of the CIDS/ODS Contractor under clause 18.3(a) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate certifying the amount.
- (c) If the cost incurred by the Principal is greater than the amount that would have been paid to the CIDS/ODS Contractor if the CIDS/ODS Contractor had completed the work, the difference will be a debt due from the CIDS/ODS Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the CIDS/ODS Contractor if the CIDS/ODS Contractor had completed the work, the difference will be a debt due to the CIDS/ODS Contractor from the Principal.
- (d) Without limiting clause 18.6(c), if the Principal exercises the right under clause 18.3(a), the Principal will be entitled to recover from the CIDS/ODS Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (e) If the CIDS/ODS Contractor is indebted to the Principal, the CIDS/ODS Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 18.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the CIDS/ODS Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the CIDS/ODS Contractor.

## **18.7 Principal's Rights after Termination**

Subject to clause 18.11, if the Principal terminates this Contract under clauses 18.3 or 18.4, or if the CIDS/ODS Contractor repudiates this Contract and the Principal otherwise terminates this Contract the Principal will:

- (a) be absolutely entitled to call upon, convert and have recourse to and retain the proceeds of any unconditional undertaking held under clause 3.7 or clause 14.7(b); and
- (b) be entitled to recover from the CIDS/ODS Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination.

This clause 18.7 survives the termination of this Contract.



## **18.8 CIDS/ODS Contractor's Rights after Repudiation or Wrongful Termination**

- (a) If the Principal:
- (i) repudiates this Contract and the CIDS/ODS Contractor terminates this Contract; or
  - (ii) wrongfully:
    - A. exercises or attempts to exercise any right or power conferred on it by clauses 18.3, 18.4 or 18.9; or
    - B. determines or purports to determine this Contract at common law,
- then the:
- (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 18.9 and the CIDS/ODS Contractor's sole rights in such circumstances will be those set out in clause 18.10; and
  - (iv) CIDS/ODS Contractor:
    - A. will not be entitled to the payment of damages;
    - B. will not be entitled to any payment on a quantum meruit basis; and
    - C. other than the rights set out in clause 18.10, waives all rights it has to make a Claim in such circumstances.
- (b) This clause 18.8 will survive the termination of this Contract.

## **18.9 Termination for Convenience**

Without prejudice to any of the Principal's other rights or entitlements or powers under this Contract, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the CIDS/ODS Contractor terminate this Contract effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the CIDS/ODS Contractor; and
- (b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the CIDS/ODS Contractor's Activities or the Works either itself or by engaging other contractors.

## **18.10 Payment for Termination for Convenience**

If the Principal terminates this Contract under clause 18.9, the CIDS/ODS Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:

- (i) for work carried out prior to the date of termination, the amount which would have been payable if this Contract had not been terminated and the CIDS/ODS Contractor submitted a payment claim under clause 14.2 for work carried out to the date of termination;
  - (ii) the cost of plant and materials reasonably ordered by the CIDS/ODS Contractor for the Works and for which it is legally bound to pay provided that:
    - A. the value of the plant or materials have not been previously paid or included in the amount payable under clause 18.10(a)(i); and
    - B. title in the plant and materials vests in the Principal upon payment;
  - (iii) the reasonable costs of removing from the Site or Extra Land all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the CIDS/ODS Contractor's Activities that are not part of, or to be part of, the Works;
  - (iv) the costs reasonably incurred by the CIDS/ODS Contractor in the expectation of completing the whole of the CIDS/ODS Contractor's Activities and not included in any other payment by the Principal;
  - (v) for work carried out in complying with written directions of the Principal resulting from the termination for convenience; and
  - (vi) an amount equal to ■ of the costs determined under clauses 18.10(a)(ii), 18.10(a)(iii) and 18.10(a)(iv) for all Overhead Costs and profit associated with, and to the extent not included in, the work and costs determined under clauses 18.10(a)(ii), 18.10(a)(iii) and 18.10(a)(iv); and
- (b) must take all steps possible to mitigate the costs referred to in clauses 18.10(a)(ii), 18.10(a)(iii) and 18.10(a)(iv);.

To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 3.7 or 14.7(b) when the CIDS/ODS Contractor has complied with all its obligations under this clause.

The amount to which the CIDS/ODS Contractor is entitled under this clause 18.10 will be a limitation upon the Principal's liability to the CIDS/ODS Contractor arising out of, or in any way in connection with, the termination of this Contract and the Principal will not be liable to the CIDS/ODS Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Contract other than for the amount payable under this clause 18.10.

This clause 18.10 will survive the termination of this Contract by the Principal under clause 18.9.

### **18.11 Preservation of Rights**

Subject to clause 18.8, nothing in this clause 18 or that the Principal does or fails to do pursuant to this clause 18 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 20.12) which it may have where the CIDS/ODS Contractor breaches (including repudiates) this Contract.

### **18.12 Termination by Frustration**

If under the Law this Contract is frustrated the Principal will:

- (a) pay the CIDS/ODS Contractor the following amounts as determined by the Principal's Representative:
  - (i) an amount calculated in accordance with clause 18.10(a)(i) for work carried out prior to the date of frustration;
  - (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 18.10(a)(ii); and
  - (iii) the costs calculated in accordance with the terms of clauses 18.10(a)(iii), 18.10(a)(iv) and 18.10(a)(v); and
- (b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 3.7 or clause 14.7(b) when the CIDS/ODS Contractor has complied with its obligations under this clause.

The amount to which the CIDS/ODS Contractor is entitled under this clause 18.12 will be a limitation upon the Principal's liability to the CIDS/ODS Contractor arising out of, or in any way in connection with, the frustration of this Contract and the Principal will not be liable to the CIDS/ODS Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Contract other than for the amount payable under this clause 18.12.

Without limiting any other provision of this Contract, this clause 18.12 will survive the frustration of this Contract.

### **18.13 Codification of CIDS/ODS Contractor's Entitlements**

This clause 18 is an exhaustive code of the CIDS/ODS Contractor's rights arising out of or in any way in connection with any termination and the CIDS/ODS Contractor:

- (a) cannot otherwise terminate, rescind or treat this Contract as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this Contract as repudiated,

otherwise than in accordance with this clause 18.

## 19. Disputes

### 19.1 Disputes generally

Any dispute, difference, controversy or Claim ("**Dispute**") directly or indirectly based upon, arising out of, relating to or in connection with this Contract or the Works, the Temporary Works or the CIDS/ODS Contractor's Activities, including any questions relating to the existence, validity or termination of this Contract, but excluding a failure by a party to comply with a final and binding decision of the Expert, must be resolved in accordance with this clause 19.

### 19.2 Independent Dispute Avoidance and Resolution Panel

- (a) The IDAR Panel has been constituted under the IDAR Panel Agreement.
- (b) The CIDS/ODS Contractor must, on or before the Condition Precedent Deadline Date, execute the IDAR Panel Agreement Accession Deed Poll.
- (c) Each party must:
  - (i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;
  - (ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this Contract; and
  - (iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of the CIDS/ODS Contractor's Activities, including providing all information it reasonably requests.

### 19.3 Consultation

- (a) Where a Dispute arises, the Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute ("**Notice of Issue**") from the dissatisfied party ("**Party A**") to the IDAR Panel and the other party ("**Party B**"). The Notice of Issue must provide brief particulars of the issues in Dispute.
- (b) Within 2 Business Days of the Notice of Issue, the parties must agree upon a member of the IDAR Panel ("**Nominated Member**") to review the Dispute. If:
  - (i) the parties fail to reach such agreement within 2 Business Days; or
  - (ii) the Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the chairperson of the IDAR Panel, as appointed under the IDAR Panel Agreement from time to time ("**Chair**") must nominate a replacement Nominated Member within a further 2 Business Days.
- (c) If a replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair

must nominate a further replacement Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.

- (d) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 19.3(c) will be reapplied until there are no IDAR Panel members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.
- (e) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting ("**Consultation**") to facilitate genuine and good faith negotiations with a view to:
  - (i) resolving the Dispute; and
  - (ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.
- (f) Each Consultation will be attended by:
  - (i) the Nominated Member;
  - (ii) the Principal's Representative;
  - (iii) the CIDS/ODS Contractor's Representative; and
  - (iv) other persons as agreed between the Principal's Representative and the CIDS/ODS Contractor's Representative.
- (g) The Consultation process must conclude within 15 Business Days of the first Consultation, or such other period as the parties may agree. The Nominated Member will advise the parties in writing when the Consultation process has concluded.
- (h) A failure to comply with clause 19.3(a) will be treated as a breach of this Contract by the relevant party.

#### **19.4 Recommendation**

- (a) Within 5 Business Days of the conclusion of Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:
  - (i) the formulation of the issues in Dispute;
  - (ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 19.5; and
  - (iii) whether the Dispute is not suitable for expert determination and should be determined in accordance with clause 19.8,

**("Recommendation").**

(b) Subject to clause 19.4(d), if the Dispute is not resolved within the later of:

- (i) 5 Business Days of the Recommendation; and
- (ii) 15 Business Days of the Notice of Issue,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) within 20 Business Days after the later of (i) and (ii) above or such other period of time as agreed between the parties ("**Notice of Dispute**").

(c) The Notice of Dispute must:

- (i) be in writing;
- (ii) state that it is a Notice of Dispute under this clause 19.4(c); and
- (iii) include or be accompanied by reasonable particulars of those parts of the Dispute including:
  - A. references to any:
    - 1) provisions of this Contract; and
    - 2) acts or omissions of any person, relevant to the Dispute;
  - B. the relief sought and the basis for claiming the relief sought; and
  - C. copies of, or relevant extracts from, any documents in support of the claim.

(d) If the Nominated Member makes a Recommendation:

- (i) under clause 19.4(a)(ii), the parties may accept the recommendation or clause 19.5(a) will apply; or
- (ii) under clause 19.4(a)(iii) that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined in accordance with clause 19.8, however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 19.5 will apply.

## 19.5 Expert determination

- (a) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule 34.
- (b) Both parties must promptly make available to the Expert all such additional information, access to the Site and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.

- (c) The parties agree that, to the extent permitted by law:
  - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and
  - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.
- (d) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 19.5. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 19.

## 19.6 Notice of dissatisfaction

- (a) If:
  - (i) either party is dissatisfied with a determination made by an Expert under clause 19.5, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
  - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties) then either party may, within 10 Business Days after this period has expired, give a notice to the other party of its dissatisfaction,
 

**("Notice of Dissatisfaction").**
- (b) A Notice of Dissatisfaction issued under clause 19.6 must:
  - (i) state that it is given under clause 19.6; and
  - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 19.4(d), neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 19.6.

## 19.7 Final and binding decision

- (a) If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 19.6, within 10

Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.

- (b) Once a determination of an Expert has become final and binding under clause 19.7(a), neither party will be entitled to challenge the determination on any basis.

## **19.8 Litigation or arbitration**

Where this clause applies, the Principal in its absolute discretion, may within 5 Business Days:

- (a) after issuing or receiving a Notice of Dissatisfaction; or
- (b) of reaching an agreement under clause 19.4(d)(ii),

(as applicable) issue a notice to the CIDS/ODS Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

## **19.9 Arbitration rules**

- (a) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) The seat of the arbitration will be Sydney, Australia.
- (c) The language of the arbitration will be English.
- (d) The parties agree:
  - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) that any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
  - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
    - A. the number of written submissions that will be permitted;
    - B. where appropriate, the length of written submissions;
    - C. the extent of document discovery permitted, if any;
    - D. the consolidation of proceedings, when requested;
    - E. the joinder of parties, when requested;



- F. the length of any hearing, if any; and
  - G. the number of experts, if any, each party is permitted to appoint.
- (e) The parties agree that:
- (i) subject to clause 19.10, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
  - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (f) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- (g) Any award of the arbitral tribunal will be final and binding upon the parties.
- (h) This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.

#### **19.10 Exclusion from determination or award**

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 19.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

#### **19.11 Payments**

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

#### **19.12 CIDS/ODS Contractor to continue performing obligations**

Despite the existence of any Dispute the CIDS/ODS Contractor must:

- (a) continue to perform the CIDS/ODS Contractor's Activities; and
- (b) perform its other obligations under this Contract.

#### **19.13 Urgent relief**

Nothing in this clause 19 will prejudice:

- (a) the right of a party to seek urgent injunctive or declaratory relief from a court; or
- (b) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, when enacted, or an equivalent provision under any Law.

#### 19.14 Dispute under related contracts

The parties acknowledge and agree that:

- (a) the provisions of this clause 19 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed;
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Certifier Deed;
- (c) the provisions of this clause 19 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under a Project Cooperation and Integration Deed;
- (d) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to a Project Cooperation and Integration Deed; and
- (e) where the Dispute is a Common Dispute, as that term is defined in clause 6 of Schedule 8, then this clause 19 will apply subject to the provisions of clause 6 of Schedule 8.

#### 19.15 Survive termination

This clause 19 will survive termination of this Contract.

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## 20. General

### 20.1 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 Contract.
- (b) At any time and from time to time, the Principal's Representative may notify the CIDS/ODS Contractor that a PDCS will be used for giving Notices under or in connection with this Contract. 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 CIDS/ODS Contractor to use the PDCS;
  - (iv) any requirements for specific notices (eg notices of Claims);
  - (v) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this Contract; and
  - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) At any time and from time to time, the Principal's Representative may notify the CIDS/ODS Contractor that a PDCS will not be used for giving certain Notices under or in connection with this Contract. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 20.1(d)(i).
- (d) Each Notice must:
- (i) before the date referred to in clause 20.1(b)(ii) or where clause 20.1(c) applies:
    - A. be in writing;
    - B. be addressed:
      - 1) in the case of a Notice from the CIDS/ODS Contractor, to the Principal's Representative and any additional person notified by the Principal in writing; or
      - 2) in the case of a Notice from the Principal, to the CIDS/ODS Contractor's Representative;
    - C. comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
    - D. 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; and
    - E. be delivered or posted to the relevant address or sent to the email address shown in item 25 of Schedule 1 (or to any new address or email address notified by the intended recipient); and
  - (ii) from the commencement date for use of the PDCS referred to in clause 20.1(b)(ii) and other than where clause 20.1(c) applies:
    - A. be sent through the PDCS in accordance with the requirements set out in clause 20.1(f) and:
      - 1) in the case of a Notice from the CIDS/ODS Contractor, be addressed to the Principal's Representative and any

additional person notified in accordance with clause 20.1(b)(v) and comply with any requirements notified in accordance with clause 20.1(b)(iv); or

2) in the case of a Notice from the Principal, be addressed to the CIDS/ODS Contractor's Representative; or

B. in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 20.1(d)(i).

(e) 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;

(iv) (in the case of delivery by hand) on delivery; and

(v) (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,

provided that if the communication is received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.

(f) 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 20.1(f)(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.
- (g) The CIDS/ODS Contractor must:
- (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) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
  - (iv) advise the Principal's Representative of which personnel require access to the PDCS;
  - (v) 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
  - (vi) 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 20.1(d)(ii)B to the Principal's Representative through the PDCS.
- (h) The Principal has no liability for any losses the CIDS/ODS Contractor 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 CIDS/ODS Contractor 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 CIDS/ODS Contractor's access to or use of the PDCS or any failure of the PDCS.

## **20.2 Governing Law and jurisdiction**

- (a) This Contract is governed by and will be construed according to the Laws of New South Wales.
- (b) Each party irrevocably:
- (i) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Contract; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 20.2(b)(i).

### 20.3 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Contract by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Contract.
- (b) Any waiver or consent given by the Principal under this Contract will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
  - (i) a breach of any term of this Contract; or
  - (ii) any other failure by the CIDS/ODS Contractor to comply with a requirement of this Contract, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Contract or failure to comply with any other requirement of this Contract.

### 20.4 Assignment and Change in Control

- (a) (Change in Control of an entity that comprises the CIDS/ODS Contractor)
  - (i) Subject to the terms of this clause 20.4(a), the CIDS/ODS Contractor must ensure that there is no Change in Control of any entity that comprises the CIDS/ODS Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
  - (ii) The CIDS/ODS Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the CIDS/ODS Contractor, and provide:
    - A. full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
    - B. all other information necessary for the Principal to determine whether to exercise its rights under clause 20.4(a)(iv), in relation to the Change in Control of the relevant entity that comprises the CIDS/ODS Contractor.
  - (iii) The Principal's approval is not required for a Change in Control arising from:
    - A. a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or

- B. any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the CIDS/ODS Contractor gives the Principal prior written notice of the transfer.
- (iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the CIDS/ODS Contractor where the Principal is of the reasonable opinion that:
- A. the person or entity which will exercise Control of the CIDS/ODS Contractor or the relevant entity that comprises the CIDS/ODS Contractor:
    - 1) is not solvent and reputable;
    - 2) has an interest or duty which conflicts in a material way with the interests of the Principal; or
    - 3) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
  - B. as a result of the Change in Control, the CIDS/ODS Contractor will no longer:
    - 1) have sufficient expertise and ability; or
    - 2) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the CIDS/ODS Contractor under this Contract.
- (v) If a Change in Control of any entity that comprises the CIDS/ODS Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 20.4(a)(iii)), the CIDS/ODS Contractor acknowledges that the Principal may terminate this Contract by notice in writing to the CIDS/ODS Contractor.
- (vi) The Principal's approval of a Change in Control of any entity that comprises the CIDS/ODS Contractor will not relieve the CIDS/ODS Contractor of any of its obligations under this Contract.
- (b) (Change in Control of a Parent Company Guarantor)
- (i) Subject to the terms of this clause 20.4(b), the CIDS/ODS Contractor must ensure that there is no Change in Control of a Parent Company Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
  - (ii) The CIDS/ODS Contractor must notify the Principal in writing of any Change in Control of a Parent Company Guarantor, and provide:

- A. full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
  - B. all other information necessary for the Principal to determine whether to exercise its rights under clause 20.4(b)(iv), in relation to the Change in Control of that Parent Company Guarantor.
- (iii) The Principal's approval is not required for a Change in Control arising from:
- A. a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
  - B. any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the CIDS/ODS Contractor gives the Principal prior written notice of the transfer.
- (iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of a Parent Company Guarantor where the Principal is of the reasonable opinion that:
- A. the person or entity which will exercise Control of the relevant Parent Company Guarantor:
    - 1) is not solvent and reputable;
    - 2) has an interest or duty which conflicts in a material way with the interests of the Principal; or
    - 3) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
  - B. as a result of the Change in Control, the relevant Parent Company Guarantor will no longer:
    - 1) have sufficient expertise and ability; or
    - 2) be of sufficiently high financial and commercial standing, to properly carry out the obligations of the Parent Company Guarantor under the relevant Parent Company Guarantee.
- (v) If a Change in Control of a Parent Company Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 20.4(b)(iii)), the CIDS/ODS Contractor acknowledges that the Principal may terminate this Contract by notice in writing to the CIDS/ODS Contractor.



- (c) The Principal's approval of a Change in Control of a Parent Company Guarantor will not relieve the CIDS/ODS Contractor of any of its obligations under this Contract.
- (d) The CIDS/ODS Contractor cannot assign, transfer or novate any of its rights or liabilities under this Contract without the prior written consent of the Principal and except on such terms and conditions as are determined in writing by the Principal.
- (e) (Assignment and Novation by the Principal)
  - (i) Without limiting clause 20.24, the Principal may:
    - A. assign, novate or otherwise transfer all or any part of its rights under this Contract without the CIDS/ODS Contractor's prior approval, provided that the assignee, novatee or transferee (as applicable) is an authority of the State, a minister or a government entity including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State; and
    - B. not otherwise assign, novate or otherwise transfer all or any part of its rights under this Contract without the CIDS/ODS Contractor's 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 CIDS/ODS Contractor.
  - (ii) The CIDS/ODS Contractor agrees to such assignment, novation or transfer as contemplated in clause 20.4(e)(i) 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 Contract and the respective rights of the Principal and the CIDS/ODS Contractor against one another under this Contract will cease;
    - B. the novated agreement will be on the same terms as this Contract, such that the incoming party and the CIDS/ODS Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 20.4(e)(iii)A, except that the incoming party replaces the Principal for all purposes under the agreement; and
    - C. the CIDS/ODS Contractor consents 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.
- (f) If there is a Change in Control of the CIDS/ODS Contractor:
  - (i) the CIDS/ODS Contractor must procure a replacement Parent Company Guarantee from an entity, and on terms, approved by the Principal and which is, where required, duly stamped; and
  - (ii) provide the replacement Parent Company Guarantee procured under clause 20.4(f)(i) to the Principal within 10 Business Days of the date of the Change in Control of the CIDS/ODS Contractor.

## **20.5 Entire Agreement**

This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; and
- (b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the date of this Contract and that are not expressly included in this Contract.

## **20.6 Joint and Several Liability**

The rights and obligations of the CIDS/ODS Contractor, if more than one person, under this Contract, are joint and several. Each person constituting the CIDS/ODS Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Contract) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

## **20.7 Severability**

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

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

## **20.8 Indemnities to Survive**

- (a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Contract.
- (b) Nothing in this clause 20.8 prevents any other provision of this Contract, as a matter of interpretation also surviving the termination of this Contract.

- (c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract.
- (d) Despite anything to the contrary in this Contract, neither the Principal nor any other person who has the benefit of an indemnity or other promise given by the CIDS/ODS Contractor under this Contract, is entitled to bring any Claim whatsoever arising out of, or in connection with this Contract, against the CIDS/ODS Contractor on or after the date occurring:
  - (i) subject to clause 20.8(d)(ii), 12 years after the date Completion is achieved; and
  - (ii) for a Claim arising out of or in connection with any Defect notified under clause 11.2 during the applicable Defect Rectification Period, 12 years after the expiry of the applicable Defects Rectification Period for that Defect,

and the Principal and those other parties irrevocably release the CIDS/ODS Contractor from any such Claims.
- (e) For each indemnity in this Contract, the Principal must take reasonable steps to mitigate any cost, expense, loss, damage, liability, fine, penalty or other amount incurred or suffered by the Principal, having regard to what mitigation would be reasonable in the circumstances.

## **20.9 Stamp Duty and Other Fees**

The CIDS/ODS Contractor must pay all stamp duties and other fees payable in respect of the execution of this Contract and the performance of its obligations in respect of this Contract.

## **20.10 Taxes**

Without limiting clause 3.3 but subject to clause 23, the CIDS/ODS Contractor must pay all Taxes that may be payable in respect of the CIDS/ODS Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the CIDS/ODS Contractor's Activities.

## **20.11 Confidentiality**

- (a) Subject to clause 20.11(b), the CIDS/ODS Contractor must:
  - (i) keep confidential this Contract and any information relating to the CIDS/ODS Contractor's Activities and any discussions concerning this Contract;
  - (ii) not use the information referred to in clause 20.11(a)(i) except as necessary for the performance of the CIDS/ODS Contractor's Activities; and
  - (iii) ensure that each of its Associates complies with the terms of clause 20.11(a)(i) and clause 20.11(a)(ii).

- (b) The CIDS/ODS Contractor is not obliged to keep confidential any information:
- (i) which is in the public domain through no default of the CIDS/ODS Contractor; or
  - (ii) the disclosure of which is:
    - A. required by Law;
    - B. consented to in writing by the Principal; or
    - C. given to a court in the course of proceedings to which the CIDS/ODS Contractor is a party.
- (c) The CIDS/ODS Contractor must:
- (i) execute and submit to the Principal within 10 Business Days of this Contract a Confidentiality Undertaking in the form in Schedule 5;
  - (ii) ensure that all employees of the CIDS/ODS Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
  - (iii) ensure that each Subcontractor, including suppliers and consultants, to the CIDS/ODS Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) The CIDS/ODS Contractor acknowledges that the Principal may disclose this Contract (and information concerning the terms of this Contract) under or in accordance with any one or more of the following:
- (i) the *Government Information (Public Access) Act 2009* (NSW);
  - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
  - (iii) any other Law.
- (e) The CIDS/ODS Contractor must provide to the Principal's Representative any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 20.11(d).
- (f) Subject to clause 20.11(a)(iii), the CIDS/ODS Contractor may provide this Contract and any information referred to in clause 20.11(a)(i) to its Related Bodies Corporate, Subcontractors, employees, agents, advisors, equity investors and each of these parties' advisors as is necessary to enable the CIDS/ODS Contractor to perform its obligations under this Contract or any other CIDS/ODS Contract Document, provided that the CIDS/ODS Contractor ensures that the relevant recipient is subject to the same obligations of confidentiality as those contained in this Contract.

## 20.12 Right of Set-Off

The Principal may at any time withhold, set-off or deduct from moneys otherwise due to the CIDS/ODS Contractor:

- (a) any debt or other moneys due from the CIDS/ODS Contractor to the Principal (including any debt due from the CIDS/ODS Contractor to the Principal pursuant to section 26C of the *SOP Act*);
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the *SOP Act*; or
- (c) any claim to money which the Principal may have against the CIDS/ODS Contractor whether for damages (including liquidated damages) or otherwise,

whether under or arising out of or in connection with this Contract.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 3.7.

## 20.13 Principal May Act

- (a) The Principal may, either itself or by a third party, perform an obligation under this Contract that the CIDS/ODS Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the CIDS/ODS Contractor to the Principal.
- (b) Where the Principal or the Principal's Representative is entitled under this Contract to exercise any right or power to:
  - (i) direct or instruct the CIDS/ODS Contractor to; or
  - (ii) itself step in to,

take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.

Where the Principal or the Principal's Representative does exercise any such right or power, the CIDS/ODS Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Works.

## 20.14 Process Agent

If the CIDS/ODS Contractor is a foreign company (as defined in the Corporations Act), the CIDS/ODS Contractor must:

- (a) 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 Contract. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and

- (b) obtain the process agent's consent to the appointment.

## 20.15 Variation of Contract

This Contract may only be varied by a document signed by or on behalf of both the Principal and the CIDS/ODS Contractor.

## 20.16 Prior Work

The CIDS/ODS Contractor agrees that the work in connection with the CIDS/ODS Contractor's Activities carried out by the CIDS/ODS Contractor prior to the date of this Contract will be deemed to be governed by the provisions of this Contract and will be deemed to be part of the CIDS/ODS Contractor's Activities and any payments made to the CIDS/ODS Contractor by the Principal prior to the date of this Contract in respect of the CIDS/ODS Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this Contract.

## 20.17 Design Life

- (a) The CIDS/ODS Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 6.20 of the EP&A Act in respect of the design lives of the asset elements referred to in Appendix B01, Appendix B02 and section 4.4 of the SWTC where those design lives are for periods longer than those provided for in those Acts.
- (b) If the waiver referred to in clause 20.17(a) is held to be without effect or otherwise unenforceable, or if it is severed from this Contract, the CIDS/ODS Contractor shall indemnify and keep the Principal indemnified at all times from and against all liability, claim, costs, expenses, losses, damages, fines or penalties that the Principal may suffer or incur out of the Principal's loss of the benefit of the waiver.
- (c) The indemnity in clause 20.17(b) is to continue and remain in full force and effect until the expiration of the last of the design lives referred to in Appendix B01, Appendix B02 and section 4.4 of the SWTC.
- (d) The parties agree that any action by the Principal on the indemnity in clause 20.17(b) is not a "civil action for loss or damage" for the purposes of sections 6.19 and 6.20 of the EP&A Act.
- (e) Nothing in this clause 20.17 limits the operation of any other indemnity in this Contract.

## 20.18 Counterparts

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

## 20.19 Personal Property Securities Act

- (a) By signing this Contract, the CIDS/ODS Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law ("**Security Interest**"), the CIDS/ODS Contractor shall do anything (including amending

this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:

- (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
  - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
  - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this Contract.
- (b) If Chapter 4 of the *PPS Act* applies to the enforcement of the Security Interest, the CIDS/ODS Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *PPS Act* will not apply to the enforcement of the Security Interest.
- (c) The CIDS/ODS Contractor:
- (i) acknowledges that the Security Interests created under or pursuant to this Contract relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
  - (ii) acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
  - (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the *PPS Act* and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The CIDS/ODS Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the *PPS Act* to authorise the disclosure of the above information.

## 20.20 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

**20.21 Not used****20.22 Chain of responsibility legislation**

- (a) To the extent heavy vehicles are used in the performance of the CIDS/ODS Contractor's Activities, the CIDS/ODS Contractor:
- (i) acknowledges that it is a primary duty holder under the Chain of Responsibility Provisions with responsibility for developing COR Systems;
  - (ii) must ensure that:
    - A. any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits and are appropriately secured;
    - B. operators carrying freight containers have a valid Container Weight Declaration; and
    - C. drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
  - (iii) must proactively provide reasonable assistance to the Principal's Representative to enable the Principal (and any of the Principal's personnel) to satisfy its duties and responsibilities under the Chain of Responsibility Provisions;
  - (iv) must obtain and maintain, and ensure that each of its personnel or Subcontractors obtains and maintains, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
  - (v) must undertake any audits or monitoring as requested by the Principal's Representative to demonstrate compliance with this clause; and
  - (vi) warrants that it is familiar with and has the capability and resources to comply with the Chain of Responsibility Provisions and ensure that its personnel and Subcontractors comply with all Chain of Responsibility Provisions.
- (b) Where used in this clause 20.22:
- (i) **"COR Systems"** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with the COR Laws; and
  - (ii) terms which are defined in the Heavy Vehicle National Law have the meaning given in the Heavy Vehicle National Law.



### 20.23 No Merger

Terms contained in this Contract which are capable of taking effect, or capable of continuing after Completion, will remain in full force and effect and will not merge on Completion.

### 20.24 Survival of certain provisions

Without limiting clause 20.8(a) or the schedules to this Contract:

- (a) clause 1 (Definitions and interpretation), clause 3.7 (Unconditional Undertakings and Parent Company Guarantee), clause 4.7 (Information Documents and Materials), clause 6.11 (Assignment and ownership of Intellectual Property), clause 14.4A(d) (Initial Payment), clause 14.13 (Interest), clause 17 (Liability), clause 18.5 (Principal's common rights after take out or termination), clause 18.7 (Principal's rights after termination), clause 18.8 (CIDS/ODS Contractor's rights after repudiation or wrongful termination), clause 18.9(b), clause 18.10 (Payment for termination for convenience), clause 18.12 (Termination by frustration), clause 19 (Disputes), clause 20 (General), clause 22 (Notification of Claims) and clause 23 (General Provisions Relating to GST), the representations, warranties and indemnities given by the CIDS/ODS Contractor under this Contract and any other provisions which are expressed to survive termination or by implication from their nature are intended to survive termination (together, the "**Surviving Clauses**") and any rights arising on termination will survive rescission, termination or expiration of this Contract; and
- (b) if this Contract is rescinded or terminated, no party will be liable to any other party except:
  - (i) under the Surviving Clauses; or
  - (ii) in respect of any breach of this Contract occurring before such rescission or termination.

### 20.25 Transfer of Functions or NSW Rail Assets

- (a) The parties acknowledge that:
  - (i) a Rail 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 Rail Transport Agency may be transferred to or vested in another entity;
  - (ii) if a Rail Transport Agency is reconstituted, renamed, dissolved, replaced or restructured or if some or all of a Rail Transport Agency's powers, functions, rights or responsibilities are transferred to another entity, then other than as notified by the Rail Transport Agency, references in this Contract to that party (as the case may be) must, subject to any facilitative legislation, be deemed to refer, as applicable, to that reconstituted, renamed, restructured or new entity to the extent that the

entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

- (iii) a Rail Transport Agency may, or may be required to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets forming part of a Rail Transport Agency's assets at its absolute discretion.
- (b) The CIDS/ODS Contractor acknowledges and agrees that it must, to the extent required by a Rail Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this Contract, or any replacement agreement or agreements for this Contract to give effect to a Rail Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The CIDS/ODS Contractor will be taken for all purposes to have consented to, and will not have, and no Rail Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by clause 20.24.
- (d) For the purposes of this clause 'another entity' means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

## **21. Representations and warranties**

### **21.1 Principal representations and warranties**

The Principal represents and warrants for the benefit of the CIDS/ODS Contractor that:

- (a) it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this Contract (or will have them in full force and effect at the time the obligation is to be performed);
- (c) this Contract constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) the execution, delivery and performance of this Contract does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

### **21.2 CIDS/ODS Contractor Representations and Warranties**

The CIDS/ODS Contractor represents and warrants for the benefit of the Principal that:

- (a) it is duly registered and remains in existence;

- (b) the execution, delivery and performance of this Contract does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it has taken all action required to enter into this Contract and to authorise the execution and delivery of this Contract and the satisfaction of its obligations under it;
- (d) this Contract constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) it subsists and is properly constituted;
- (f) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (g) it does not 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);
- (h) there has been no material change in the financial condition of the CIDS/ODS Contractor (since the date of its last audited accounts) which would prejudice the ability of the CIDS/ODS Contractor to perform its obligations under this Contract;
- (i) the most recently published financial statements of the CIDS/ODS Contractor has been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the CIDS/ODS Contractor;
- (j) the CIDS/ODS Contractor is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Contract with the CIDS/ODS Contractor; and
- (k) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under this Contract.

### **21.3 Repetition of representation and warranties**

The representations and warranties contained in clauses 21.2(h), 21.2(i), 21.2(j) and 21.2(k) are made on the date of this Contract. Each other representation and warranty contained in clause 21.2:

- (a) is made on the date of this Contract; and
  - (b) will be deemed to be repeated on each anniversary of the date of this Contract,
- with reference to the facts and circumstances then subsisting.

## **22. Notification of Claims**

### **22.1 Notice of Variation**

If a direction by the Principal's Representative, other than a "Variation Order" under clause 9.2, constitutes or involves a Variation, the CIDS/ODS Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

- (a) within 10 Business Days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, as required under clause 22.3(a), that it considers the direction constitutes or involves a Variation;
- (b) within 20 Business Days of giving the notice under clause 22.1(a), submit a written Claim to the Principal's Representative, which includes the details required by clause 22.3(b); and
- (c) continue to carry out the CIDS/ODS Contractor's Activities in accordance with this Contract and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 22.1.

### **22.2 Notice of Other Claims**

If the CIDS/ODS Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this Contract by the Principal) under, arising out of, or in any way in connection with, this Contract, the CIDS/ODS Contractor's Activities or the Works, including anything in respect of which:

- (a) it is otherwise given an express entitlement under this Contract; or
- (b) this Contract expressly provides that:
  - (i) specified costs are to be added to the Contract Sum; or
  - (ii) the Contract Sum will be otherwise increased or adjusted, as determined by the Principal's Representative,

the CIDS/ODS Contractor must give the Principal's Representative:

- (c) the notice required by clause 22.3(a); and
- (d) a Claim in accordance with clause 22.3(c).

### **22.3 Prescribed Notices**

- (a) Any written notice referred to in clauses 22.1(a) and 22.2(c) must:
  - (i) be provided not later than 10 Business Days after the CIDS/ODS Contractor:

- A. receives the direction (in respect of a notice under clause 22.1(a)); or
  - B. first becoming aware (or when it ought reasonably to have first become aware) of alleged entitlement arising as a result of an event, circumstance, act, omission, fact, matter or thing (in respect of a notice under clause 22.2(c)); and
- (ii) expressly specify:
- A. that the CIDS/ODS Contractor proposes to make a Claim; and
  - B. the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 22.1(b) must include:
- (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
  - (ii) the provisions of this Contract or other legal basis upon which the Claim is based; and
  - (iii) details of the amount claimed and how it has been calculated.
- (c) Any written Claim referred to in clause 22.2(d) must:
- (i) be provided not later than 20 Business Days after giving notice under clause 22.2(c); and
  - (ii) include:
    - A. detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
    - B. the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
    - C. the facts relied upon in support of the Claim in reasonably sufficient detail; and
    - D. details of the amount claimed and how it has been calculated.

## 22.4 Submission of Claims

- (a) Claims submitted by the CIDS/ODS Contractor under clauses 22.1(b) and 22.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full or request further information from the CIDS/ODS Contractor in order to assess the Claim.

- (b) Subject to clause 22.4(c), if within 20 Business Days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 20th Business Day.
- (c) The Principal's Representative may, upon written notice to the CIDS/ODS Contractor, reasonably extend the time within which it will make a decision on the Claim.

## 22.5 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the CIDS/ODS Contractor must continue to give the information required by clause 22.3(b) or 22.3(c) every 20 Business Days after the written Claim under clause 22.1(b) or 22.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

## 22.6 Bar

If the CIDS/ODS Contractor fails to comply with clauses 22.1, 22.2, 22.3 or 22.5:

- (a) the Principal will not be liable upon any Claim by the CIDS/ODS Contractor; and
- (b) the CIDS/ODS Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

## 22.7 Other Provisions Unaffected

Nothing in clauses 22.1 to 22.6 will limit the operation or effect of any other provision of this Contract that requires the CIDS/ODS Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

---

## 23. General Provisions Relating to GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party ("**Supplier**") under or in connection with this Contract, including the CIDS/ODS Contractor's Activities or the Works, the party providing consideration for the supply ("**Recipient**") must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.

- (c) Any amount payable under clause 23(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
- (d) If any party is required under this Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of this Contract, a party will not be obliged to pay any amount in respect of GST to the other party (whether under this clause 23 or otherwise) unless and until a tax invoice that complies with the GST Legislation has been issued by the Supplier in respect of that taxable supply.
- (f) The parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by the CIDS/ODS Contractor to the Principal under or in connection with this Contract:
  - (i) the Principal will issue to the CIDS/ODS Contractor a recipient created tax invoice ("**RCTI**") for each taxable supply made by the CIDS/ODS Contractor to the Principal under this Contract;
  - (ii) the Principal will issue to the CIDS/ODS Contractor an adjustment note for any adjustment event;
  - (iii) the CIDS/ODS Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
  - (iv) the Principal may notify the CIDS/ODS Contractor that it will no longer issue a RCTI for each taxable supply made by the CIDS/ODS Contractor under this Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the CIDS/ODS Contractor will be required to issue tax invoices to the Principal (including under clause 14.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the CIDS/ODS Contractor in respect of any such taxable supply.
- (g) Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to:
  - (i) enable or assist the other party to claim input tax credits to the maximum extent possible; or
  - (ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this Contract.
- (h) If the GST payable in relation to a supply made by the Supplier under this Contract varies from the additional amount paid by the other party under this clause 23 in respect of that supply, then the Supplier will provide a

corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

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## 24. TfNSW's Statement of Business Ethics

- (a) The CIDS/ODS Contractor must at all times comply with TfNSW's Statement of Business Ethics, a copy of which is available at [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au).
- (b) Prior to the engagement of any Subcontractor by the CIDS/ODS Contractor, the CIDS/ODS Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with TfNSW's Statement of Business Ethics.

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## 25. NSW Guidelines

### 25.1 NSW Guidelines

In addition to terms defined in this document, terms used in this clause 25 have the same meaning as is attributed to them in the New South Wales Government's NSW Industrial Relations Guidelines: Building and Construction Procurement ("**NSW Guidelines**") (as published by the NSW Treasury July 2013 and updated in September 2017). The NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### 25.2 Primary Obligation

- (a) The CIDS/ODS Contractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (b) The CIDS/ODS Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the CIDS/ODS Contractor engages a Subcontractor, the CIDS/ODS Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 25, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (d) The CIDS/ODS Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

### 25.3 Access and information

- (a) The CIDS/ODS Contractor must maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors and related entities.
- (b) The CIDS/ODS Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:



- (i) enter and have access to sites and premises controlled by the CIDS/ODS Contractor, including but not limited to the Site;
- (ii) inspect any work, material, machinery, appliance, article or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the Works;
- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines, by the CIDS/ODS Contractor, its Subcontractors and related entities.

- (c) The CIDS/ODS Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

## 25.4 Sanctions

- (a) The CIDS/ODS Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (b) If the CIDS/ODS Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines.
- (c) Where a sanction is imposed:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - A. record and disclose details of non-compliance with the NSW Guidelines and the sanction; and
    - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the CIDS/ODS Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.

## 25.5 Compliance

- (a) The CIDS/ODS Contractor bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The CIDS/ODS Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- (b) Compliance with the NSW Guidelines does not relieve the CIDS/ODS Contractor from responsibility to perform the CIDS/ODS Contractor's Activities and any other obligation under the Contract, or from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (c) Where a change in the Contract or the Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the CIDS/ODS Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
  - (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
  - (iii) what steps the CIDS/ODS Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Health and Safety Management Plan),

and the Principal will direct the CIDS/ODS Contractor as to the course it must adopt within 10 Business Days of receiving notice.

**CONTRACT EXECUTION PAGE**

**DATED** 13 ..... day of July 2023 .....

**Executed and delivered** as a deed in Sydney

**EXECUTED** by **SYDNEY METRO**  
(ABN 12 354 063 515) by its authorised  
delegate, in the presence of:

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Signature of authorised delegate

  
\_\_\_\_\_  
Name

**EXECUTED** by UGL Engineering Pty  
Limited in accordance with section  
127 of the *Corporations Act 2001*  
(Cth):

  
\_\_\_\_\_  
Signature of director

11 July 2023

  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Signature of director/secretary

11 July 2023

  
\_\_\_\_\_  
Name



Execution Version

## **SYDNEY METRO CITY & SOUTHWEST**

### **Southwest Metro – Corridor Intrusion Detection System (CIDS) and Object Detection System (ODS)**

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**Design, Supply and Install Contract – Schedules**

**Contract Number: SMC-21-0456**

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EXHIBIT A	SWTC
EXHIBIT B	SWM Fencing Stage 2/3 Design Documentation
EXHIBIT C	Principal's Insurance Policies
EXHIBIT D	Information Documents and Materials

## Schedule 1. Contract Particulars

No	Item	Details
1.	<b>Defects Rectification Period:</b> (Clauses 1.1 and 11.6)	The Defects Rectification Period for each Portion: (a) commences on the Date of Construction Completion of that Portion; and  (b) expires on the later to occur of:  [REDACTED]  (ii) in respect of rectification work, 12 months after the date of completion of the rectification work for each Defect notified under clause 11.2.
2.	<b>Environmental Representative:</b> (Clauses 1.1 and 12.8)	Healthy Buildings International Pty Limited (ABN 39 003 270 693) (or such other replacement nominated by the Principal from time to time)
3.	<b>Interface Contractors:</b> (Clauses 1.1 and 3.9)	<ul style="list-style-type: none"> <li>• TSOM Contractor;</li> <li>• Operator;</li> <li>• Corridor Works Contractor;</li> <li>• each SWM Station Works Contractor;</li> <li>• SWM Designer;</li> <li>• PSD/MGF Contractor</li> <li>• SWM Finishing Works Contractor;</li> <li>• SWM Fencing Works Contractor; and</li> <li>• Sydney Trains.</li> </ul>
4.	<b>Original Contract Price:</b> (Clause 1.1)	[REDACTED] <b>Option 1 price -</b> [REDACTED] <b>Option 2 price -</b> [REDACTED] <b>(Option 3 and 4 to be negotiated if still required)</b>
5.	<b>Principal's Representative:</b> (Clauses 1.1 and 12.1 )	[REDACTED]
6.	<b>CIDS/ODS Contract Documents:</b> (Clause 1.1)	(a) This Contract;  (b) not used;  (c) the Independent Certifier Deed;

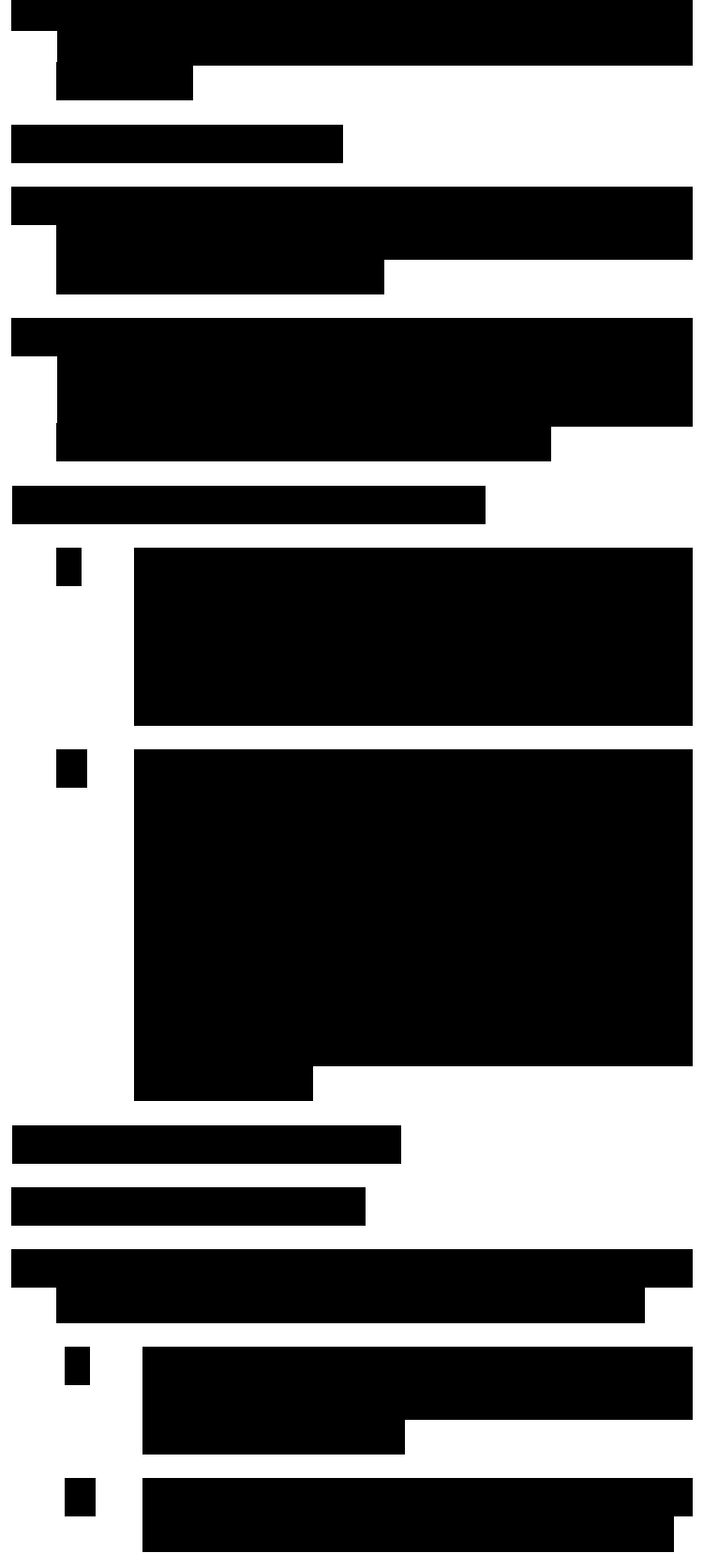
No	Item	Details
		<p>(d) each Project Cooperation and Integration Deed;</p> <p>(e) the Master Interface Protocols Deed Poll;</p> <p>(f) the Collateral Warranty Deed Poll;</p> <p>(g) the IDAR Panel Agreement;</p> <p>(h) the Interface Agreement Deed Poll (to be executed by the CIDS/ODS Contractor in the form of Schedule 34); and</p> <p>(i) any document which the Principal and the CIDS/ODS Contractor acknowledge in writing to be a CIDS/ODS Contract Document.</p>
7.	<b>Sydney Trains' Representative:</b> (Clause 1.1)	The person set out in Item 18 of the Contract Particulars to the "Scope of Works and Access Schedule" (as that term is defined in clause 3(a)(i)(B) of Schedule 8).
8.	<b>Working days:</b> (Clause 1.2(l))	Monday to Saturday excluding public holidays in Sydney and rostered days off, plus any day included in a Track Possession.
9.	<b>Order of Precedence:</b> (Clause 1.4)	<p>(a) This Contract excluding the Schedules and the Exhibits; then</p> <p>(b) this Schedule 1; then</p> <p>(c) Schedules 2 to 43; then</p> <p>(d) the SWTC; then</p> <p>(e) Exhibits B to D.</p>
10.	<b>Amount for approval of Subcontracts:</b> (Clauses 3.2(b)(i) and 3.2(e)(ii))	
11.	<b>Parts of Works requiring approval for particular Subcontractor:</b> (Clause 3.2(b)(ii))	N/A
12.	<b>Subcontractors required to effect professional</b>	All Subcontractors whose engagement includes any element of design or other professional services.







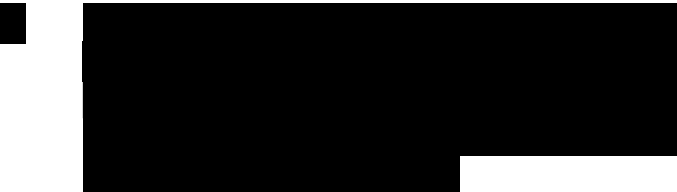



No	Item	Details	
	<b>indemnity insurance:</b> (Clause 3.2(c))		
<b>13.</b>	<b>Minimum amount of professional indemnity insurance required by Subcontractors:</b> (Clause 3.2(c))		
<b>14.</b>	<b>Subcontract prices for which security of payment provisions are required:</b> (Clause 3.2(e)(i))	Subcontracts with an initial price of  or greater.	
<b>15.</b>	<b>Subcontractors required to execute deed in form of Schedule 18:</b> (Clause 3.2(e)(v)A) (Clause 3.2(e)(v)B)	Subcontracts with an initial price of  or greater. All Subcontracts and consultant engagements which include any element of design.	
<b>16.</b>	<b>Parent Company Guarantor:</b> (Clauses 1.1 and 3.7(g))	N/A	
<b>16A</b>	<b>Pandemic Construction Site Allowance</b> (Clause 3.20(e)(i)(B))		
<b>17.</b>	<b>Percentages to be applied to costs:</b> (Clause  9.4, 13.16(d)(v) and 13,16(e)(v))	<b>Clause No</b>	<b>Percentage</b>
		 9.4(b)(ii)A, 13.16(d)(v), 13.16(e)(v)	
		9.4(b)(ii)B	
<b>18.</b>		<b>Position</b>	<b>Name</b>

No	Item	Details
	<p><b>CIDS/ODS Contractor's Personnel:</b> (Clauses 3.1(e), 12.4(a) and 12.4(b)(i))</p>	<p>Project Manager Design &amp; Systems Assurance Manager</p> <p>[Redacted]</p> <p>[Redacted]</p>
<p>19.</p>	<p><b>Causes of delay entitling the CIDS/ODS Contractor to extension of time:</b> (Clause 13.8)</p>	<p>[Redacted]</p> <ul style="list-style-type: none"> <li>■ [Redacted]</li> <li>■ [Redacted]</li> </ul> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

No	Item	Details
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No	Item	Details
		

No	Item	Details
		<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
20.	<p><b>Causes of delay entitling the CIDS/ODS Contractor to delay damages:</b> (Clause 13.14)</p>	<p>[Redacted]</p> <ul style="list-style-type: none"><li>[Redacted]</li><li>[Redacted]</li></ul> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>

No	Item	Details
		
		
		
		
		
		
		
		

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No	Item	Details
		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
21.	<p><b>Maximum daily amount of delay damages:</b> (Clause 13.14(a))</p>	<p>[REDACTED]</p>
	<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
23.	<p><b>Limit of liability for liquidated damages for delay:</b> (Clauses 1.1 and 15.8(f))</p>	<p>[REDACTED]</p>
24.	<p><b>Amount of CIDS/ODS Contractor's insurance:</b> (Clauses 16.7)</p>	<ul style="list-style-type: none"> <li>• <b>Workers' compensation insurance</b> or similar insurance as required under clause 16.7(e) for an amount as required by Law</li> <li>• <b>Plant and equipment insurance</b> Current market value of the Construction Plant</li> <li>• <b>Professional indemnity insurance</b> [REDACTED] for any one claim and in the aggregate</li> <li>• <b>Motor vehicle insurance</b> [REDACTED] third party property damage for any one occurrence</li> </ul>



No	Item	Details
		<ul style="list-style-type: none"> <li>• <b>Asbestos liability insurance</b>                      [REDACTED] for any one occurrence and in the aggregate</li> <li>• <b>Marine transit insurance</b>                      An amount not less than the full replacement value of the things in transit, plus freight and insurance</li> <li>• <b>Insurance required by Law or Change in Law</b>                      As required by Law</li> <li>• <b>Property damage insurance for materials fabricated overseas</b>                      Replacement value</li> </ul>
<p>25.</p>	<p><b>Period for Professional Indemnity Insurance:</b>                      (Clause 16.9(b)(ii))</p>	<p>7 years</p>
<p>26.</p>	<p><b>Addresses:</b>                      (Clause 20.1(d)(i)E.)</p>	<p><b>Principal</b>                      Address: Level 43, 680 George Street                      Sydney NSW 2000                      Email: [REDACTED]                      Attention: [REDACTED]</p> <p>Any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel – Sydney Metro and sent to [REDACTED]</p> <p><b>Principal's Representative</b>                      Address: Level 43, 680 George Street,                      Sydney NSW 2000                      Email: [REDACTED]                      Attention: [REDACTED]</p> <p>Any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel – Sydney Metro and sent to [REDACTED]</p> <p><b>CIDS/ODS Contractor</b>                      Address: Level 8/40 Miller St, North Sydney NSW 2060                      Email: [REDACTED]                      Attention: [REDACTED]</p>

**Schedule 2. Conditions Precedent**

(Clause 2)

<b>No.</b>	<b>Condition Precedent</b>	<b>Benefiting Party</b>
1.	<p>The following documents have been executed by all parties to them in a form satisfactory to the Principal:</p> <p>(a) this Contract;</p> <p>(b) Independent Certifier Deed.</p>	The Principal and the CIDS/ODS Contractor
2.	<p>The following documents have been provided to the Principal in the number of counterparts required by the Principal:</p> <p>(a) a Confidentiality Undertaking in the form of Schedule 5, duly executed by the CIDS/ODS Contractor;</p> <p>(b) an Interface Agreement Deed Poll in the form of Schedule 34 in favour of Sydney Metro and Sydney Trains, duly executed by the CIDS/ODS Contractor;</p> <p>(c) a Master Interface Protocols Deed Poll in the form of Schedule 41, duly executed by the CIDS/ODS Contractor;</p> <p>(d) the Operator Cooperation and Integration Deed, duly executed by the CIDS/ODS Contractor; and</p> <p>(e) the IDAR Panel Agreement Accession Deed Poll, duly executed by the CIDS/ODS Contractor.</p>	The Principal
3.	The CIDS/ODS Contractor has provided the unconditional undertakings required by clause 3.7(b)(i) of the General Conditions.	The Principal
4	The CIDS/ODS Contractor has provided the guarantee required by clause 3.7(g) of the General Conditions.	The Principal
4.	<p>The CIDS/ODS Contractor has:</p> <p>(a) effected the policies of insurance required by clause 16.7 of the General Conditions (other than the insurances referred to in clause 16.7(a)(iii) and clause 16.7(a)(vii) of the General Conditions); and</p>	The Principal

No.	Condition Precedent	Benefiting Party
	(b) except for professional indemnity insurance, provided evidence that each of these insurance policies are current and comply with the requirements of this Contract in accordance with clause 16.8(a) of the General Conditions.	
5.	The Principal has effected the policies of insurance required by clause 16.5 and clause 16.6 of the General Conditions.	The CIDS/ODS Contractor
6.	Not used	N/A
7.	Not used	N/A

**Schedule 3. Portions and Milestones**

(Clause 1.1)

Unless the context requires otherwise, terms which are defined in the SWTC have the same meaning where used in this Schedule 3.

**Part A: Portions**

**Table 1: Portions**

Portion	Description	Date for Construction Completion	Liquidated damages post Date for Construction Completion (\$/day)
Portion 1	Works have reached the stage where the CIDS/ODS Contractor is ready to start System Integration and Acceptance Tests as defined in SWTC Appendix F07	[REDACTED]	[REDACTED]

**Part B: Milestones**

**Table 2: Milestones**

The following Milestones are based on a Contract commencement date of 3 July 2023:

<b>Milestone</b>	<b>Description</b>	<b>Date for Milestone Achievement</b>
Milestone 1	Completion of installation and commissioning of the Trial Systems at the Trial Location in accordance with this Contract.	17 November 2023
Milestone 2	<ul style="list-style-type: none"> <li>a) Completion of the Trial Activities demonstrating compliance with section 2.3.2(a) – (g) of the SWTC main body; and</li> <li>b) without limiting paragraph (a), satisfactory demonstration that the Trial Systems meet or exceed the IFAT requirements detailed in Appendix F07 of the SWTC.</li> </ul>	19 February 2024
Milestone 3	<ul style="list-style-type: none"> <li>a) Submission of Design Stage 3 Design Documentation for all Works to the Principal's Representative in accordance with clause 6.3(a)(ii);</li> <li>b) the Principal's Representative has issued the CIDS/ODS Contractor with a notice under clause 6.6(c)(i)B in respect of all Design Stage 3 Design Documentation; and</li> <li>c) in respect of all Design Stage 3 Design Documentation which has been provided to the Independent Certifier by the Principal under clause 6.3(d), the Independent Certifier has issued a certificate in the form of Schedule 25.</li> </ul>	20 June 2024
Milestone 4	<p>Following the successful completion of all System Integration and Acceptance Tests, demonstration that the CIDS/ODS meets or exceeds both:</p> <ul style="list-style-type: none"> <li>a) the performance criteria described in section 2.1 of Appendices B01 and B02 to the SWTC; and</li> </ul>	The date that is 3 calendar months after the last day of the month in which all System Integration and Acceptance Tests have

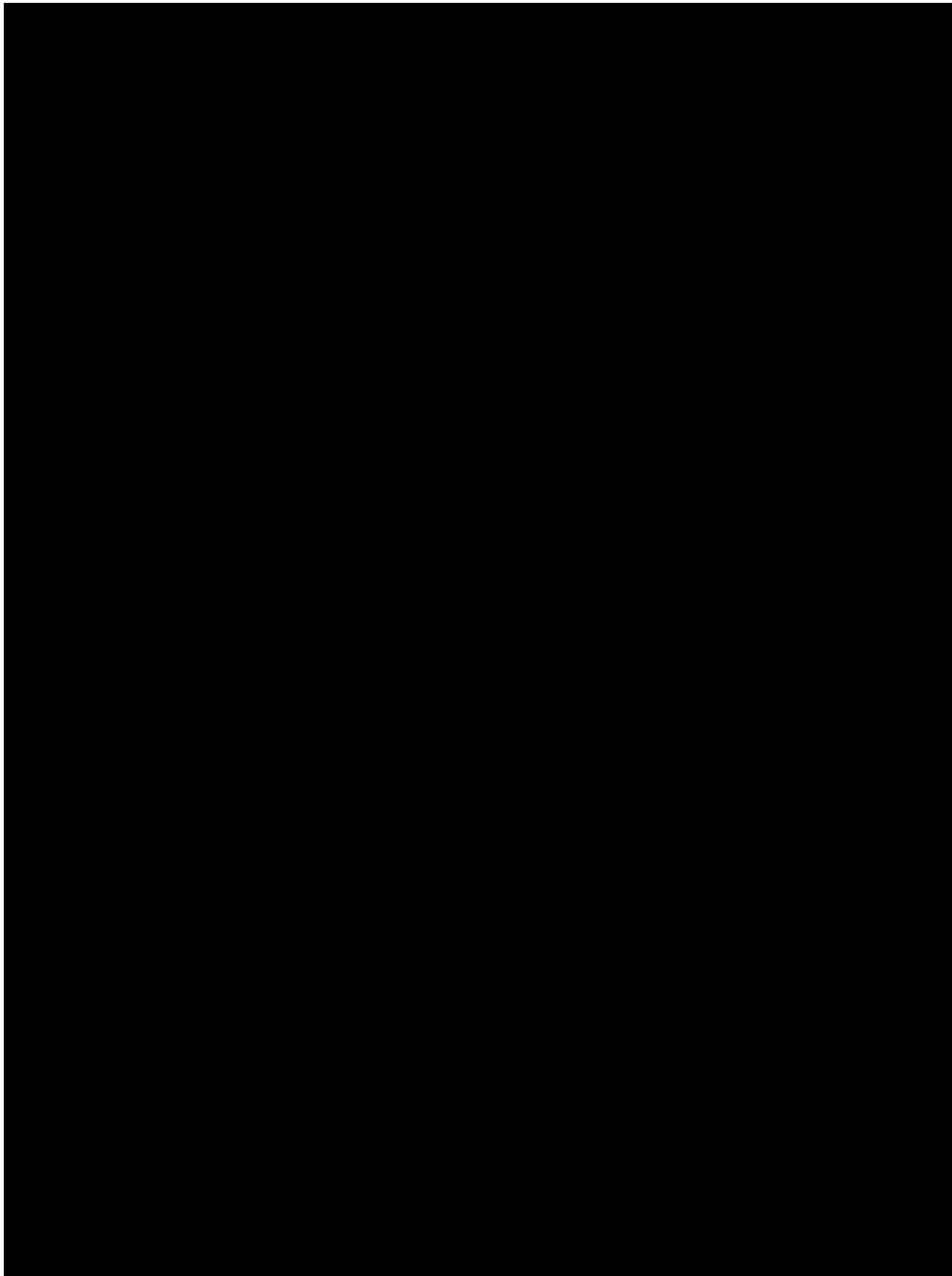
Milestone	Description	Date for Milestone Achievement
	b) the reliability criteria described in section 3.1 of Appendices B01 and B02 to the SWTC, for three consecutive calendar months.	been successfully completed

**Table 3: Milestone Performance Payments**

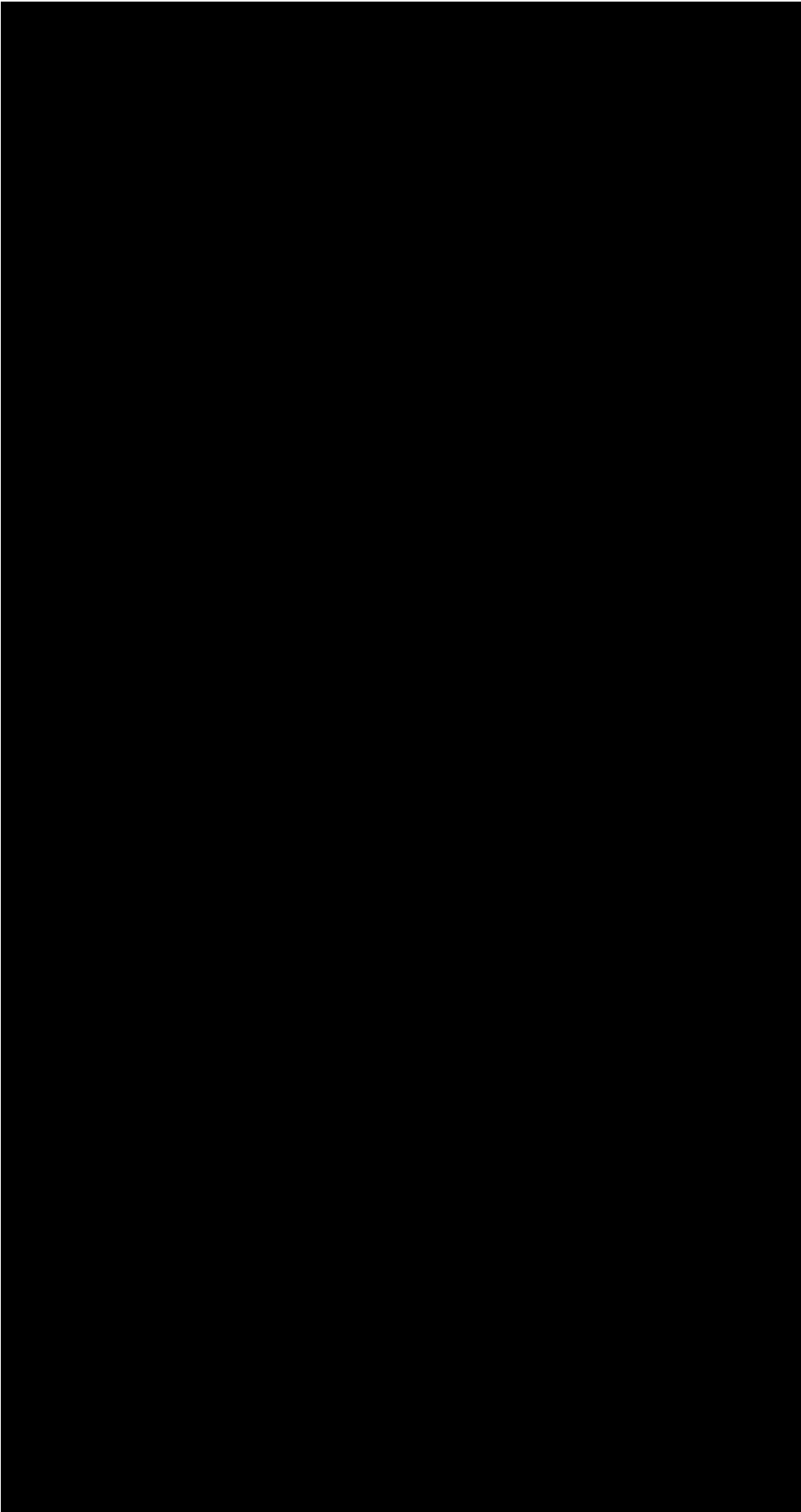
Milestone Performance Payment (MPP)	Description	Value of Milestone Performance Payment
Milestone Performance Payment 1	Milestone Achievement of Milestone 1 on or before the Date for Milestone Achievement of Milestone 1	██████████
Milestone Performance Payment 2	Milestone Achievement of Milestone 3 on or before the Date for Milestone Achievement of Milestone 3	██████████
Milestone Performance Payment 3	Milestone Achievement of Milestone 4	██████████

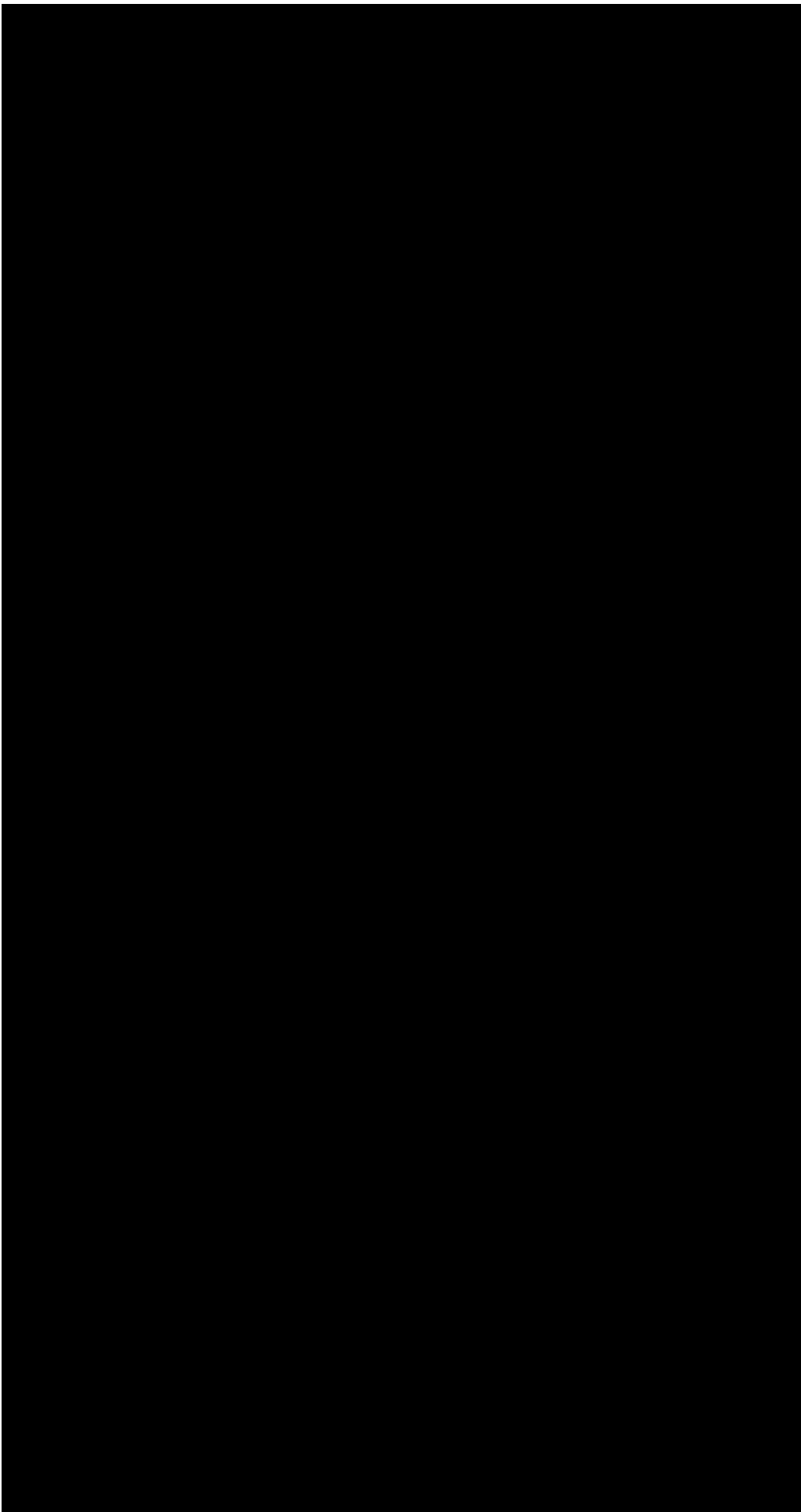
**Schedule 4. Payment Breakdown Schedule**

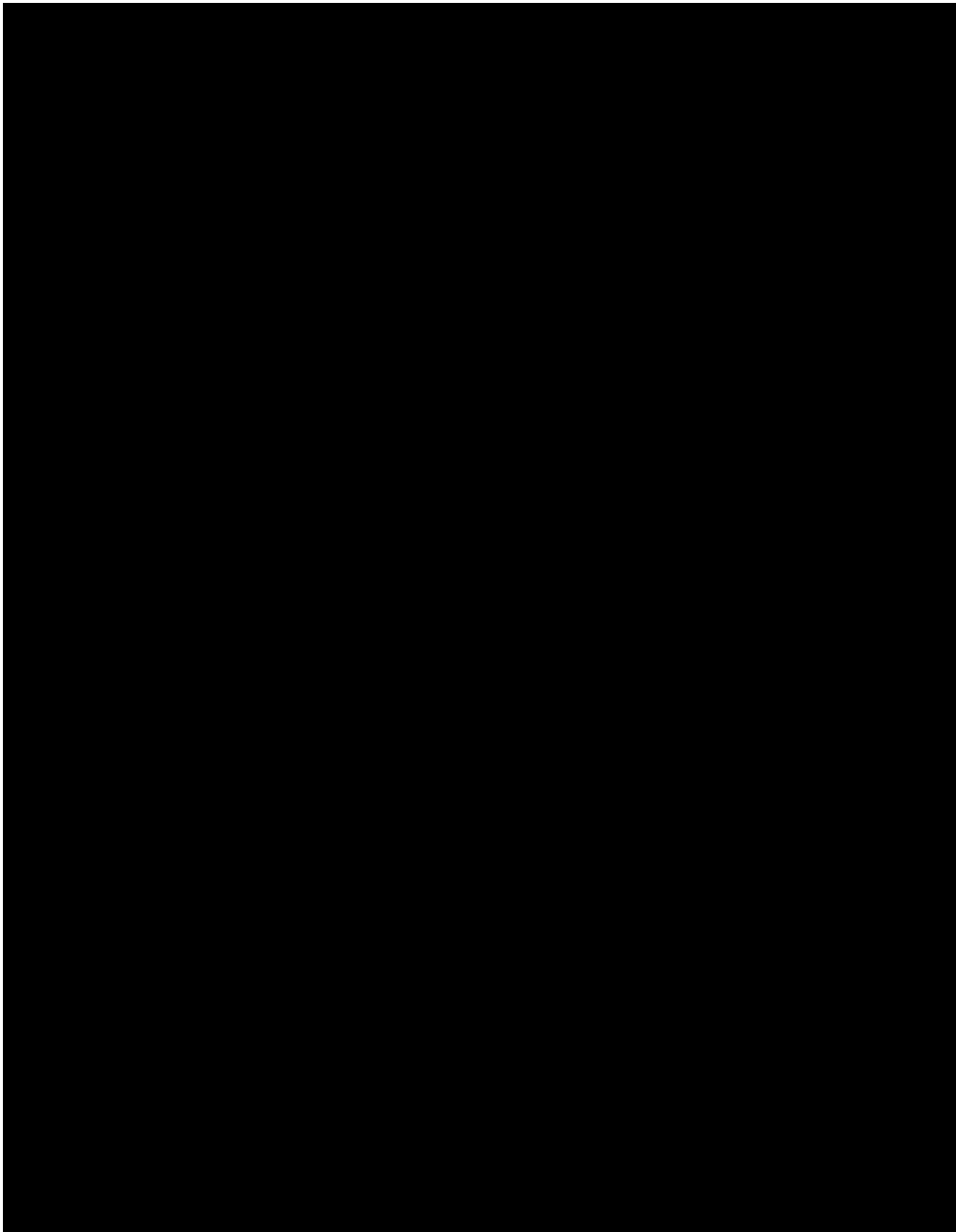
(Clauses 1.1, 14 and 15.11)











## Schedule 5. Form of Confidentiality Undertaking

(Clauses 3.2(e)(iv) and 20.11(c)(i))

To: **Sydney Metro ABN 12 354 063 515** of Level 43, 680 George Street, Sydney NSW 2000

We, \_\_\_\_\_ the engaged Consultant/Supplier/Contractor/Subcontractor body, undertake to treat as confidential all information received/generated from the (Principal) in respect of work performed by the Principal.

The Consultant/Supplier/Contractor/Subcontractor hereby undertakes:

- (a) To disclose information to its employees only on a need-to-know basis;
- (b) Not to disclose information to any other person without first obtaining the written consent of the Principal;
- (c) To ensure that its employees to whom information is disclosed will comply with (a) and (b) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant/Supplier/Contractor/Subcontractor, its employees or agents) or which was already known to the Consultant/Supplier/Contractor/Subcontractor.

Any breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor and at the direction of the Principal the Consultant/Supplier/Contractor/Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Consultant/Supplier/Contractor/Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied. The obligations to return or destroy confidential information do not extend to:

- (a) documents or other materials that are required to be retained in order to comply with any relevant Laws, professional obligations, insurance requirements, audit requirements or order of any Government agency for so long as it is necessary to satisfy the relevant requirements; or
- (b) documents or other materials that are stored in electronic backups or records that are produced by the Consultant/Supplier/Contractor/Subcontractor in its normal course of business and it is not reasonably practicable for the Consultant/Supplier/Contractor/Subcontractor to delete such backups or records, so long as these are not accessed during any period of backup storage.

If the Consultant/Supplier/Contractor/Subcontractor retains any confidential information pursuant to paragraphs (a) or (b), the Consultant/Supplier/Contractor/Subcontractor must maintain the confidentiality of such information in accordance with the terms of this undertaking.

The Consultant/Supplier/Contractor/Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated: .....

**SIGNED** for and on behalf of:

.....  
(Print Company Name)

By: .....  
(Print Name) (Signature)

in the presence of:

.....  
(Print Name) (Signature)

## **Schedule 6. Project Planning Approval and Conditions**

(Clause 3.3(c))

### **1. APPROVALS TO BE OBTAINED BY THE PRINCIPAL**

#### **1.1 Existing Approvals**

The Project Planning Approval (Sydenham to Bankstown).

#### **1.2 Future Approvals to be obtained by the Principal**

None.

### **2. OBLIGATIONS IN RESPECT OF THE PLANNING APPROVAL**

- (a) The CIDS/ODS Contractor must, in performing the CIDS/ODS Contractor's Activities, comply with all of the obligations, conditions and requirements of the Planning Approval, as if it were the Principal, to the extent that they relate to the Works, the Temporary Works or the CIDS/ODS Contractor's Activities except to the extent that this Schedule 6 provides that the Principal will comply with the obligation, condition or requirement or this Schedule 6 limits the CIDS/ODS Contractor's obligation in respect of that obligation, condition or requirement.
- (b) Nothing specified in this Schedule 6 as being the responsibility of the Principal will, in any way, relieve the CIDS/ODS Contractor from complying with any obligation set out elsewhere in the Contract.

### **3. THE PRINCIPAL'S OBLIGATIONS IN RESPECT OF PROJECT PLANNING APPROVAL (SYDENHAM TO BANKSTOWN)**

- (a) Terms which have a defined meaning in the Project Planning Approval (Sydenham to Bankstown) have the same meaning where used in this section 3.
- (b) In relation to the conditions in schedule 2 of the Project Planning Approval (Sydenham to Bankstown) the Principal will:
  - (i) be responsible for A7;
  - (ii) in relation to A9, submit the information provided by the CIDS/ODS Contractor, to the Planning Secretary. The CIDS/ODS Contractor must undertake all activities necessary to comply with this condition (except submission to the Planning Secretary) and provide the information to the Principal;
  - (iii) be responsible for A10 and A11;
  - (iv) be responsible for A12 to A15, except that:
    - (A) the CIDS/ODS Contractor must inform the Principal if staging of deliverables is required in addition to that identified in the Staging Report; and
    - (B) the CIDS/ODS Contractor must carry out the CIDS/ODS Contractor's Activities in accordance with the Staging Report;

- (v) in relation to A17, submit the information provided by the CIDS/ODS Contractor to the Planning Secretary. The CIDS/ODS Contractor must undertake all activities necessary to comply with this condition (except submission to the Planning Secretary) and provide the information to the Principal;
- (vi) in relation to A22, engage, nominate, and seek approval from the Planning Secretary of a suitably qualified and experienced Environmental Representative (**ER**). The Principal will be the single point of contact with the Planning Secretary and will provide the CIDS/ODS Contractor with the date the submission for approval is made, or notify the CIDS/ODS Contractor of any other timeframe relevant to this condition;
- (vii) in relation to A23 to A25, notify the CIDS/ODS Contractor when the approval of the ER is given by the Planning Secretary;
- (viii) be responsible for A26, except that the CIDS/ODS Contractor must:
  - (A) provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that could relate to the approved ER's functions and obligations under condition A26; and
  - (B) facilitate any actions necessary for the ER to carry out its functions and obligations under condition A26;
- (ix) be responsible for A28, except that the CIDS/ODS Contractor must provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are relevant to the Planning Secretary's audit under condition A28;
- (x) be responsible for A29 to 32, except that the CIDS/ODS Contractor must:
  - (A) provide the Principal with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Principal to comply with this condition; and
  - (B) participate in any activities necessary under the Compliance Monitoring and Reporting Program;
- (xi) be responsible for A33;
- (xii) be responsible for A34 and A35, except that the CIDS/ODS Contractor must:
  - (A) provide the Principal with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Principal to comply with conditions A34 and A35;
  - (B) participate in any activities necessary under the Independent Audit Program; and
  - (C) provide reasonable assistance required to enable the independent audits to be carried out.

The Principal will submit the Independent Audit Program to the Planning Secretary and advise the CIDS/ODS Contractor of the date of submission or any other timeframe relevant to conditions A34 and A35;

- (xiii) be responsible for A36 and A37, except that the CIDS/ODS Contractor must immediately advise the Principal of any incident and promptly provide the Principal with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Principal to comply with conditions A36 and A37;
- (xiv) be responsible for B1 to B4 except that the CIDS/ODS Contractor must:
  - (A) provide all reasonable assistance and information to the relevant Appointed Principal Contractor or the Principal (if requested by the Principal) to enable the Appointed Principal Contractor or the Principal (as the case may be) to comply with its obligations with respect to the application and updating of the Community Communication Strategy; and
  - (B) comply with the Community Communication Strategy;
- (xv) be responsible for B5 and B6, except that the CIDS/ODS Contractor must:
  - (A) provide the Principal with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to prepare the "Complaints Management System";
  - (B) implement the Complaints Management System; and
  - (C) provide reasonable assistance required to enable the mediation system to be implemented;
- (xvi) be responsible for B7 to B9, except that the CIDS/ODS Contractor must provide the Principal with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Principal to comply with these conditions;
- (xvii) be responsible for B10 to B12, except that the CIDS/ODS Contractor must:
  - (A) provide the Principal and the Community Complaints Mediator with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities in order for the Community Complaints Mediator to perform its functions; and
  - (B) co-operate with, and respond to the reasonable requests and requirements of, the Community Complaints Mediator;
- (xviii) be responsible for B13, except that the CIDS/ODS Contractor must provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Principal to comply with this condition;



- (xix) be responsible for B14, except that the CIDS/ODS Contractor must:
  - (A) establish and maintain a new website, or dedicated pages within an existing website, and comply with condition B14 in relation to the CIDS/ODS Contractor's Activities;
  - (B) agree with the Principal on the extent of documentation to be posted on the CIDS/ODS Contractor's website considering privacy and confidentiality in relation to information, documents, details and data provided by the CIDS/ODS Contractor;
  - (C) comply with level AA accessibility requirements in the Web Content Accessibility Guidelines (WCAG 2.0); and
  - (D) provide the Appointed Principal Contractor or the Principal (if requested by the Principal) with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor or the Principal (as the case may be) to comply with this condition;
- (xx) be responsible for C1 to C6, except that the CIDS/ODS Contractor must:
  - (A) provide the Appointed Principal Contractor with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Appointed Principal Contractor to comply with conditions C1 to C6; and
  - (B) co-operate and respond to the requests and requirements of the relevant government agencies, including those identified in the table in condition C3;
  - (C) comply with and implement the Appointed Principal Contractor's Construction Environmental Management Plan;
- (xxi) in relation to C7, notify the CIDS/ODS Contractor when the approval of the Planning Secretary is given;
- (xxii) be responsible for C8 to C11 and C15, except that the CIDS/ODS Contractor must:
  - (A) provide the Appointed Principal Contractor with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Appointed Principal Contractor to comply with conditions C8 to C11 and C15; and
  - (B) co-operate and respond to the requests and requirements of the relevant government agencies, including those identified in the table in condition C8; and
  - (C) comply with and implement the Appointed Principal Contractor's Construction Environmental Management Plan;
- (xxiii) in relation to C12, notify the CIDS/ODS Contractor of the date of approval of the Construction Monitoring Programs;

- (xxiv) in relation to C14, submit the Construction Monitoring Reports to the Planning Secretary. The CIDS/ODS Contractor must prepare and provide the Appointed Principal Contractor with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Appointed Principal Contractor to comply with condition C14;
- (xxv) be responsible for D1 to D5;
- (xxvi) be responsible for E1, except that the CIDS/ODS Contractor must provide protection of physical and operational Sydney Trains assets and services during construction;
- (xxvii) in relation to E2, the Principal is responsible complying with this condition in respect of Operation, and the CIDS/ODS Contractor is responsible during Construction only;
- (xxviii) in relation to E7, provide the Appointed Principal Contractor or the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required for the Principal to prepare the Final Tree Report;
- (xxix) be responsible for E10 to E12, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this condition;
- (xxx) in relation to E13, prepare and submit the Heritage Interpretation Strategy to the Planning Secretary. The CIDS/ODS Contractor must comply with the Heritage Interpretation Strategy developed during design to satisfy this condition;
- (xxxi) in relation to E14, prepare the Heritage Interpretation Plan. The CIDS/ODS Contractor must comply with the Heritage Interpretation Plan developed during design to satisfy this condition;
- (xxxii) be responsible for E15 to E18, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Appointed Principal Contractor to comply with conditions E15 and E18;
- (xxxiii) in relation to E23, be responsible for submission of the outcomes of the community consultation, the identified respite periods and the scheduling of likely Out-of-Hours Work to the Planning Secretary (for high risk activities after 9pm) upon request;
- (xxxiv) in relation to E28, be responsible for submitting the request form in respect of Noise Generating Work, from the CIDS/ODS Contractor, to the Planning Secretary, and for notifying the CIDS/ODS Contractor of approval;
- (xxxv) be responsible for E25 only to the extent of preparing and submitting the Out-of-Hours Work Protocol/Strategy to the Planning Secretary for approval. The CIDS/ODS Contractor must:

- (A) provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required for the Principal to prepare the Out-of-Hours Work Protocol/Strategy; and
  - (B) implement and comply with the approved Out-of-Hours Work Protocol/Strategy;
- (xxxvi) be responsible for E27, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this condition;
- (xxxvii) be responsible for E31 and E32, except that the CIDS/ODS Contractor must:
- (A) provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required for the Principal to comply with this condition; and
  - (B) consider and implement the identified noise and vibration control measures, treatments and mitigations through the CIDS/ODS Contractor's Activities;
- (xxxviii) be responsible for E33 and E34, except that the CIDS/ODS Contractor must provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required for the Principal to comply with these conditions;
- (xxxix) be responsible for E35, except that the CIDS/ODS Contractor must:
- (A) provide the Principal and the Independent Property Assessment Panel with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities in order for the Independent Property Assessment Panel to perform its functions; and
  - (B) co-operate with, and respond to the reasonable requests and requirements of, the Independent Property Assessment Panel;
- (xl) be responsible for E36;
- (xli) be responsible for E37, except that the CIDS/ODS Contractor must provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required for the Principal to comply with this condition;
- (xlii) be responsible for E39, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required for the Appointed Principal Contractor to comply with this condition;
- (xliii) be responsible for E43, except that the CIDS/ODS Contractor must:
- (A) provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities in order for the Principal to prepare and implement the Sustainability Strategy; and

- (B) implement the Sustainability Strategy referred to in condition E43 to the extent it relates to the CIDS/ODS Contractor's Activities;
- (xiv) be responsible for E44 only to the extent of reviewing, updating and implementing the sustainability initiatives identified under condition E44 annually during Operation;
- (xlv) be responsible for E45;
- (xlvii) be responsible for E46, except that the CIDS/ODS Contractor must:
  - (A) provide a representative to attend relevant meetings of the Traffic and Transport Liaison Group(s);
  - (B) provide all relevant information, documents, details and data relating to the CIDS/ODS Contractor's Activities to the Traffic and Transport Liaison Group(s);
  - (C) provide the Appointed Principal Contractor with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Appointed Principal Contractor to prepare the Appointed Principal Contractor's Construction Traffic Management Plans; and
  - (D) implement and comply with any traffic and transport management measures that relate to construction activities;
- (xlviii) be responsible for E47, except that the CIDS/ODS Contractor must:
  - (A) provide the Appointed Principal Contractor with all the information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Appointed Principal Contractor to prepare the Appointed Principal Contractor's Construction Traffic Management Plans; and
  - (B) comply with and implement the Appointed Principal Contractor's Construction Traffic Management Plan;
- (xlix) be responsible for E48, except that the CIDS/ODS Contractor must provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities in a timely fashion in order for the Principal to prepare and implement the Temporary Transport Management Plan;
- (l) be responsible for E53;
- (li) be responsible for E54 only during Operation;
- (lii) be responsible for E55;
- (liii) in relation to E56 to E65, prepare the Station Design and Precinct Plans. The CIDS/ODS Contractor must implement the approved Station Design and Precinct Plans or any subsequent revisions, where relevant to the CIDS/ODS Contractor's scope of works;

- (liii) in relation to E66 and E67, submit the relevant Station Design and Precinct Plans to the Planning Secretary for approval. The CIDS/ODS Contractor must not commence construction until these conditions have been satisfied;
  - (liv) be responsible for E68, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required for the Appointed Principal Contractor to comply with this condition;
  - (lv) be responsible for E69;
  - (lvi) be responsible for E70;
  - (lvii) in relation to E71, submit the Appointed Principal Contractor's Utilities Management Strategy to the Planning Secretary for approval. The CIDS/ODS Contractor must implement and comply with the Appointed Principal Contractor's Utilities Management Strategy; and
  - (lviii) be responsible for E72 only to the extent of appointing a Utility Coordination Manager. The CIDS/ODS Contractor must:
    - (A) provide the Utility Coordination Manager with all relevant information, documents, details and data relating to the CIDS/ODS Contractor's Activities to enable the Utility Coordination Manager to carry out its functions; and
    - (B) co-operate with, and respond to the reasonable requests and requirements of, the Utility Coordination Manager.
- (c) In relation to the Revised Environmental Mitigation Measures the Principal will:
- (i) be responsible for TC1 to TC3;
  - (ii) be responsible for TC4 and TC5, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
  - (iii) be responsible for TC6;
  - (iv) be responsible for TC7; except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
  - (v) be responsible for TO1 and TO2;
  - (vi) be responsible for TC8, except that the CIDS/ODS Contractor must:
    - (A) provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Principal to comply with these measures;

- (B) comply with and implement the Appointed Principal Contractor's Construction Traffic Management Plan;
- (vii) be responsible for TC9 to TC22, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (viii) be responsible for TO3 to TO5;
- (ix) be responsible for NVC1, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (x) be responsible for NVC3 and NVC4, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xi) be responsible for NVO1 to NVO3, except that the CIDS/ODS Contractor must:
  - (A) provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Principal to comply with this measure; and
  - (B) consider and implement the identified noise and vibration control measures, treatments and mitigations through the CIDS/ODS Contractor's Activities;
- (xii) be responsible for NVC9, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xiii) be responsible for NVC11 to NVC15, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xiv) be responsible for NVC16, except that the CIDS/ODS Contractor must implement and comply with the Out-of-Hours Work Protocol/Strategy;
- (xv) be responsible for NAH5, except that the CIDS/ODS Contractor must comply with and implement the adaptive reuse strategy developed during design;
- (xvi) be responsible for NAH6, except that the CIDS/ODS Contractor must comply with the Heritage Interpretation Plan developed during design;
- (xvii) be responsible for NAH7 to NAH11;

- (xviii) be responsible for NAH13 and NAH14;
- (xix) be responsible for NAH17;
- (xx) be responsible for NAH21 and NAH22, except that the CIDS/ODS Contractor must:
  - (A) provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities in order for the Appointed Principal Contractor to comply with this measure; and
  - (B) comply with the conservation management plan and conservation management strategy accordingly in undertaking the CIDS/ODS Contractor's Activities;
- (xxi) be responsible for AH1;
- (xxii) be responsible for AH2, except that the CIDS/ODS Contractor must implement the Aboriginal Cultural Heritage Assessment Report where relevant to the CIDS/ODS Contractor's Activities;
- (xxiii) be responsible for AH3;
- (xxiv) be responsible for AH4, except that the CIDS/ODS Contractor must
  - (A) provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities in order for the Principal to comply with this measure; and
  - (B) implement appropriate Aboriginal heritage interpretation in undertaking the CIDS/ODS Contractor's Activities;
- (xxv) be responsible for LU1 to LU3;
- (xxvi) be responsible for LU4, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xxvii) be responsible for SO1 to SO4, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xxviii) be responsible for BI1 and BI2, except that the CIDS/ODS Contractor must provide the Principal with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Principal to comply with this measure;
- (xxix) be responsible for LV2;

- (xxx) be responsible for LV3, except that the CIDS/ODS Contractor must implement the approved Station Design and Precinct Plans or any subsequent revisions, where relevant to their scope of works;
- (xxxi) be responsible for LV4, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xxxii) be responsible for LV6 to LV9;
- (xxxiii) be responsible for LV10 to LV16, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xxxiv) be responsible for SC2 to SC7, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xxxv) be responsible for SC9;
- (xxxvi) be responsible for FHW2 and FHW3;
- (xxxvii) be responsible for FHW4 to FHW6, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xxxviii) be responsible for FHW9 and FHW10, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xxxix) be responsible for FHW11;
- (xl) be responsible for B1;
- (xli) be responsible for B2 to B4, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xlii) be responsible for B6 to B7, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;



- (xliv) be responsible for B8 to B10;
- (xlv) be responsible for AQ1, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xlv) be responsible for SCC3, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xlvi) be responsible for SCC5 to SCC8, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (xlvii) be responsible for SCC9 to SCC12;
- (xlviii) be responsible for HRS1, except where relevant to the CIDS/ODS Contractor's Activities;
- (xlix) be responsible for HRS2;
- (l) be responsible for HRS3, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure;
- (li) be responsible for WM1;
- (lii) be responsible for WM3 and WM4, except that the CIDS/ODS Contractor must provide the Appointed Principal Contractor with all information, documents, details and data relating to the CIDS/ODS Contractor's Activities that are required to enable the Appointed Principal Contractor to comply with this measure; and
- (liii) in relation to C11, but only to the extent of being the single point of contact with the Department of Planning and Environment if consultation is required with the Department of Planning and Environment in order to co-ordinate the interface with projects under construction.

## **Schedule 7. Third Party Agreements**

(Clause 3.15)

### **Third Party Agreements**

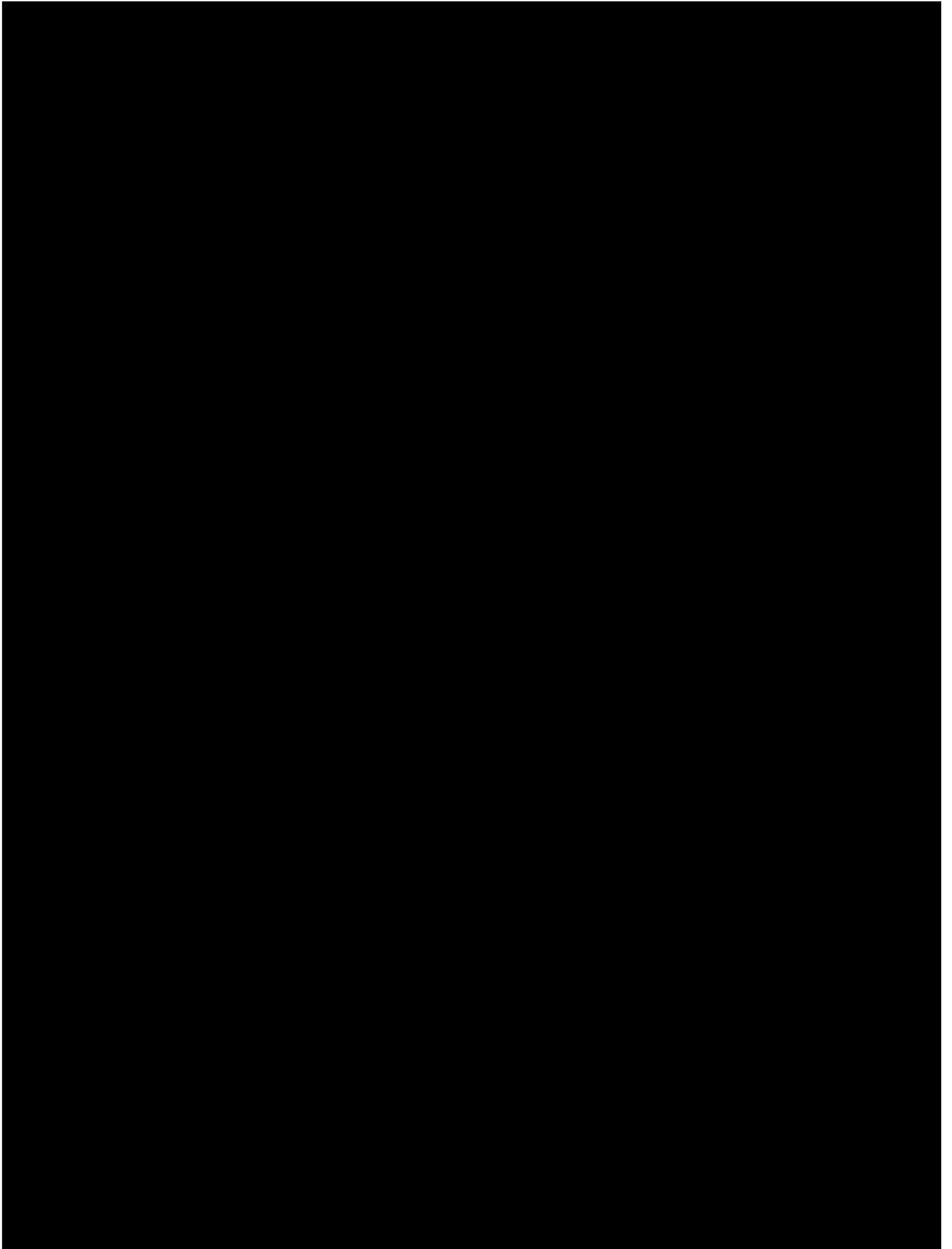
- Sydney Trains Global Safety Interface Agreement dated 7 April 2021 between Sydney Trains and the Principal, as amended by the "Amendment to the Sydney Metro City & Southwest Global Safety Interface Agreement (Document No: 11823)" dated 21 December 2021.
- "Sydney Metro City & Southwest – City and Southwest Transition Agreement (000-TPA-ST\_RC-02)" dated 7 November 2018 between the Principal, RailCorp (now TAHE) and Sydney Trains as amended by the "Amendment to the Sydney Metro City & Southwest - Transition Agreement – Foundation Infrastructure Works Contracts" dated 28 February 2019 and the "Second Amendment to the Sydney Metro City & Southwest - Transition Agreement – Foundation Infrastructure Works Contracts" dated 22 July 2020 (000-TPA-ST\_RC-02) and the "Third Amendment to the Sydney Metro City & Southwest - Transition Agreement – Foundation Infrastructure Works Contracts" dated 27 September 2021 (as may be updated or replaced in accordance with clause 3.15 of this Contract).
- ARTC Construction Safety Interface Agreement dated 22 July 2021 between ARTC and the Principal.

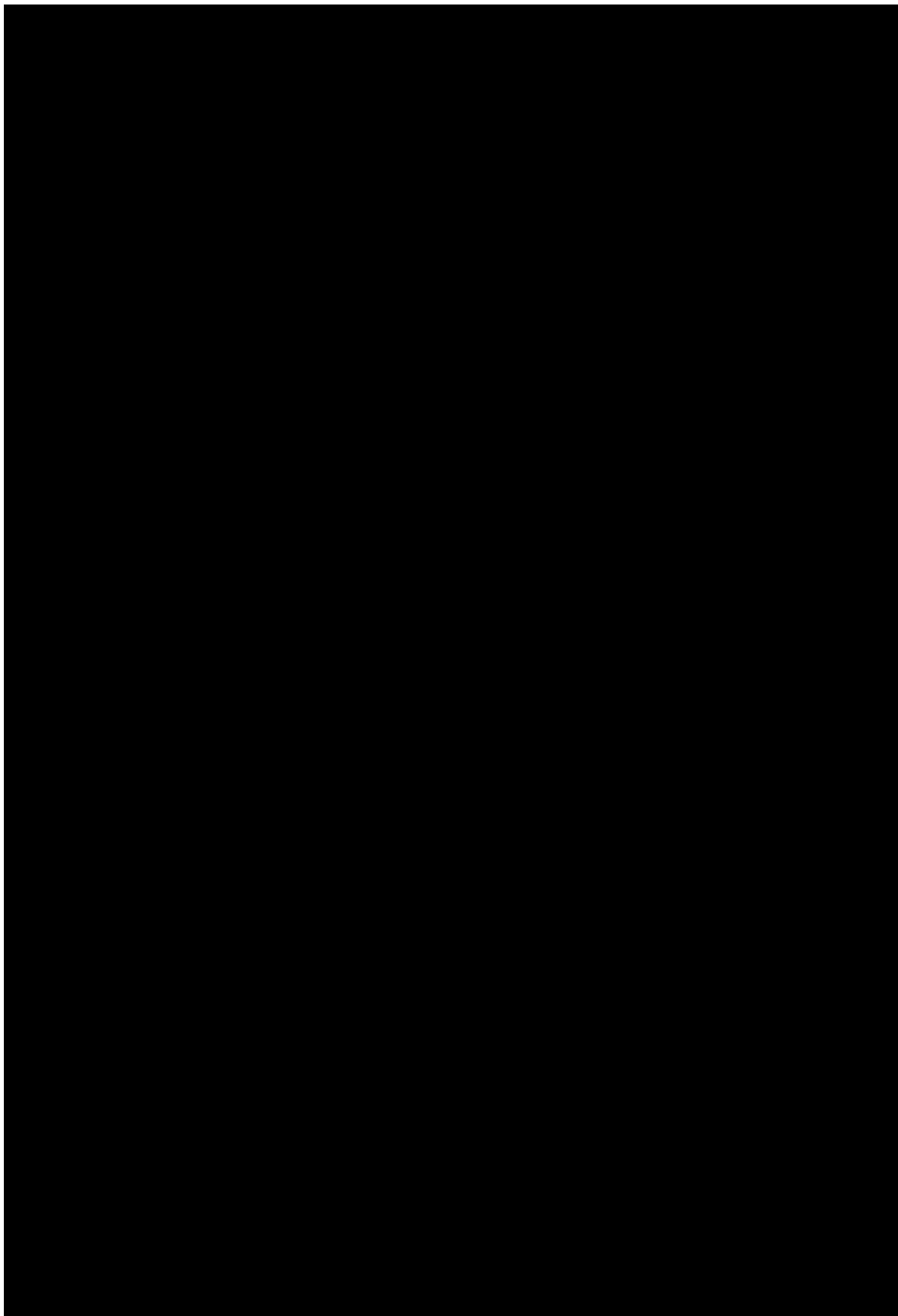
### **Draft Third Party Agreements**

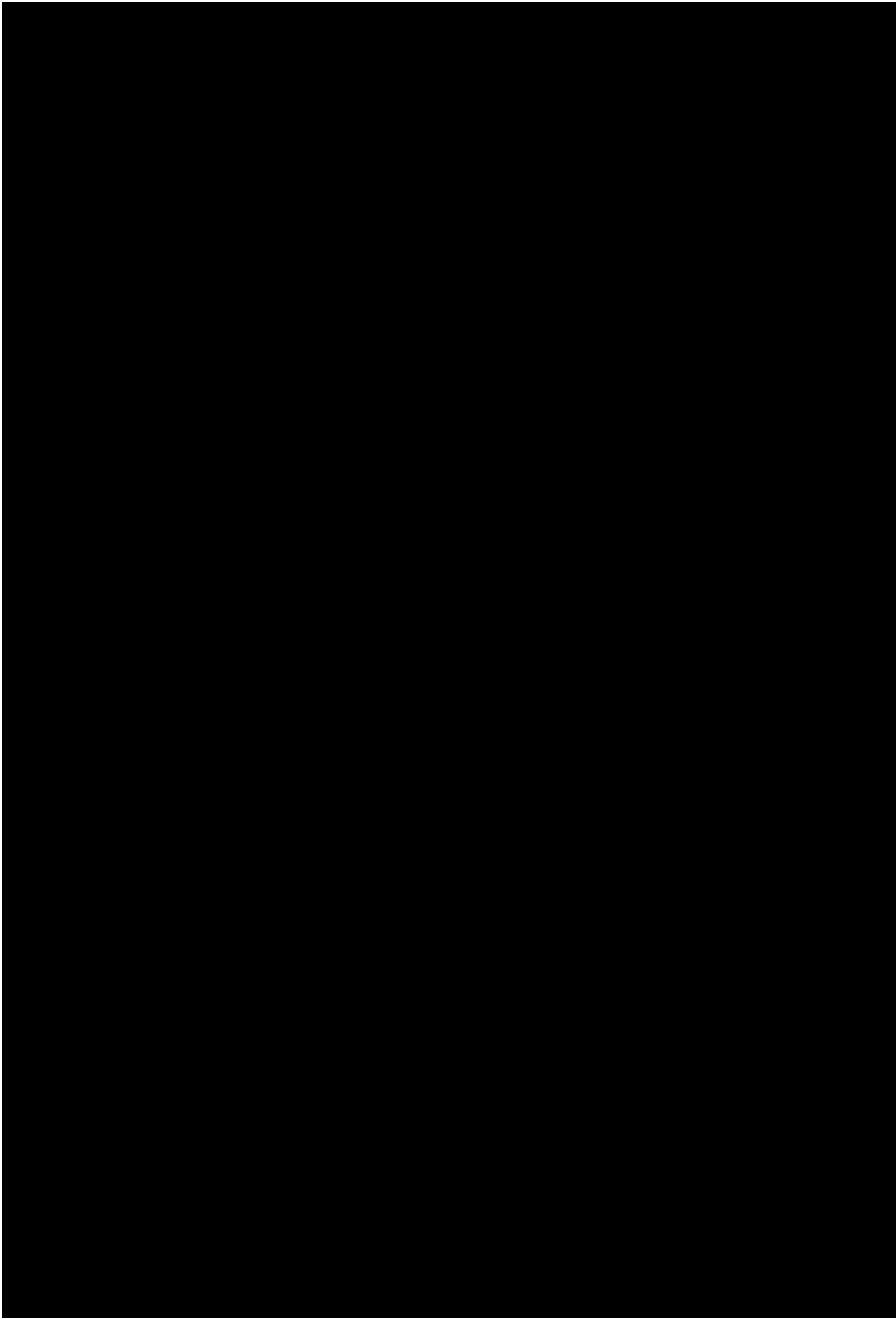
- Scope of Works and Access Schedule for Southwest Metro – CIDS/ODS between the Principal, TAHE and Sydney Trains.
- Licence for Permitted Use of Shared Corridor between RailCorp (now TAHE) and the Principal.

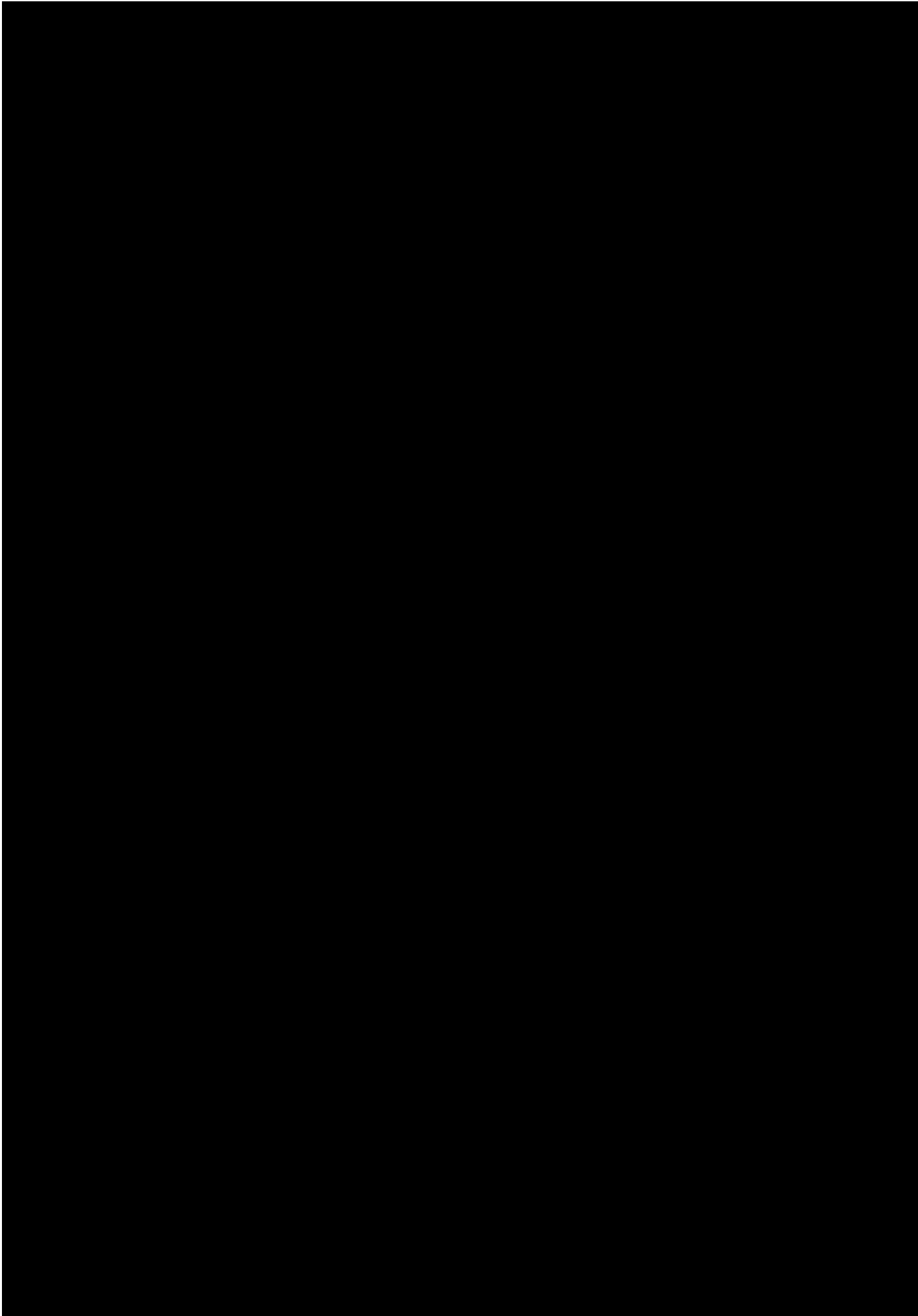
**Schedule 8. Requirements of Third Party Agreements**

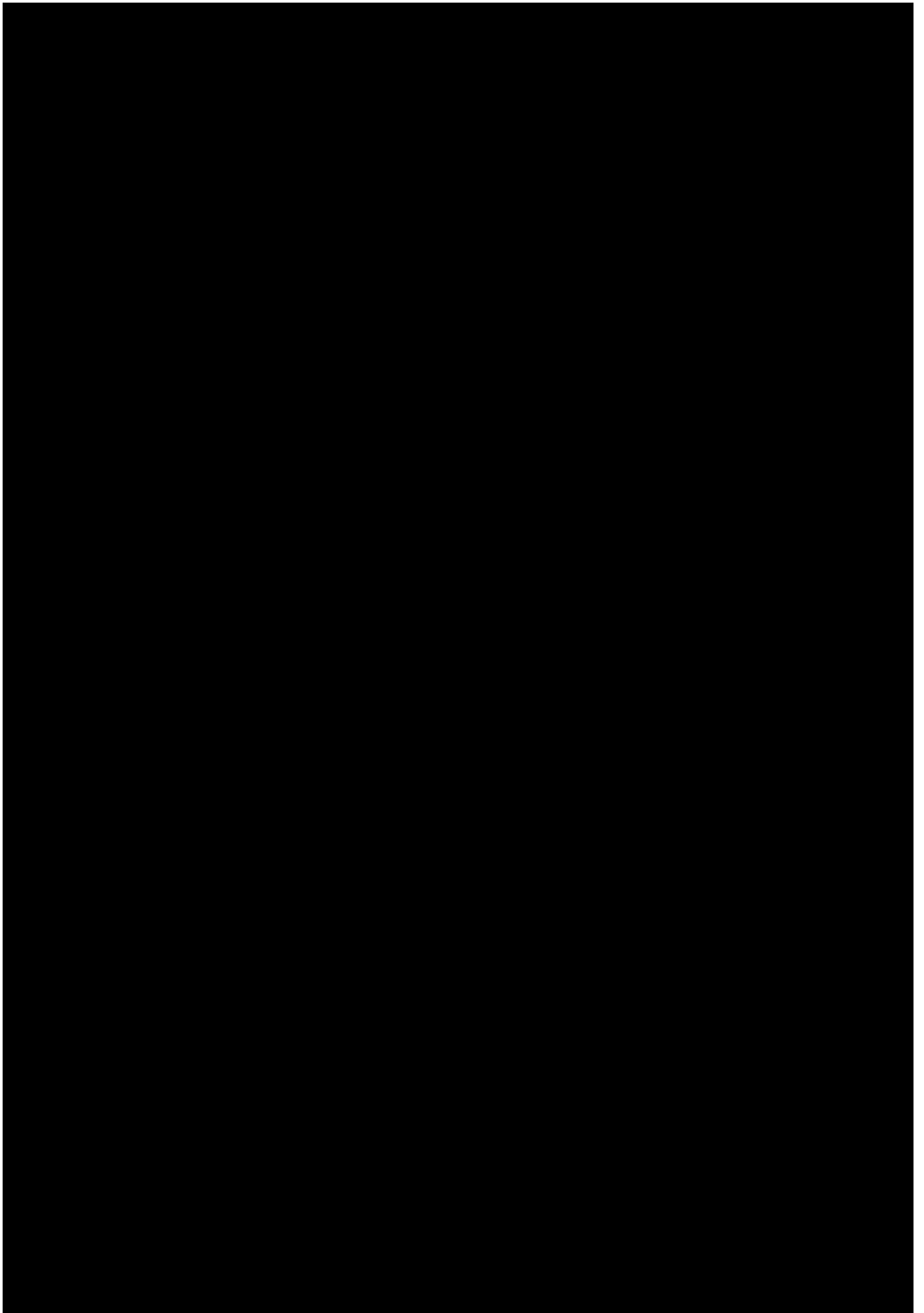
(Clause 3.15)

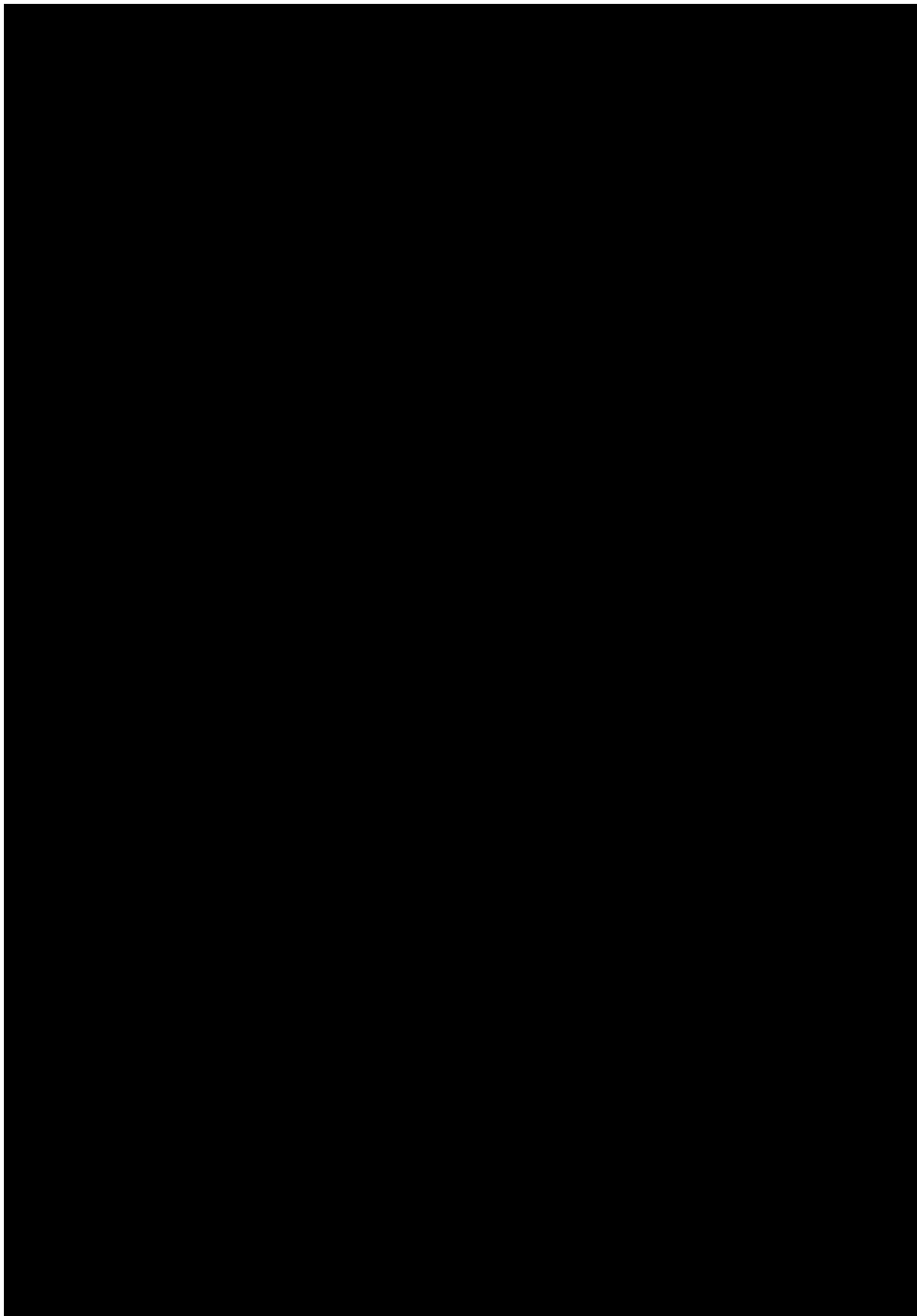




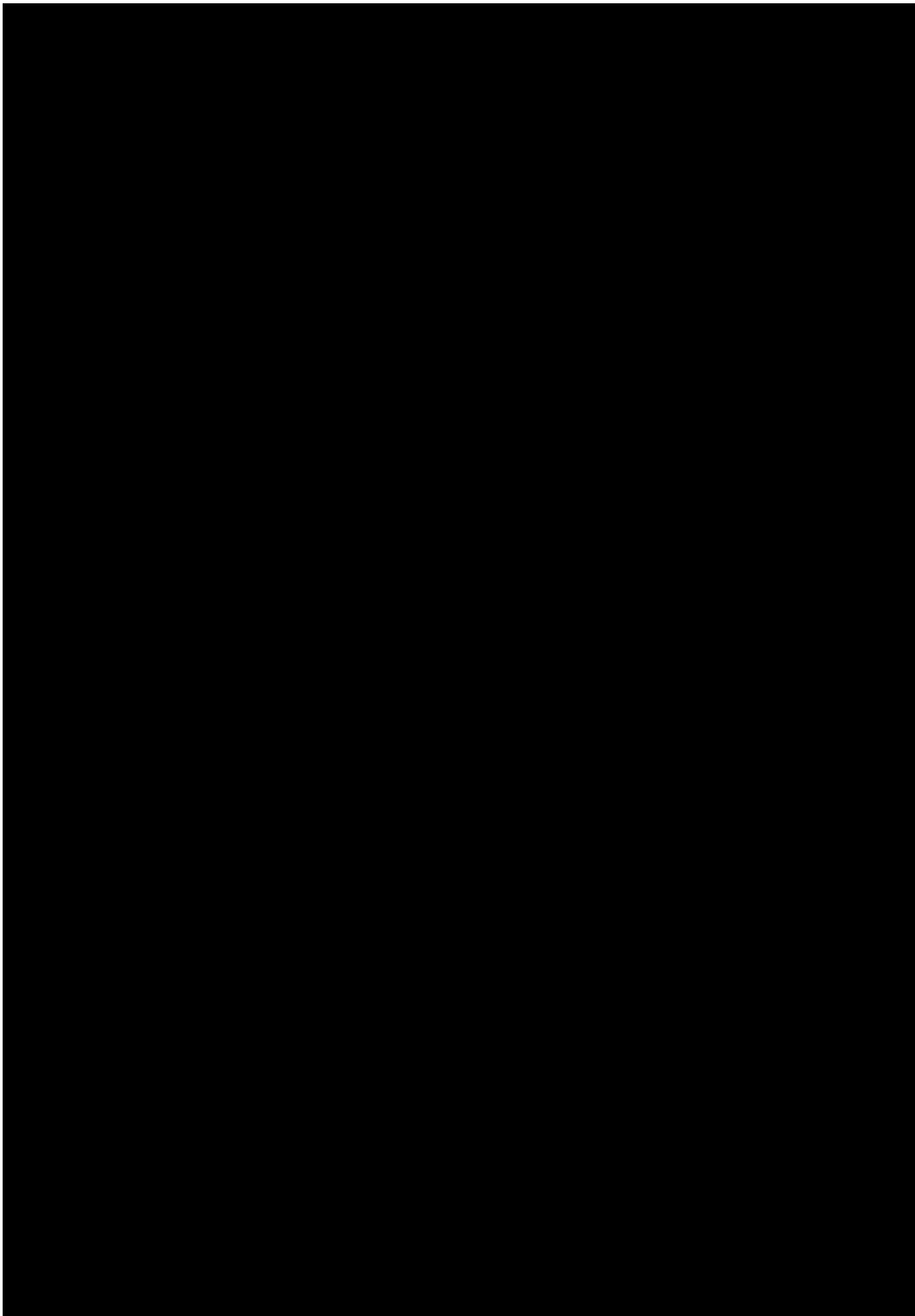


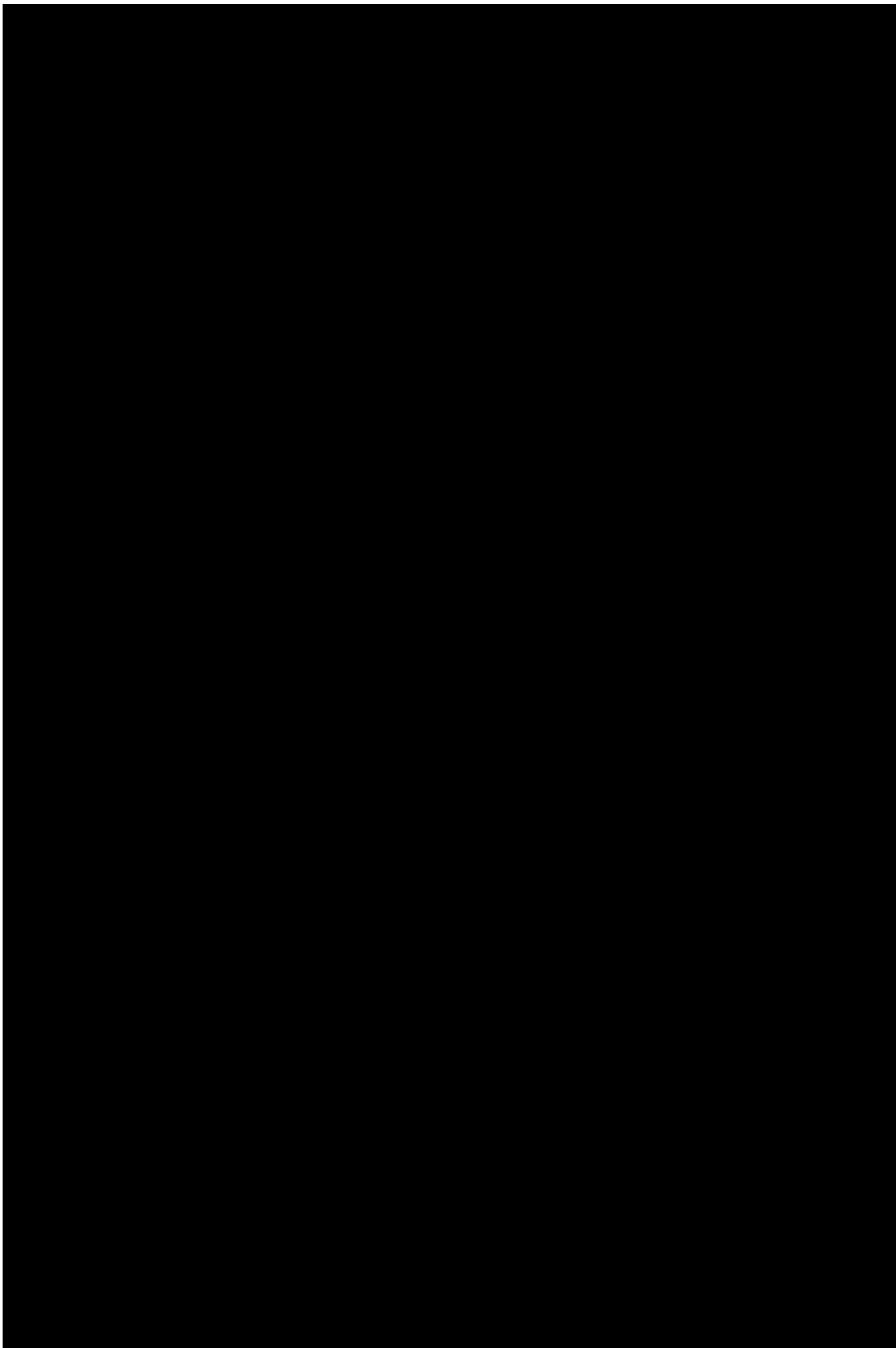


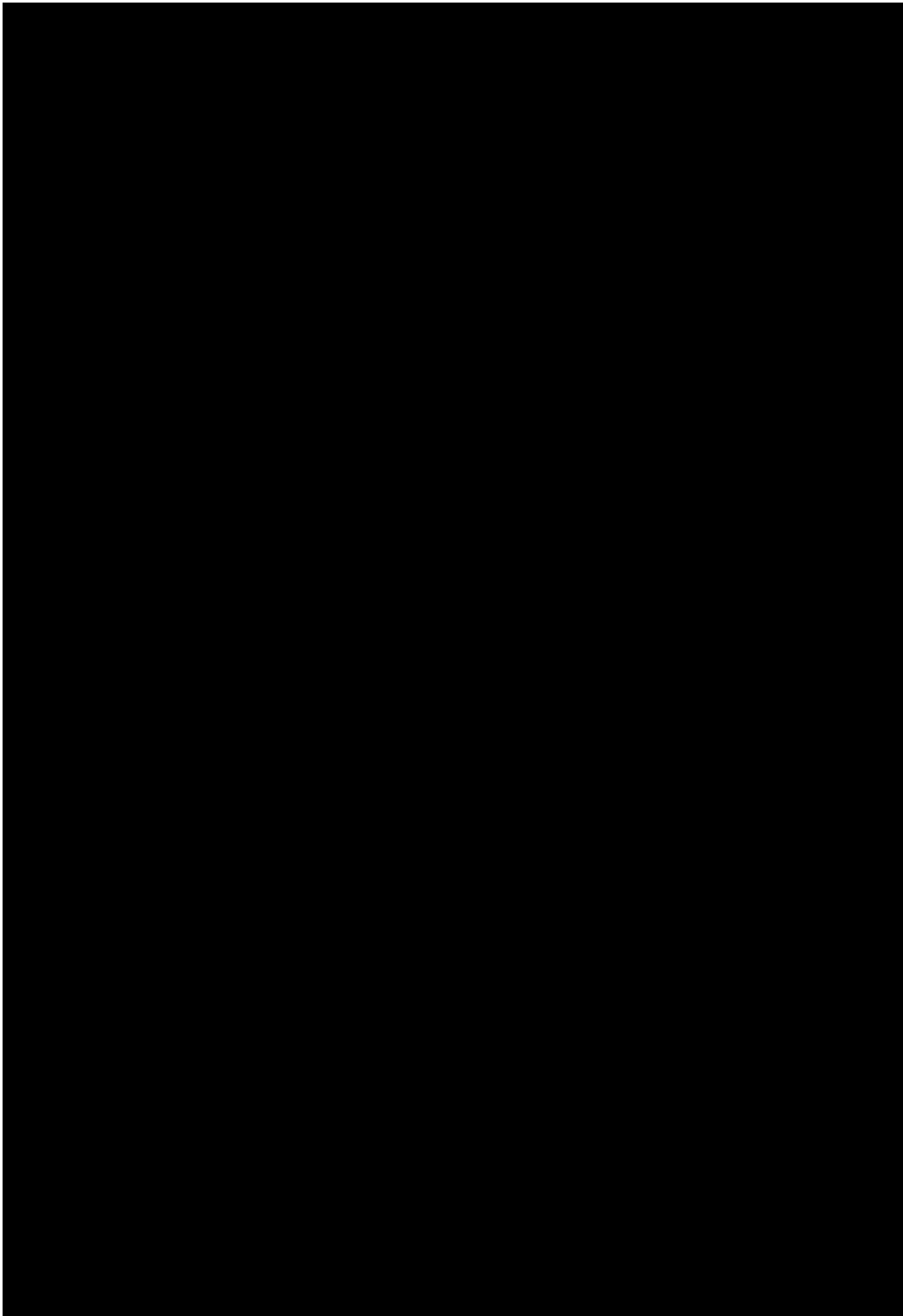


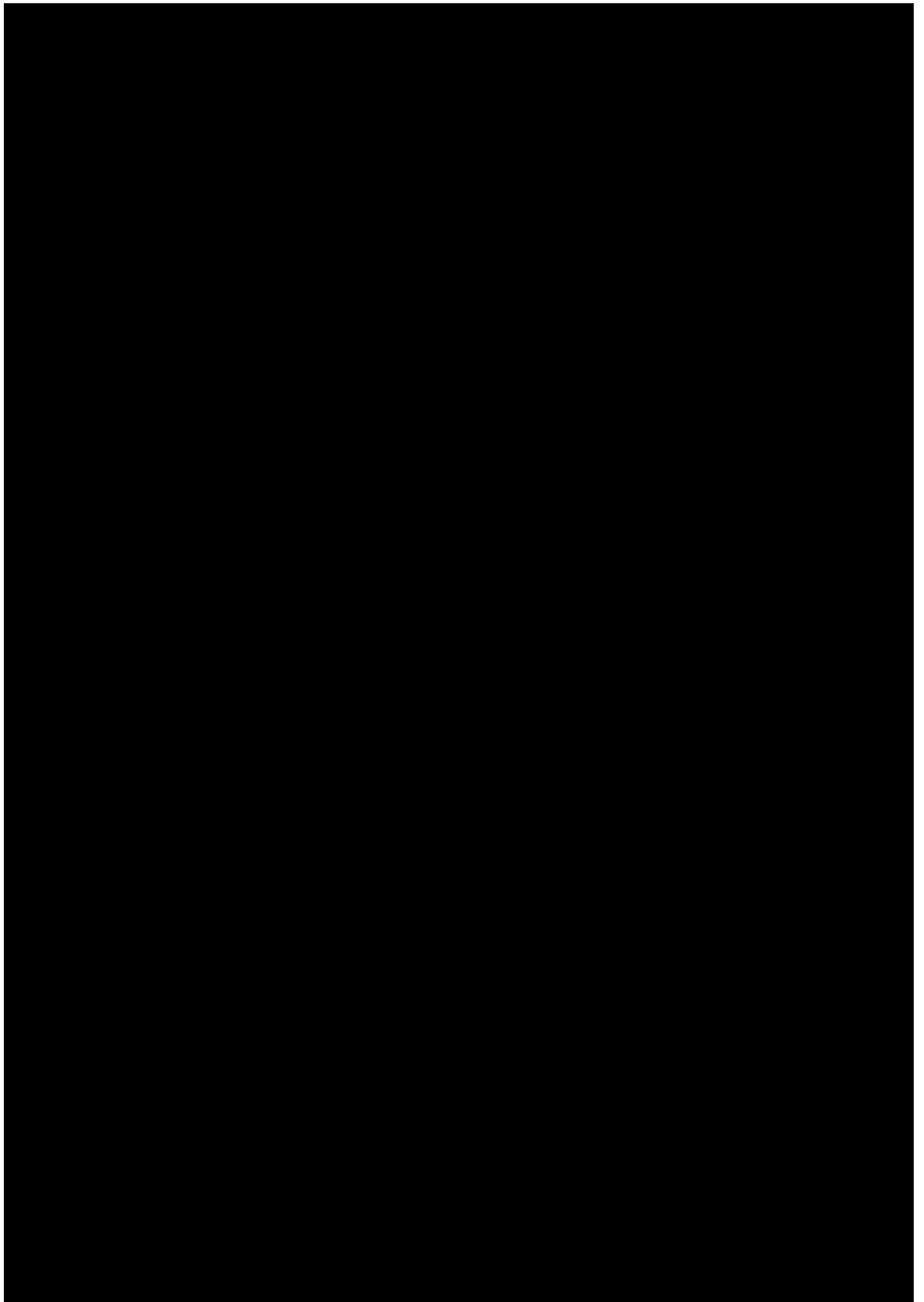


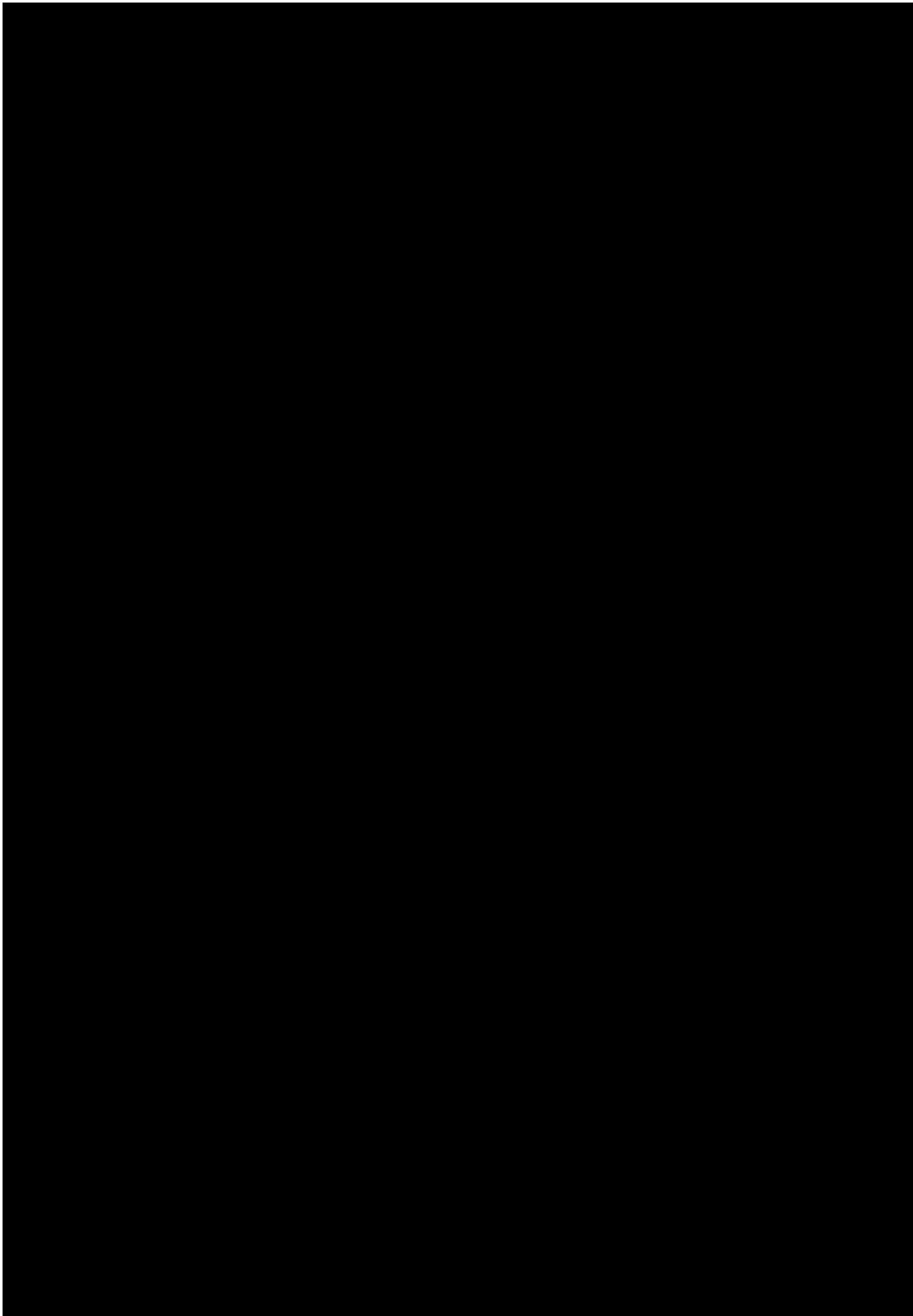


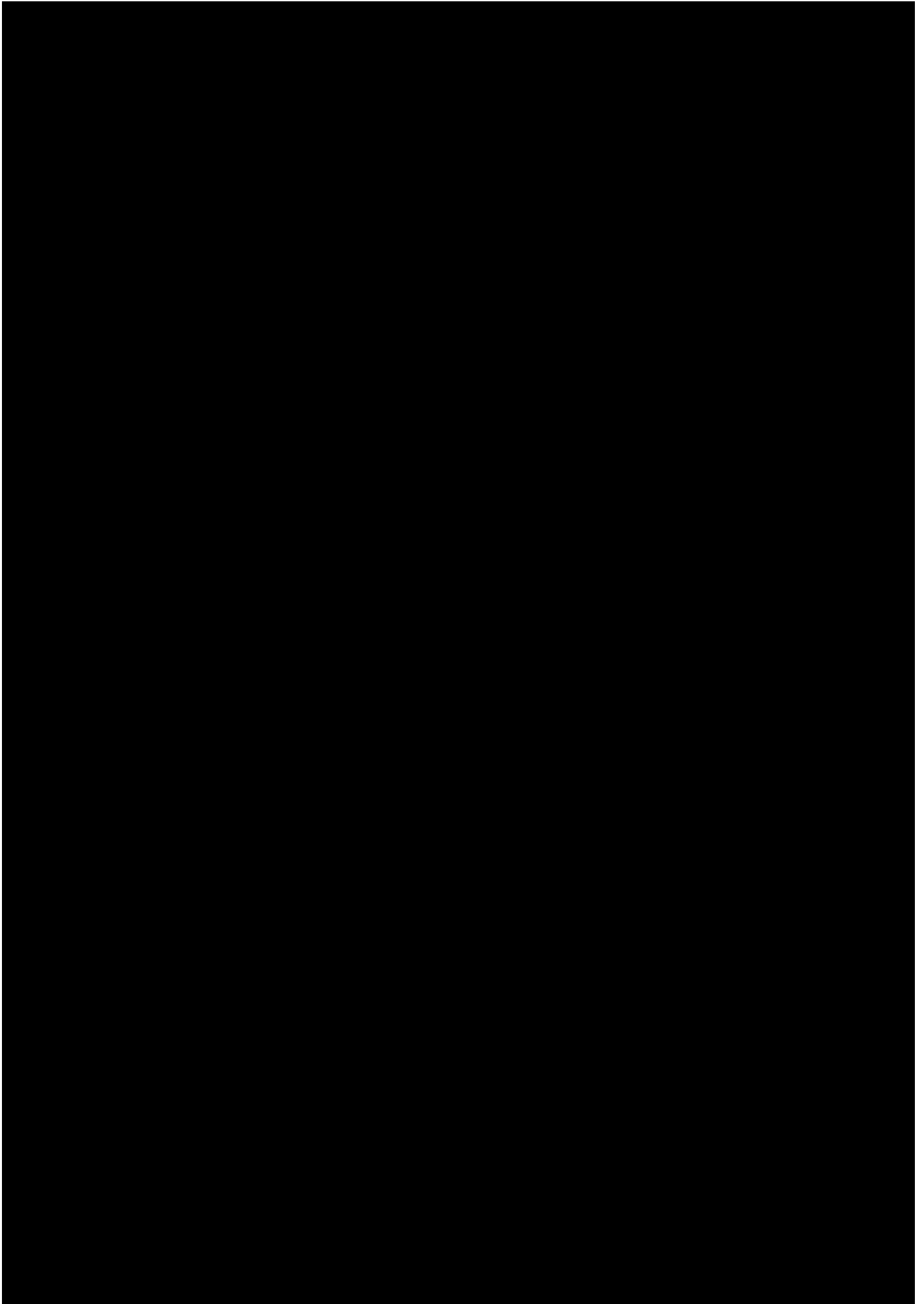


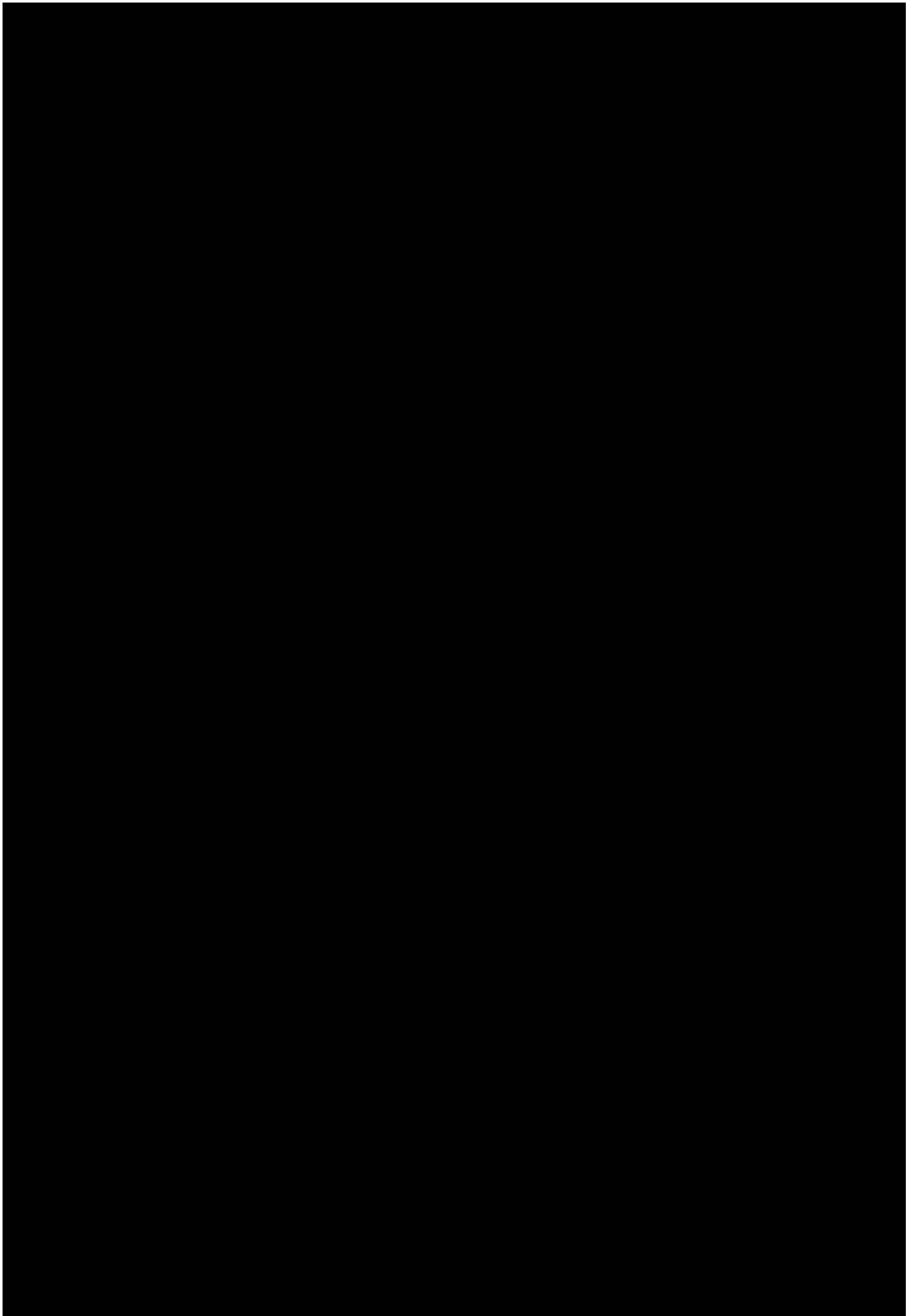


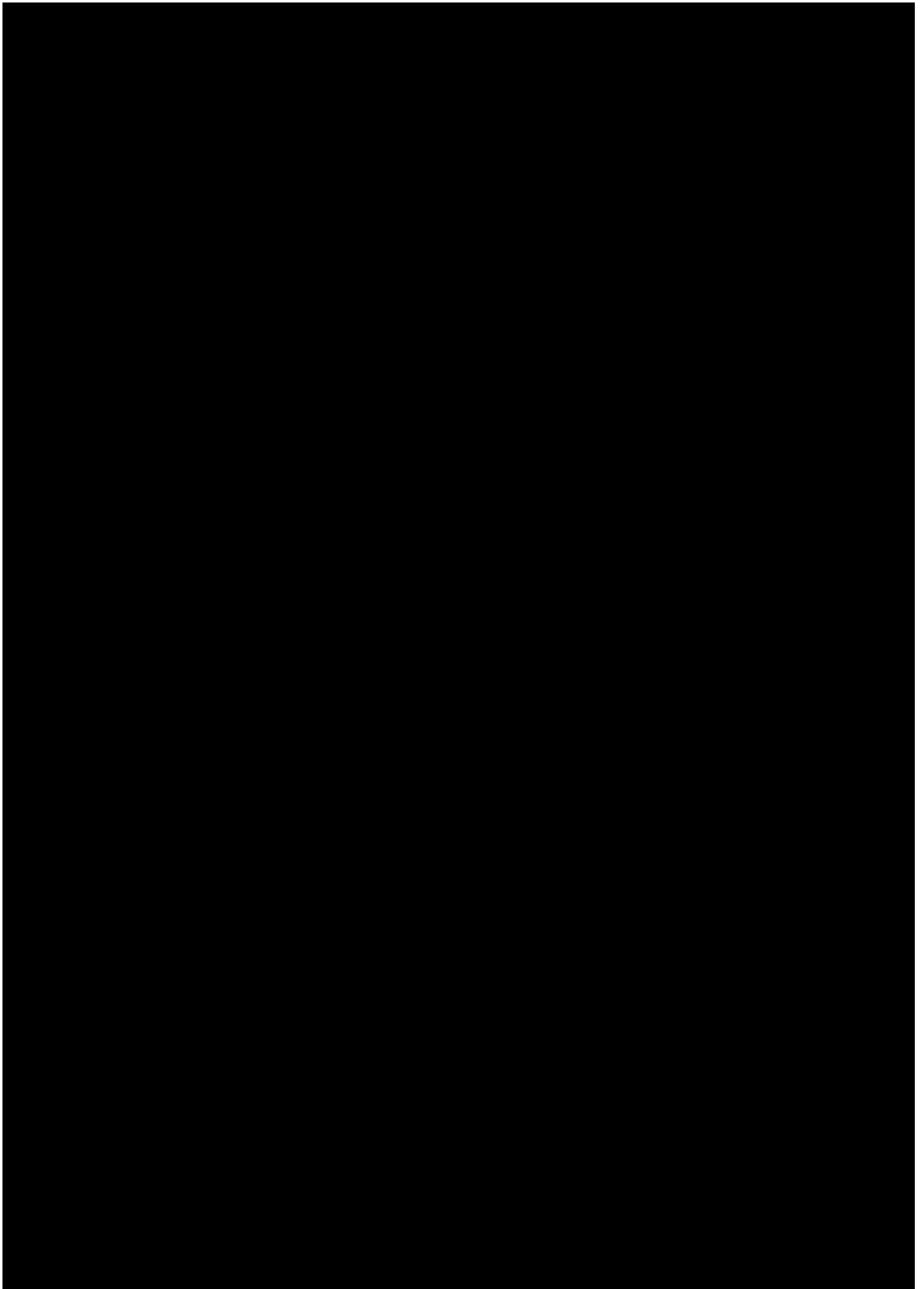




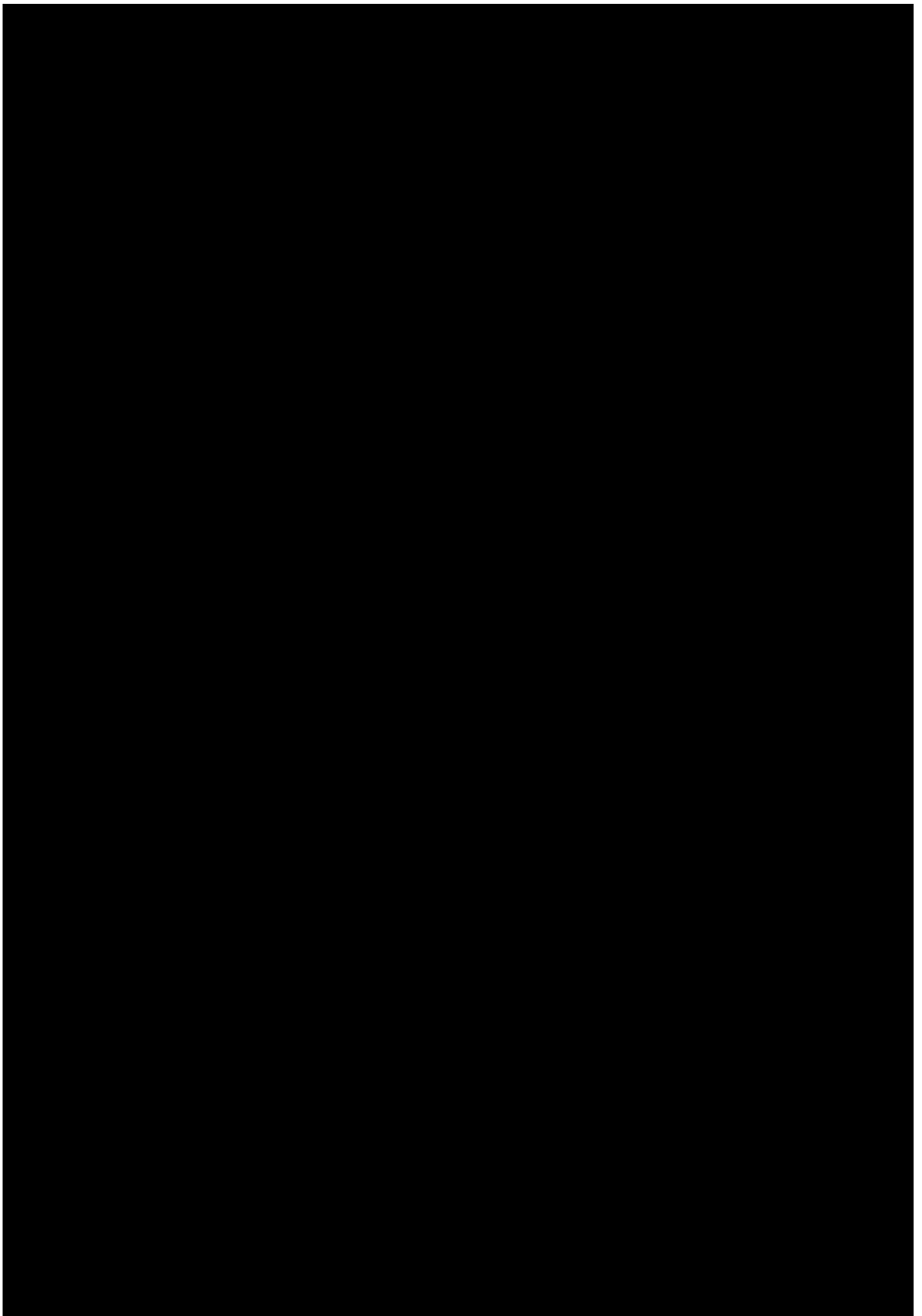


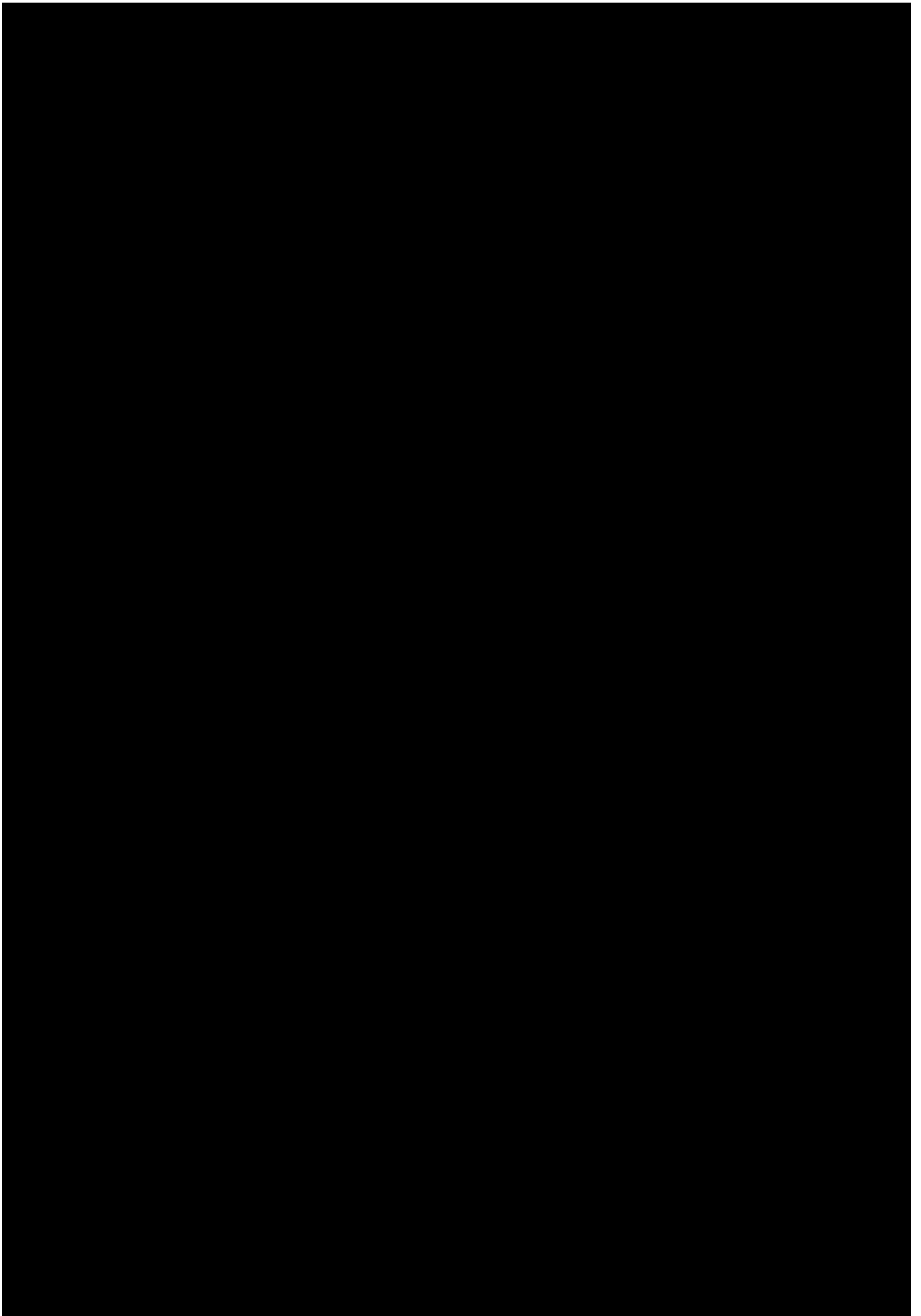


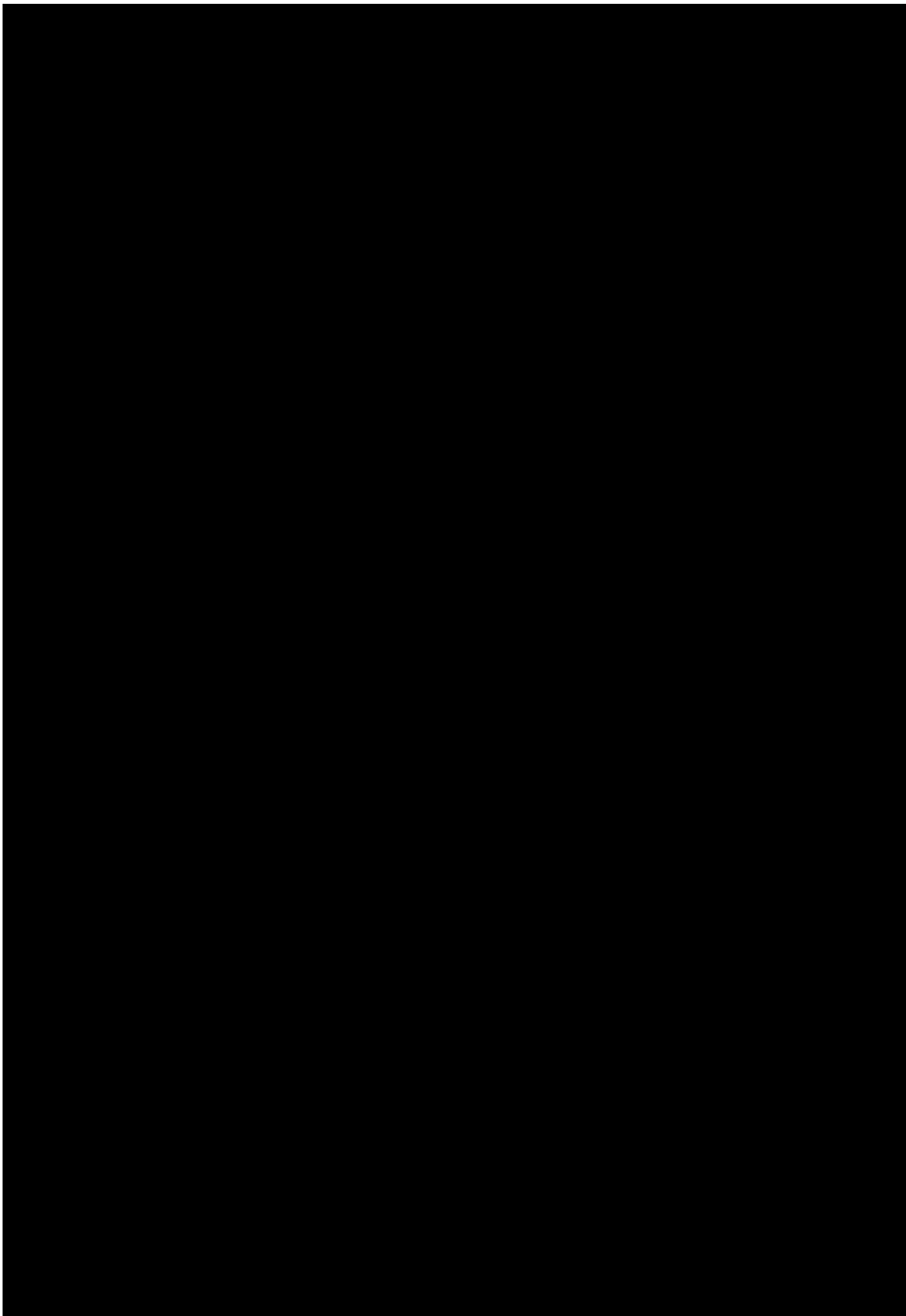












## **Schedule 9. Subcontractors - Security of Payment**

(Clause 3.2(e)(i))

The following terms must be included in each Subcontract, and the Subcontracts let by those Subcontractors, as referred to in clause 3.2(e) of the General Conditions of this Contract.

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### **1. Options as to Form of Security**

A clause which allows the Subcontractor to lodge an approved unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the Subcontract.

A clause which provides that if the Subcontractor does lodge an unconditional undertaking for the required amount, the CIDS/ODS Contractor must not deduct further retention moneys and any retention moneys or other cash security then held will be promptly released to the Subcontractor.

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### **2. Trust for Cash Security and Retention Moneys**

A clause which has the effect that:

- (a) cash securities and retentions under the Subcontract and the cash proceeds of any security converted to cash (other than in exercise of a contractual right of enforcement) is trust money and must be deposited into and held in a trust account with a bank within 24 hours of receipt or conversion;
- (b) the trust money is beneficially owned by the party which provided the security at all times unless the other party becomes entitled to receive them under the Subcontract;
- (c) the security holder must hold proper records and account to the security provider for the trust moneys; and
- (d) any interest earned by the trust account will not be held in trust, and will be owned by the security holder.

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### **3. Payment Provisions**

Not used.

(a)

A clause that prescribes an interest rate for overdue payments that is not less than the interest rate specified in clause 14.13 of the General Conditions of this Contract.

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### **4. Alternative Dispute Resolution**

A clause that requires alternative dispute resolution procedures of the type required in this Contract.

A clause making it optional for the Subcontractor to comply with the alternative dispute resolution process if the only remedy it seeks is an order for payment of money which is not disputed to be due and payable under the Subcontract.

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## **5. Documents to be Provided to Subcontractors**

A clause that requires the CIDS/ODS Contractor to provide the Subcontractor with a copy of extracts from this Contract before the Subcontractor starts work under the Subcontract. The extracts to be provided are:

- (a) clause 3.2(e)(i);
- (b) this Schedule 9;
- (c) clause 14; and
- (d) clause 19.

## Schedule 10. Designer Deed of Covenant

(Clause 3.2(e)(iii))

**THIS DEED POLL** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**To: Sydney Metro** ABN 12 354 063 515 of Level 43, 680 George Street, Sydney NSW 2000  
**(Principal)**

**By: [insert]** (ABN [insert]) of [insert] **(Designer)**

### RECITALS

- (A) The Principal has engaged [insert] **(CIDS/ODS Contractor)** to carry out certain works for the Principal by a contract dated [insert] **(Contract)**.
- (B) The CIDS/ODS Contractor has engaged the Designer by agreement dated [insert] **(Subcontract)** to carry out the professional services to be performed under the Subcontract **(Professional Services)** for the purposes of the performance of the CIDS/ODS Contractor's obligations under the Contract as they relate those design services.
- (C) Under the Contract, the CIDS/ODS Contractor is required to procure the Designer to execute this Deed Poll in favour of the Principal.

### OPERATIVE

#### 1. Duty of Care

(a) The Designer:

(i) warrants to the Principal that:

- (A) in performing the Professional Services, it will exercise the standard of skill, care and diligence that would be expected of a designer experienced in the provision of the type of professional services required by the Subcontract;
- (B) the Professional Services will be fit for the intended purposes disclosed in or reasonably able to be inferred from the SWTC, which is an Exhibit to the CIDS/ODS Contract; and
- (C) the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right;

(ii) acknowledges that:

- (A) in performing the Professional Services it will owe a duty of care to the Principal; and
- (B) it is aware that the Principal will be relying upon the skill and judgment of the Designer in performing the Professional Services and the warranties given by the Designer in this deed poll; and

(iii) promptly advise the Principal about any matter in which the Designer has been instructed by the CIDS/ODS Contractor to provide the Professional Services in

a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Subcontract, including without limitation:

- (A) where the CIDS/ODS Contractor's instructions in relation to design are not consistent with the Subcontract or may result in the works under the Subcontract not being fit for their intended purpose; or
  - (B) where the CIDS/ODS Contractor's instructions require the Designer to issue a certificate where the conditions for the issue of that certificate under the Subcontract have not been satisfied.
- (b) The Designer must carry out the Professional Services so as to minimise any interference with, disruption or delay to the services and work carried out by the other contractors engaged by the Principal.

## 2. Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address or sent to the facsimile number shown below (or to a party's new address or email address which that party notifies to the others):
- (i) to the Principal: Level 43, 680 George Street, Sydney NSW 2000  
Email: **[to be completed]**
  - (ii) to the Designer: **[to be completed]**  
Email: **[to be completed]**
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by email will be taken to have been received:
- (i) if it is transmitted before 5.00pm (Sydney time) on a Business Day, on that Business Day; or
  - (ii) if it transmitted after 5:00pm (Sydney time) on a Business Day, or a day that is not a Business Day, on the next Business Day.
- (d) If the Designer is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the Designer must within 10 Business Days of the date of this deed poll:
- (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 poll; and
  - (ii) obtain the process agent's consent to the appointment.
- (e) The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent.

3. **Miscellaneous**

- (a) This deed poll will be construed in accordance with the law of the State of New South Wales and the Designer irrevocably submits to the jurisdiction of the Courts of that State.
- (b) This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

4. **Limit of Liability**

The aggregate of the Designer's liability to the Principal under this deed poll and the Designer's liability to the CIDS/ODS Contractor under the Subcontract will not exceed the liability that the Designer would have had under the Subcontract if the Subcontract had named, as parties having the benefit of the performance of the obligations of the Designer:

- (a) the Principal; and
- (b) the CIDS/ODS Contractor.

The Designer's liability to the Principal under this deed poll is subject to the same limitations of liability, and qualifications on and exclusions of such limitations of liability, as are specified in the Subcontract.



## SCHEDULE

***[Insert description of Professional Services]*** as more particularly described in the Subcontract.

**EXECUTED** as a deed poll.

**EXECUTED** by *[Insert Name and ABN of Designer]* in accordance with section 127 of the *Corporations Act 2001* (Cth):

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full



***included in the Undertaking where the Institution is headquartered outside Australia.]***

7. The Principal must not assign this Undertaking without the prior written agreement of the Institution, which must not be unreasonably withheld.
8. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

**Executed** as a deed poll.

**EXECUTED** by [*insert name and ABN of Institution*] in accordance with section 127 of the *Corporations Act 2001* (Cth):

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Signature of director

---

Signature of director/secretary

---

Name

---

Name

## **Schedule 12. Post Construction Completion Activities**

(Clause 15.12)

The CIDS/ODS Contractor must undertake Post Construction Completion Activities to support the Operator carrying out and completing trial running and performance tests related directly to the Works.

The Post Construction Completion Activities include:

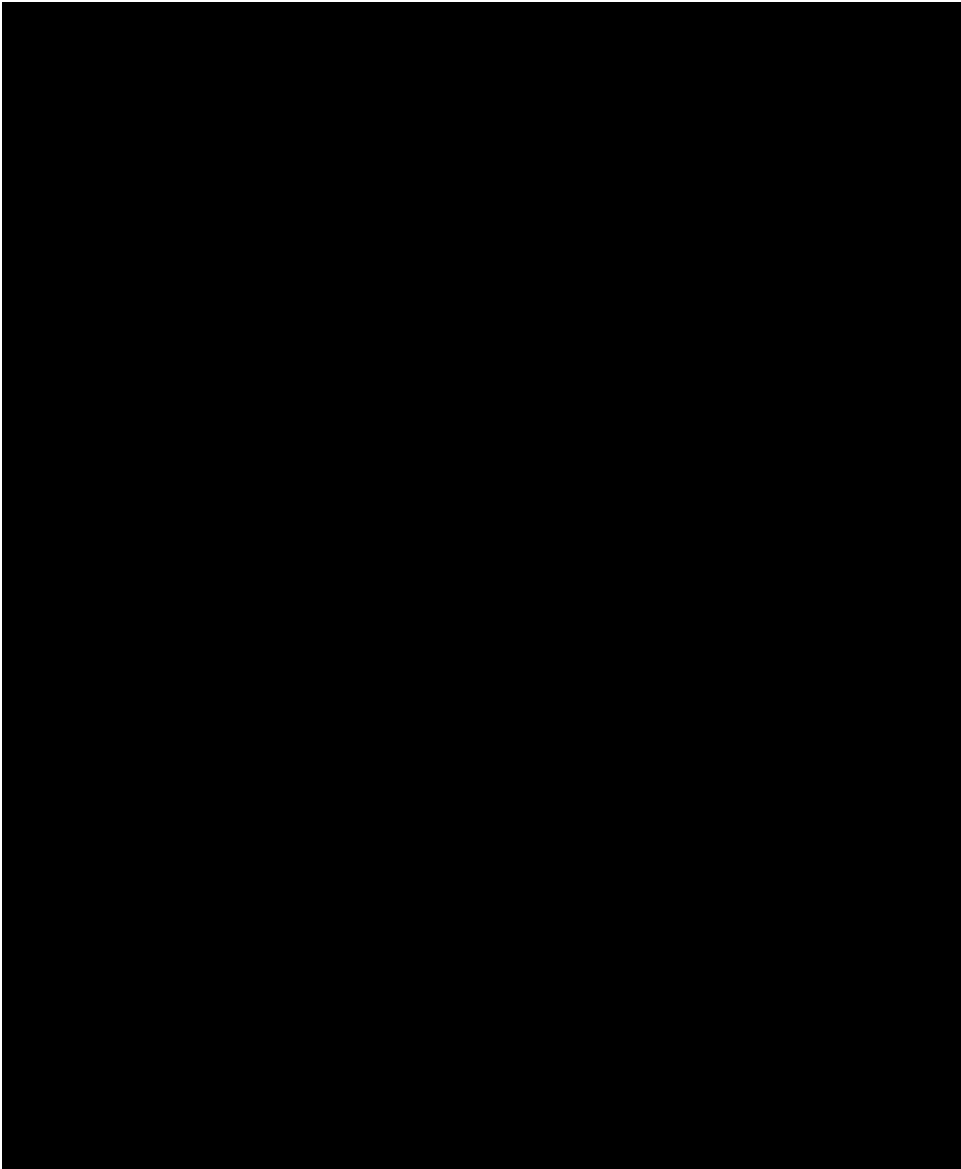
- (a) without limiting or otherwise affecting clause 3.9 of the General Conditions or any of the CIDS/ODS Contractor's other obligations under this Contract or the Operator Cooperation and Integration Deed, provision of all access, technical input and support to the Operator;
- (b) attendance at, and provision of support in respect of, all performance tests undertaken by the Operator;
- (c) attendance at, and provision of support in respect of, tests and drills undertaken by the Operator during trial running;
- (d) attendance at Authority inspections required by the Operator; and
- (e) demonstration that the CIDS and ODS meet the Reliability, Availability, and Maintainability requirements and functional and performance requirements specified in Appendix B01 and Appendix B02 of the SWTC.

**Schedule 13. Prices and Rates for valuation of Variations and Overhead Costs**

(Clause 9.1(b)(i) and 9.4(b)(i))

**Part A**

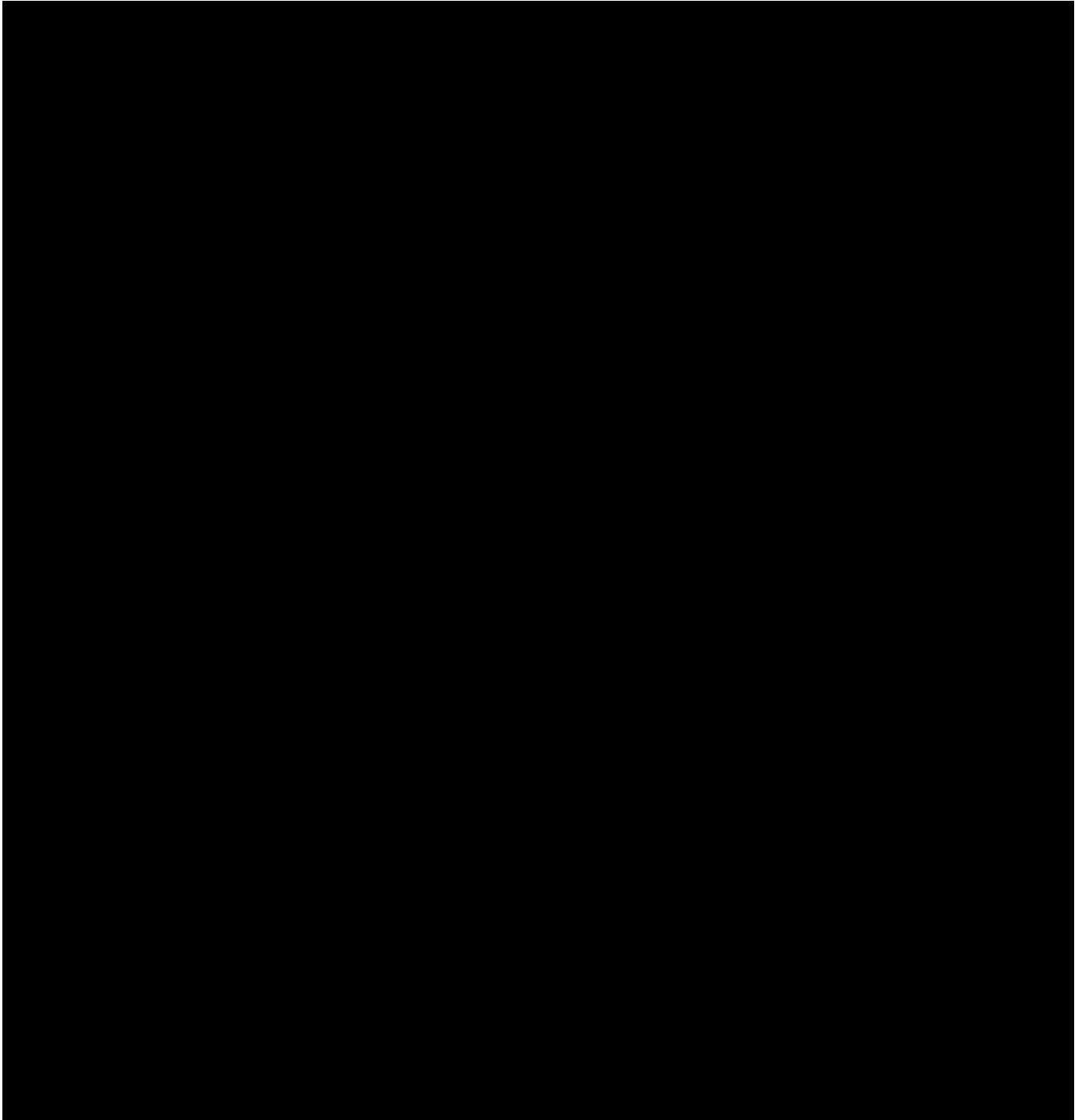
The prices and rates referred to in clauses 9.1(b)(i) and 9.4(b)(i) of the General Conditions (which are inclusive of Overhead Costs and profit) are those set out in the table below:



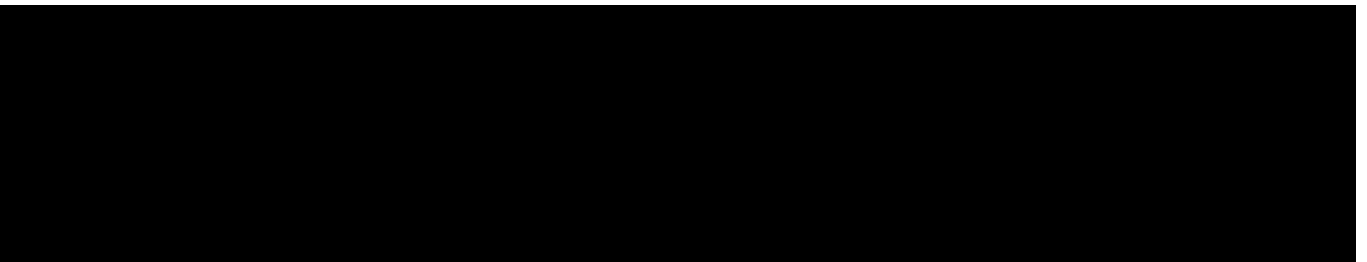
**Part B – Overhead Costs**

(Clauses 1.1, 9.1(b)(i)B and 9.4(b)(ii))

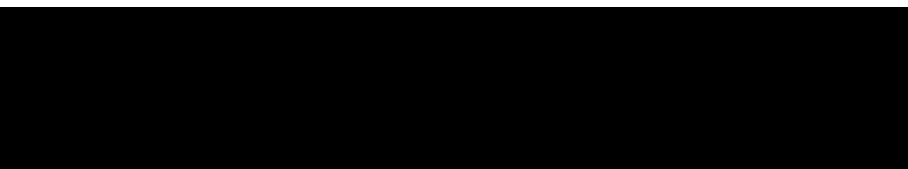
**1. On-site overheads**



**2. Off-site overheads**







**Schedule 14. List of warranties required from Subcontractors**

(Clause 3.2(f))

<b>Equipment</b>	<b>Beneficiary (other than the Principal)</b>	<b>Warranty Period</b>
CIDS server/processor/receiver equipment	Operator	[REDACTED]
ODS server/processor/receiver equipment	Operator	[REDACTED]
Fibre optic sensor cable	Operator	[REDACTED]
<b>Electrical</b>		
Solar / battery	Operator	[REDACTED]
Other electrical equipment and fittings	Operator	[REDACTED]
Electrical and data cables	Operator	[REDACTED]
<b>Surface Finishes</b>		
Hot dip galvanising – external mounting structures	Operator	[REDACTED]

## Schedule 15. Form of Warranty

(Clause 3.2(f))

This Deed Poll is made the                      day of                      20

To:        **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000  
("Principal")

**[Add other beneficiaries as nominated by Sydney Metro] ("Beneficiary").**

By:        That person described in Item 1 of the Schedule ("**Warrantor**") which expression will include its successors and assigns)

### Recitals

- A.        The Warrantor has supplied the items described in Item 2 of the Schedule ("**Equipment**") to the person described in Item 3 of the Schedule ("**CIDS/ODS Contractor**") or the person described in Item 4 of the Schedule, a subcontractor of the CIDS/ODS Contractor ("**Subcontractor**"), for the works ("**Works**") being carried out by the CIDS/ODS Contractor under the contract described in Item 5 of the Schedule ("**Contract**") with the Principal.
- B.        It is a requirement of the Contract that the CIDS/ODS Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment.

### Operative

---

#### 1.        Quality

The Warrantor:

- (a)        warrants to the Principal and the Beneficiary that the Equipment will be to the quality and standard stipulated by the contract between the Warrantor and the CIDS/ODS Contractor ("**Warrantor Contract**") and will be of merchantable quality and complies with the specifications set out in the Warrantor Contract; and
- (b)        gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

---

#### 2.        Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 7 of the Schedule:

- (a)        is found to be of a lower quality or standard than that referred to in clause 1; or
- (b)        shows deterioration of such extent (fair wear and tear excepted) that in the reasonable opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which

it was manufactured, whether on account of utility, performance, appearance or otherwise.

---

**3. Warrantor to bear cost**

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

---

**4. Principal not liable**

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

---

**5. This deed poll may not be revoked**

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

---

**6. Governing Law**

This deed poll is governed by the laws of the State of New South Wales.

---

**7. Jurisdiction**

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

---

**8. Enforcement of this deed poll**

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

---

**9. Limit of Liability**

The aggregate of the Warrantor's liability to the Principal and Beneficiary under this deed poll and the Warrantor's liability to the CIDS/ODS Contractor under the Warrantor Contract will not exceed the liability that the Warrantor would have had under the Warrantor Contract if the Warrantor Contract had named, as parties having the benefit of the performance of the obligations of the Warrantor:

- (a) the Principal;
- (b) the Beneficiary; and
- (c) the CIDS/ODS Contractor.

The Warrantor's liability to the Principal and the Beneficiary under this deed poll is subject to the same limitations of liability, and qualifications on and exclusions of such limitations of liability, as are specified in the Warrantor Contract.

## Schedule

Item 1: Name and Address of Warrantor

Item 2: Equipment  
(Recital A)

Item 3: CIDS/ODS Contractor  
(Recital A)

Item 4: Subcontractor  
(Recital A)

Item 5: Contract  
(Recital A)

Item 6: Detailed Warranty of Warrantor  
(Clause 1(b))

Item 7: Period of Years  
(Clause 2)

**[insert period]** years from the expiry of the final "Defects Rectification Period" as defined in the General Conditions (including any extension under clause 11.6 of the General Conditions).

**Executed** as a deed poll.

**Executed by [insert name of Warrantor]  
(ABN [insert ABN])** by or in the presence of:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

**Schedule 16. Form of Statutory Declaration**

(Clause 14.6(a)(iii)A)

**Statutory Declaration**

Oaths Act 1900 (NSW) Ninth Schedule

I,

of

do solemnly and sincerely declare that:

1. I am the representative of:

**("the CIDS/ODS Contractor")**

in the Office Bearer capacity of:

2. The CIDS/ODS Contractor has a contract with the [ ]:

**("the Contract")**

3. I personally know the facts which I have set out in this declaration.

4. All employees who have at any time been engaged by the CIDS/ODS Contractor for work done under the Contract:

a) have been paid all remuneration and benefits to the date of this declaration payable to them by the CIDS/ODS Contractor in respect of their employment on work under the Contract, and

b) have otherwise had accrued to their account all benefits to which they are entitled from the CIDS/ODS Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,

with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:

Employee: Amount unpaid or not accrued:

4A. All subcontractors who have at any time been engaged by the CIDS/ODS Contractor for work done under the Contract have been paid to the date of this declaration in accordance with the relevant subcontracts and any applicable industrial instruments (as defined in the Industrial Relations Act 1996 (NSW)), with the exception of the subcontractors and respective amounts unpaid for each subcontractor listed below:

Subcontractor: Amount unpaid:

5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).

5A. Where the CIDS/ODS Contractor holds any retention money from a subcontractor, the CIDS/ODS Contractor has complied with all requirements under Part 2 of the Building and

Construction Industry Security of Payment Regulation 2020 (NSW), with the exception of the items listed below:

.....  
.....  
.....

6. In all cases where a subcontractor or supplier to the CIDS/ODS Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the CIDS/ODS Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the CIDS/ODS Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the CIDS/ODS Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the CIDS/ODS Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the CIDS/ODS Contractor have been complied with by the CIDS/ODS Contractor.

8. The CIDS/ODS Contractor has been informed by each subcontractor to the CIDS/ODS Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

(a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and

(a1) that all their subcontractors, as at the date of the making of such a declaration, have been paid in accordance with the relevant subcontracts and any applicable industrial instruments (as defined in the Industrial Relations Act 1996 (NSW)), and

(b) that all their employees, as at the date of the making of such a declaration:

i) have been paid all remuneration and benefits due and payable to them by; or

ii) had accrued to their account all benefits to which they are entitled from;

the subcontractor of the CIDS/ODS Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and

(c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(a1) and 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the CIDS/ODS Contractor who have failed to provide such a declaration:

Subcontractor:	Due amount unpaid:
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

insert names and addresses of the CIDS/ODS Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the CIDS/ODS Contractor in respect of this claim

9. Where a subcontractor to the CIDS/ODS Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

Employee, subcontractor or supplier:	Amount unpaid or not accrued:
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

10. In relation to the statutory declaration provided by each subcontractor to the CIDS/ODS Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the CIDS/ODS Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:

- (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;
- (b) under section 18(6) of part 5 of schedule 2 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and
- (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.

12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

13. All statutory declarations and Subcontractor's Statements received by the CIDS/ODS Contractor from subcontractors were:

- (a) given to the CIDS/ODS Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and
- (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.

14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the CIDS/ODS Contractor by its subcontractors, as referred to in this declaration.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at ..... on .....  
 (place) (day) (month) (year)

.....  
 (Signature of Declarant)

Before me:

.....  
 (Signature of person before whom the declaration is made)

.....  
 (Name of the person before whom the declaration is made)

.....  
 (Title\* of the person before whom the declaration is made)

And as a witness, I certify the following matters concerning the person who made this declaration (**declarant**):

[\*strike out the text that does not apply]

- 1. \*I saw the face of the declarant.  
 OR  
 \*I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.
- 2. \*I have known the declarant for at least 12 months.  
 OR  
 \*I confirmed the declarant's identity using the following identification document:

\_\_\_\_\_  
 Identification document relied on  
 (may be original or certified copy)

\_\_\_\_\_  
 Signature of person before whom the declaration is made

Before me:

.....  
 (Signature of person before whom the declaration is made)

.....  
 (Name of the person before whom the declaration is made)

.....  
 (Title\* of the person before whom the declaration is made)

\*The declaration must be made before one of the following persons:



- where the declaration is sworn within the State of New South Wales:

- (i) a justice of the peace of the State of New South Wales;
- (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
- (iii) a notary public.

- where the declaration is sworn in a place outside the State of New South Wales:

- (i) a notary public; or
- (ii) any person having authority to administer an oath in that place.

## Annexure A

### Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999* (the "Act").

Head contractor: [*business name of head contractor*]

ABN: [*ABN*]

\* 1. has entered into a contract with: [*business name of subcontractor*]

ABN: [*ABN*]

Contract number/identifier: [*contract number/identifier*]

OR

\* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

\* [*Delete whichever of the above does not apply*]

This statement applies for work between [*start date*] and [*end date*] inclusive (the construction work concerned), subject of the payment claim dated [*date*].

I, [*full name*], being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief all subcontractors, if any, have been paid all amounts that have become due and payable in relation to construction work that is the subject of this payment claim.

These subcontractors and the amounts paid to them are identified in the attachment to this statement.

**It is an offence under section 13(7) of the Act for a head contractor to serve a payment claim on the principal, if it is not accompanied by a supporting statement that indicates that it relates to that payment claim. The maximum penalty is \$110,000 for corporations, and \$22,000 for an individual.**

**It is also an offence under the Act for a head contractor to serve a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances. The maximum penalty is \$110,000 for corporations, and \$22,000 or 3 months imprisonment (or both) for individuals.**

Signature: ..... Date: .....

Full name: ..... Position/Title: .....

**Attachment**

List all subcontractors that have been paid all amounts that have become due and payable in relation to the construction work that is the subject of the payment claim which this supporting statement accompanies.

<b>Name of Subcontractor</b>	<b>ABN</b>	<b>Contract number / identifier</b>	<b>Date of works (period or stage)</b>	<b>Date of subcontractor's payment claim</b>

**Annexure B**

**SUBCONTRACTOR'S STATEMENT**

**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION  
(Note 1 - see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

**SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.**

Subcontractor: .....  
(Business name)

ABN: .....

of .....  
(Address of subcontractor)

has entered into a contract with ..... ABN:.....  
(Business name of principal contractor) (Note 2)

Contract number/identifier ..... (Note 3)

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, (Note 4)

subject of the payment claim dated: ...../...../..... (Note 5)

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../.....(Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)
- (f) Signature .....  
Full name.....
- (g) Position/Title .....  
Date ...../...../.....

*NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.*

## Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.  
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.  
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'  
Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

### Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**Schedule 17. Property Owner's Certificate**

(Clause 4.4(c)(ii))

**This deed poll** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**To:** **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 ("**Principal**")

**By:** [ \_\_\_\_\_ ].

**Property Address:** .....

1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:

**[Insert description of Works]**

2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.

3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1.

4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

**Executed** as a deed poll.

**[Note to Tenderer: Appropriate execution panel to be confirmed prior to execution.]**

**EXECUTED** by [*insert name and ABN of property owner*] in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**Schedule 18. Form of Subcontractor Deed**

(Clause 3.2(e)(v))

**THIS DEED POLL** is made on ....., 20..... by

..... ACN..... of

..... (the "**Subcontractor**").

**RECITALS:**

- A. **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 (the "**Principal**") and ABN [ ] of ("**CIDS/ODS Contractor**") have entered into the deed titled "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" dated [*insert*] ("**Contract**") under which the CIDS/ODS Contractor is required to design, supply, install and handover to the Principal the "Works" as defined in the contract ("**Works**").
- B. The Subcontractor has an agreement (the "**Subcontract**") with the CIDS/ODS Contractor for the execution and completion of the [ ] (the "**Subcontract Works**") for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

**THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES** with and for the benefit of the Principal as follows:

- 1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
- 2. The Principal may assign or charge the benefits and rights accrued under this Deed Poll.
- 3. The Subcontractor:
  - (a) must, if required by a written notice by the Principal, sign a deed in the form of the attached Deed of Novation (Attachment 1) with such substitute contractor as the Principal may nominate; and
  - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
- 4. This Deed Poll is governed by the laws of the State of New South Wales.
- 5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
- 6. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the CIDS/ODS Contractor in respect of that breach.
- 7. The aggregate of the Subcontractor's liability to the Principal under this Deed Poll and the Subcontractor's liability to the CIDS/ODS Contractor under the Subcontract will not exceed



the liability that the Subcontractor would have had under the Subcontract if the Subcontract had named, as parties having the benefit of the performance of the obligations of the Subcontractor:

- (a) the Principal; and
- (b) the CIDS/ODS Contractor.

8. The Subcontractor's liability to the Principal under this deed poll is subject to the same limitations of liability, and qualifications on and exclusions of such limitations of liability, as are specified in the Subcontract.

**EXECUTED AS A DEED POLL.**

**Executed by [insert name] (ABN [insert ABN])** by or in the presence of:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

## Attachment 1 (to Schedule 18)

**THIS DEED OF NOVATION** is made on [ ] 20[ ] between the following parties:

1. [ ] **ABN** [ ] of [ ] ("**Substitute Contractor**")
2. **ABN** of ("**CIDS/ODS Contractor**")
3. [ ] **ABN** [ ] of [ ] ("**Subcontractor**").

### RECITALS:

- A. By agreement dated [ ] (the "**Subcontract**"), the CIDS/ODS Contractor engaged the Subcontractor to, and the Subcontractor agreed to, undertake certain works for the CIDS/ODS Contractor (the "**Subcontract Works**").
- B. By agreement dated [ ] (the "**Contract**") between Sydney Metro (ABN 12 354 063 515) of Level 43, 680 George Street, Sydney NSW 2000 (the "**Principal**"); and the CIDS/ODS Contractor, the Principal engaged the CIDS/ODS Contractor to, and the CIDS/ODS Contractor agreed to, undertake certain works for the Principal, which includes the Subcontract Works.
- C. Under the Contract and the Subcontract, the CIDS/ODS Contractor and the Subcontractor must enter into this deed when the Principal requires them to do so.
- D. Subject to this deed, the Subcontractor agrees to accept the Substitute Contractor in place of the CIDS/ODS Contractor for the performance of all the obligations of the CIDS/ODS Contractor and to release completely and discharge the CIDS/ODS Contractor from all of its obligations under the Subcontract and from all claims and demands in respect of it.

**THIS DEED WITNESSES** that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if the Substitute Contractor was originally named in the Subcontract in place of the CIDS/ODS Contractor.
2. The Subcontractor:
  - (a) releases and forever discharges the CIDS/ODS Contractor from its obligations under the Subcontract and from all claims and demands in respect of the Subcontract; and
  - (b) accepts the liability of the Substitute Contractor in place of the liability of the CIDS/ODS Contractor in respect of the Subcontract.
3. The Substitute Contractor must perform all the obligations of the CIDS/ODS Contractor under, and be bound by, the Subcontract as if the Substitute Contractor were originally named in the Subcontract as the CIDS/ODS Contractor.
4. Upon the execution and exchange of this deed:
  - (a) the CIDS/ODS Contractor must release any securities given to it by the Subcontractor in accordance with the Subcontract;

- (b) the Subcontractor must give the Substitute Contractor security in the same form and for the same amounts as any security required by the Subcontract; and
- (c) the Subcontractor must ensure that the Substitute Contractor is appropriately noted on all relevant insurance policies as required by the Subcontract.

5. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

**EXECUTED** by the parties as a deed:

**Executed by [                      ] ABN [              ]**  
by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

**Executed [                      ] by ABN [              ]**  
by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

**Executed by [                      ] ABN [              ] by**  
or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full


\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

## Schedule 19. Options

(Clause 9.3)

OPTION 1	
<b>Description:</b>	CIDS for Sydenham to Marrickville dive building including Sydney Metro Trains Facility (South)
<b>Adjustment to the Contract Sum:</b>	
<b>Period for exercising the Option:</b>	No later than 30 Business Days after the date of this Contract
<b>Amendments to the Contract:</b>	As set out in Annexure A to this Schedule 19.
<b>Amendments to SWTC:</b>	<p>In Appendix B01, section 1.2(c) is deleted and replaced with:</p> <p style="padding-left: 40px;">“(c) The CIDS/ODS Contractor must provide a CIDS to detect intrusions at high-risk locations, defined in Appendix D01, and for the Southern Dive to Sydenham Section including Sydney Metro Trains Facility South (SMTF-S) defined in Appendix D05.”</p> <p>A new Appendix D05 is inserted as set out in Annexure B to this Schedule 19.</p>

<b>OPTION 2</b>	
<b>Description:</b>	CIDS for entire Southwest Corridor
<b>Adjustment to the Contract Sum:</b>	
<b>Period for exercising the Option:</b>	No later than 20 Business Days after the date of this Contract
<b>Amendments to the Contract:</b>	As set out in Annexure C to this Schedule 19.
<b>Amendments to SWTC:</b>	In Appendix B01, section 1.2(c) is deleted and replaced with: “(c) The CIDS/ODS Contractor must provide a CIDS to detect intrusions for the entire Southwest Corridor, defined in Appendix D02.”

<b>OPTION 3 (values and conditions to be negotiated between parties if required)</b>	
<b>Description:</b>	Appointed Principal Contractor
<b>Adjustment to the Contract Sum:</b>	<p><b>Alternative 1</b> (applies where neither Option 1 nor Option 2 have been exercised by Sydney Metro):</p> <p style="padding-left: 40px;">\$[<b>to be inserted</b>] (excluding GST) for drafting and maintaining management plans and \$[<b>to be inserted</b>] (excluding GST) for procurement, mobilisation, operations and demobilisation of site facilities.</p> <p><b>Alternative 2</b> (applies where Option 1 has been exercised by Sydney Metro but Option 2 has not):</p> <p style="padding-left: 40px;">\$[<b>to be inserted</b>] (excluding GST) for drafting and maintaining management plans and \$[<b>to be inserted</b>] (excluding GST) for procurement, mobilisation, operations and demobilisation of site facilities.</p> <p><b>Alternative 3</b> (applies where Option 2 has been exercised by Sydney Metro but Option 1 has not):</p> <p style="padding-left: 40px;">\$[<b>to be inserted</b>] (excluding GST) for drafting and maintaining management plans and \$[<b>to be inserted</b>] (excluding GST) for procurement, mobilisation, operations and demobilisation of site facilities.</p> <p><b>Alternative 4</b> (applies where both Option 1 and Option 2 have been exercised by Sydney Metro):</p> <p style="padding-left: 40px;">\$[<b>to be inserted</b>] (excluding GST) for drafting and maintaining management plans and \$[<b>to be inserted</b>] (excluding GST) for procurement, mobilisation, operations and demobilisation of site facilities.</p>
<b>Period for exercising the Option:</b>	Prior to the date that the CIDS/ODS Contractor commences carrying out any construction work involved in the CIDS/ODS Contractor's Activities.
<b>Amendments to the Contract:</b>	<p>Clause 3.14 is deleted and replaced as follows:</p> <p>(a) In this clause 3.14, the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.</p> <p>For the purpose of the WHS Legislation and the Contract:</p> <p>(i) the construction work involved in the CIDS/ODS Contractor's Activities; and</p> <p>(ii) any construction work carried out on the Site by any Interface Contractor, the Principal or any other person which is performed during any period in</p>

which the CIDS/ODS Contractor has been engaged as principal contractor ("**Site Interface Work**"),

are taken to be part of the same 'construction project'.

(b) (**Engagement as principal contractor**): Without limiting the CIDS/ODS Contractor's obligations under any other provision of this Contract, the parties acknowledge and agree that from the date on which the CIDS/ODS Contractor has been granted access to a part of the Site in accordance with this deed:

(i) to the extent that the CIDS/ODS Contractor's Activities or any Site Interface Work includes construction work, the Principal:

(A) engages the CIDS/ODS Contractor as the principal contractor in respect of the CIDS/ODS Contractor's Activities and the Site Interface Work;

(B) authorises the CIDS/ODS Contractor to have management and control of each workplace at which the CIDS/ODS Contractor's Activities and the Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;

(C) must give the CIDS/ODS Contractor prior notice of any Interface Contractor (other than Sydney Trains or TfNSW or any contractors appointed by either of them) undertaking Site Interface Work before such Interface Contractor commences; and

(D) must provide the CIDS/ODS Contractor with executed deed polls in favour of the CIDS/ODS Contractor in the form set out in Part A of Schedule 32 from each Interface Contractor engaged by the Principal undertaking Site Interface Work (other than Sydney Trains or TfNSW or any contractors appointed by either of them); and;

(ii) the CIDS/ODS Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and this Contract.

	<p>(c) <b>(Period of engagement):</b> The CIDS/ODS Contractor's engagement and authorisation as a principal contractor will continue until the earlier of:</p> <ul style="list-style-type: none"> <li>(i) termination of this Contract;</li> <li>(i) if the Site Access Schedule specifies a "Site Access Expiry Date" for any area of the Site, the date on which the CIDS/ODS Contractor vacates that area of the Site; and</li> <li>(ii) the Date of Construction Completion of the relevant Portion.</li> </ul> <p>(d) If the engagement of the CIDS/ODS Contractor as principal contractor under this Contract is not effective for any reason, the CIDS/ODS Contractor agrees that it will ensure that it exercises and fulfils the functions and obligations of the principal contractor under the WHS Legislation as if the CIDS/ODS Contractor had been validly engaged and authorised as principal contractor as contemplated by clause 3.14(b).</p> <p>(e) At any time:</p> <ul style="list-style-type: none"> <li>(i) when the Site Access Schedule provides that the CIDS/ODS Contractor will not have control of a part of the Site; or</li> <li>(ii) during the period when the CIDS/ODS Contractor is not engaged and authorised as the principal contractor in accordance with the corresponding periods set out in clause 3.14(c),</li> </ul> <p>the CIDS/ODS Contractor:</p> <ul style="list-style-type: none"> <li>(iii) acknowledges that the Other Contractor or another person who is specified in: <ul style="list-style-type: none"> <li>A. the Site Access Schedule; or</li> <li>B. a notice from the Principal,</li> </ul> as being in control of the part of the Site (<b>Other Principal Contractor</b>) is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on the part of the Site during the period in which that Other Principal Contractor is in control of the part of the Site; and</li> <li>(iv) must comply with any exercise by the Other Principal Contractor referred to in clause 3.14(e)(iii) of such authority as is necessary to enable that</li> </ul>
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	<p>Other Principal Contractor to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.</p> <p>(f) To the extent not prohibited by law, the CIDS/ODS Contractor must indemnify the Principal from and against any Claims against the Principal, or loss suffered or incurred by the Principal, arising out of or in any way in connection with the failure of the CIDS/ODS Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation or if the CIDS/ODS Contractor otherwise fails to comply with this clause 3.14.</p>
<p><b>Amendments to SWTC:</b></p>	<p>In the SWTC main body, a new section 6 is inserted as follows:</p> <p>The CIDS/ODS Contractor must at a minimum, as part of its obligations as principal contractor:</p> <p>(a) appoint a project director for the installation works to manage the principal contractor reporting obligations;</p> <p>(b) update and prepare the Risk Management Plan, Project Health and Safety Management Plan, Quality Plan, Construction and Site Management Plan, Workplace Relations Management Plan, Construction Environmental Management Plan, Construction Traffic Management Plan and COVID-19 Management Plan as required; and</p> <p>(c) provide to the Principal updates and inputs as required to the Principal's Community Communications Strategy.</p> <p>The CIDS/ODS Contractor will be responsible for the procurement, mobilisation, operations and demobilisation of all site facilities required.</p>

<b>OPTION 4 (values and conditions to be negotiated between parties if required)</b>	
<b>Description:</b>	Appointed Principal Contractor – Sydenham to Marrickville dive building only
<b>Adjustment to the Contract Sum:</b>	<p> <b>[\$[to be inserted]</b> (excluding GST) for drafting and maintaining management plans and <b>[\$[to be inserted]</b> (excluding GST) for procurement, mobilisation, operations and demobilisation of site facilities. </p>
<b>Period for exercising the Option:</b>	Prior to the date that the CIDS/ODS Contractor commences carrying out any construction work involved in the CIDS/ODS Contractor's Activities on the Appointed PC Area.
<b>Amendments to the Contract:</b>	<p>Clause 1 is amended to include the following new defined term[s]:</p> <p style="padding-left: 40px;"><b>"Appointed PC Area"</b> means those parts of the Site specified in <b>[insert]</b>.</p> <p style="padding-left: 40px;"><b>"Other Contractor PC Area"</b> means those parts of the Site other than the Appointed PC Area.</p> <p>Clause 3.14 is deleted and replaced as follows:</p> <p style="padding-left: 20px;">(a) In this clause 3.14, the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.</p> <p style="padding-left: 40px;">For the purpose of the WHS Legislation and the Contract:</p> <p style="padding-left: 40px;">(i) the construction work involved in the CIDS/ODS Contractor's Activities; and</p> <p style="padding-left: 40px;">(ii) any construction work carried out on the Appointed PC Area by any Interface Contractor, the Principal or any other person which is performed during any period in which the CIDS/ODS Contractor has been engaged as principal contractor ("<b>Site Interface Work</b>"),</p> <p style="padding-left: 40px;">are taken to be part of the same 'construction project'.</p> <p style="padding-left: 20px;">(b) (<b>Engagement as principal contractor – Appointed PC Area</b>): Without limiting the CIDS/ODS Contractor's obligations under any other provision of this Contract, the parties acknowledge and agree that from the date on which the CIDS/ODS Contractor has been granted access to the Appointed PC Area in accordance with this deed:</p> <p style="padding-left: 40px;">(i) to the extent that any CIDS/ODS Contractor's Activities to be carried out on the Appointed PC</p>

	<p>Area or any Site Interface Work includes construction work, the Principal:</p> <ul style="list-style-type: none"> <li>(A) engages the CIDS/ODS Contractor as the principal contractor in respect of the relevant CIDS/ODS Contractor's Activities and Site Interface Work;</li> <li>(B) authorises the CIDS/ODS Contractor to have management and control of the Appointed PC Area and each workplace at which the relevant CIDS/ODS Contractor's Activities and Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;</li> <li>(C) must give the CIDS/ODS Contractor prior notice of any Interface Contractor (other than Sydney Trains or TfNSW or any contractors appointed by either of them) undertaking Site Interface Work before such Interface Contractor commences; and</li> <li>(D) must provide the CIDS/ODS Contractor with executed deed polls in favour of the CIDS/ODS Contractor in the form set out in Part A of Schedule 32 from each Interface Contractor engaged by the Principal undertaking Site Interface Work (other than Sydney Trains or TfNSW or any contractors appointed by either of them); and</li> </ul> <ul style="list-style-type: none"> <li>(ii) the CIDS/ODS Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and this Contract.</li> </ul> <p>(c) <b>(Period of engagement – Appointed PC Area):</b> The CIDS/ODS Contractor's engagement and authorisation as a principal contractor under clause 3.14(b) will continue until the earlier of:</p> <ul style="list-style-type: none"> <li>(i) termination of this Contract;</li> <li>(ii) if the Site Access Schedule specifies a "Site Access Expiry Date" for the Appointed PC Area, the date on which the CIDS/ODS Contractor vacates the Appointed PC Area; and</li> <li>(i) the Date of Construction Completion of the relevant Portion.</li> </ul>
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- (d) **(Engagement not effective)** If the engagement of the CIDS/ODS Contractor as principal contractor under clause 3.14(b) is not effective for any reason, the CIDS/ODS Contractor agrees that it will ensure that it exercises and fulfils the functions and obligations of the principal contractor under the WHS Legislation as if the CIDS/ODS Contractor had been validly engaged and authorised as principal contractor as contemplated by clause 3.14(b).
- (e) **(Other Contractor PC Areas):** The parties acknowledge and agree that:
- (i) the CIDS/ODS Contractor (or any of its subcontractors) will not be engaged by the Principal as the principal contractor in respect of the construction work carried out by or on behalf of the Principal on any Other Contractor PC Area; and
  - (ii) prior to being provided with access to any Other Contractor PC Area under clause 4.1, the Principal will provide the CIDS/ODS Contractor with written notice setting out details of:
    - A. the person who has been engaged as the principal contractor by the Principal in respect of all construction work carried out by or on behalf of the Principal on that Other Contractor PC Area ("**Appointed Principal Contractor**"); and
    - B. the period of the Appointed Principal Contractor's engagement.
- (f) The CIDS/ODS Contractor:
- (i) acknowledges that each Appointed Principal Contractor is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on the relevant Other Contractor PC Area;
  - (ii) must comply with any exercise by the relevant Appointed Principal Contractor of such authority as is necessary to enable the Appointed Principal Contractor to discharge the duties imposed on a principal contractor by the WHS Legislation; and
  - (iii) must provide the Appointed Principal Contractor with an executed site interface deed poll in favour of the Appointed Principal Contractor in the form set out in the relevant Project Cooperation and Integration Deed (where that person is an Interface

	<p>Contractor) or otherwise in the same form as that set out in Part A of Schedule 32 but with such amendments as are required by the Principal.</p> <p>(g) To the extent not prohibited by law, the CIDS/ODS Contractor must indemnify the Principal from and against any Claims against the Principal, or loss suffered or incurred by the Principal, arising out of or in any way in connection with the failure of the CIDS/ODS Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation or if the CIDS/ODS Contractor otherwise fails to comply with this clause 3.14.</p>
<p><b>Amendments to SWTC:</b></p>	<p>In the SWTC main body, a new section 6 is inserted as follows:</p> <p>The CIDS/ODS Contractor must at a minimum, as part of its obligations as principal contractor:</p> <p>(a) appoint a project director for the installation works to manage the principal contractor reporting obligations;</p> <p>(b) update and prepare the Risk Management Plan, Project Health and Safety Management Plan, Quality Plan, Construction and Site Management Plan, Workplace Relations Management Plan, Construction Environmental Management Plan, Construction Traffic Management Plan and COVID-19 Management Plan as required; and</p> <p>(c) provide to the Principal updates and inputs as required to the Principal's Community Communications Strategy.</p> <p>The CIDS/ODS Contractor will be responsible for the procurement, mobilisation, operations and demobilisation of all site facilities required.</p>

**Annexure A**

**Option 1 – Amendments to the Contract**

Not applicable

**Annexure B**

**Option 1 – Amendments to the SWTC**

**Annexure C**

**Option 2 – Amendments to the Contract**

Not applicable.



**Schedule 20. Not used**

**Schedule 21. CIDS/ODS Contractor's Design Certificate – Design Stage 1**

(Clause 6.3(b))

To: The Principal's Representative

From: UGL Engineering Pty Ltd (ABN 96 096 365 972) (**CIDS/ODS Contractor**)

This certificate is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Objection Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor dated [*insert*] (**CIDS/ODS Contract**). Words defined in the CIDS/ODS Contract have the same meaning in this certificate.

In accordance with the terms of clause 6.3(b) of the CIDS/ODS Contract, the CIDS/ODS Contractor certifies that the attached Design Documentation complies with all requirements of the CIDS/ODS Contract, including the SWTC.

Signed for and on behalf of the CIDS/ODS Contractor by:

Signature:	
Name:	
Position:	
Date:	

**Schedule 22. CIDS/ODS Contractor's Design Certificate – Design Stage 2**

(Clause 6.3(b))

To: The Principal's Representative

From: UGL Engineering Pty Ltd (ABN 96 096 365 972 (**CIDS/ODS Contractor**))

This certificate is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Objection Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor dated [*insert*] (**CIDS/ODS Contract**). Words defined in the CIDS/ODS Contract have the same meaning in this certificate.

In accordance with the terms of clause 6.3(b) of the CIDS/ODS Contract, the CIDS/ODS Contractor certifies that the attached Design Documentation complies with all requirements of the CIDS/ODS Contract, including the SWTC.

Signed for and on behalf of the CIDS/ODS Contractor by:

Signature:	
Name:	
Position:	
Date:	

**Schedule 23. CIDS/ODS Contractor and Subcontractor Design Certificate – Design Stage 3**

(Clause 6.3(c))

To: The Principal's Representative

From: UGL Engineering Pty Ltd (ABN 96 096 365 972) (**CIDS/ODS Contractor**)

**[Insert name of Subcontractor]** (ABN [ ] ) (**Subcontractor**)

This certificate is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor dated **[insert]** (**CIDS/ODS Contract**). Words defined in the CIDS/ODS Contract have the same meaning in this certificate.

**This section to be completed by CIDS/ODS Contractor:**

In accordance with the terms of clause 6.3(c)(i) of the CIDS/ODS Contract, the CIDS/ODS Contractor certifies that the attached Design Documentation:

- (a) complies with all requirements of the CIDS/ODS Contract, including the SWTC; and
- (b) is suitable for construction.

Signed for and on behalf of the CIDS/ODS Contractor by:

Signature:	
Name:	
Position:	
Date:	

**This section to be completed by the relevant Subcontractor. When there is more than one relevant Subcontractor, this section must be replicated and signed by each relevant Subcontractor:**

In accordance with the terms of clause 6.3(c)(ii) of the CIDS/ODS Contract, the Subcontractor certifies that the attached Design Documentation complies with all requirements of the CIDS/ODS Contract, including the SWTC, to the extent those requirements are relevant to the Subcontractor's scope of work.

Signed for and on behalf of the Subcontractor by:

Signature:	
Name:	

Position:	
Date:	

**Schedule 24. Independent Certifier's Form of Design Certification**

(Clause 6.6(c)(i)B.2)

To: The Principal's Representative and the Operator

Cc: The CIDS/ODS Contractor

From: **[insert name of Independent Certifier]** (ABN [ ]) )

This certificate is given in accordance with the "Sydney Metro City & Southwest Independent Certification of the CIDS/ODS Works: Independent Certifier Deed" (Contract No: **[insert]**) dated **[insert]** (**Independent Certifier Deed**).

Words defined in the "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor dated **[insert]** (**CIDS/ODS Contract**) have the same meaning in this certificate.

In accordance with the Independent Certifier Deed, the Independent Certifier certifies that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed, the attached Design Documentation complies with all the requirements of the CIDS/ODS Contract (including the SWTC) except for the Minor Non-Compliances identified in the attached list.

.....

Signed for and on behalf of

**[insert name of Independent Certifier]**

**ATTACHMENT A**

**List of Minor Non-Compliances**

<b>No.</b>	<b>Minor Non-Compliance</b>	<b>Recommended action to be taken by the CIDS/ODS Contractor to address Minor Non-Compliance</b>

**Schedule 25. CIDS/ODS Contractor's Certificate of Construction Compliance**

(Clauses 10.1(c) and 14.6(a)(iii)B)

<b>CIDS/ODS CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE</b>	
<b>CIDS/ODS CONTRACTOR:</b>	
<u>WORK PACKAGE</u>	<u>DESCRIPTION</u>
_____	_____
_____	_____
_____	_____
<i>(Attach schedule of work packages if insufficient space)</i>	
<p>I certify that the procurement/construction of the work packages or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the "Sydney Metro City &amp; Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / <i>(CIDS/ODS Contractor's Representative)</i></p>	



THIS SECTION MUST BE COMPLETED BY THE RELEVANT CIDS/ODS CONTRACTOR'S SUBCONTRACTOR

I certify that the procurement/construction of the work packages (one certificate per work package) or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and \_\_\_\_\_, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non-conformances and unresolved issues attached.

I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.

SIGNATURE: \_\_\_\_\_  
(CIDS/ODS Contractor's Subcontractor)

DATE: \_\_\_\_\_

**Schedule 26. CIDS/ODS Contractor's Certificate of Milestone Achievement**

(Clause 15.2(d))

To: The Principal's Representative

From: UGL Engineering Pty Ltd (ABN 96 096 365 972)

This certificate is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor dated **[insert]** (**CIDS/ODS Contract**). Words defined in the CIDS/ODS Contract have the same meaning in this certificate.

In accordance with the terms of clause 15.2 of the CIDS/ODS Contract, we hereby certify that Milestone Achievement **[insert number]** has been achieved by the CIDS/ODS Contractor on **[insert date]** in accordance with the terms of the CIDS/ODS Contract.

.....  
Signed for and on behalf of  
**UGL Engineering Pty Ltd**

**Schedule 27. Not used**

**Schedule 28. CIDS/ODS Contractor's Certificate of Construction Completion**

(Clause 15.3(d))

To: The Principal's Representative and the Independent Certifier

From: UGL Engineering Pty Ltd (ABN 96 096 365 972)

This certificate is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor dated **[insert] (CIDS/ODS Contract)**. Words defined in the CIDS/ODS Contract have the same meaning in this certificate.

In accordance with the terms of clause 15.3(d) of the CIDS/ODS Contract, we hereby certify that Construction Completion of Portion **[insert number]** has been achieved by the CIDS/ODS Contractor on **[insert date]** in accordance with the terms of the CIDS/ODS Contract.

.....  
Signed for and on behalf of  
**UGL Engineering Pty Ltd**

**Schedule 29. Notice of Construction Completion**

(Clauses 1.1 and 15.3(e)(i))

**[ON INDEPENDENT CERTIFIER LETTERHEAD]**

**[Insert date]**

Sydney Metro  
**[Insert address]**

CIDS/ODS Contractor  
Level 8, 40 Miller Street, North Sydney, NSW 2060

Dear **[Insert name]**

**NOTICE OF CONSTRUCTION COMPLETION  
Sydney Metro City & Southwest  
Southwest Metro CIDS/ODS Contract  
Works – Portion [insert number]**

This Notice of Construction Completion is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor dated **[insert] (CIDS/ODS Contract)**. Words defined in the CIDS/ODS Contract have the same meaning in this certificate.

In accordance with clause 15.3(e)(i) of the CIDS/ODS Contract, the Independent Certifier confirms that Construction Completion in respect of Portion **[insert number]** has been achieved. The Date of Construction Completion in respect of Portion **[insert number]** is **[insert date]**.

A list of Minor Defects, Agreed Defects and Accepted Defects is **attached**.

This Notice of Construction Completion does not relieve the CIDS/ODS Contractor of its obligation to rectify Defects (including Minor Defects and Agreed Defects listed in this notice) under clause 11 of the CIDS/ODS Contract and to complete any other outstanding obligations under the CIDS/ODS Contract.

Yours sincerely

.....  
**[Insert name]**  
for and on behalf of the Independent Certifier

**Attachment – List of Minor Defects, Agreed Defects and Accepted Defects**

<b>No. Minor Defects</b>	
1.	
2.	
<b>No. Agreed Defects</b>	
1.	
2.	
<b>No. Accepted Defects</b>	
1.	
2.	

**Schedule 30. CIDS/ODS Contractor's Certificate of Completion**

(Clause 15.4(a))

To: The Principal's Representative and the Independent Certifier

From: UGL Engineering Pty Ltd (ABN 96 096 365 972)

This certificate is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor dated **[insert] (CIDS/ODS Contract)**. Words defined in the CIDS/ODS Contract have the same meaning in this certificate.

In accordance with the terms of clause 15.4(a) of the CIDS/ODS Contract, we hereby certify that Completion has been achieved by the CIDS/ODS Contractor on **[insert date]** in accordance with the terms of the CIDS/ODS Contract.

.....  
Signed for and on behalf of  
**UGL Engineering Pty Ltd**

**Schedule 31. Notice of Completion**

(Clause 1.1 and Clause 15.4(b)(i))

**[ON INDEPENDENT CERTIFIER LETTERHEAD]**

**[insert date]**

Sydney Metro  
**[insert address]**

CIDS/ODS Contractor  
Level 8, 40 Miller Street, North Sydney, NSW 2060

Dear **[insert name]**

**NOTICE OF COMPLETION  
Sydney Metro City & Southwest  
Southwest Metro CIDS/ODS Contract**

This Notice of Completion is given in accordance with the "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between Sydney Metro (ABN 12 354 063 515) and the CIDS/ODS Contractor dated **[insert]** (**CIDS/ODS Contract**). Words defined in the CIDS/ODS Contract have the same meaning in this certificate.

In accordance with clause 15.4(b)(i) of the CIDS/ODS Contract, the Independent Certifier confirms that Completion has been achieved by the CIDS/ODS Contractor on **[insert date]** in accordance with the terms of the CIDS/ODS Contract.

A list of Accepted Defects is **attached**.

This Notice of Completion does not relieve the CIDS/ODS Contractor of its obligation to rectify Defects under clause 11 of the CIDS/ODS Contract and to complete any other outstanding obligations under the CIDS/ODS Contract.

Yours sincerely

.....  
**[insert name]**  
for and on behalf of the Independent Certifier



**Attachment – List of Accepted Defects**

<b>No.</b>	<b>Accepted Defects</b>
a)	
b)	

## Schedule 32. Form of Site Interface Deed Poll

### Part A

(Clauses 3.14(c)(iii), 4.1(c)(ii)F, 4.1(d)(iv) and 8.3(b)(ii))

**THIS DEED POLL** is made on [year]

#### IN FAVOUR OF:

- (1) **[Insert name]** ABN **[number]** of **[address]** (**Site Contractor**);
- (2) **[Insert name]** ABN **[number]** of **[address]** (**Appointed Principal Contractor**); and
- (3) **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**),  
  
(together, the **Beneficiaries**)

#### GIVEN BY:

- (4) **[Insert name]** ABN **[number]** of **[address]** (**Accessing Contractor**)

#### RECITALS:

- (A) Pursuant to the deed titled "**[insert]**" between the Principal and the Site Contractor dated **[insert]** (**Contract**), the Site Contractor agreed to, among other things, design and construct certain works and carry out certain activities (**Project Works**) on the land more particularly described in the Contract (the **Construction Site**).
- (B) The Accessing Contractor has been appointed under a contract to undertake certain works and activities on the Construction Site (**Construction Site Interface Work**).
- (C) For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) (together, the **WHS Legislation**), the Project Works and the Construction Site Interface Work are a 'construction project' within the meaning of the WHS Legislation.
- (D) The Appointed Principal Contractor is authorised to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- (E) Under the provisions of the Contract, the Principal is required to procure the provision of this deed poll from certain contractors that undertake Construction Site Interface Work.

**This deed poll witnesses that the Accessing Contractor hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:**

1. In consideration of the Site Contractor and the Appointed Principal Contractor accepting this deed poll, the Accessing Contractor agrees that:
  - (a) the Accessing Contractor, its subcontractors and their respective personnel while they are on the Construction Site, will comply with Construction Site safety regulations, any

- Construction Site rules or regulations and with all directions of the Site Contractor and the Appointed Principal Contractor with respect to work health and safety;
- (b) the Accessing Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the Site Contractor and the Appointed Principal Contractor so that the Appointed Principal Contractor discharges its obligations as principal contractor;
  - (c) the Accessing Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Site Contractor and the Appointed Principal Contractor, the Principal and all other persons who have a work health and safety duty in relation to the same matter;
  - (d) the Accessing Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Site Contractor and the Appointed Principal Contractor while on the Construction Site;
  - (e) the Site Contractor and the Appointed Principal Contractor may exclude the Accessing Contractor, any of its subcontractors and their respective personnel from the Construction Site for work health and safety reasons;
  - (f) the Site Contractor and the Appointed Principal Contractor may direct the Accessing Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
  - (g) where high risk construction work, as reasonably determined by the Site Contractor or the Appointed Principal Contractor, is to be carried out in the performance of the Construction Site Interface Work, the Accessing Contractor must:
    - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
    - (ii) provide a copy of the safe work method statement to the Principal, the Site Contractor and the Appointed Principal Contractor prior to the commencement of high risk construction work;
    - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
    - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
    - (v) where so directed by the Site Contractor and the Appointed Principal Contractor, suspend the performance of any high risk construction work;
  - (h) the Accessing Contractor will in carrying out the Construction Site Interface Work, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
  - (i) in its contracts with subcontractors, the Accessing Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Accessing Contractor under this deed poll.

2. The Accessing Contractor indemnifies the Site Contractor and the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Site Contractor and the Appointed Principal Contractor as a result of:
  - (a) any failure by the Accessing Contractor to comply with any direction given by the Site Contractor or the Appointed Principal Contractor in accordance with this deed poll; or
  - (b) any breach by the Accessing Contractor, any of its subcontractors or their respective personnel of:
    - (i) their respective contractual or legislative work health and safety obligations; or
    - (ii) the provisions of this deed poll.
  
3. This deed poll will be governed by and construed in accordance with the law for the time being of New South Wales.

**EXECUTED** as a deed poll.

Executed by [**Accessing Contractor**] in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/other director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/other director

## Part B

(Clause 7.2(b)(i)H)

**THIS DEED POLL** is made on [year]

### IN FAVOUR OF:

- (1) **NRT PTY LTD (ABN 47 312 495 249)** of Level 3, 116 Miller St North Sydney (**OpCo**);
- (2) **Metro Trains Sydney (ABN 54 600 820 737)** of Postal Address PO BOX 3839 Rouse Hill NSW 2155 (**Appointed Principal Contractor**); and
- (3) **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 (**Sydney Metro**),

### GIVEN BY:

- (4) **[Insert name]** ABN **[number]** of **[address]** (**Other Contractor**)

### RECITALS

- (A) By a contract dated 15 September 2014 (**OTS Project Deed**) between Sydney Metro and OpCo, OpCo agreed to, amongst other things, design and construct certain works and operate and maintain a rapid transit rail system (**OpCo's Activities**) on the land more particularly described in the OTS Project Deed (the **NWRL Site**).
- (B) The Other Contractor has been appointed under a contract (**Other Contract**) to undertake certain activities on the NWRL Site (**NWRL Site Interface Work**).
- (C) For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) (together, the **WHS Legislation**), the OTS Works and the NWRL Site Interface Work are a 'construction project' within the meaning of the WHS Legislation.
- (D) Sydney Metro has engaged the Appointed Principal Contractor as principal contractor and authorised the Appointed Principal Contractor to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.

### OPERATIVE PROVISIONS

1. In consideration of OpCo and the Appointed Principal Contractor accepting this deed poll, the Other Contractor agrees that:
  - (a) the Other Contractor, its subcontractors and their respective personnel while they are on the NWRL Site, will comply with NWRL Site safety regulations, any NWRL Site rules or regulations and with all directions of OpCo or the Appointed Principal Contractor with respect to work health and safety;

- (b) the Other Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of OpCo or the Appointed Principal Contractor so that the Appointed Principal Contractor discharges its obligations as principal contractor;
- (c) the Other Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with OpCo or the Appointed Principal Contractor, Sydney Metro and all other persons who have a work health and safety duty in relation to the same matter;
- (d) the Other Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by OpCo or the Appointed Principal Contractor while on the NWRL Site;
- (e) OpCo or the Appointed Principal Contractor may exclude the Other Contractor, any of its subcontractors and their respective personnel from the NWRL Site for work health and safety reasons;
- (f) OpCo or the Appointed Principal Contractor may direct the Other Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
- (g) where high risk construction work, as reasonably determined by OpCo or the Appointed Principal Contractor, is to be carried out in the performance of the NWRL Site Interface Work, the Other Contractor must:
  - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
  - (ii) provide a copy of the safe work method statement to Sydney Metro, OpCo and the Appointed Principal Contractor prior to the commencement of high risk construction work;
  - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
  - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
  - (v) where so directed by OpCo and the Appointed Principal Contractor, suspend the performance of any high risk construction work;
- (h) the Other Contractor will in carrying out the work under the Other Contract, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
- (i) in its contracts with subcontractors, the Other Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Other Contractor under this deed poll.

2. The Other Contractor indemnifies OpCo and the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by OpCo or the Appointed Principal Contractor as a result of:
  - (a) any failure by the Other Contractor to comply with any direction given by OpCo or the Appointed Principal Contractor in accordance with this deed poll; or
  - (b) any breach by the Other Contractor, any of its subcontractors or their respective personnel of:
    - (i) their respective contractual or legislative work health and safety obligations; or
    - (ii) the provisions of this deed poll.
  
3. This deed poll will be governed by and construed in accordance with the law for the time being of New South Wales.

**EXECUTED** as a deed poll.

**Executed** by [**Other Contractor**] in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/other director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/other director

### **Schedule 33. Form of Interface Agreement Deed Poll in favour of Rail Transport Agency and Sydney Metro**

(Clause 1.5)

This deed poll ("**Deed Poll**") made the                      day of                      20

in favour of:

**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**

Sydney Trains (ABN 38 284 779 682) of 477 Pitt Street Sydney NSW 2000 ("**Rail Transport Agency**")

**By:**                      **[insert name of CIDS/ODS Contractor]** (ABN **[insert CIDS/ODS Contractor's ABN]**) of **[insert CIDS/ODS Contractor's address]** ("**CIDS/ODS Contractor**").

#### **Recitals**

- A. Rail Transport Agency operates the commuter rail system in Sydney in the surrounds where the Works (the "**Project**") are to be undertaken by the CIDS/ODS Contractor and others.
- B. The Principal is responsible for procuring the execution and completion of the Project, and has entered into a safety interface agreement dated 7 April 2021 ("**Global Safety Interface Agreement**") with Rail Transport Agency to cover the Project.
- C. Rail Transport Agency is relying on the Principal to procure the CIDS/ODS Contractor (with others) to execute and complete the Project in accordance with the Contract to ensure that Rail Transport Agency will satisfy, among other things, its obligation to provide an operating commuter rail system.
- D. Rail Transport Agency will suffer loss if the Principal does not procure the CIDS/ODS Contractor to execute and complete the Works in accordance with the Contract and the Global Safety Interface Agreement.

#### **Operative**

- 1. The CIDS/ODS Contractor will comply with its obligations under the Global Safety Interface Agreement as specified in the Contract.
- 2. During and upon Completion of the Project, the CIDS/ODS Contractor's Activities will satisfy the requirements of the Global Safety Interface Agreement.
- 3. Rail Transport Agency and the Principal may assign or charge the benefits and rights accrued under this Deed Poll.
- 4. This Deed Poll is governed by the laws of the State of New South Wales.
- 5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency and the Principal.



6. Where terms used in this Deed Poll are defined in the Contract or the Global Safety Interface Agreement, those terms have the meaning given to them in the Contract or the Global Safety Interface Agreement.

**Executed** as a deed poll.

**EXECUTED** by *[insert name and ABN of CIDS/ODS Contractor]* in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

## Schedule 34. Modification to the Expert Determination Rules

(Clause 19.5)

Pursuant to Rule 4(2)(b) of the Resolution Institute Expert Determination Rules (**Rules**), the parties agree to modify the application of the Rules as follows:

Modifications are underlined or ~~struck out~~.

### **RULE 1 Definitions**

"Business Days" means any day in New South Wales other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December.

"IDAR Panel Agreement" means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the Members, the CIDS/ODS Contractor and any other party that accedes to the agreement from time to time.

"Member" has the meaning given in the IDAR Panel Agreement.

"Relevant Proportionate Liability Legislation" means:

- (a) Part IV of the *Civil Liability Act 2002* (NSW);
- (b) Part IVAA of the *Wrongs Act 1958* (Vic);
- (c) Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) Part 1F of the *Civil Liability Act 2002* (WA);
- (e) the *Proportionate Liability Act 2005* (NT);
- (f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);
- (g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (h) Part 9A of the *Civil Liability Act 2002* (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"Relevant Security of Payment Legislation" means:

- (a) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) the *Building and Construction Industry Payments Act 2004* (Qld);
- (d) the *Building and Construction Industry (Security of Payment) Act 2021* (WA);
- (e) the *Construction Contracts (Security of Payment) Act 2004* (NT);
- (f) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);

- (g) the Building and Construction Industry Security of Payment Act 2009 (SA);
- (h) the Building and Construction Industry Security of Payment Act 2009 (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

“Subject-Matter Expert” means those persons listed in Schedule 3 to the IDAR Panel Agreement.

“the Contract” mean the deed titled "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" (Contract No: 2021/0456) between the Principal and the CIDS/ODS Contractor dated [insert].

## **RULE 2 Appointment of the Expert**

1. Unless otherwise agreed in writing by the parties, the Process shall be conducted:
  - a. by a Member or a Subject-Matter Expert person agreed between the parties; or
  - b. if the parties are unable to agree on the identity of the person to be appointed within 3 Business Days of Party A giving Party B a Notice of Dispute, by a Member or a Subject-Matter Expert person nominated by the Australian Centre for International Commercial Arbitration (ACICA) Resolution Institute,  
 who accepts appointment as Expert.

2. Rule 2.2 is deleted in its entirety.

3. [no modification]

4. [no modification]

5. [no modification]

## **RULE 3 Agreement to be bound**

1. [no modification]

2. Rule 3.2 is deleted in its entirety.

## **RULE 5 Role of the Expert**

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Contract, the requirements of procedural fairness and according to law.
2. [no modification]
3. [no modification]
4. (a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.

(b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the parties immediately.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c), unless the parties agree otherwise.

5. [no modification]

### **RULE 9 Conduct of the Process**

1. [no modification]

2. [no modification]

3. ~~If The parties agree in writing (in the Agreement or otherwise), that~~ the procedure in Schedule B ~~shall~~ will apply.

4. The rules of evidence do not apply to the Process.

### **RULE 10 The Expert's Determination**

1. ~~As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9, t~~The Expert shall determine the Dispute between the parties and notify such determination in writing to the parties within the time period specified in the Contract.

2. [no modification]

3. ~~Subject to any rule of law or equity or written agreement of the parties to the contrary, Unless otherwise agreed by the parties,~~ the Expert's determination:

a. may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;

b. must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;

c. may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and

d. to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.

4. [no modification]

### **RULE 12 Waiver of Right to Object**

Rule 12 is deleted in its entirety.

## **RULE 14 Extension of Limitation Period**

Rule 14 is deleted in its entirety.

### **SCHEDULE B**

1. The reference to "twenty one (21) days" is replaced by "ten Business Days".
2. The reference to "twenty one (21) days" is replaced by "twenty Business Days".
3. The reference to "twenty one (21) days" is replaced by "five Business Days".
4. [no modification]
5. [no modification]
6. [no modification]
7. [no modification]
8. [no modification]

## Schedule 35. Site Access Schedule

(Clause 4.1)

### 1. OVERVIEW AND SCOPE

#### 1.1 General

- (a) This Schedule 35 identifies:
  - (i) the Site;
  - (ii) the "Site Access Date" and "Site Access Expiry Date" for each part of the Site; and
  - (iii) the conditions of access that will apply to the CIDS/ODS Contractor's access to or use of each part of the Site.
- (b) This Schedule 35 is subject to the requirements of:
  - (i) this Contract; and
  - (ii) any other document or condition referred to in this Schedule 35 (including in the "Conditions of Access" column of the tables contained in section 3 of this Schedule 35).

#### 1.2 References

In this Schedule 35, a reference to:

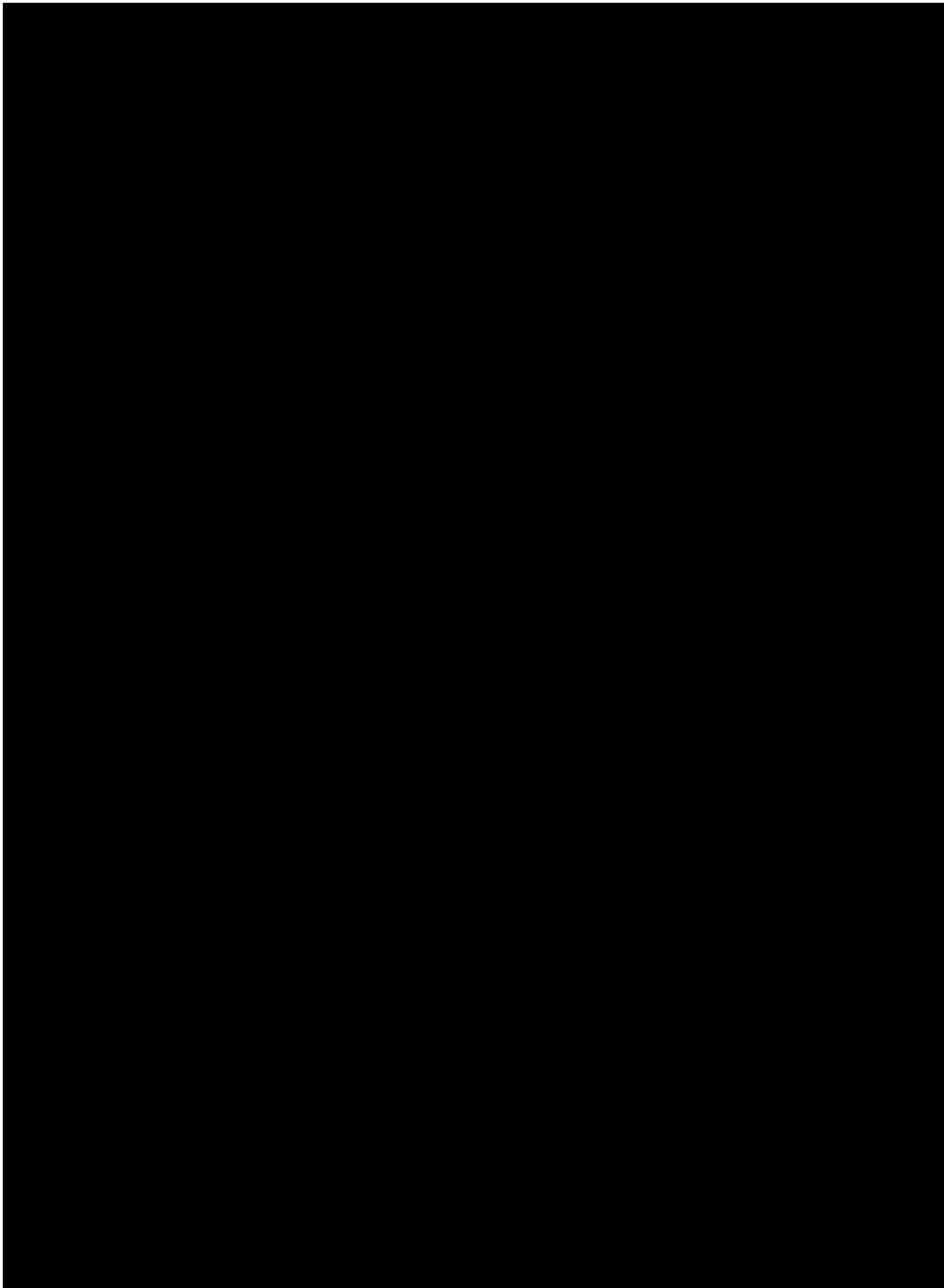
- (a) an **Area** is a reference to an area of land depicted in the Site Drawings with an individual Area reference (e.g. Area 'A4');
- (b) **Site Drawings** is a reference to the drawings described in Table 1 of section 2.1 of this Schedule 35; and
- (c) **Lot [No.] DP [No.]** are references to land contained in the lots and deposited plans (DPs) registered with NSW Land and Registry Services as at the date of this Contract under the *Real Property Act 1900* (NSW).

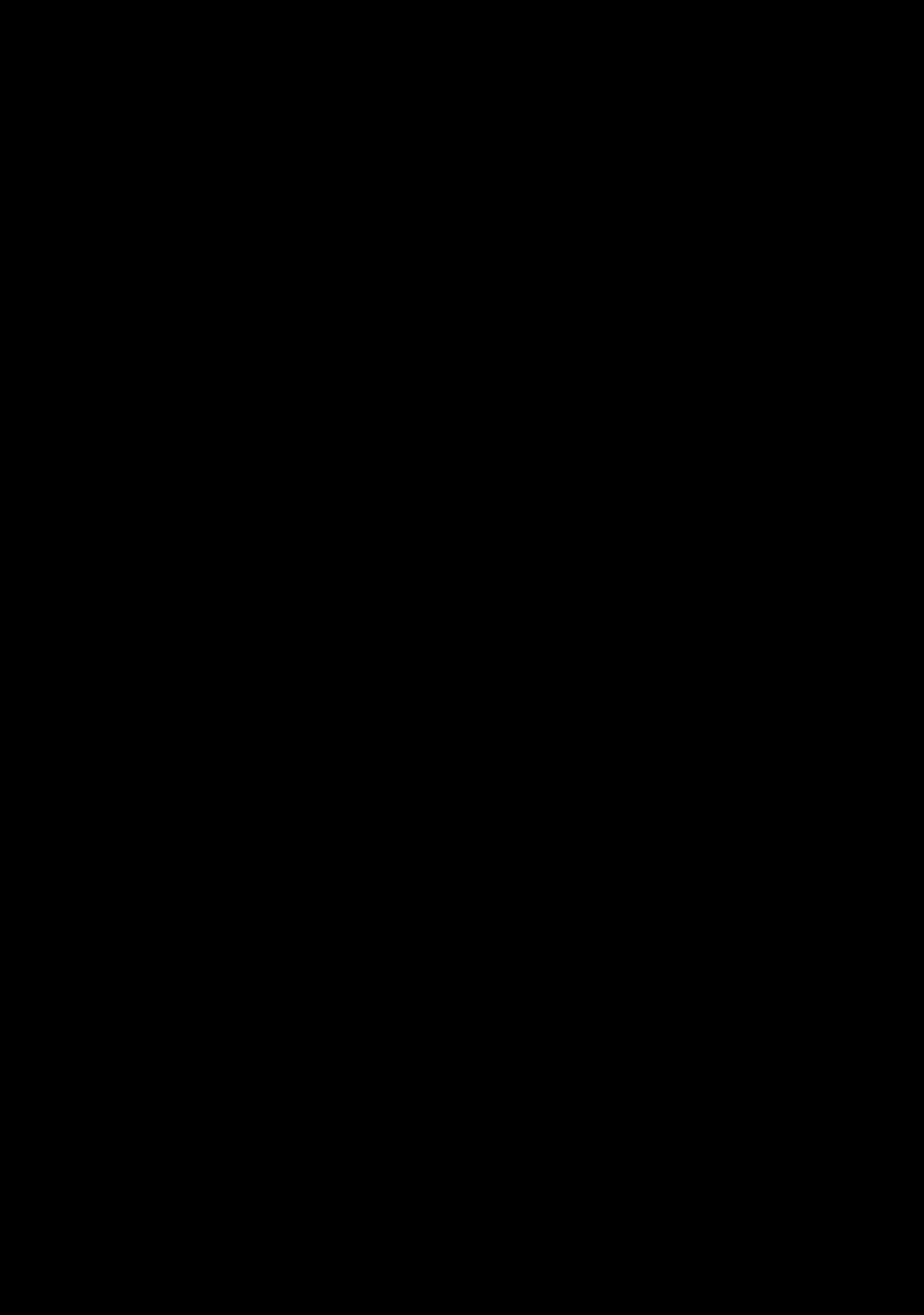
### 2. SITE – DRAWINGS

#### 2.1 Drawings

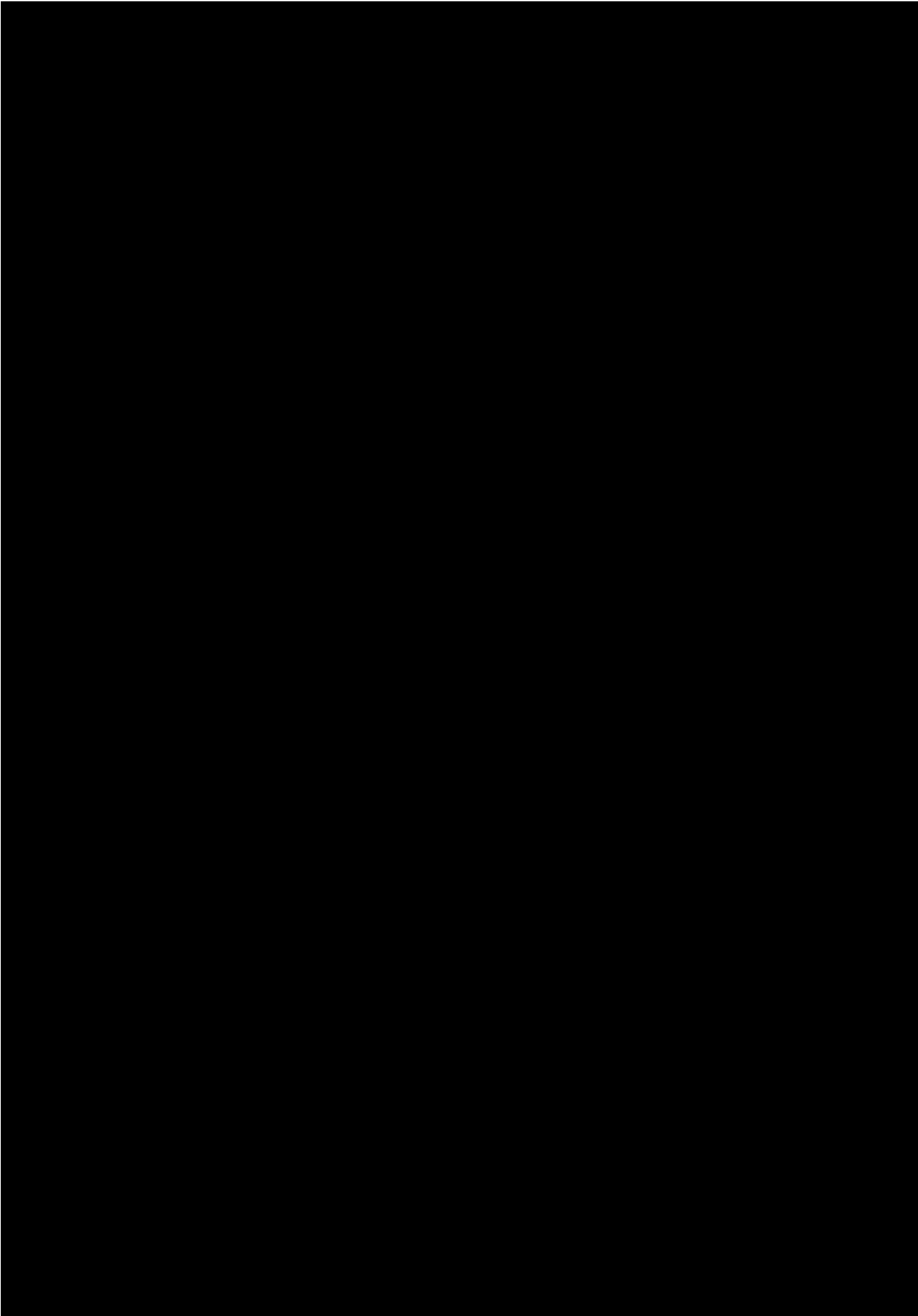
- (a) This Schedule 35 contains the drawings identified in Table 1 of this section 2.1, which are included in Schedule 44 as electronic files.

**Table 1 Drawings**









## 2.2 Explanation of Table 2

Table 2 in this Schedule 35 comprises 4 columns as follows:

- (a) "Area of Site" specifies the specific parcel of land within the Site;
- (b) "Site Access Date" is the date on which the Principal must give the CIDS/ODS Contractor access to the land referred to in the corresponding "Area of Site" column, and must be read in conjunction with the corresponding "Site Access Expiry Date" and "Conditions of Access" columns;
- (c) "Site Access Expiry Date" is the date on which the Principal is no longer required to give the CIDS/ODS Contractor access to the land referred to in the corresponding "Area of Site" column; and
- (d) "Conditions of Access" are the conditions upon which access to each area of the Site specified in the second column of Table 2 in this Schedule 35 is given to the CIDS/ODS Contractor. The Conditions of Access are set out in the fourth column of Table 2 in this Schedule 35 and clause 2.3(a) of this Schedule 35.

## 2.3 Conditions of Access

- (a) Without limiting clause 2.2(d) of this Schedule 35 or any other obligation of the CIDS/ODS Contractor under this Contract, the following conditions of access apply to the CIDS/ODS Contractor's access to the Site:
  - (i) the CIDS/ODS Contractor must establish each part of the Site for which it has access to the extent required to undertake the CIDS/ODS Contractor's Activities;
  - (ii) the removal of any trees is subject to the prior written approval of the Principal's Representative;
  - (iii) the CIDS/ODS Contractor must comply with the conditions of all leases, licences and easements under which the Principal or any relevant Rail Transport Agency is entitled (as against the owner of a part of the Site) to have access to a part of the Site (including any Third Party Agreements); and
  - (iv) the CIDS/ODS Contractor acknowledges that a part of the Site may extend across, over and under railways and the CIDS/ODS Contractor will not have exclusive use of these railways. The CIDS/ODS Contractor must coordinate its use of these railways with any relevant Rail Transport Agency and Other Contractors.
- (b) Nothing in this Schedule 35 limits the CIDS/ODS Contractor's obligations to comply with this Contract (including the SWTC) or the Contract Management Plans.

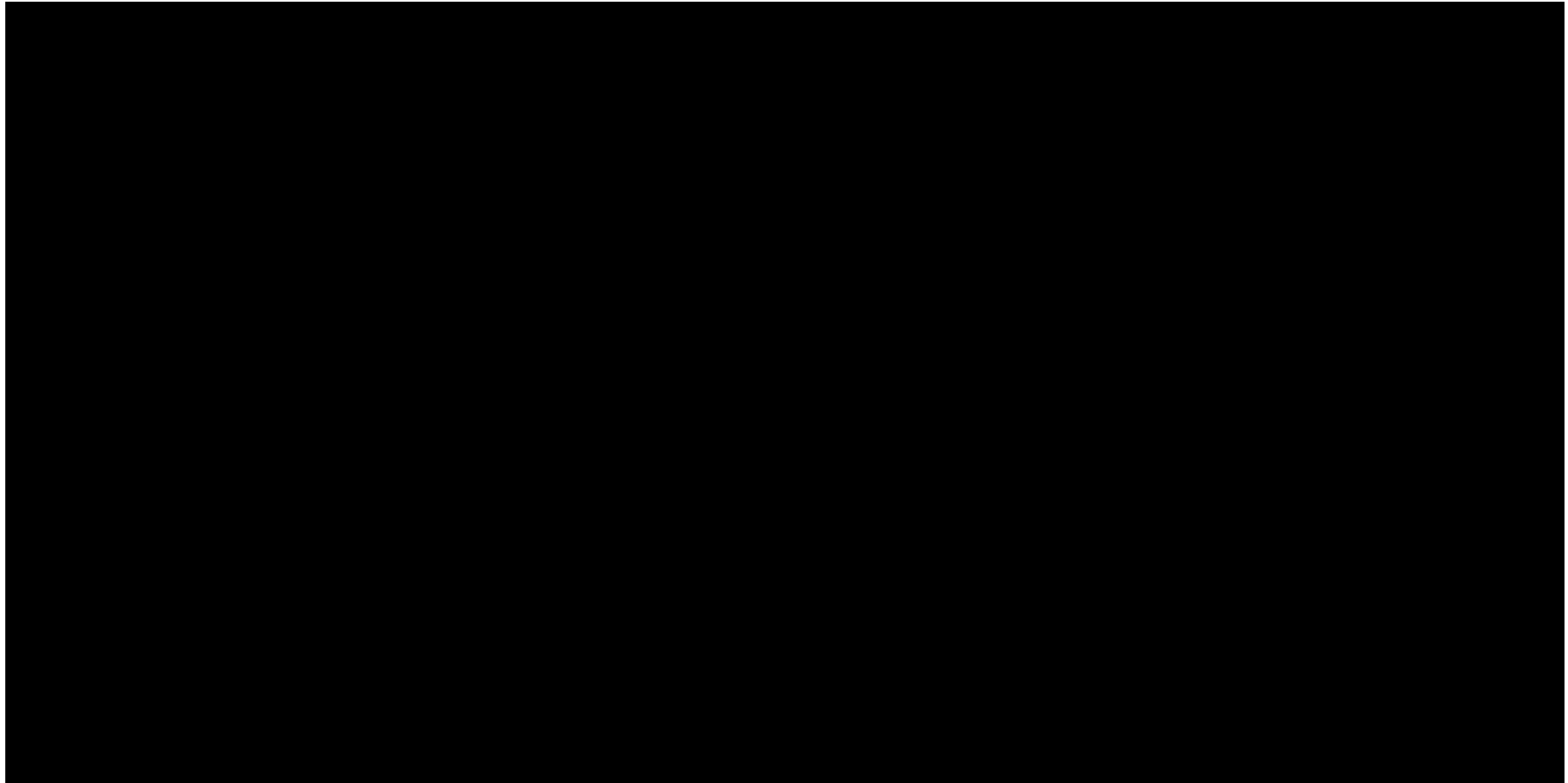
## 2.4 Boundaries

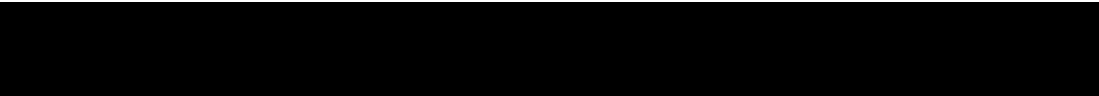
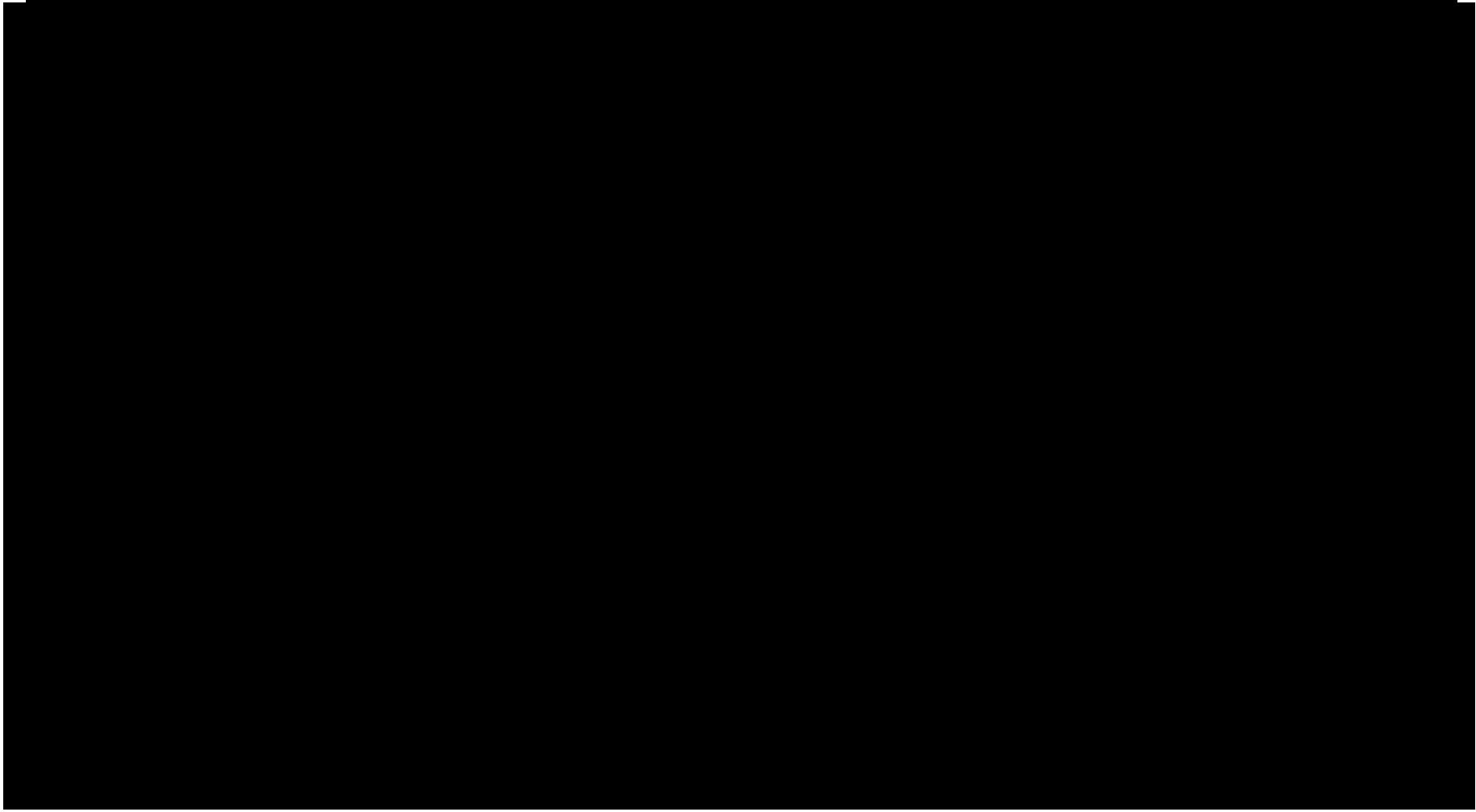
- (a) Subject to section 2.4(b) of this Schedule 35, each Area in the Site Drawings contains the land enclosed by the plan area represented for that Area in the Site Drawings.

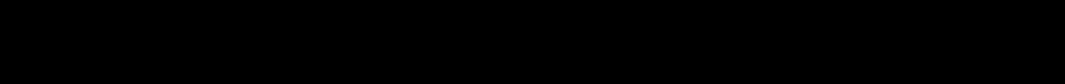
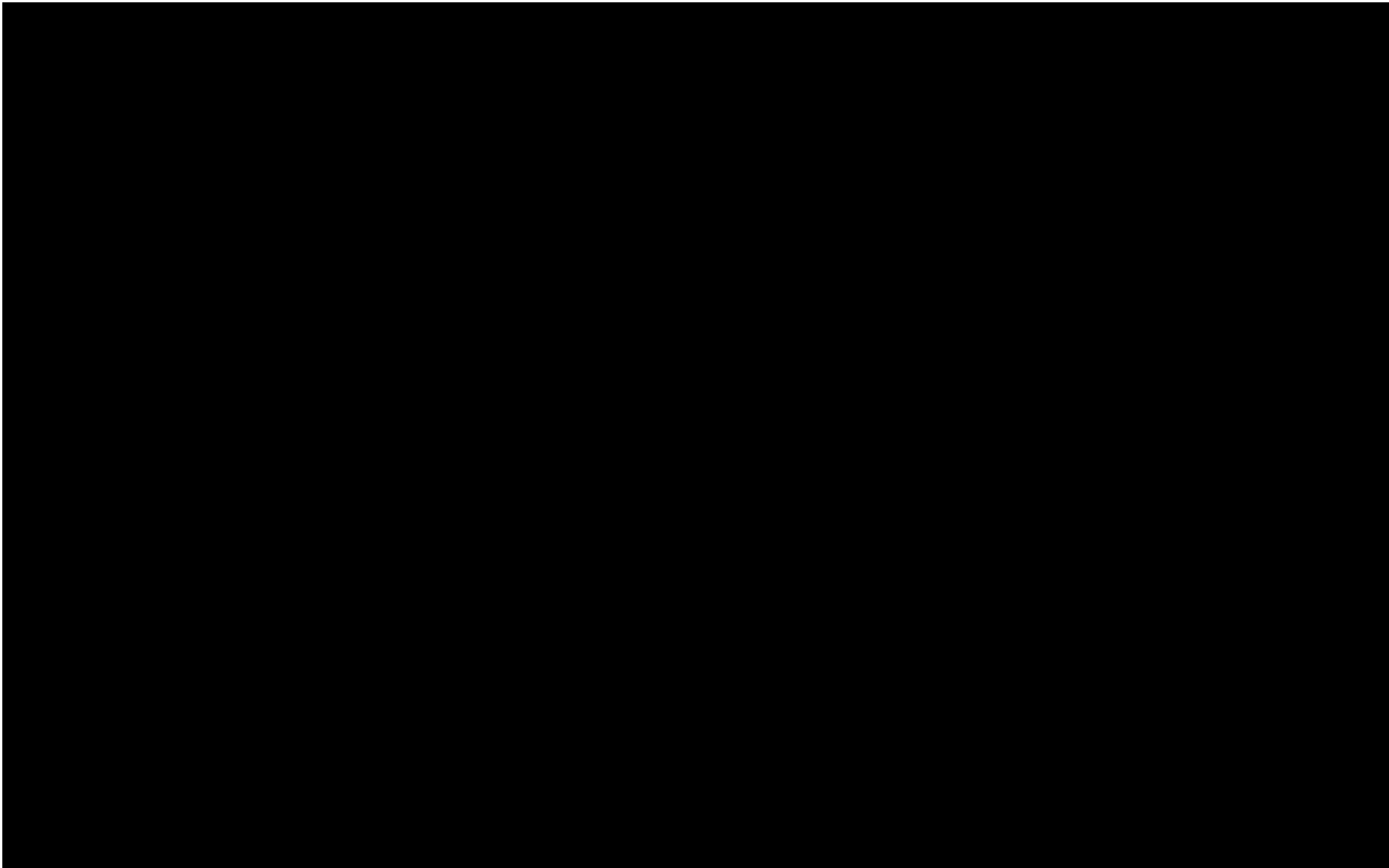
- (b) Areas in the Site Drawings are unrestricted in height and depth above and below the plan area represented in the Site Drawings, unless a limit is specified in the Site Drawings or this Schedule 35.
- (c) Where boundaries of the Site are identified as curved in the Site Drawings, the boundary is defined by the schedule of curved boundaries included in the Site Drawings.

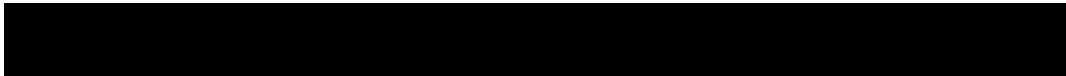
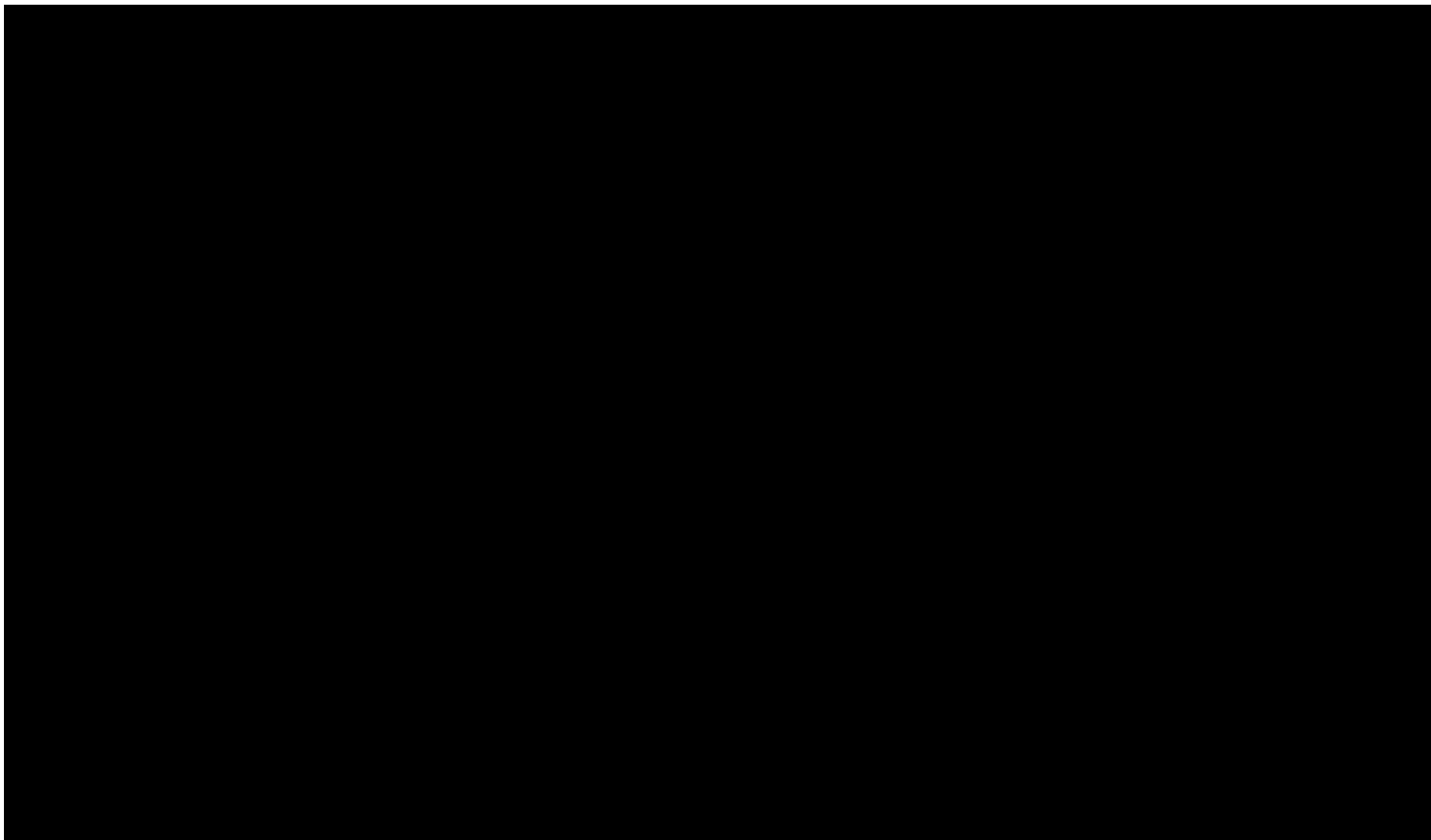
3. **SITE**

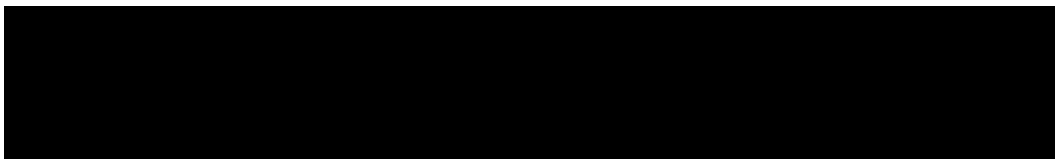
**Table 2      Site**

A large, solid black rectangular redaction box covers the entire content area of the table, obscuring all data and text that would otherwise be present.A solid black horizontal redaction bar is located at the bottom of the page, covering a line of text.











## **Attachment 1**

### **Access to Rail Corridor**

1. Access which does not require a Track Possession or Temporary Shutdown is subject to the requirements of clause 8.3 of the Sydney Trains Transition Agreement and Annexure C to the Scope of Works and Access Schedule in accordance with Schedule 8.
2. Track Possession and Temporary Shutdown access must be in accordance with:
  - (a) the configuration of the Track Possessions and Temporary Shutdowns as detailed in Schedule 37; and
  - (b) the requirements of clause 7 of the Sydney Trains Transition Agreement and Annexure A to the Scope of Works and Access Schedule in accordance with Schedule 8.
3. The CIDS/ODS Contractor must comply with Clause 11 “Working In and Adjacent to the Rail Corridor and Rail Environment” of the MR-PA and the Rail Transport Agency “Network Access Manual”.
4. The CIDS/ODS Contractor must provide and maintain a minimum clear width access of 4 metres wide for all relevant Authorities including the Rail Transport Agency to the Rail Corridor which must be kept clear at all times.
5. Access to any Area forming part of the Shared Corridor (as that term is defined in clause 2.5(a) of the Sydney Trains Transition Agreement) is subject to the requirements of clause 2.7 of the Sydney Trains Transition Agreement and the Licence for Permitted Use of the Shared Corridor applicable to that Area in accordance with Schedule 8.

**Schedule 36. Track Possessions**

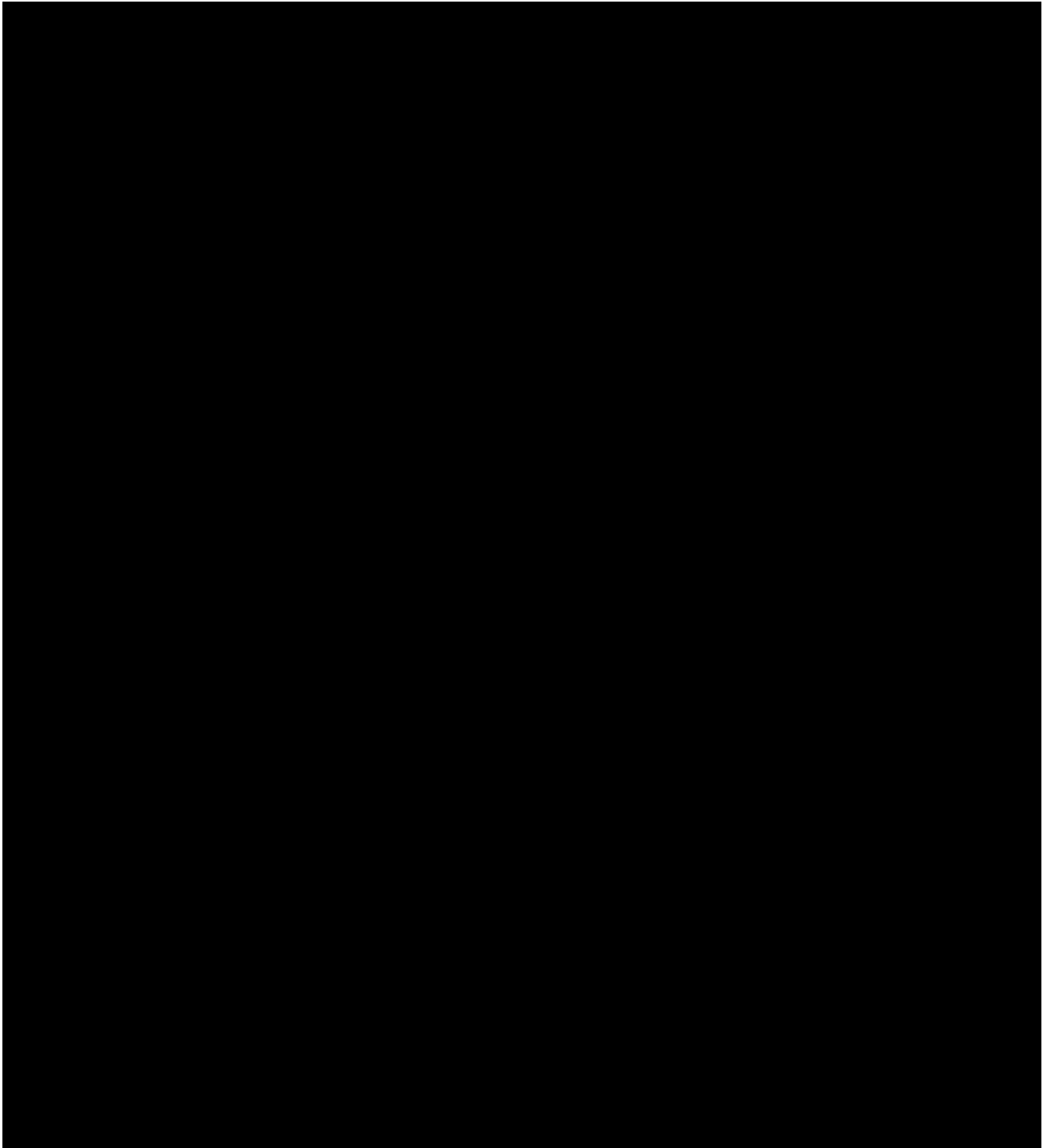
(Clauses 1.1 and 10.8)

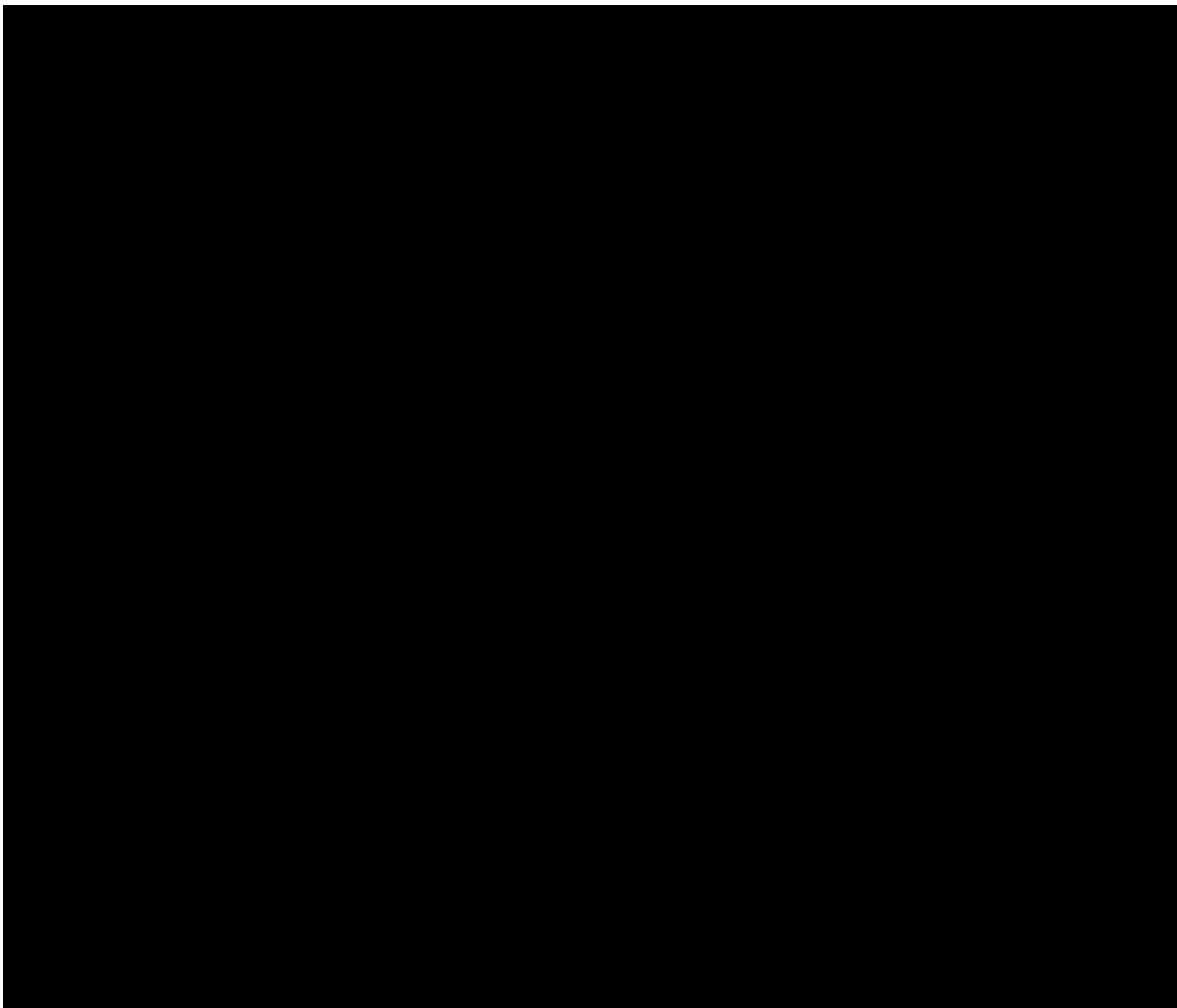
**GENERAL**

Unless the context requires otherwise, terms which are defined in the General Conditions and in the SWTC have the same meaning where used in this Schedule 36.

**1. TRACK POSSESSIONS**

**Table 1 – Table of Track Possessions –**







## Schedule 37. Form of Collateral Warranty Deed Poll

(Clause 3.12)

**THIS DEED POLL** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**BY:** UGL Engineering Pty Ltd ABN 96 096 365 972] of Level 8, 40 Miller Street, North Sydney, NSW 2060 (**CIDS/ODS Contractor**)

**IN FAVOUR OF:** **NRT CSW Pty Ltd** (ACN 635 509 036) of 'Rialto South Tower' Level 43, 525 Collins Street, Melbourne VIC 3000, in its personal capacity and in its capacity as trustee of the NRT CSW Unit Trust (**Operator**)  
**[Note: This is the entity engaged by the Principal to operate and maintain Sydney Metro City & Southwest.]**

### RECITALS

- (A) Sydney Metro ABN 12 354 063 515 (**Principal**) and the Operator have entered into a deed for the provision of various services, including the operation and maintenance of Sydney Metro City & Southwest (**OTS2 Project Deed**).
- (B) The Principal and the CIDS/ODS Contractor have entered into the deed titled "Sydney Metro City & Southwest – Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" dated **[insert]** (**Contract**) under which the CIDS/ODS Contractor is required to construct and handover to the Principal the Works as defined in the Contract (**Works**).
- (C) The CIDS/ODS Contractor has agreed under the Contract to provide this deed poll to the Operator in respect of the Works.

This deed poll provides:

- 1. The CIDS/ODS Contractor represents and warrants to the Operator that the Works will:
  - (a) be to the quality and standard stipulated by the Contract; and
  - (b) comply with the requirements of the Contract.
- 2. The Operator may give notice to the CIDS/ODS Contractor requiring the CIDS/ODS Contractor to remedy any breach of any of the warranties under clause 1 which results in a Defect (as defined in the Contract) during the applicable Defects Rectification Period (**Breach Notice**).
- 3. The Breach Notice may set out the time within which the breach must be remedied (which period must be reasonable having regard to the nature and extent of the breach).
- 4. Following receipt of a Breach Notice under clause 2, the CIDS/ODS Contractor must remedy the breach at its own cost within the time period stated in the Breach Notice (or, if no period is stated, within a reasonable period).

5. If the CIDS/ODS Contractor does not comply with clause 4, then:
  - (a) the Operator may remedy the breach or arrange for others to do so; and
  - (b) the Operator may recover all costs and expenses suffered or incurred by the Operator in remedying the breach from the CIDS/ODS Contractor.
6. Clause 2 to clause 5 do not limit the Operator's rights against the CIDS/ODS Contractor to damages for breach of the representations and warranties in clause 1.
7. The CIDS/ODS Contractor's liability to the Operator under this deed poll and the CIDS/ODS Contractor's liability to the Principal under the Contract will not (in the aggregate) exceed the liability which the CIDS/ODS Contractor would have had under the Contract if the Contract had named, as Principal, the Operator and the Principal jointly and severally.
8. The CIDS/ODS Contractor's liability to the Operator under this deed poll is subject to the same limitations of liability, and qualifications on and exclusions of such limitations of liability, as are specified in the Contract.
9. The CIDS/ODS Contractor acknowledges and agrees that:
  - (a) this deed poll is for the benefit of the Operator;
  - (b) this document operates as a deed poll and is enforceable against the CIDS/ODS Contractor in accordance with its terms by the Operator, even though the Operator is not a party to this deed poll;
  - (c) this deed poll may not be revoked or otherwise modified by the CIDS/ODS Contractor without the prior written consent of the Operator; and
  - (d) no conduct of the Operator (including a failure to exercise, or delay in exercising a right) operates as a waiver of its rights or otherwise prevents the exercise of its rights under this deed poll, unless the Operator has notified the CIDS/ODS Contractor in writing that it has waived its rights under this clause 9(d).
10. Nothing contained in this deed poll is intended to nor will render the CIDS/ODS Contractor in any way liable to the Operator in relation to any matters arising out of the OTS2 Project Deed.
11. The Operator may, at any time, assign (in whole or in part) or otherwise deal with its rights under this deed poll with the consent of the CIDS/ODS Contractor (not to be unreasonably withheld).
12. This deed poll is governed by the laws of New South Wales.
13. This deed poll may not be revoked or otherwise modified without the prior written consent of the Operator.

**EXECUTED** as a deed poll.

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

---

Signature of director

---

Signature of director/secretary

---

Name

---

Name

**Schedule 38. Initial CIDS/ODS Contractor's Program**

(Clauses 1.1 and 13.3(a))

CIDS/ODS Contractor to submit the Initial CIDS/ODS Contractor's Program within 10 Business Days of the date of this Contract.





## Schedule 39. Interface Contractor Cooperation and Integration Deed

(Clauses 1.1 and 3.10)

**DATE:** *[insert date]*

### **BETWEEN:**

- (1) **Sydney Metro** (ABN 12 354 063 515), a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and
- (2) *[Note: insert name, ABN and address details of the SSJ Contractor]* (**SSJ Contractor**); and
- (3) UGL Engineering Pty Ltd, ABN 96 096 365 972, of Level 8, 40 Miller Street, North Sydney, NSW 2060 (**Interface Contractor**).

### **RECITALS:**

- (A) The Principal is procuring Sydney Metro City & Southwest on behalf of the NSW government and the people of New South Wales.
- (B) In order to deliver Sydney Metro City & Southwest, the SSJ Contractor and the Interface Contractor will need to cooperate with each other and integrate the work under their respective contracts.
- (C) The parties enter into this deed to record the terms on which they will cooperate with each other and integrate their respective work in order to deliver Sydney Metro City & Southwest.

### **THE PARTIES AGREE AS FOLLOWS:**

#### **1. INTERPRETATION**

##### **1.1 Definitions**

In this deed:

**Accreditation** means any accreditation under Part 3 of the *Rail Safety National Law* (NSW).

**Combined Project Site** means any area that forms part of both:

- (a) the "Construction Site" as defined in the SSJ Contract; and
- (b) the "Site" as defined in the Interface Contract.

**Contractor** means each of the SSJ Contractor and the Interface Contractor and **Contractors** will mean both of them.

**Cooperation and Integration Control Group** means the group referred to in clause 3.1.

**Direction** means:

- (a) as it relates to the SSJ Contractor or the SSJ Contract, a direction given by the Principal to the SSJ Contractor under the SSJ Contract; and
- (b) as it relates to the Interface Contractor or the Interface Contract, a direction given by the Principal to the Interface Contractor under the Interface Contract.

**Interface Contract** means the deed titled "Sydney Metro City & Southwest - Southwest Metro – Corridor Intruder Detection System (CIDS) and Object Detection System (ODS) – Design, Supply and Install Contract" between the Principal and the Interface Contractor in respect of the Interface Works dated **[insert]**.

**Interface Contractor's Activities** means all things and tasks that the Interface Contractor is or may be required to do under the Interface Contract.

**Interface Requirements Specifications** has the meaning set out in Appendix E of the SWTC.

**Interface Works** has the meaning given to "Works" in the Interface Contract (including as those Interface Works may be changed or varied in accordance with the Interface Contract).

**Liability** includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

**Loss** means:

- (a) any cost, expense, fee, loss, damage, Liability, or other amount; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent.

**Principal's Representative** means any person that the Principal may from time to time appoint as its representative in respect of this deed, as notified to the SSJ

Contractor and the Interface Contractor, and if no such representative is appointed it means the Principal itself.

**SSJ Contract** means the deed titled "Sydney Metro City & Southwest – Sydenham Station and Junction Works (Incentivised Target Cost Contract)" between the Principal and the SSJ Contractor in respect of the SSJ Works dated 20 September 2017.

**SSJ Contractor's Activities** means all things and tasks that the SSJ Contractor is or may be required to do under the SSJ Contract.

**SSJ Works** has the meaning given to "Project Works" in the SSJ Contract (including as those SSJ Works may be changed or varied in accordance with the SSJ Contract).

## 1.2 Definitions in SSJ Contract

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the SSJ Contract have the same meaning in this deed as is provided for in the SSJ 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 SSJ Contractor or the Interface Contractor comprises more than one entity, an obligation or a liability assumed by, or a right conferred on, either the SSJ Contractor or the Interface Contractor, binds or benefits the entities which comprise that party 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 any Authority, institute, association or body is:
    - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

- (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) 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;
- (g) 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;
- (h) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (i) 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;
- (j) 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;
- (k) **includes** in any form is not a word of limitation;
- (l) a reference to **\$** or **dollar** is to Australian currency;
- (m) 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;
- (n) for all purposes other than as set out in clause 1.3(m), **day** means calendar day;
- (o) a reference to a **month** is a reference to a calendar month;
- (p) a reference to a court or tribunal is to an Australian court or tribunal;
- (q) 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
- (r) 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.

#### 1.5 **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. **PRIMARY OBLIGATIONS**

#### 2.1 **General**

- (a) Each Contractor acknowledges that it must comply with the obligations under its respective deed with the Principal and this deed.
- (b) Each Contractor acknowledges that it must comply with this deed.
- (c) Other than as expressly required under this deed, the SSJ Contractor and the Interface Contractor must not enter into any contract, arrangement or other understanding with each other without the prior written approval of the Principal's Representative.

#### 2.2 **SSJ Independent Certifier**

- (a) The parties acknowledge that the SSJ Independent Certifier's role is to, amongst other things:
  - (i) certify whether relevant portions of the Design Stage 3 Design Documentation produced by the SSJ Contractor comply with the requirements of the SSJ Contract;
  - (ii) certify whether each Portion has reached Construction Completion in accordance with the requirements of the SSJ Contract;
  - (iii) certify whether each Portion has reached Completion in accordance with the requirements of the SSJ Contract; and
  - (iv) make determinations on other matters that the SSJ Contract expressly requires be determined by the SSJ Independent Certifier.
- (b) The Contractors agree that, subject to the SSJ Independent Certifier Deed, any certification given by the SSJ Independent Certifier that a Portion has reached Construction Completion or Completion in accordance with the requirements of the SSJ Contract is final and binding in the absence of manifest error on the face of the certification from the SSJ Independent Certifier.

## 2.3 Rail safety

In performing their respective obligations under this deed:

- (a) the Contractors must liaise and cooperate with each other (and with the ONRSR and the Principal); and
- (b) the SSJ Contractor must provide any reasonable assistance and documentation required by the Interface Contractor (or by the Principal), and the Interface Contractor must provide any reasonable assistance and documentation required by the SSJ Contractor in relation to safety matters, including in relation to the Interface Contractor's Accreditation (if applicable) or the Principal's Accreditation, including any application for a renewal or extension of such accreditation.

## 3. COOPERATION

### 3.1 Cooperation and Integration Control Group

The Cooperation and Integration Control Group will be established within 10 Business Days of the date of this deed. The Cooperation and Integration Control Group will comprise:

- (a) the Principal's Representative;
- (b) the following personnel of the SSJ Contractor:
  - (i) the SSJ Contractor's Representative (as defined in the SSJ Contract); and
  - (ii) the SSJ Contractor's construction manager;
- (c) the following personnel of the Interface Contractor:
  - (i) the CIDS/ODS Contractor's Representative (as defined in the Interface Contract); and
  - (ii) the Interface Contractor's construction manager;
- (d) representatives of any subcontractors of the Contractors as reasonably required by the Principal's Representative; and
- (e) any other person the Principal's Representative reasonably requires from time to time which (for the avoidance of doubt) may include:
  - (i) the members of the IDAR Panel appointed in connection with the SSJ Contract or, if applicable, the Interface Contract; and
  - (ii) representatives of any person or entity engaged to undertake independent certification activities in connection with the SSJ Contract or the Interface Contract.

### 3.2 Cooperation and Integration Control Group functions

The functions and objectives of the Cooperation and Integration Control Group include:

- (a) identifying all key interfaces between the SSJ Contractor's Activities and the Interface Contractor's Activities. This includes access requirements and the provision of design and work methodology input, to the extent not already identified in the Interface Requirements Specifications;
- (b) developing a program for the key interface activities to be incorporated into each Contractor's delivery program (including provision of design information and the activities identified in the Interface Requirements Specifications);
- (c) reviewing the progress of the SSJ Contractor's Activities and the Interface Contractor's Activities and anticipated future progress of the SSJ Contractor's Activities and the Interface Contractor's Activities;
- (d) considering interface issues between the SSJ Contractor's Activities, the Interface Contractor's Activities and any other interfaces with contractors, including their status, problems, solutions and newly identified interfaces;
- (e) identifying strategies to efficiently manage key interface issues between the Contractors;
- (f) considering and coordinating community and stakeholder relations issues;
- (g) establishing administrative procedures to be adopted by the various parties in relation to the matters referred to in this deed;
- (h) reviewing the working relationship between the parties and addressing issues as they arise in a constructive and efficient manner;
- (i) considering matters arising in respect of the performance of the SSJ Independent Certifier; and
- (j) any other matters relating to the interface between the Interface Work and the SSJ Works.

### 3.3 Cooperation and Integration Control Group meetings

- (a) The Cooperation and Integration Control Group must meet:
  - (i) at the dates and times specified by the Principal's Representative, which will be on a regular monthly basis between the date of this deed and the date that is one month after the Date of Completion of the last Portion to reach Completion (or such other regular period as the Principal, the SSJ Contractor and the Interface Contractor agree in writing);
  - (ii) in accordance with this clause 3.3; and
  - (iii) at other times as required by any of the Principal's Representative, the SSJ Contractor or the Interface Contractor.



- (b) The Contractors must together provide the Principal's Representative with an agenda for each meeting of the Cooperation and Integration Control Group. The agenda must:
- (i) have been prepared in consultation with the Principal's Representative;
  - (ii) be provided no less than 48 hours prior to each meeting;
  - (iii) include the agenda items set out in Schedule 1 or as otherwise notified by the Principal's Representative from time to time; and
  - (iv) be distributed to any other person as required by the Principal's Representative.
- (c) The Principal's Representative will have the role of chairperson for meetings of the Cooperation and Integration Control Group.
- (d) For each meeting of the Cooperation and Integration Control Group, the Principal's Representative (or such other member of the Cooperation and Integration Control Group as is nominated by the Principal's Representative) must record minutes of the meeting and distribute the minutes to all members of the Cooperation and Integration Control Group within 5 Business Days after the meeting. The Principal's Representative may also require that the minutes be distributed to any other person.
- (e) Notwithstanding the recording of the minutes of any Cooperation and Integration Control Group meeting, no resolution or communication at any Cooperation and Integration Control Group meeting (nor minutes recording any resolution or communication) or anything else which occurs during a Cooperation and Integration Control Group meeting or as part of the process for such meetings will:
- (i) limit or otherwise affect:
    - (A) the SSJ Contractor's obligations under this deed or the SSJ Contract or otherwise according to Law;
    - (B) the Interface Contractor's obligations under this deed or the Interface Contract or otherwise according to Law; or
    - (C) the Principal's rights, whether under this deed, the SSJ Contract or the Interface Contract or otherwise according to Law;
  - (ii) be construed as or amount to a Direction under the SSJ Contract unless and until a separate direction is given to the SSJ Contractor in writing by the Principal's Representative under the SSJ Contract; or
  - (iii) be construed as or amount to a Direction under the Interface Contract unless and until a separate direction is given to the Interface Contractor in writing by the Principal's Representative under the Interface Contract,

and the parties agree that all materials referred to and all discussions, debates, disagreements and resolutions on any matters raised at these meetings are

only for the purpose of reviewing the matters referred to in this clause 3 and other matters raised at the meetings.

### 3.4 Cooperation and Integration

The SSJ Contractor:

- (a) acknowledges that:
  - (i) the SSJ Works and the Interface Works form part of Sydney Metro City & Southwest;
  - (ii) the SSJ Contractor's Activities interface with the Interface Contractor's Activities;
  - (iii) the Interface Contractor will be executing work on parts of the Combined Project Site or Extra Land, or adjacent to the Combined Project Site or Extra Land, at the same time the SSJ Contractor is performing the SSJ Contractor's Activities;
  - (iv) it may require certain design and work methodology from the Interface Contractor to coordinate the design of the SSJ Works with the Interface Works;
  - (v) the Interface Contractor may require the SSJ Contractor to provide design and work methodology information to it to coordinate the design of the Interface Works with the SSJ Works, and this information must be provided in a timely manner by the SSJ Contractor; and
  - (vi) any delay in the performance of the SSJ Contractor's Activities, or in the SSJ Contractor providing information to, or cooperating and coordinating with the Interface Contractor may adversely impact upon, delay or disrupt the Interface Contractor's Activities or the SSJ Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages; and
- (b) must at all times:
  - (i) permit the Interface Contractor to execute the Interface Works on the applicable parts of the Combined Project Site or Extra Land or on any property adjacent to the Combined Project Site or Extra Land:
    - (A) at the same time the SSJ Contractor is performing the SSJ Contractor's Activities; and
    - (B) at the times agreed between the Contractors, or failing agreement, at the times determined by the Principal's Representative,

and for this purpose ensure that the Interface Contractor has safe, clean and clear access to those parts of the Combined Project Site or Extra Land, or property adjacent to the Combined Project Site or Extra Land required by the Interface Contractor for the purpose of carrying out the Interface Works;

- (ii) protect the SSJ Works and other improvements on the Combined Project Site or Extra Land from accidental damage by the Interface Contractor and provide means of receiving, storing and protecting goods and equipment supplied by the Interface Contractor;
- (iii) not damage the Interface Works or the Interface Contractor's plant or equipment;
- (iv) fully co-operate with the Interface Contractor, and do everything reasonably necessary to:
  - (A) facilitate the execution of work by the Interface Contractor including providing the Interface Contractor with such assistance as may be directed by the Principal's Representative; and
  - (B) ensure the effective coordination of the design and construction of the SSJ Works with the Interface Works;
- (v) carefully coordinate and interface the SSJ Contractor's Activities with the Interface Contractor's Activities and for this purpose:
  - (A) make proper allowance in all programs for the Interface Contractor's Activities;
  - (B) review all programs provided by the Interface Contractor and confirm that they adequately allow for the SSJ Contractor's Activities and the interfaces between the SSJ Contractor's Activities and the Interface Contractor's Activities;
  - (C) monitor the progress of the Interface Contractor's Activities; and
  - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement or progress of the Project Works, or Construction Completion or Completion of a Portion; and
  - (E) provide the Interface Contractor with sufficient information about the current and expected SSJ Contractor's Activities to assist the Interface Contractor to coordinate the Interface Contractor's Activities with the SSJ Contractor's Activities;
- (vi) cooperate, meet with, liaise and share information so that the SSJ Contractor and the Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- (vii) perform the SSJ Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Contractor's Activities;
- (viii) be responsible for coordinating the SSJ Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, the Interface Contractor's

personnel and work, including providing to the Principal's Representative copies of working method statements for those parts of the SSJ Works which are adjacent to or interface with the Interface Works, at least 15 Business Days prior to commencing the work described in the work method statement;

- (ix) work directly with the Interface Contractor where required to complete the design of the SSJ Works and provide all necessary information to the Interface Contractor in respect of the SSJ Works to permit the Interface Contractor to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with the SSJ Contract, including the SWTC and the MRs;
- (x) attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others each 14 days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- (xi) when information is required from the Interface Contractor, provide reasonable written notice to the Interface Contractor requesting that information and specifying the date by which such information is required, which must be:
  - (A) at least 10 days after the date of the notice (except in special circumstances); or
  - (B) if a longer period for the provision of information is required by the SSJ Contract, the date that period expires with a copy to the Principal's Representative;
- (xii) ensure that any notice given under clause 3.4(b)(xi) provides the Interface Contractor with the longest possible time for the provision of the information;
- (xiii) when any information is requested by the Interface Contractor, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Contractor's Activities with the SSJ Works or the SSJ Contractor's Activities:
  - (A) provide the information to the Interface Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor (or, if the time requested by the Interface Contractor is not reasonable, within a reasonable period of time); and
  - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate;

- (xiv) achieve a high level of cooperation, coordination and collaboration with the Interface Contractor to ensure that:
  - (A) the SSJ Works and Interface Works are fully integrated with each other; and
  - (B) any delay, or potential delay, to the SSJ Contractor's Activities or the Interface Contractor's Activities are mitigated;
- (xv) work directly with the Interface Contractor in preparing any asset management information required under the SSJ Contract or the Interface Contract;
- (xvi) closely cooperate with the Interface Contractor with respect to community and stakeholder liaison issues; and
- (xvii) use its best endeavours to resolve any problems, and work closely and iteratively, with the Interface Contractor, including providing design options, iterations and work methodologies, to achieve the best solution to such problems related to:
  - (A) the provision of information;
  - (B) the obtaining of information;
  - (C) the adequacy of information provided to, or received from, the Interface Contractor;
  - (D) the compatibility of the SSJ Works with the Interface Works;
  - (E) coordination in accordance with this clause 3.4; and
  - (F) technical issues with the information provided to, or received from, the Interface Contractor;
- (c) must, in the event that despite using its best endeavours, and working closely and iteratively with the Interface Contractor, the Contractors fail to resolve a problem between them:
  - (i) give written notice to the Principal's Representative with a copy to the Interface Contractor describing the problem; and
  - (ii) attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem; and
- (d) must promptly advise the Principal's Representative of all matters arising out of the liaison between the Contractors that may involve a change to the SSJ Works or have an adverse effect upon, or cause a delay to, the SSJ Works.

### 3.5 Cooperation and Integration – Interface Contractor

The Interface Contractor:

- (a) acknowledges that:
  - (i) the Interface Works and the SSJ Works form part of Sydney Metro City & Southwest;
  - (ii) the Interface Contractor's Activities interface with the SSJ Contractor's Activities;
  - (iii) the SSJ Contractor will be executing work on parts of the Combined Project Site or Extra Land, or adjacent to the Combined Project Site or Extra Land, at the same time the SSJ Contractor is performing the SSJ Contractor's Activities;
  - (iv) it may require certain design and work methodology from the SSJ Contractor to coordinate the design of the Interface Works with the SSJ Works;
  - (v) the SSJ Contractor may require the Interface Contractor to provide design and work methodology information to it to coordinate the design of the SSJ Works with the Interface Works, and this must be provided in a timely manner by the Interface Contractor; and
  - (vi) any delay in the performance of the Interface Contractor's Activities, or in the Interface Contractor providing information to, or cooperating and coordinating with, the SSJ Contractor may adversely impact upon, delay or disrupt the SSJ Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages; and
- (b) must at all times:
  - (i) permit the SSJ Contractor to execute the SSJ Works on the applicable parts of the Combined Project Site or Extra Land or on any property adjacent to the Combined Project Site or Extra Land:
    - (A) at the same time the Interface Contractor is performing the Interface Works; and
    - (B) at the times agreed between the Contractors, or failing agreement, at the times determined by the Principal's Representative;and for this purpose must not interfere with access to those parts of the Combined Project Site or Extra Land, or property adjacent to the Combined Project Site or Extra Land, required by the SSJ Contractor for the purpose of carrying out the SSJ Works;
  - (ii) protect the Interface Works from accidental damage by the SSJ Contractor;

- (iii) not damage the SSJ Works or the SSJ Contractor's plant or equipment;
- (iv) fully co-operate with the SSJ Contractor, and do everything reasonably necessary to:
  - (A) facilitate the execution of work by the SSJ Contractor including providing the SSJ Contractor with such assistance as may be directed by the Principal's Representative; and
  - (B) ensure the effective coordination of the design and construction of the Interface Works with the SSJ Works;
- (v) carefully coordinate and interface the Interface Contractor's Activities with the SSJ Contractor's Activities and for this purpose:
  - (A) make proper allowance in all programs for the SSJ Contractor's Activities;
  - (B) review all programs provided by the SSJ Contractor and confirm that they adequately allow for the Interface Contractor's Activities and the interfaces between the Interface Contractor's Activities and the SSJ Contractor's Activities;
  - (C) monitor the progress of the SSJ Works; and
  - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement or progress of the Interface Works or completion of the Interface Works; and
  - (E) provide the SSJ Contractor with sufficient information about the current and expected Interface Contractor's Activities to assist the SSJ Contractor to coordinate the SSJ Contractor's Activities with the Interface Contractor's Activities;
- (vi) cooperate, meet with, liaise and share information so that the SSJ Contractor and the Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- (vii) perform the Interface Contractor's Activities so as to minimise any interference with or disruption or delay to the SSJ Contractor's Activities;
- (viii) be responsible for coordinating the Interface Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influence by, the SSJ Contractor's personnel and work, including providing to the Principal's Representative copies of work method statements for those parts of the Interface Works which are adjacent to or interface with the SSJ Works, at least 15 Business Days prior to commencing the work described in the work method statement;
- (ix) work directly with the SSJ Contractor where required to complete the design of the Interface Works and provide all necessary information to

the SSJ Contractor in respect of the Interface Works to permit the SSJ Contractor to complete the design of the SSJ Works so that they are acceptable to the Principal;

- (x) attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others each 14 days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- (xi) when information is required from the SSJ Contractor, provide reasonable written notice to the SSJ Contractor requesting that information and specifying the date by which such information is required, which must be:
  - (A) at least 10 days after the date of the notice (except in special circumstances); or
  - (B) if a longer period for the provision of information is required by the Interface Contract, the date that period expires with a copy to the Principal's Representative;
- (xii) ensure that any notice given under clause 3.5(b)(xi) provides the SSJ Contractor with the longest possible time for the provision of the information;
- (xiii) when any information is requested by the SSJ Contractor, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the SSJ Contractor's Activities with the Interface Works or the Interface Contractor's Activities:
  - (A) provide the information to the SSJ Contractor, with a copy to the Principal's Representative, within the time requested by the SSJ Contractor (or, if the time requested by the SSJ Contractor is not reasonable, within a reasonable period of time); and
  - (B) ensure and warrant that the information provided is accurate;
- (xiv) achieve a high level of cooperation, coordination and collaboration with the SSJ Contractor to ensure that:
  - (A) the Interface Works and SSJ Works are fully integrated with each other;
  - (B) any delay, or potential delay, to the Interface Contractor's Activities or the SSJ Contractor's Activities are mitigated; and
- (xv) work directly with the SSJ Contractor in preparing any asset management information required under the SSJ Contract or the Interface Contract;



- (xvi) closely cooperate with the SSJ Contractor with respect to community and stakeholder liaison issues; and
- (xvii) use its best endeavours to resolve any problems, and work closely and iteratively, with the SSJ Contractor, including providing design options, iterations and work methodologies, to achieve the best solution to such problems related to:
  - (A) the provision of information;
  - (B) the obtaining of information;
  - (C) the adequacy of information provided to, or received from, the SSJ Contractor;
  - (D) the compatibility of the SSJ Works with the Interface Works;
  - (E) coordination in accordance with this clause 3.5; and
  - (F) technical issues with the information provided to, or received from, the SSJ Contractor;
- (c) must, in the event that despite using its best endeavours, and working closely and iteratively with the SSJ Contractor, the Contractors fail to resolve a problem between them:
  - (i) give written notice to the Principal's Representative with a copy to the SSJ Contractor describing the problem; and
  - (ii) attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem;
- (d) must promptly advise the Principal's Representative of all matters arising out of the liaison between the Contractors that may involve a change to the Interface Works or have an adverse effect upon, or cause a delay to, the Interface Works;
- (e) must, if it is required to access a part of the Construction Site in order to rectify any Defects after the SSJ Contractor has taken possession of the relevant part of the Construction Site for the purposes of carrying out the SSJ Contractor's obligations under the SSJ Contract, carry out the Defect rectification work in a manner which minimises any disruption, interference or adverse impact on or to, and without unreasonably disrupting or interfering with, or adversely impacting on, the activities which the SSJ Contractor is carrying out in discharge of its obligations under the SSJ Contract; and
- (f) indemnifies the SSJ Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the SSJ Contractor as a result of any breach by the Interface Contractor, any of its subcontractors or their respective personnel of clause 3.5(e). The Interface Contractor's responsibility to indemnify the SSJ Contractor in accordance with this clause 3.5(f) will be

reduced proportionally to the extent that an act or omission by the SSJ Contractor contributed to the delay, damage, expense, loss, penalty or liability.

### 3.6 **Defect rectification by SSJ Contractor**

If the SSJ Contractor is required to access a part of the Construction Site in order to rectify any Defects after the Interface Contractor has been provided with access to the relevant part of the Construction Site for the purposes of carrying out the Interface Contractor's obligations under the Interface Contract, the SSJ Contractor must carry out the Defect rectification work in a manner which minimises any disruption, interference or adverse impact on or to, and without unreasonably disrupting or interfering with, or adversely impacting on, the activities which the Interface Contractor is carrying out in discharge of its obligations under the Interface Contract.

### 3.7 **SSJ Contract and Interface Contract not affected**

Notwithstanding the provisions of this deed, the parties acknowledge and agree that nothing contained in this deed will limit or otherwise affect the duties, rights and obligations of:

- (a) the SSJ Contractor pursuant to the SSJ Contract; or
- (b) the Interface Contractor pursuant to the Interface Contract.

### 3.8 **Limitation of liability**

- (a) Subject to clause 3.8(b), each Contractor releases the other Contractor from and against:
  - (i) any claim against the other Contractor (including any claim, action, demand or proceeding for payment of money (including damages)); and
  - (ii) any Loss suffered or incurred by the Contractor,  
  
arising out of or in any way in connection with a breach of this deed by, or other act or omission of, the other Contractor.
- (b) Clause 3.8(a) does not limit:
  - (i) a Contractor's liability in respect of liability which cannot be limited at Law;
  - (ii) any liability arising:
    - (A) from a breach of clause 3.4(b)(iii) or 3.5(b)(iii);
    - (B) not used; or
    - (C) in respect of the Interface Contractor, under the indemnity in clause 3.5(f);
  - (iii) any liability arising under the indemnity in clause 2 of the Site Interface Deed Poll; or

- (iv) a Contractor's liability to the Principal under the SSJ Contract or the Interface Contract (as the case may be) arising out of or in any way in connection with any:
  - (A) breach of this deed by the Contractor; or
  - (B) any other act, default or omission by the Contractor under, or purportedly under, this deed.
- (c) This clause 3.8 applies:
  - (i) notwithstanding and survives any termination of this deed;
  - (ii) notwithstanding any other provision of this deed; and
  - (iii) to the maximum extent permitted by Law (present or future).
- (d) Despite any other provision of this deed:
  - (i) each of the Contractor's liability to the Principal under or in connection with this deed is limited to the extent described in the SSJ Contract or the Interface Contract (as applicable);
  - (ii) nothing in this deed is intended to make or makes either of the Contractors liable for the same loss twice for the same breach of an obligation;
  - (iii) the liability of each of the Contractors arising under or in connection with this deed will:
    - (A) be subject to the same exceptions, exclusions and limitations as are specified in the SSJ Contract or the Interface Contract (as applicable);
    - (B) not exceed the maximum aggregate limit of liability of the:
      - (aa) SSJ Contractor under the SSJ Contract or the other SSJ Contract Documents as set out in clause 21.1 of the SSJ Contract; or
      - (bb) Interface Contractor under the Interface Contract,
        - subject to the same exceptions, exclusions and limitations as are specified in the SSJ Contract or the Interface Contract (as applicable), less the liability incurred (from time to time) by the relevant Contractor to the Principal under the SSJ Contract, the other SSJ Contract Documents or under the Interface Contract (as applicable); and
  - (iv) a Contractor's total aggregate liability to the other Contractor under or in connection with this deed howsoever caused or arising, whether in contract, tort (including by negligence), equity, statute, by way of

indemnity, contribution, unjust enrichment, warranty or guarantee or otherwise at law will not exceed the liability that the:

- (A) SSJ Contractor would have had under the SSJ Contract if the SSJ Contract had named, in place of the Principal, the Principal and the Interface Contractor, jointly and severally; or
- (B) Interface Contractor would have had under the Interface Contract if the Interface Contract had named, in place of the Principal, the Principal and the SSJ Contractor, jointly and severally.

#### **4. LIABILITY**

##### **4.1 Exclusion of proportionate liability scheme**

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 4.1(a), the rights, obligations and liabilities of the Principal, the SSJ Contractor and the Interface Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

##### **4.2 Contractors not to apply proportionate liability scheme**

To the extent permitted by Law:

- (a) each of the SSJ Contractor and the Interface Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the SSJ Contractor or the Interface Contractor (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the SSJ Contractor or the Interface Contractor (whether in contract, tort or otherwise), the SSJ Contractor or the Interface Contractor (as applicable) will indemnify the Principal against any Loss which the Principal is not able to recover from the SSJ Contractor or the Interface Contractor (as applicable) because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

#### **5. TERMINATION AND SUBSTITUTION**

##### **5.1 Termination**

- (a) Subject to clause 5.1(b), none of the parties will have any right to terminate this deed.
- (b) This deed will terminate automatically upon the termination of the SSJ Contract or the Interface Contract.

- (c) If required by the Principal:
  - (i) upon any termination of the Interface Contract, the SSJ Contractor must;  
or
  - (ii) upon any termination of the SSJ Contract, the Interface Contractor must,  
  
enter into a new cooperation and integration deed on substantially the same terms as this deed with the Principal and any new contractor or contractors appointed by the Principal for the completion of the balance of the works under the Interface Contract or the SSJ Contract (as applicable) which remain unfinished as at the date of termination.

## 5.2 Preservation of rights

Nothing in this clause 5 or that the Principal does or fails to do pursuant to this clause 5 will prejudice the right of the Principal to exercise any right or remedy which it may have where a Contractor breaches (including repudiates) this deed.

## 6. GENERAL

### 6.1 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 may notify each party that a PDCS will be used for giving Notices under or in connection with this deed. The Principal'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 parties to use the PDCS;
  - (iv) any requirements for specific notices (eg notices of claims);
  - (v) the name and contact details of any additional person which the Principal nominates for receipt of Notices under this deed; and
  - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (ba) At any time and from time to time, the Principal may notify the parties that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's notice will state that such Notices will be given in accordance with clause 6.1(c)(i).

- (c) Each Notice must:
- (i) before the date referred to in clause 6.1(b)(ii) or where clause 6.1(ba) applies:
    - (A) be in writing;
    - (B) be addressed:
      - (aa) in the case of a Notice from the SSJ Contractor, to the Principal and the Interface Contractor and any additional person notified by the Principal in writing;
      - (bb) in the case of a Notice from the Interface Contractor, to the Principal and the SSJ Contractor and any additional person notified by the Principal in writing; or
      - (cc) in the case of a Notice from the Principal, to the SSJ Contractor and the Interface Contractor;
    - (C) comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
    - (D) 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; and
    - (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

(aa) to the Principal:

Address: Level 43, 680 George Street  
Sydney NSW 2000

Email: [REDACTED]

Attention : [REDACTED]

Any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel – Sydney Metro and sent to

[REDACTED]

(bb) to the SSJ Contractor:

Address: **[to be inserted]**

Email: **[to be inserted]**

Attention: **[to be inserted]**

(cc) to the Interface Contractor:

Address: Level 8, 40 Miller Street, North Sydney,  
NSW 2060

Email: [REDACTED]

Attention: [REDACTED]

(ii) on and from the commencement date for use of the PDCS referred to in clause 6.1(b)(ii) and other than where clause 6.1(ba) applies:

(A) be sent through the PDCS in accordance with the requirements set out in clause 6.1(e) and:

(aa) in the case of a Notice from the SSJ Contractor, be addressed to the Principal and the Interface Contractor and any additional person notified in accordance with clause 6.1(b)(v) and comply with any requirements notified in accordance with clause 6.1(b)(iv);

(bb) in the case of a Notice from the Interface Contractor, be addressed to the Principal and the SSJ Contractor and any additional person notified in accordance with clause 6.1(b)(v) and comply with any requirements notified in accordance with clause 6.1(b)(iv);

(cc) in the case of a Notice from the Principal, be addressed to the SSJ Contractor and the Interface Contractor; or

(B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 6.1(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;

(iv) (in the case of delivery by hand) on delivery; and

(v) (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.

- (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 paragraph 6.1(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) Each of the SSJ Contractor and the Interface Contractor must:
  - (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) ensure all relevant personnel attend all necessary training required by the Principal;
  - (iv) advise the Principal of which personnel require access to the PDCS;
  - (v) 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
  - (vi) 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 6.1(c)(ii)(B) to the Principal through the PDCS.

The Principal has no liability for any losses the SSJ Contractor and the Interface Contractor 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 SSJ Contractor and the Interface Contractor 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 SSJ Contractor or the Interface Contractor's access to or use of the PDCS or any failure of the PDCS.



## 6.2 **Governing law**

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

## 6.3 **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 6.3(a).

## 6.4 **The 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 Contractors acknowledges and agrees that, without limiting clause 6.4(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 either of the Contractors to make any claim against the Principal.

## 6.5 **Amendments**

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

## 6.6 **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.

### 6.7 **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.

### 6.8 **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.

### 6.9 **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.

### 6.10 **Assignment**

(a) Subject to clause 6.10(b), 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.

(b) If:

- (i) the SSJ Contractor assigns, novates or otherwise transfers its rights or interests under the SSJ Contract;
- (ii) the Interface Contractor assigns, novates or otherwise transfers its rights or interests under the Interface Contract,

(in each case in accordance with the terms of such contract) and if required by the Principal, the SSJ Contractor and the Interface Contractor (as applicable) must ensure that the relevant assignee, novatee or transferee takes assignment, novation or transfer (as applicable) of the relevant Contractor's rights and/or obligations (as applicable) under this deed.

(c) The parties acknowledge and agree that the consent of each other party is not required in relation to an assignment, novation or transfer made pursuant to clause 6.10(b).

### 6.11 **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.

#### 6.12 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. All counterparts taken together constitute one document.
- (b) Notwithstanding any other provision of this deed, this deed will not be effective or binding on any one party until one document has been executed by all parties or all parties have executed and delivered a counterpart.

#### 6.13 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.

#### 6.14 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.

#### 6.15 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed, the SSJ Contract (in respect of the Principal and the SSJ Contractor) and the Interface Contract (in respect of the Principal and the Interface Contractor) and the SSJ Independent Certifier Deed:

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

#### 6.16 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.

**6.17 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 of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

**6.18 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.

**6.19 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

### Agenda Items

***[Note: list of agenda items to be confirmed prior to execution.]***

**EXECUTED** as a deed.

**SIGNED** by **SYDNEY METRO (ABN 12 354 063 515)**, by its duly authorised delegate, in the presence of:

\_\_\_\_\_  
Signature of delegate

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **[INSERT NAME OF SSJ CONTRACTOR]** (ABN **[INSERT ABN]**):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **UGL ENGINEERING PTY LTD (ABN 96 096 365 972)**:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

## **Schedule 40. Operator Cooperation and Integration Deed**

(Clause 1.1 and 3.10)

**DATE:** *[insert date]*

### **BETWEEN:**

- (1) **Sydney Metro** (ABN 12 354 063 515) a NSW 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
- (2) **UGL Engineering Pty Ltd (CIDS/ODS Contractor)**; and
- (3) **NRT CSW Pty Ltd** (ACN 635 509 036) of 'Rialto South Tower' Level 43, 525 Collins Street, Melbourne VIC 3000, in its personal capacity and in its capacity as trustee of the NRT CSW Unit Trust (**Operator**).

### **RECITALS:**

- (A) The Principal is procuring Sydney Metro City & Southwest on behalf of the NSW government and the people of New South Wales.
- (B) In order to deliver Sydney Metro City & Southwest, the CIDS/ODS Contractor and the Operator will need to cooperate with each other and integrate the work under their respective contracts.
- (C) The parties enter into this deed to record the terms on which they will cooperate with each other and integrate their respective work in order to deliver Sydney Metro City & Southwest.

### **THE PARTIES AGREE AS FOLLOWS:**

#### **1. INTERPRETATION**

##### **1.1 Definitions**

In this deed:

**Accreditation** means any accreditation under Part 3 of the *Rail Safety National Law* (NSW).

**Combined Project Site** means any area that forms part of both:

- (a) the "Site" as defined in the DSI Contract; and
- (b) the "Construction Site" as defined in the OTS2 Project Deed.

**Contractor** means each of the CIDS/ODS Contractor and the Operator and **Contractors** will mean both of them.

**Cooperation and Integration Control Group** means the group referred to in clause 3.1.

**Direction** means:

- (a) as it relates to the CIDS/ODS Contractor or the DSI Contract, as that term is defined under the DSI Contract; and
- (b) as it relates to the Operator or the OTS2 Project Deed, as that term is defined under the OTS2 Project Deed.

**Dispute** has the meaning given to that term in clause 4.2(a).

**DSI Contract** means the deed titled "Sydney Metro City & Southwest – Design, Supply and Installation Contract" between the Principal and the CIDS/ODS Contractor in respect of the CIDS/ODS Contractor's Activities dated **[insert date]**.

**DSI Contract Documents** has the meaning given to "CIDS/ODS Contract Documents" in the DSI Contract.

**DSI Independent Certifier** means the person appointed as the independent certifier for the CIDS/ODS Contractor Works in accordance with the DSI Independent Certifier Deed, including any replacement thereof pursuant to the DSI Independent Certifier Deed.

**DSI Independent Certifier Deed** means the deed titled "Sydney Metro City & Southwest Independent Certification of the CIDS/ODS Works - Independent Certifier Deed" entered into between the CIDS/ODS Contractor, the Principal, the DSI Independent Certifier and the Operator.

**Executive Negotiator** means:

- (a) in the case of the Principal, the Chief Executive of Sydney Metro City & Southwest (or his or her delegate);
- (b) in the case of the CIDS/ODS Contractor, **[insert]** (or his or her delegate who must not be part of the CIDS/ODS Contractor's project team for Sydney Metro City & Southwest); and
- (c) in the case of the Operator, the Operator's Chairperson (or his or her delegate, who must not be part of the Operator's project team for Sydney Metro City & Southwest).

**Final Inspection** has the meaning given to that term in clause 5.1(b).

**Interface Requirements Specifications** means the documents of that name included in Appendix E01 of the SWTC to the DSI Contract.

**Loss** means:

- (a) any cost, expense, fee, loss, damage, Liability, or other amount; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty,



whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent.

**Operator's Activities** means all the things and tasks that Operator is or may be required to do under the OTS2 Project Deed.

**OTS2 Project Deed** means the deed titled "OTS2 Project Deed" between the Principal and the Operator in respect of the TSOM Works dated 21 November 2019.

**Principal's Representative** means any person that the Principal may from time to time appoint as its representative in respect of this deed, as notified to the CIDS/ODS Contractor and the Operator.

**CIDS/ODS Contractor Works** has the meaning given to "Works" in the DSI Contract (including as those CIDS/ODS Contractor Works may be changed or varied in accordance with the DSI Contract).

**CIDS/ODS Contractor's Activities** means all things and tasks that the CIDS/ODS Contractor is or may be required to do under the DSI Contract.

**Site Interface Deed Poll** means a deed poll substantially in the form of Schedule 2 to this deed.

**Subcontractor** means any subcontractor of either of the CIDS/ODS Contractor or the Operator.

## 1.2 Definitions in DSI Contract

Except as otherwise defined, terms used in this deed that are defined in the DSI Contract have the same meaning in this deed as is provided for in the DSI 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 CIDS/ODS Contractor or the Operator comprises more than one entity, an obligation or a liability assumed by, or a right conferred on, either the CIDS/ODS Contractor or the Operator (as applicable), binds or benefits the entities which comprise that party 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 any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) 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;
- (g) 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;
- (h) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (i) a reference to a part, clause, schedule, exhibit, attachment or annexure is a reference to a part, 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;
- (j) 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;
- (k) **includes** in any form is not a word of limitation;
- (l) a reference to **\$** or **dollar** is to Australian currency;
- (m) 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;
- (n) for all purposes other than as set out in clause 1.3(m), **day** means calendar day;

- (o) a reference to a **month** is a reference to a calendar month;
- (p) a reference to a court or tribunal is to an Australian court or tribunal;
- (q) 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
- (r) 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.

#### 1.5 **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. **PRIMARY OBLIGATIONS**

### 2.1 **General**

- (a) Each Contractor acknowledges that it must comply with the obligations under its respective deed with the Principal.
- (b) Each Contractor acknowledges that it must comply with this deed.
- (c) Other than as expressly required under this deed, the CIDS/ODS Contractor and the Operator must not enter into any contract, arrangement or other understanding with each other without the prior written approval of the Principal's Representative.

### 2.2 **DSI Independent Certifier**

- (a) The parties acknowledge that the DSI Independent Certifier's role is to, amongst other things:
  - (i) certify whether relevant portions of the Design Stage 3 Design Documentation produced by the CIDS/ODS Contractor complies with the requirements of the DSI Contract;
  - (ii) certify whether each Milestone has reached Milestone Achievement in accordance with the requirements of the DSI Contract;
  - (iii) certify whether each Portion has reached Construction Completion in accordance with the requirements of the DSI Contract;

- (iv) certify whether Completion has been achieved in accordance with the requirements of the DSI Contract; and
  - (v) make determinations on other matters that the DSI Contract expressly requires be determined by the DSI Independent Certifier.
- (b) The Contractors agree that, subject to the DSI Independent Certifier Deed, any certification given by the DSI Independent Certifier that a Milestone has reached Milestone Achievement, a Portion has reached Construction Completion or Completion has been achieved in accordance with the requirements of the DSI Contract is final and binding in the absence of manifest error on the face of the certification from the DSI Independent Certifier.

### 2.3 **Rail safety**

In performing their respective obligations under this deed:

- (a) the Contractors must liaise and cooperate with each other (and with the ONRSR and the Principal); and
- (b) the CIDS/ODS Contractor must provide any reasonable assistance and documentation required by the Operator (or by the Principal) and the Operator must provide any reasonable assistance and documentation required by the CIDS/ODS Contractor (or by the Principal) in relation to safety matters, including in relation to the Principal's Accreditation or the Operator's Accreditation, including any application for or renewal or extension of such Accreditation.

## 3. **COOPERATION**

### 3.1 **Cooperation and Integration Control Group**

The Cooperation and Integration Control Group will be established within 14 days of the date of this deed. The Cooperation and Integration Control Group will comprise:

- (a) the Principal's Representative;
- (b) the following personnel of the CIDS/ODS Contractor:
  - (i) the CIDS/ODS Contractor's Representative; and
  - (ii) the CIDS/ODS Contractor's construction manager;
- (c) the following personnel of the Operator:
  - (i) the Operator's technical director; and
  - (ii) a representative of the Operator's Subcontractor as nominated by the Operator from time to time,

or their respective delegates;
- (d) any representative(s) of the DSI Independent Certifier as required by the Principal's Representative;

- (e) representatives of any Subcontractors as reasonably required by the Principal's Representative;
- (f) representatives of any Interface Contractor as reasonably required by the Principal's Representative; and
- (g) any other person the Principal's Representative reasonably requires from time to time which (for the avoidance of doubt) may include:
  - (i) the members of any IDAR Panel appointed in connection with the DSI Contract or the OTS2 Project Deed; and
  - (ii) representatives of any person or entity engaged to undertake independent verification or certification activities in connection with the OTS2 Project Deed.

### 3.2 Cooperation and Integration Control Group functions

The functions and objectives of the Cooperation and Integration Control Group include:

- (a) identifying all key interfaces between the CIDS/ODS Contractor's Activities and the Operator's Activities. This includes access requirements and the provision of access, design and work methodology input, to the extent not already identified in the Interface Requirements Specifications;
- (b) developing a program for the key interface activities to be incorporated into each Contractor's delivery program (including provision of design information and the activities identified in the Interface Requirements Specifications);
- (c) reviewing the progress of the CIDS/ODS Contractor's Activities and the Operator's Activities and anticipated future progress of the CIDS/ODS Contractor's Activities and the Operator's Activities;
- (d) considering interface issues between the CIDS/ODS Contractor's Activities, the Operator's Activities and any other interfaces with other contractors, including their status, problems, solutions and newly identified interfaces;
- (e) identifying strategies to efficiently manage key interface issues between the Contractors;
- (f) considering and coordinating community and stakeholder relations issues;
- (g) establishing administrative procedures to be adopted by the various parties in relation to the matters referred to in this deed;
- (h) reviewing the working relationship between the parties and addressing issues as they arise in a constructive and efficient manner;
- (i) considering matters arising in respect of the performance of the DSI Independent Certifier; and

- (j) any other matters relating to the interface between the TSOM Works and the CIDS/ODS Contractor Works.

### 3.3 Cooperation and Integration Control Group meetings

- (a) The Cooperation and Integration Control Group must meet:
  - (i) at the dates and times specified by the Principal's Representative, which will be on a regular monthly basis between the date of this deed and the date that is one month after the date Completion is achieved (or such other regular period as the Principal, the CIDS/ODS Contractor and the Operator agree in writing);
  - (ii) in accordance with this clause 3.3; and
  - (iii) at other times as required by any of the Principal's Representative, the CIDS/ODS Contractor and/or the Operator.
- (b) The Contractors must together provide the Principal's Representative with an agenda for each meeting of the Cooperation and Integration Control Group. The agenda must:
  - (i) have been prepared in consultation with the Principal's Representative;
  - (ii) be provided no less than 48 hours prior to each meeting;
  - (iii) include the agenda items set out in Schedule 1 or as otherwise notified by the Principal's Representative from time to time; and
  - (iv) be distributed to any other person as required by the Principal's Representative.
- (c) The Principal's Representative will have the role of chairperson for meetings of the Cooperation and Integration Control Group.
- (d) For each meeting of the Cooperation and Integration Control Group, the Principal's Representative (or such other member of the Cooperation and Integration Control Group as is nominated by the Principal's Representative) must record minutes of the meeting and distribute the minutes to all members of the Cooperation and Integration Control Group within 5 Business Days after the meeting. The Principal's Representative may also require that the minutes be distributed to any other person.
- (e) Notwithstanding the recording of the minutes of any Cooperation and Integration Control Group meeting, no resolution or communication at any Cooperation and Integration Control Group meeting (nor minutes recording any resolution or communication) or anything else which occurs during a

Cooperation and Integration Control Group meeting or as part of the process for such meetings will:

- (i) limit or otherwise affect:
  - (A) the CIDS/ODS Contractor's obligations under this deed or the DSI Contract or otherwise according to Law;
  - (B) the Operator's obligations under this deed or the OTS2 Project Deed or otherwise according to Law; or
  - (C) the Principal's rights, whether under this deed, the DSI Contract or the OTS2 Project Deed or otherwise according to Law;
- (ii) be construed as or amount to a Direction under the DSI Contract unless and until a separate direction is given to the CIDS/ODS Contractor in writing by the Principal's Representative under the DSI Contract; or
- (iii) be construed as or amount to a Direction under the OTS2 Project Deed unless and until a separate direction is given to the Operator in writing by the Principal's Representative under the OTS2 Project Deed,

and the parties agree that all materials referred to and all discussions, debates, disagreements and resolutions on any matters raised at these meetings are only for the purpose of reviewing the matters referred to in this clause 3.3 and other matters raised at the meetings.

### 3.4 **Cooperation and Integration – CIDS/ODS Contractor**

The CIDS/ODS Contractor:

- (a) acknowledges that:
  - (i) the CIDS/ODS Contractor Works and the TSOM Works form part of Sydney Metro City & Southwest;
  - (ii) the CIDS/ODS Contractor's Activities interface with the Operator's Activities;
  - (iii) the Operator will be executing work on parts of the Combined Project Site or Extra Land, or adjacent to the Combined Project Site or Extra Land, at the same time the CIDS/ODS Contractor is performing the CIDS/ODS Contractor's Activities;
  - (iv) it may require certain design and work methodology input from the Operator to coordinate the design of the CIDS/ODS Contractor Works with the TSOM Works;
  - (v) the Operator may require the CIDS/ODS Contractor to provide design and work methodology information to it to coordinate the design or conduct of the TSOM Works with the CIDS/ODS Contractor Works, and this must be provided in a timely manner by the CIDS/ODS Contractor; and

- (vi) any delay in the performance of the CIDS/ODS Contractor's Activities, or in the CIDS/ODS Contractor providing information to, or cooperating and coordinating with, the Operator may adversely impact upon, delay or disrupt the Operator's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages;
- (b) must at all times:
- (i) permit the Operator to execute the TSOM Works on the applicable parts of the Combined Project Site or Extra Land or on any property adjacent to the Combined Project Site or Extra Land:
    - (A) at the same time the CIDS/ODS Contractor is performing the CIDS/ODS Contractor's Activities; and
    - (B) at the times agreed between the Contractors, or failing agreement, at the times determined by the Principal's Representative,

and for this purpose must not interfere with access to those parts of the Combined Project Site or Extra Land, or property adjacent to the Combined Project Site or Extra Land, required by the Operator for the purpose of carrying out the TSOM Works;
  - (ii) protect the CIDS/ODS Contractor Works from accidental damage by the Operator;
  - (iii) not damage the TSOM Works or the Operator's plant or equipment;
  - (iv) fully co-operate with the Operator, and do everything reasonably necessary to:
    - (A) facilitate the execution of work by the Operator including providing the Operator with such assistance as may be directed by the Principal's Representative; and
    - (B) ensure the effective coordination of the design and construction of the CIDS/ODS Contractor Works with the TSOM Works;
  - (v) carefully coordinate and interface the CIDS/ODS Contractor's Activities with the Operator's Activities and for this purpose:
    - (A) make proper allowance in all programs for the Operator's Activities;
    - (B) review all programs provided by the Operator and confirm that they adequately allow for the CIDS/ODS Contractor's Activities and the interfaces of the CIDS/ODS Contractor's Activities with the Operator's Activities;
    - (C) monitor the progress or conduct of the Operator's Activities;
    - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement or progress of the



Project Works, Milestone Achievement of a Milestone, Construction Completion of a Portion or Completion; and

- (E) provide the Operator with sufficient information about current and expected CIDS/ODS Contractor's Activities to assist the Operator to coordinate the Operator's Activities with the CIDS/ODS Contractor's Activities;
- (vi) cooperate, meet with, liaise and share information so that the CIDS/ODS Contractor and the Operator each comply with the provisions of the relevant EPL (if applicable);
- (vii) perform the CIDS/ODS Contractor's Activities so as to minimise any interference with or disruption or delay to, or other adverse effect on, the Operator's Activities;
- (viii) be responsible for coordinating the CIDS/ODS Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, the Operator's personnel and work, including providing to the Principal's Representative copies of work method statements for those parts of the CIDS/ODS Contractor Works which are adjacent to or interface with the TSOM Works, at least 15 Business Days prior to commencing the work described in the work method statement;
- (ix) work directly with the Operator where required to complete the design of the CIDS/ODS Contractor Works and:
  - (A) provide all necessary information to the Operator in respect of the CIDS/ODS Contractor Works to permit the Operator to complete the design of the TSOM Works so that they are acceptable to the Principal; and
  - (B) otherwise comply with the DSI Contract, including the SWTC;
- (x) attend interface coordination meetings chaired by the Principal's Representative with the Interface Contractors and others every 10 Business Days (or as otherwise agreed), or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- (xi) when information is required from the Operator, provide reasonable written notice to the Operator (with a copy to the Principal's Representative) requesting that information and specifying the date by which such information is required, which must be:
  - (A) at least 10 days after the date of the notice (except in special circumstances); or
  - (B) if a longer period for the provision of information is required by the DSI Contract, the date that period expires;

- (xii) ensure that any written notice given under clause 3.4(b)(xi) provides the Operator with the longest possible time for the provision of the information;
- (xiii) when any information is requested by the Principal or the Operator, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Operator's Activities with the CIDS/ODS Contractor Works or the CIDS/ODS Contractor's Activities:
  - (A) provide the information to the Principal's Representative or the Operator with a copy to the Principal's Representative (as the case may be) within the time requested by the Operator (or, if the time requested by the Operator is not reasonable, within a reasonable period of time); and
  - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate;
- (xiv) achieve a high level of cooperation, coordination and collaboration with the Operator to ensure that:
  - (A) the CIDS/ODS Contractor Works and the TSOM Works are fully integrated with each other; and
  - (B) any delay, or potential delay, to the CIDS/ODS Contractor's Activities or the Operator's Activities is mitigated;
- (xv) work directly with the Operator in preparing any asset management information required under the DSI Contract or the OTS2 Project Deed;
- (xvi) closely cooperate with the Operator with respect to community and stakeholder liaison issues; and
- (xvii) use its best endeavours to resolve any problems, and work closely and iteratively, with the Operator, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems related to:
  - (A) the provision of information;
  - (A) the obtaining of information;
  - (B) the adequacy of information provided to, or received from, the Operator;
  - (C) the compatibility of the CIDS/ODS Contractor Works with the TSOM Works;
  - (D) coordination in accordance with this clause 3.4; and
  - (E) technical issues with the information provided to, or received from, the Operator;

- (c) must, in the event that despite using its best endeavours, and working closely and iteratively with the Operator, the Contractors fail to resolve a problem between them:
  - (i) give written notice to the Principal's Representative with a copy to the Operator describing the problem; and
  - (vii) attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem;
- (d) must promptly advise the Principal's Representative of all matters arising out of the liaison between the Contractors that may involve a change to the CIDS/ODS Contractor Works or have an adverse effect upon, or cause a delay to, the CIDS/ODS Contractor Works; and
- (e) indemnifies the Operator against any cost or expense suffered or incurred by the Operator in rectifying any damage caused as a result of any breach by the CIDS/ODS Contractor, any of its subcontractors or their respective personnel of clause 3.4(b)(iii). The CIDS/ODS Contractor's responsibility to indemnify the Operator in accordance with this clause 3.4(e) will be reduced proportionally to the extent that an act or omission by the Operator, any of the Operator's subcontractors or their respective personnel contributed to the damage.

### 3.5 Cooperation and Integration – the Operator

The Operator:

- (a) acknowledges that:
  - (i) the TSOM Works and the CIDS/ODS Contractor Works form part of Sydney Metro City & Southwest;
  - (ii) the Operator's Activities and the TSOM Works interface with the CIDS/ODS Contractor's Activities;
  - (iii) the CIDS/ODS Contractor will be executing work on parts of the Combined Project Site or Extra Land, or adjacent to the Combined Project Site or Extra Land, at the same time the Operator is performing the Operator's Activities;
  - (iv) it may require certain design and work methodology input from the CIDS/ODS Contractor to coordinate the design of the TSOM Works with the CIDS/ODS Contractor Works;
  - (v) the CIDS/ODS Contractor may require the Operator to provide design and work methodology information to it to coordinate the design or conduct of the CIDS/ODS Contractor Works with the TSOM Works, and this must be provided in a timely manner by the Operator; and
  - (vi) any delay in the performance of the Operator's Activities, or in the Operator providing information to, or cooperating and coordinating with,

the CIDS/ODS Contractor may adversely impact upon, delay or disrupt the CIDS/ODS Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages;

(b) must during the periods set out in clauses 9.2(c) and 9.2(d) of the OTS2 Project Deed in which the Operator or its nominee has been engaged as principal contractor in respect of that part of the Construction Site or the Licensed Maintenance Area (as those terms are defined under the OTS2 Project Deed):

(i) permit the CIDS/ODS Contractor to execute the CIDS/ODS Contractor Works on the applicable parts of the Combined Project Site or Extra Land or on any property adjacent to the Combined Project Site or Extra Land:

(A) at the same time the Operator is performing the TSOM Works; and

(B) at the times agreed between the Contractors, or failing agreement, at the times determined by the Principal's Representative,

and for this purpose ensure that the CIDS/ODS Contractor has safe, clean and clear access to those parts of the Combined Project Site or Extra Land, or property adjacent to the Combined Project Site or Extra Land required by the CIDS/ODS Contractor for the purpose of carrying out the CIDS/ODS Contractor Works subject to, where the CIDS/ODS Contractor is carrying out construction work on the Construction Site or the Licensed Maintenance Area (as those terms are defined under the OTS2 Project Deed), the CIDS/ODS Contractor:

(C) complying with the Operator's reasonable site access and work health and safety procedures; and

(D) executing a Site Interface Deed Poll in favour of the relevant appointed principal contractor;

(ii) protect improvements on the Combined Project Site or Extra Land from accidental damage by the CIDS/ODS Contractor; and

(iii) provide means of receiving, storing and protecting goods and equipment supplied by the CIDS/ODS Contractor;

(c) must at all times:

(i) protect the TSOM Works from accidental damage by the CIDS/ODS Contractor;

(ii) not damage the CIDS/ODS Contractor Works or the CIDS/ODS Contractor's plant or equipment;

(iii) fully co-operate with the CIDS/ODS Contractor, and do everything reasonably necessary to:

(A) facilitate the execution of work by the CIDS/ODS Contractor, including providing the CIDS/ODS Contractor with such

assistance as may be directed by the Principal's Representative;  
and

- (B) ensure the effective coordination of the design and construction of the TSOM Works with the CIDS/ODS Contractor Works;
- (iv) carefully coordinate and interface the Operator's Activities with the CIDS/ODS Contractor's Activities and for this purpose:
  - (A) make proper allowance in all programs for the CIDS/ODS Contractor's Activities;
  - (B) review all programs provided by the CIDS/ODS Contractor and confirm that they adequately allow for the Operator's Activities and the interfaces of the Operator's Activities with the CIDS/ODS Contractor's Activities;
  - (C) monitor the progress or conduct of the CIDS/ODS Contractor Works;
  - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement or progress of the TSOM Works or completion of the TSOM Works; and
  - (E) provide the CIDS/ODS Contractor with sufficient information about current and expected Operator's Activities to assist the CIDS/ODS Contractor to coordinate the CIDS/ODS Contractor's Activities with the Operator's Activities;
- (v) cooperate, meet with, liaise and share information so that the CIDS/ODS Contractor and the Operator each comply with the provisions of the relevant EPL (if applicable);
- (vi) perform the Operator's Activities so as to minimise any interference with or disruption or delay to, or other adverse effect on, the CIDS/ODS Contractor's Activities;
- (vii) be responsible for coordinating the Operator's Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, the CIDS/ODS Contractor's personnel and work, including providing to the Principal's Representative copies of work method statements for those parts of the TSOM Works which are adjacent to or interface with the CIDS/ODS Contractor Works, at least 15 Business Days prior to commencing the work described in the work method statement;
- (viii) work directly with the CIDS/ODS Contractor where required to complete the design of the TSOM Works and:
  - (A) provide all necessary information to the CIDS/ODS Contractor in respect of the TSOM Works to permit the CIDS/ODS Contractor to

complete the design of the CIDS/ODS Contractor Works so that they are acceptable to the Principal; and

- (B) otherwise comply with the OTS2 Project Deed;
- (ix) attend interface coordination meetings chaired by the Principal's Representative with the Interface Contractors and others every 10 Business Days (or as otherwise agreed), or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- (x) when information is required from the CIDS/ODS Contractor, provide reasonable written notice to the CIDS/ODS Contractor (with a copy to the Principal's Representative) requesting that information and specifying the date by which such information is required, which must be:
  - (A) at least 10 days after the date of the notice (except in special circumstances); or
  - (B) if a longer period for the provision of information is required by the OTS2 Project Deed, the date that period expires;
- (xi) ensure that any written notice given under clause 3.5(c)(x) provides the CIDS/ODS Contractor with the longest possible time for the provision of the information;
- (xii) when any information is requested by the Principal or the CIDS/ODS Contractor, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the CIDS/ODS Contractor's Activities with the TSOM Works or the Operator's Activities:
  - (A) provide the information to the Principal's Representative or the CIDS/ODS Contractor with a copy to the Principal's Representative (as the case may be) within the time requested by the CIDS/ODS Contractor (or, if the time requested by the CIDS/ODS Contractor is not reasonable, within a reasonable period of time); and
  - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate;
- (xiii) achieve a high level of cooperation, coordination and collaboration with the CIDS/ODS Contractor to ensure that:
  - (A) the CIDS/ODS Contractor Works and the TSOM Works are fully integrated with each other; and
  - (B) any delay, or potential delay, to the CIDS/ODS Contractor's Activities or the Operator's Activities is mitigated;

- (xiv) work directly with the CIDS/ODS Contractor in preparing any asset management information required under the DSI Contract or the OTS2 Project Deed;
  - (xv) closely cooperate with the CIDS/ODS Contractor with respect to community and stakeholder liaison issues; and
  - (xvi) use its best endeavours to resolve any problems, and work closely and iteratively, with the CIDS/ODS Contractor, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems related to:
    - (A) the provision of information;
    - (B) the obtaining of information;
    - (C) the adequacy of information provided to, or received from, the CIDS/ODS Contractor;
    - (D) the compatibility of the CIDS/ODS Contractor Works with the TSOM Works;
    - (E) coordination in accordance with this clause 3.5; and
    - (F) technical issues with the information provided to, or received from, the CIDS/ODS Contractor;
- (d) must, in the event that despite using its best endeavours, and working closely and iteratively with the CIDS/ODS Contractor, the Contractors fail to resolve a problem between them:
- (i) give written notice to the Principal's Representative with a copy to the CIDS/ODS Contractor describing the problem; and
  - (ii) attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem;
- (e) must promptly advise the Principal's Representative of all matters arising out of the liaison between the Contractors that may involve a change to design or construction work under the OTS2 Project Deed or otherwise have an adverse effect upon, or cause a delay to, the TSOM Works;
- (f) must, if it is required to access a part of the Site in order to rectify any Defects (as defined in the OTS2 Project Deed) after the CIDS/ODS Contractor has been provided with access to the relevant part of the Site for the purposes of carrying out the CIDS/ODS Contractor's obligations under the DSI Contract, carry out the Defect (as defined in the OTS2 Project Deed) rectification work in a manner which minimises any disruption, interference or adverse impact on or to, and without unreasonably disrupting or interfering with, or adversely impacting on, the activities which the CIDS/ODS Contractor is carrying out in discharge of its obligations under the DSI Contract;





- (i) the Operator may exclude the CIDS/ODS Contractor, any of its Subcontractors and their respective personnel from the Combined Project Site for work health and safety reasons; and
  - (ii) the Operator may direct the CIDS/ODS Contractor, any of its Subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
- (g) where high risk construction work is to be carried out in the rectification of Defects by the CIDS/ODS Contractor, the CIDS/ODS Contractor must:
- (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
  - (ii) provide a copy of the safe work method statement to the Principal and the Operator prior to the commencement of high risk construction work;
  - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
  - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
  - (v) where so directed by the Operator, suspend the performance of any high risk construction work;
- (h) the CIDS/ODS Contractor must in carrying out the Defect rectification work, comply with, and ensure that all Subcontractors and personnel comply with the WHS Legislation;
- (i) in its contracts with Subcontractors, the CIDS/ODS Contractor must ensure that the Subcontractor is obliged to give the same obligations and rights as required of the CIDS/ODS Contractor under this clause 3.6; and
- (j) the CIDS/ODS Contractor indemnifies the Operator against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Operator as a result of:
- (i) any failure by the CIDS/ODS Contractor, any of its subcontractors or their respective personnel to comply with any direction given by the Operator in accordance with this clause 3.6; or
  - (ii) any breach by the CIDS/ODS Contractor, any of its subcontractors or their respective personnel of:
    - (A) their respective contractual or legislative work health and safety obligations; or
    - (B) the provisions of this clause 3.6,
- but the CIDS/ODS Contractor's responsibility to indemnify the Operator in accordance with this clause 3.6(j) will be reduced proportionally to the extent that an act or omission by the Operator, any of the Operator's

subcontractors or their respective personnel contributed to the delay, damage, expense, loss, penalty or liability.

### 3.7 **DSI Contract and OTS2 Project Deed not affected**

Notwithstanding the provisions of this deed, the parties acknowledge and agree that nothing contained in this deed will limit or otherwise affect the duties, rights and obligations of:

- (a) the CIDS/ODS Contractor pursuant to the DSI Contract; or
- (b) the Operator pursuant to the OTS2 Project Deed.

### 3.8 **Limitation of liability**

(a) Subject to clause 3.8(b), each Contractor releases the other Contractor from and against:

- (i) any claim against the other Contractor (including any claim, action, demand or proceeding for payment of money (including damages)); and
- (ii) any Loss suffered or incurred by the Contractor,

arising out of or in any way in connection with a breach of this deed by, or other act or omission of, the other Contractor.

(b) Clause 3.8(a) does not limit:

- (i) a Contractor's liability which cannot be limited at Law;
- (ii) a Contractor's liability arising from a breach of clause 3.4(b)(iii) in respect of the CIDS/ODS Contractor or clause 3.5(c)(ii) in respect of the Operator;
- (iii) in respect of the CIDS/ODS Contractor, the CIDS/ODS Contractor's liability under the indemnity in clause 3.4(e) and clause 3.6(j);
- (iv) in respect of the Operator, the Operator's liability under the indemnity in clause 3.5(g) and clause 3.5(h);
- (v) a Contractor's liability arising under the indemnity in clause 2 of the Site Interface Deed Poll (as applicable); or
- (vi) a Contractor's liability to the Principal under the DSI Contract or the OTS2 Project Deed (as the case may be) arising out of or in any way in connection with any:
  - (A) breach of this deed by the Contractor; or
  - (B) other act, default or omission by the Contractor under, or purportedly under, this deed.

(c) This clause 3.8 applies:

- (i) notwithstanding and survives any termination of this deed;
  - (ii) notwithstanding any other provision of this deed; and
  - (iii) to the maximum extent permitted by Law (present or future).
- (d) Despite any other provision of this deed:
- (i) each of the Contractors' liability to the Principal under or in connection with this deed is limited to the extent described in the DSI Contract or the OTS2 Project Deed (as applicable);
  - (ii) nothing in this deed is intended to make or makes either of the Contractors liable for the same loss twice for the same breach of an obligation;
  - (iii) the liability of each of the Contractors arising under or in connection with this deed will:
    - (A) be subject to the same exceptions, exclusions and limitations as are specified in the DSI Contract or the OTS2 Project Deed (as applicable); and
    - (B) not exceed the maximum aggregate limit of liability of:
      - (aa) in respect of the CIDS/ODS Contractor, the liability of the CIDS/ODS Contractor under the DSI Contract, the other DSI Contract Documents or the Third Party Agreements as set out in clause 17.2(a) of the DSI Contract; or
      - (bb) in respect of the Operator, the liability of the Operator under the OTS2 Project Deed,

subject to the same exceptions, exclusions and limitations as are specified in the DSI Contract or the OTS2 Project Deed (as applicable), less the liability incurred (from time to time) by the:

      - (cc) CIDS/ODS Contractor under the DSI Contract, the other DSI Contract Documents or the Third Party Agreements as set out in clause 17.2(a) of the DSI Contract; or
      - (dd) Operator under the OTS2 Project Deed,

(as applicable); and
  - (iv) a Contractor's total aggregate liability to the other Contractor under or in connection with this deed howsoever caused or arising, whether in contract, tort (including by negligence), equity, statute, by way of indemnity, contribution, unjust enrichment, warranty or guarantee or otherwise at law will not exceed the liability that the:

- (A) CIDS/ODS Contractor would have had under the DSI Contract if the DSI Contract had named, in place of the Principal, the Principal and the Operator, jointly and severally; or
- (B) the Operator would have had under the OTS2 Project Deed if the OTS2 Project Deed had named, in place of the Principal, the Principal and the CIDS/ODS Contractor, jointly and severally.

#### 4. **DISPUTES REGARDING DEFECTS**

##### 4.1 **Defects**

- (a) The parties acknowledge and agree that:
  - (i) during the Defects Rectification Period, the rectification of Defects will be in accordance with the requirements and process set out in clause 11 of the DSI Contract;
  - (ii) without prejudice to clause 4.1(a)(i), the parties must negotiate in good faith to agree a defect rectification protocol setting out the agreed processes and procedures to be used to manage the interface between the parties in relation to the rectification of Defects; and
  - (iii) the dispute resolution provisions in clauses 4.2 and 4.3 apply only where a party gives a notice of Dispute under clauses 4.1(c) and 4.1(f).
- (b) Nothing in this clause 4.1 limits any right of the Principal under the DSI Contract, including any right to issue a direction under clause 11.2 of the DSI Contract.
- (c) Where:
  - (i) the Principal gives a direction to the CIDS/ODS Contractor under clause 11.2 of the DSI Contract in respect of a Defect in a Portion (including where any such direction is given by the Principal in respect of an alleged Defect originally notified to the Principal by the Operator under the terms of the OTS2 Project Deed); and
  - (ii) the CIDS/ODS Contractor wishes to dispute that the alleged Defect the subject of the direction is:
    - (A) a Defect; or
    - (B) a Defect for which the CIDS/ODS Contractor is responsible under the terms of the DSI Contract,

the CIDS/ODS Contractor must within 20 Business Days of receiving the Principal's direction give written notice to the Principal's Representative and the Operator:

    - (C) stating that it disputes that the alleged Defect the subject of the direction is a Defect or a Defect for which it is responsible under the terms of the DSI Contract; and

(D) providing detailed particulars of why it believes this to be the case.

Such a Dispute must be determined in accordance with clauses 4.2 and 4.3.

- (d) Not used.
- (e) Not used.
- (f) Where the Principal after the expiration of the Defects Rectification Period but prior to the applicable date from which clause 20.8 of the DSI Contract applies, gives a written notice to the CIDS/ODS Contractor that a Defect exists and setting out details of work which it alleges is a Defect, if the CIDS/ODS Contractor wishes to raise any dispute, difference, controversy or claim in respect of the alleged Defect which is the subject of the Principal's notice (or in respect of the CIDS/ODS Contractor's responsibility for the Defect), the party or the CIDS/ODS Contractor (as the case may be) must, within 40 Business Days give written notice to the Principal's Representative and the Operator that it wishes to raise a dispute in respect of the Defect, which notice must include details of the party's reasons for being dissatisfied and the position which the party believes is correct.
  - (i) Such a Dispute must be determined in accordance with clauses 4.2 and 4.3.
- (g) The parties acknowledge and agree that all other disputes, differences, controversies and claims:
  - (i) must be resolved between the respective parties in accordance with the dispute resolution provisions of the DSI Contract and OTS2 Project Deed (as relevant); and
  - (ii) will not be resolved pursuant to the dispute resolution provisions of this deed,

and the respective parties will be bound by the outcome of any such dispute, difference, controversy or claim under such of the DSI Contract and OTS2 Project Deed to which they are a party.

#### 4.2 **Executive Negotiation**

- (a) Where a notice of dispute (**Dispute**) is given in accordance with clauses 4.1(c) or 4.1(f) and the Dispute is required to be determined in accordance with clauses 4.2 and 4.3, the Dispute must be referred to the Executive Negotiators and each party must ensure that its Executive Negotiators will, within 5 Business Days after the date on which the notice of Dispute was given under clauses 4.1(c) or 4.1(f), commence meetings and negotiations with a view to resolving the Dispute.
- (b) If the Executive Negotiators:
  - (i) have not resolved the Dispute; or
  - (ii) have not reached agreement upon a procedure to resolve the Dispute,

within 20 Business Days after the date on which the notice of Dispute was given under clause 4.1(c) or 4.1(f) (or such longer period as the Executive Negotiators or the parties may have agreed in writing) then, whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the Dispute:

- (iii) the Principal may, in its absolute discretion, within 20 Business Days after the expiry of the 20 Business Day period referred to above, issue a notice to the Contractors stating that the Dispute is to be determined by litigation pursuant to court proceedings; or
- (iv) if the Principal does not issue any such notice within the required time, the Dispute will be referred to arbitration under clause 4.3.

### 4.3 Arbitration

If clause 4.2 requires a Dispute to be referred to arbitration, the arbitration will be conducted in accordance with the following procedure:

- (a) the arbitration will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Expedited Arbitration Rules;
- (b) the seat of the arbitration will be Sydney, Australia;
- (c) there will be a single arbitrator appointed in accordance with the ACICA Expedited Arbitration Rules;
- (d) the language of the arbitration will be English;
- (e) the parties further agree to the following general principles relating to the procedure of the arbitration:
  - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of the Dispute;
  - (ii) that the arbitration conducted pursuant to this clause 4.3 will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
  - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above at clauses 4.3(e)(i) and 4.3(e)(ii), particularly in deciding issues such as:
    - (A) the number of written submissions that will be permitted;
    - (B) where appropriate, the length of written submissions;
    - (C) the extent of document discovery permitted, if any;
    - (D) the consolidation of proceedings, when requested;

- (E) the joinder of parties, when requested;
  - (F) the length of any hearing, if any; and
  - (G) the number of experts, if any, each party is permitted to appoint;
- (f) subject to clauses 4.3(k) and 4.3(l), the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages;
  - (g) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context;
  - (h) the arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration;
  - (i) any award of the arbitral tribunal will be final and binding upon the parties;
  - (j) this arbitration agreement is governed by and must be construed according to the Law applying in New South Wales;
  - (k) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 4; and
  - (l) the arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

#### 4.4 Urgent relief

Nothing in this clause 4 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

#### 4.5 Continued performance of obligations

Despite the existence of any Dispute the parties must, except as expressly provided otherwise, continue to perform their respective obligations under this deed.

#### 4.6 Survive termination

This clause 4 will survive the termination of any of:

- (a) this deed;
- (b) the DSI Contract; and
- (c) the OTS2 Project Deed.

## 5. FINAL INSPECTION

### 5.1 Joint inspection

- (a) The Principal's Representative and a representative of each of the CIDS/ODS Contractor and the Operator must, prior to the date which is 6 months before the expiry of the final Defects Rectification Period, jointly inspect the CIDS/ODS Contractor Works at a mutually convenient time.
- (b) The Operator must allow the parties access to the Combined Project Site for the purpose of carrying out the inspection referred to in clause 5.1(a) (**Final Inspection**).
- (c) Within 5 Business Days of the Final Inspection, the Principal's Representative and the Operator may give the CIDS/ODS Contractor written notice of any Defects which they observed during the Final Inspection or of which they are otherwise aware.

## 6. LIABILITY

### 6.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of any party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 6.1(a), the rights, obligations and liabilities of the Principal, the CIDS/ODS Contractor and the Operator under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

### 6.2 Contractors not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) each of the CIDS/ODS Contractor and the Operator must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the CIDS/ODS Contractor or the Operator (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the CIDS/ODS Contractor or the Operator (whether in contract, tort or otherwise), the CIDS/ODS Contractor or the Operator (as applicable) will indemnify the Principal against any Loss which the Principal is not able to recover from the CIDS/ODS Contractor or the Operator (as applicable) because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).



## 7. TERMINATION AND SUBSTITUTION

### 7.1 Termination

- (a) Subject to clause 7.1(b), none of the parties will have any right to terminate this deed.
- (b) This deed will terminate automatically upon the termination of the DSI Contract or the OTS2 Project Deed.
- (c) If required by the Principal:
  - (i) upon any termination of the OTS2 Project Deed, the CIDS/ODS Contractor must; or
  - (ii) upon any termination of the DSI Contract, the Operator must,  
  
enter into a new cooperation and integration deed on substantially the same terms as this deed with the Principal and any new contractor or contractors appointed by the Principal for the completion of the balance of the works under the OTS2 Project Deed or the DSI Contract (as applicable) which remain unfinished as at the date of termination.

### 7.2 Preservation of rights

Nothing in this clause 7 or that the Principal does or fails to do pursuant to this clause 7 will prejudice the right of the Principal to exercise any right or remedy which it may have where a Contractor breaches (including repudiates) this deed.

## 8. GENERAL

### 8.1 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 may notify each party that a PDCS will be used for giving Notices under or in connection with this deed. The Principal'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 parties to use the PDCS;
  - (iv) any requirements for specific notices (eg notices of claims);
  - (v) the name and contact details of any additional person which the Principal nominates for receipt of Notices under this deed; and

- (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (ba) At any time and from time to time, the Principal may notify the parties that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's notice will state that such Notices will be given in accordance with clause 8.1(c)(i).
- (c) Each Notice must:
  - (i) before the date referred to in clause 8.1(b)(ii) or where clause 8.1(ba) applies:
    - (A) be in writing;
    - (B) be addressed:
      - (aa) in the case of a Notice from the CIDS/ODS Contractor, to the Principal and the Operator and any additional person notified by the Principal in writing;
      - (bb) in the case of a Notice from the Operator, to the Principal and the CIDS/ODS Contractor and any additional person notified by the Principal in writing; or
      - (cc) in the case of a Notice from the Principal, to the CIDS/ODS Contractor and the Operator;
    - (C) comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
    - (D) 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; and
    - (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):
      - (aa) to the Principal:

Address: Level 43, 680 George Street  
Sydney NSW 2000

Email: [REDACTED]

Attention: [REDACTED] Project Director for Sydney Metro City & Southwest

Any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel – Sydney Metro and sent

to

[REDACTED]

(bb) to the CIDS/ODS Contractor:

Address: Level 8, 40 Miller Street, North Sydney,  
NSW 2060

Email: [REDACTED]

Attention: [REDACTED]

(cc) to the Operator:

Address: Level 43, Rialto South Tower, 525 Collins  
Street

Melbourne VIC 3000

Email: [REDACTED]

Attention: [REDACTED]

(ii) on and from the commencement date for use of the PDCS referred to in clause 8.1(b)(ii) and other than where clause 8.1(ba) or clause 8.1(c)(i) applies:

(A) be sent through the PDCS in accordance with the requirements set out in clause 8.1(e) and:

(aa) in the case of a Notice from the CIDS/ODS Contractor, be addressed to the Principal and the Operator and any additional person notified in accordance with clause 8.1(b)(v) and comply with any requirements notified in accordance with clause 8.1(b)(iv);

(bb) in the case of a Notice from the Operator, be addressed to the Principal and the CIDS/ODS Contractor and any additional person notified in accordance with clause 8.1(b)(v) and comply with any requirements notified in accordance with clause 8.1(b)(iv); or

(cc) in the case of a Notice from the Principal, be addressed to the CIDS/ODS Contractor and the Operator; or

(B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 8.1(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;
  - (iv) (in the case of delivery by hand) on delivery; and
  - (v) (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.
- (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 8.1(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) Each of the CIDS/ODS Contractor and the Operator must:
- (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) ensure all relevant personnel attend all necessary training required by the Principal;
  - (iv) advise the Principal of which personnel require access to the PDCS;
  - (v) 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

- (vi) 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 8.1(c)(ii)(B) to the Principal through the PDCS.
- (g) The Principal has no liability for any losses the CIDS/ODS Contractor and the Operator 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 CIDS/ODS Contractor and the Operator 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 CIDS/ODS Contractor or the Operator's access to or use of the PDCS or any failure of the PDCS.

## 8.2 **Governing Law**

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

## 8.3 **Jurisdiction**

Except where clauses 4.2 and 4.3 of this deed apply, 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 8.3(a).

## 8.4 **The 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 Contractors acknowledges and agrees that, without limiting clause 8.4(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 either of the Contractors to make any claim against the Principal.

## 8.5 **Amendments**

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

## 8.6 **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



### 8.11 **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.

### 8.12 **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.

### 8.13 **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.

### 8.14 **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.

### 8.15 **Entire agreement**

To the extent permitted by Law, in relation to its subject matter, this deed, the DSI Contract (in respect of the Principal and the CIDS/ODS Contractor), the OTS2 Project Deed (in respect of the Principal and the Operator) and the DSI Independent Certifier Deed:

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

### 8.16 **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.

**8.17 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 of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

**8.18 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.

**8.19 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**

### **Agenda Items**

The Principal will notify the parties of any agenda items.

## SCHEDULE 2

### Form of Site Interface Deed Poll

THIS DEED POLL is made on [year]

#### IN FAVOUR OF:

- (1) [Insert name] ABN [number] of [address] (**Appointed Principal 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**),  
  
(together, the **Beneficiaries**)

#### GIVEN BY:

- (1) [Insert name] ABN [number] of [address] (**Accessing Contractor**)

#### RECITALS:

- (A) Pursuant to the deed titled "[insert]" between the Principal and [insert name] ABN [number] of [address] (**Site Contractor**) dated [insert] (**Contract**), the Site Contractor agreed to, among other things, design and construct certain works and carry out certain activities (**Project Works**) on the land more particularly described in the Contract (the **Construction Site**).
- (B) The Accessing Contractor has been appointed under a contract to undertake certain works and activities on the Construction Site (**Construction Site Interface Work**).
- (C) For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) (together, the **WHS Legislation**), the Project Works and the Construction Site Interface Work are a 'construction project' within the meaning of the WHS Legislation.
- (D) The Appointed Principal Contractor is authorised to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- (E) Under the provisions of the Contract, the Principal is required to procure the provision of this deed poll from certain contractors that undertake Construction Site Interface Work.

**This deed poll witnesses that the Accessing Contractor hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:**

1. In consideration of the Appointed Principal Contractor accepting this deed poll, the Accessing Contractor agrees that:
  - (a) the Accessing Contractor, its subcontractors and their respective personnel while they are on the Construction Site, will comply with Construction Site safety

regulations, any Construction Site rules or regulations and with all directions of the Appointed Principal Contractor with respect to work health and safety;

- (b) the Accessing Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the Appointed Principal Contractor so that the Appointed Principal Contractor discharges its obligations as principal contractor;
- (c) the Accessing Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Appointed Principal Contractor, the Principal and all other persons who have a work health and safety duty in relation to the same matter;
- (d) the Accessing Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Appointed Principal Contractor while on the Construction Site;
- (e) the Appointed Principal Contractor may exclude the Accessing Contractor, any of its subcontractors and their respective personnel from the Construction Site for work health and safety reasons;
- (f) the Appointed Principal Contractor may direct the Accessing Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
- (g) where high risk construction work, as reasonably determined by the Appointed Principal Contractor, is to be carried out in the performance of the Construction Site Interface Work, the Accessing Contractor must:
  - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
  - (ii) provide a copy of the safe work method statement to the Principal and the Appointed Principal Contractor prior to the commencement of high risk construction work;
  - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
  - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
  - (v) where so directed by the Appointed Principal Contractor, suspend the performance of any high risk construction work;
- (h) the Accessing Contractor will in carrying out the Construction Site Interface Work, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
- (i) in its contracts with subcontractors, the Accessing Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Accessing Contractor under this deed poll.

2. The Accessing Contractor indemnifies the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Appointed Principal Contractor as a result of:
  - (a) any failure by the Accessing Contractor to comply with any direction given by the Appointed Principal Contractor in accordance with this deed poll; or
  - (b) any breach by the Accessing Contractor, any of its subcontractors or their respective personnel of:
    - (i) their respective contractual or legislative work health and safety obligations; or
    - (ii) the provisions of this deed poll.
  
3. This deed poll will be governed by and construed in accordance with the law for the time being of New South Wales.

**EXECUTED** as a deed poll.

**Executed** by [Accessing Contractor] in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/other director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/other director

**EXECUTED** as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**EXECUTED** by **SYDNEY METRO** (ABN 12 354 063 515), by its authorised delegate, in the presence of:

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

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

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**SIGNED, SEALED and DELIVERED** for **NRT CSW Pty Ltd (ACN 635 509 036)** in its personal capacity and as trustee of the **NRT CSW Unit Trust** under power of attorney in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name

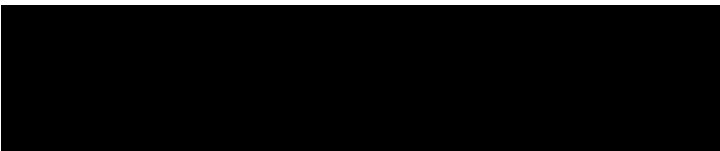
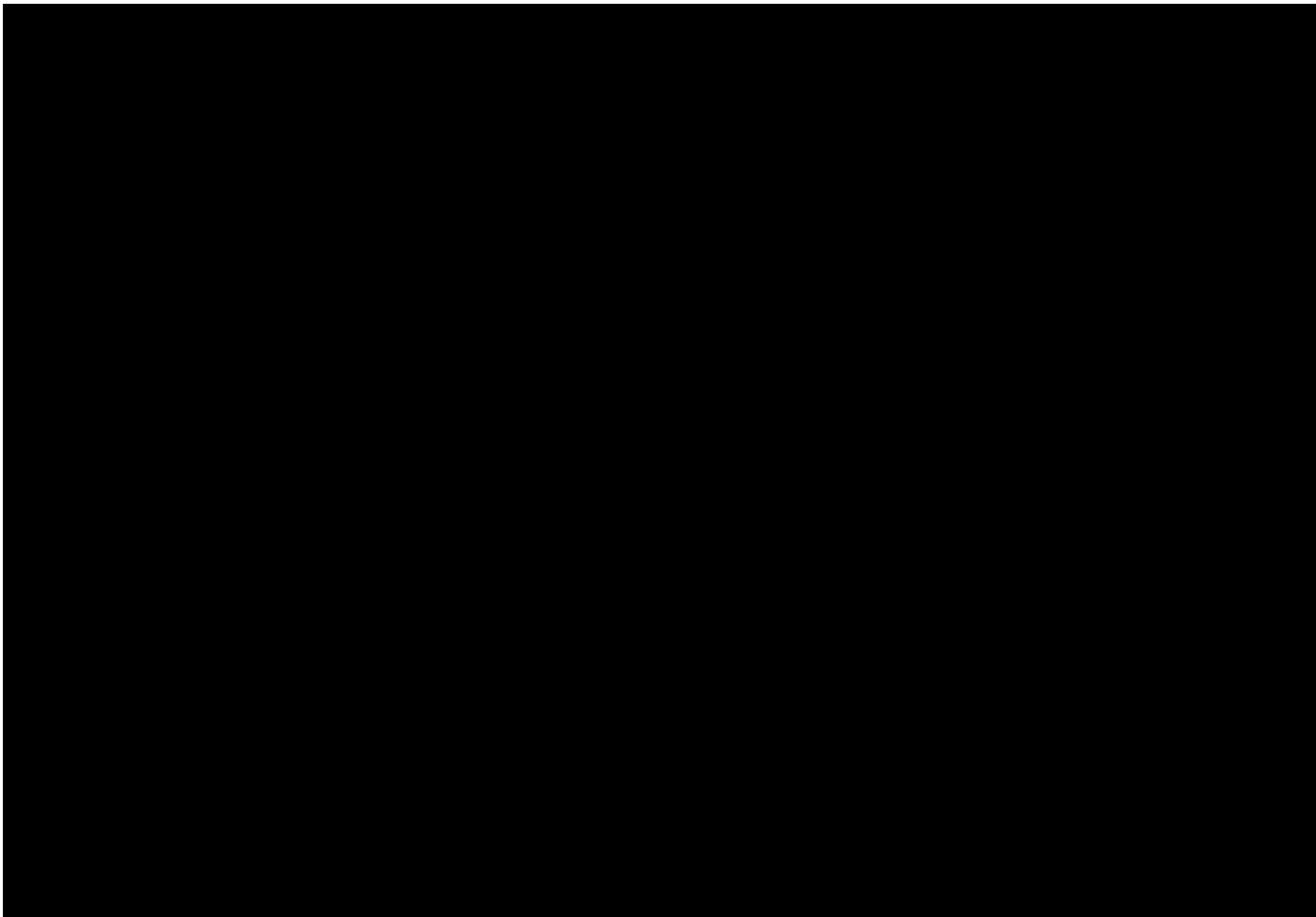
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Address of witness

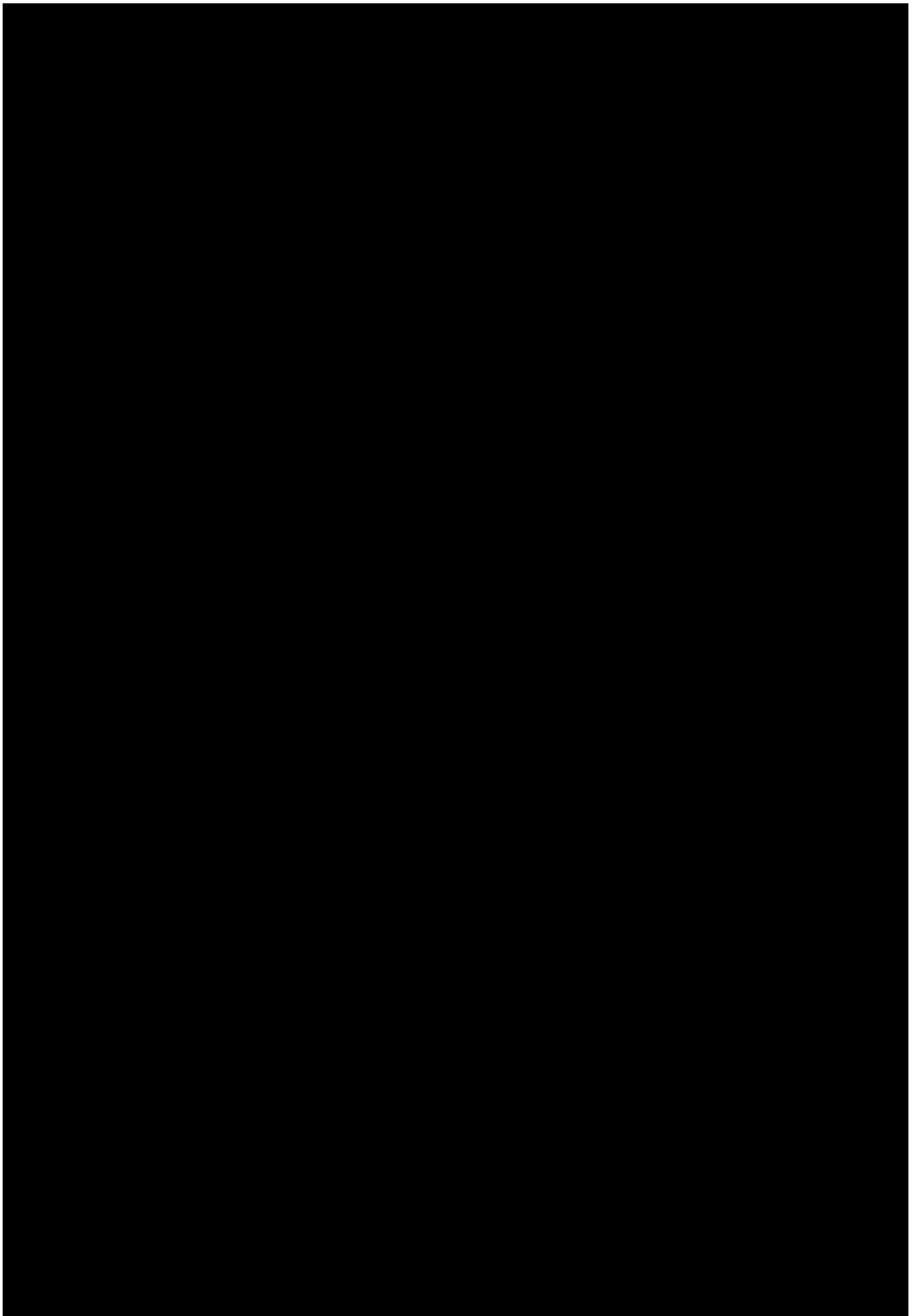
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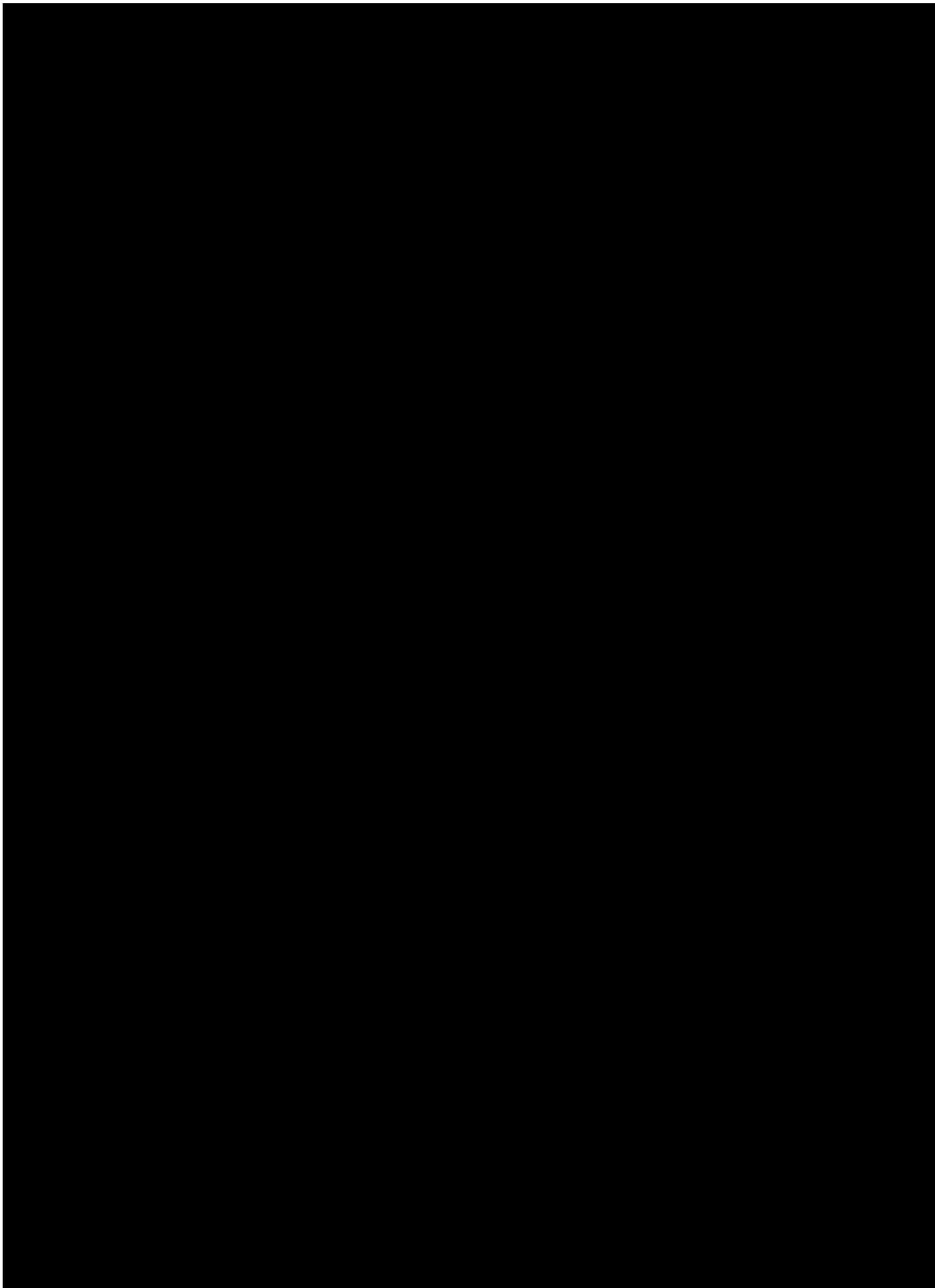
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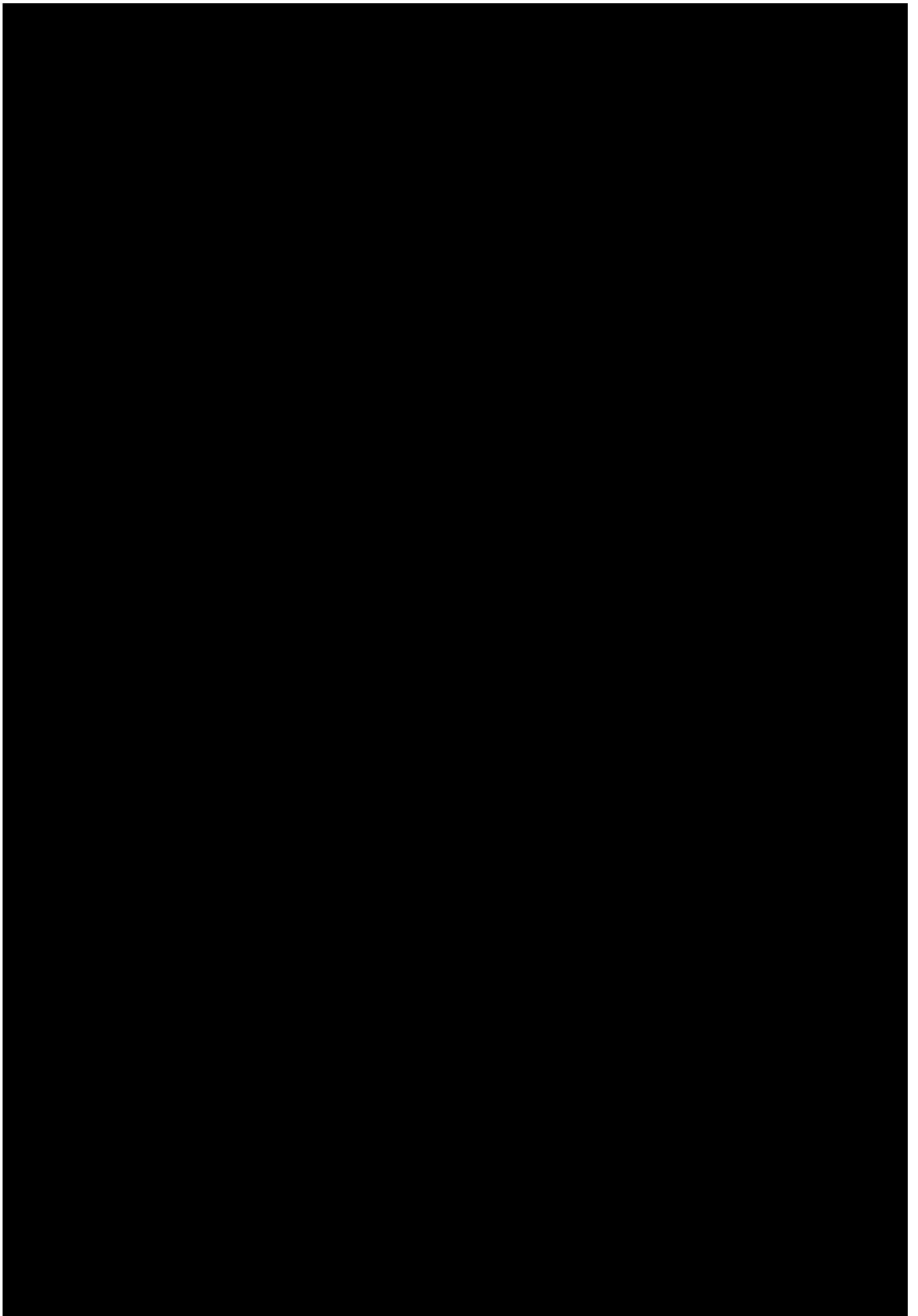
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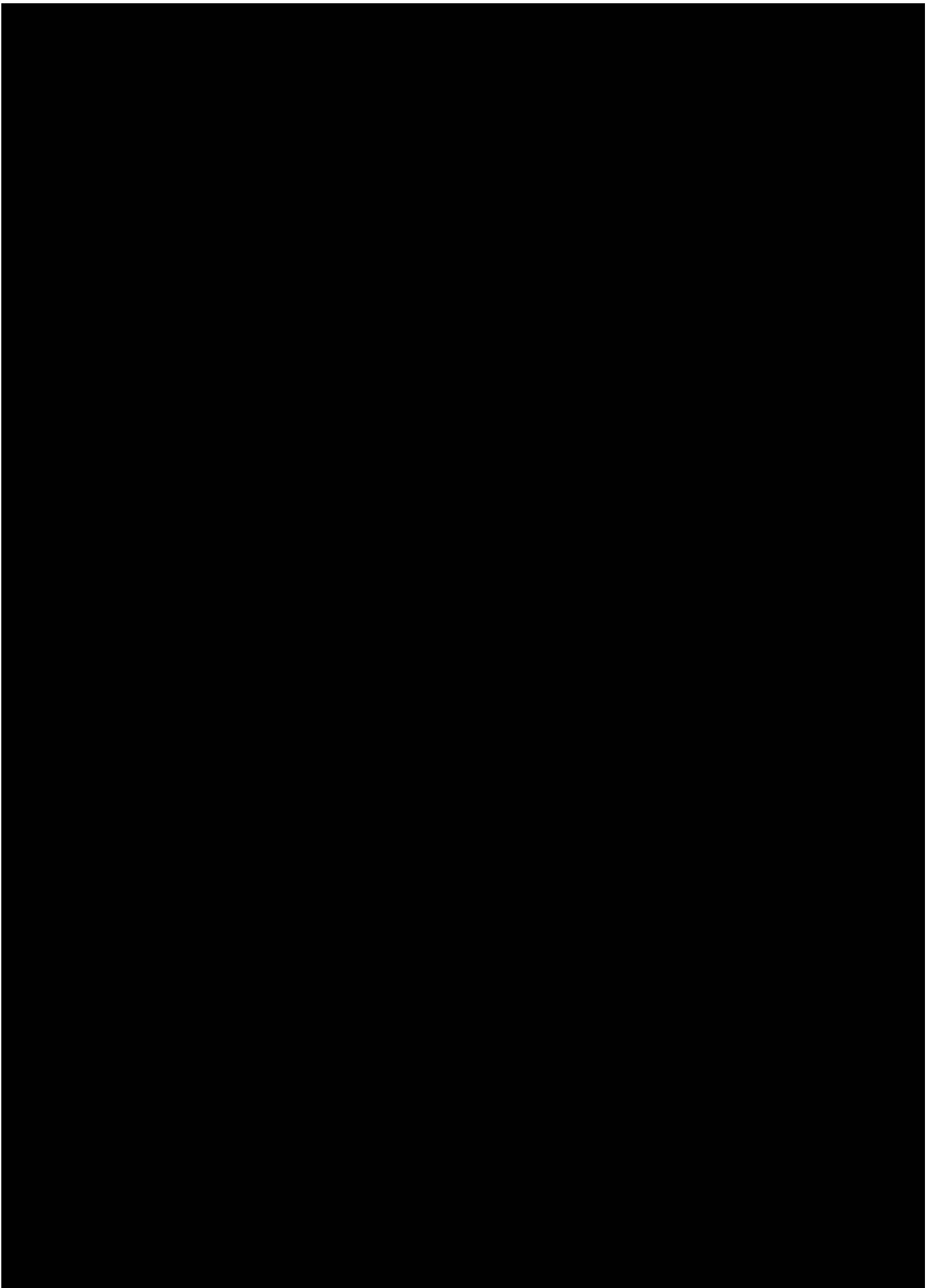


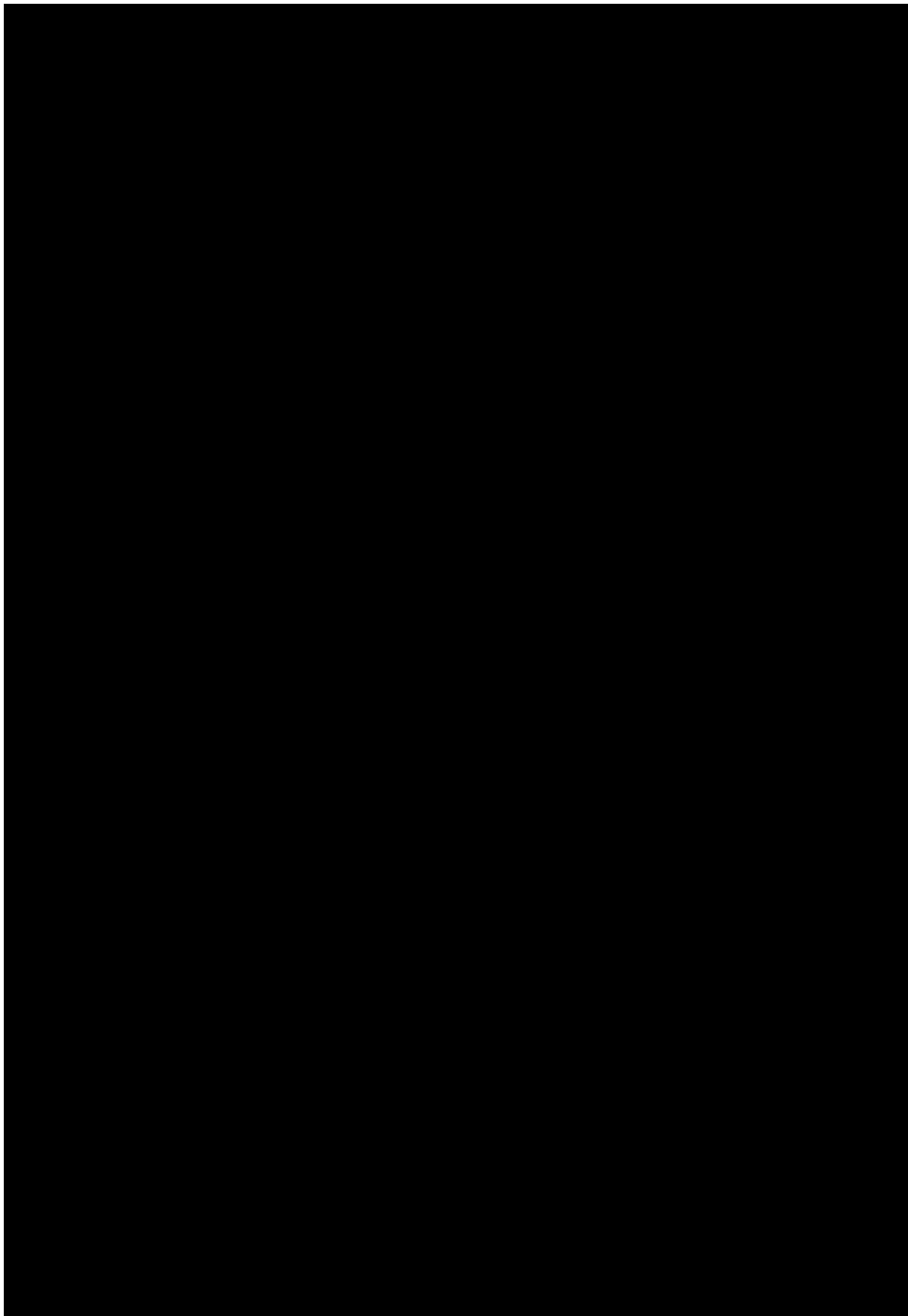


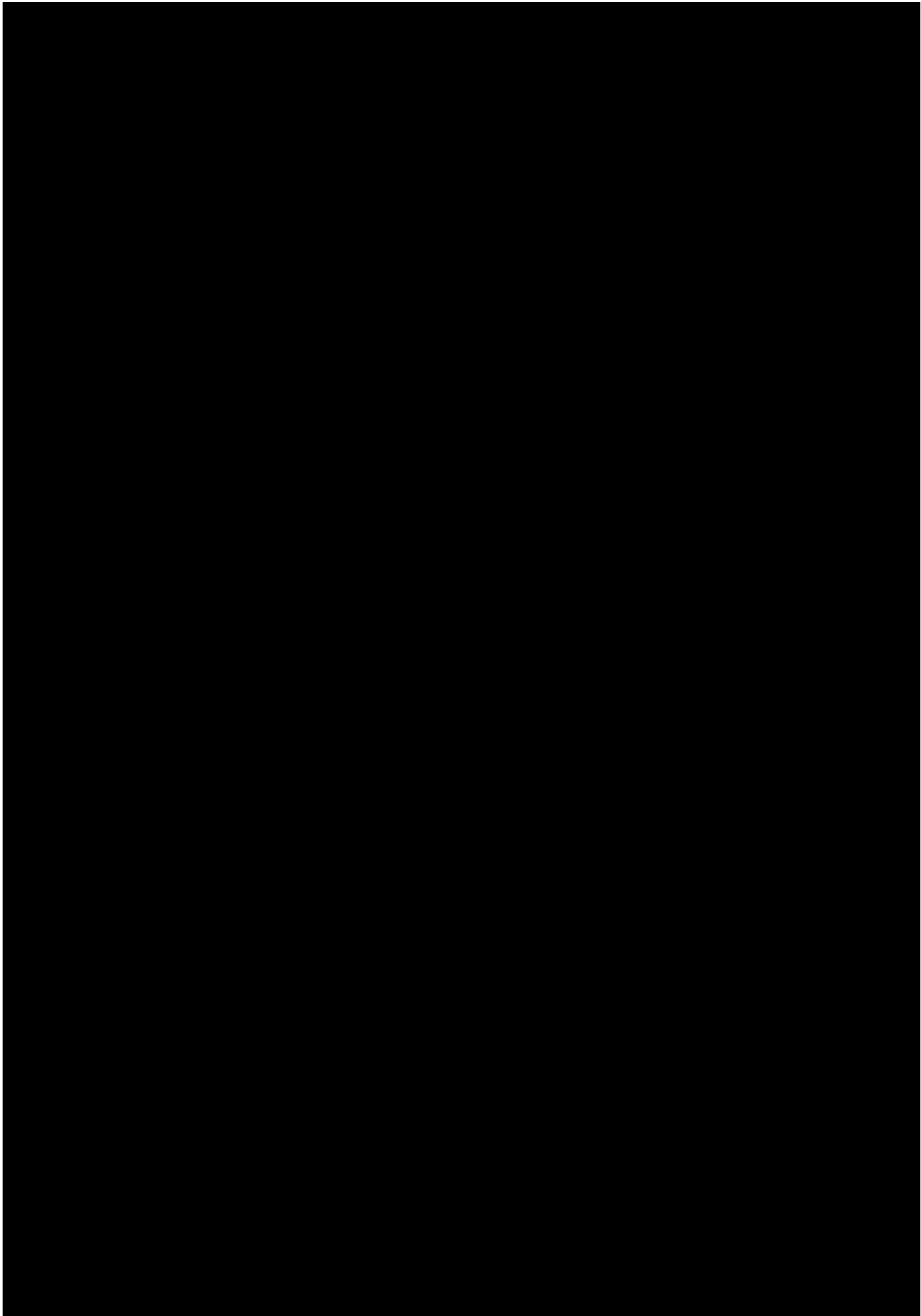


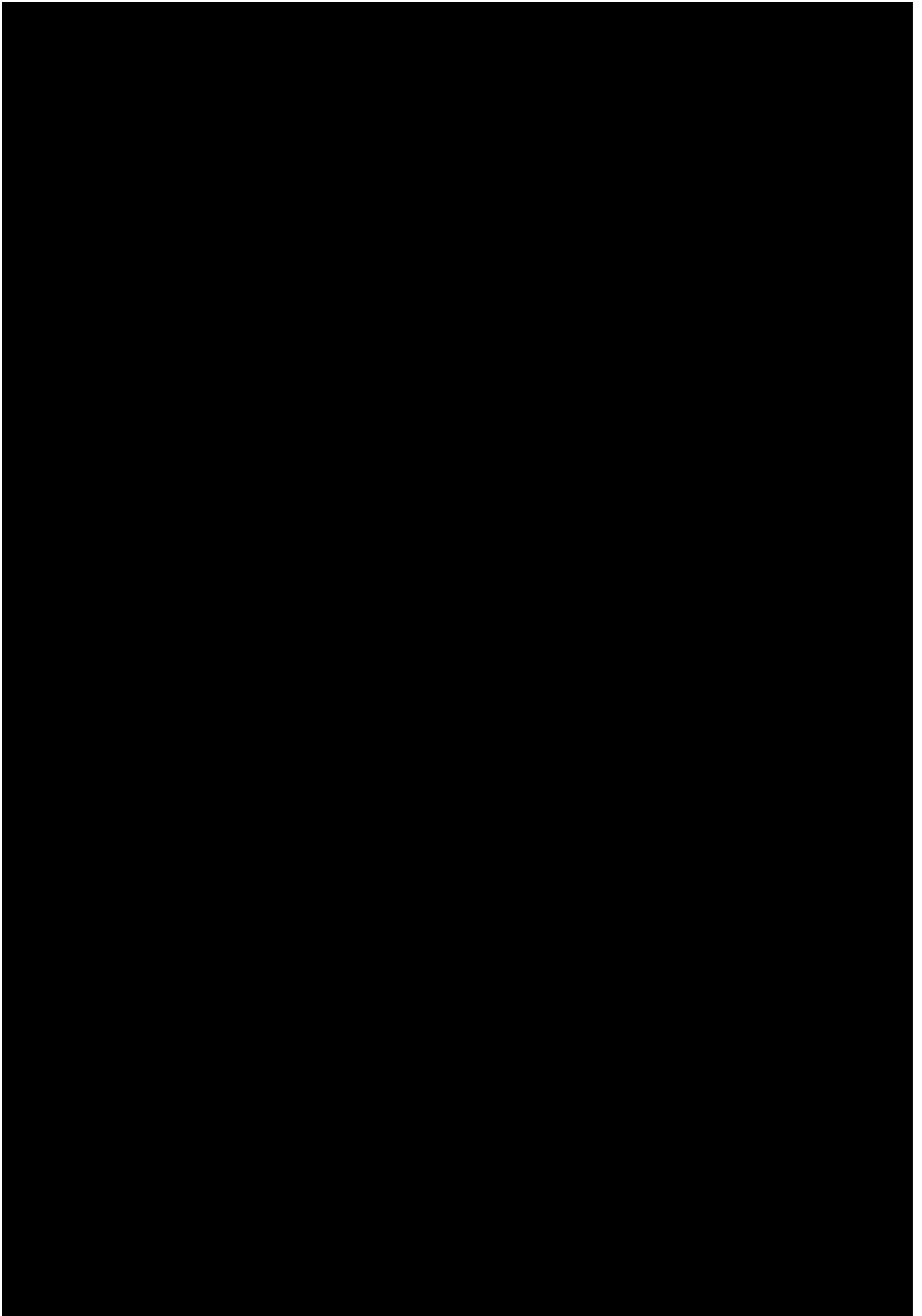


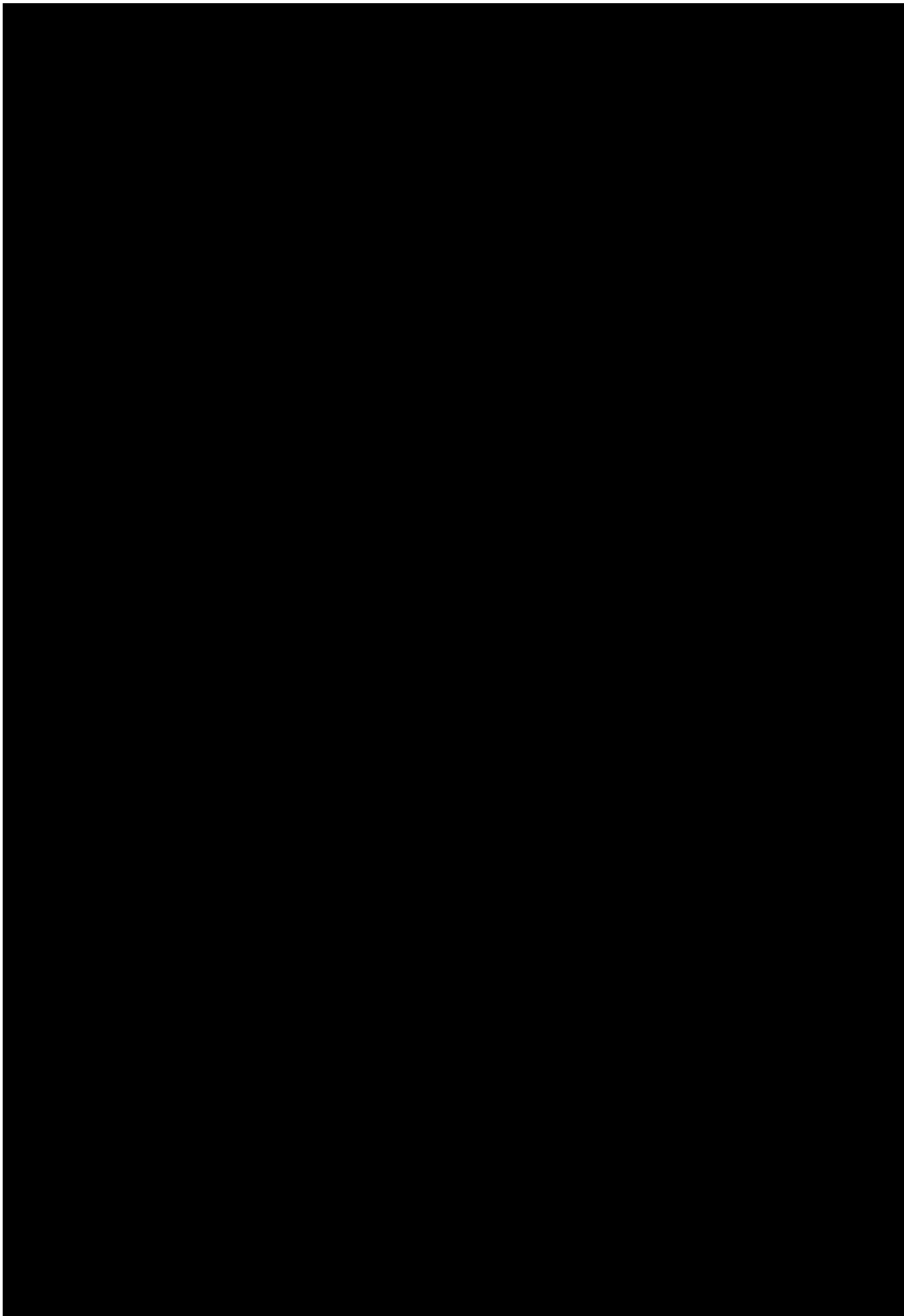




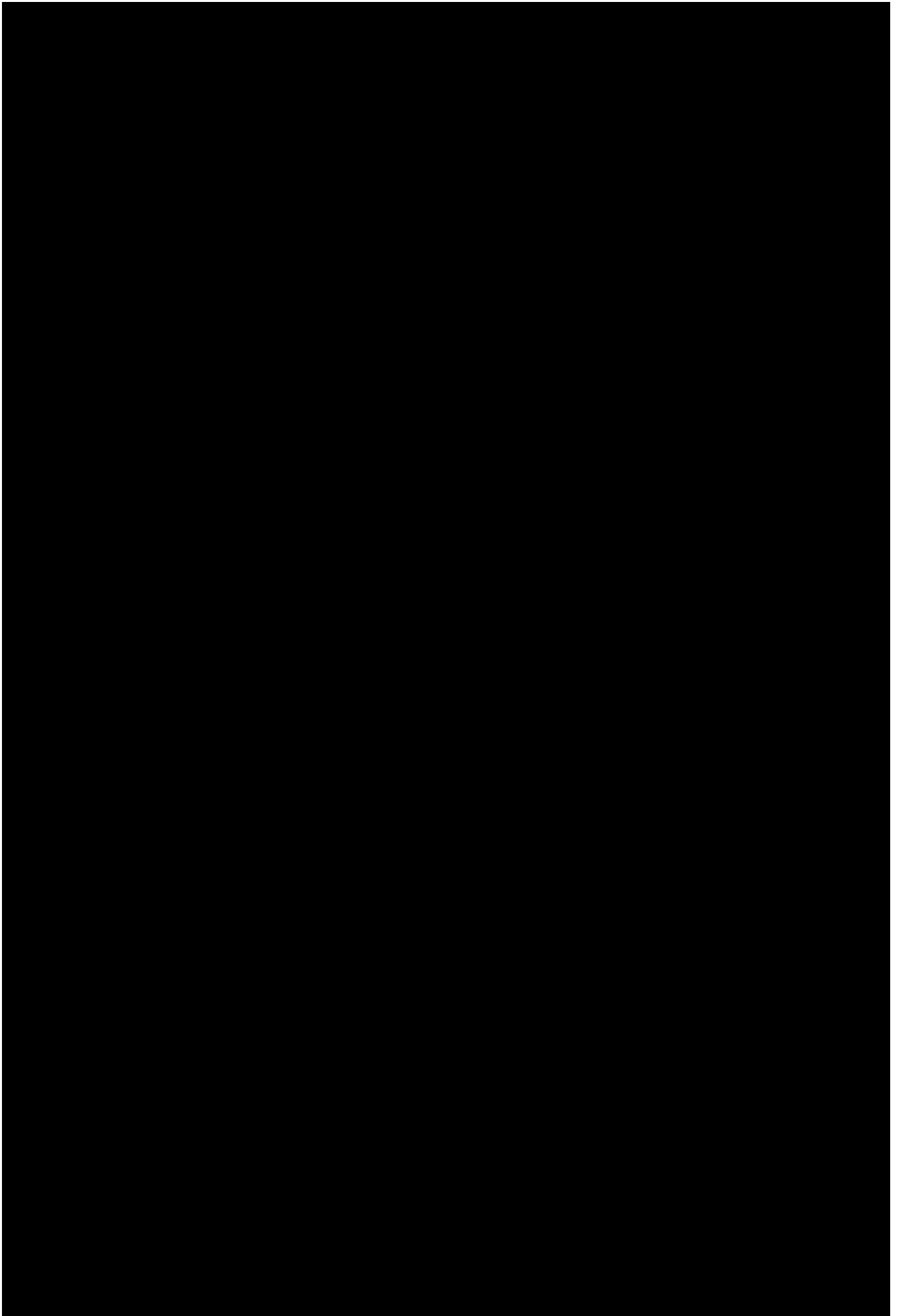


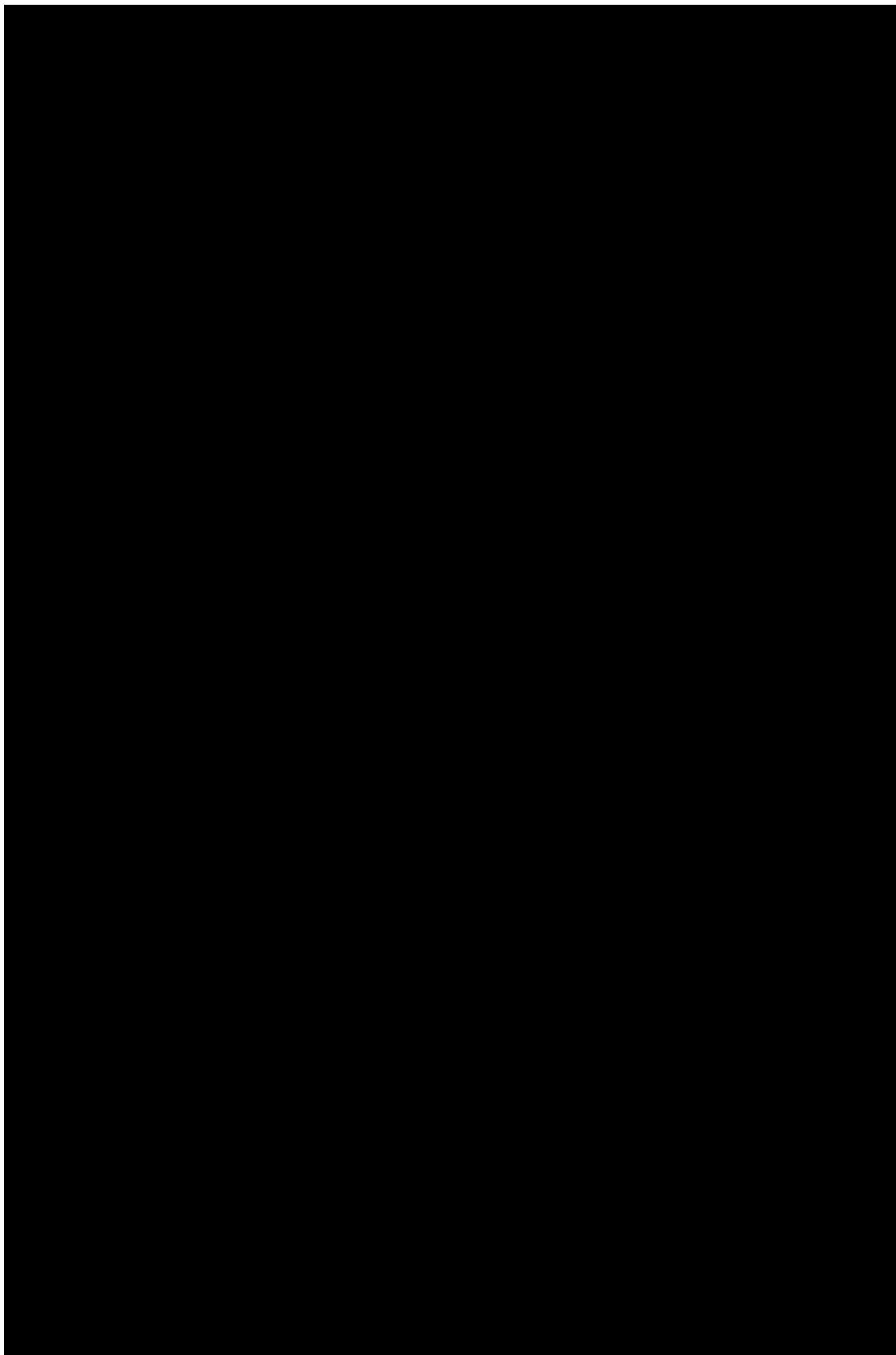


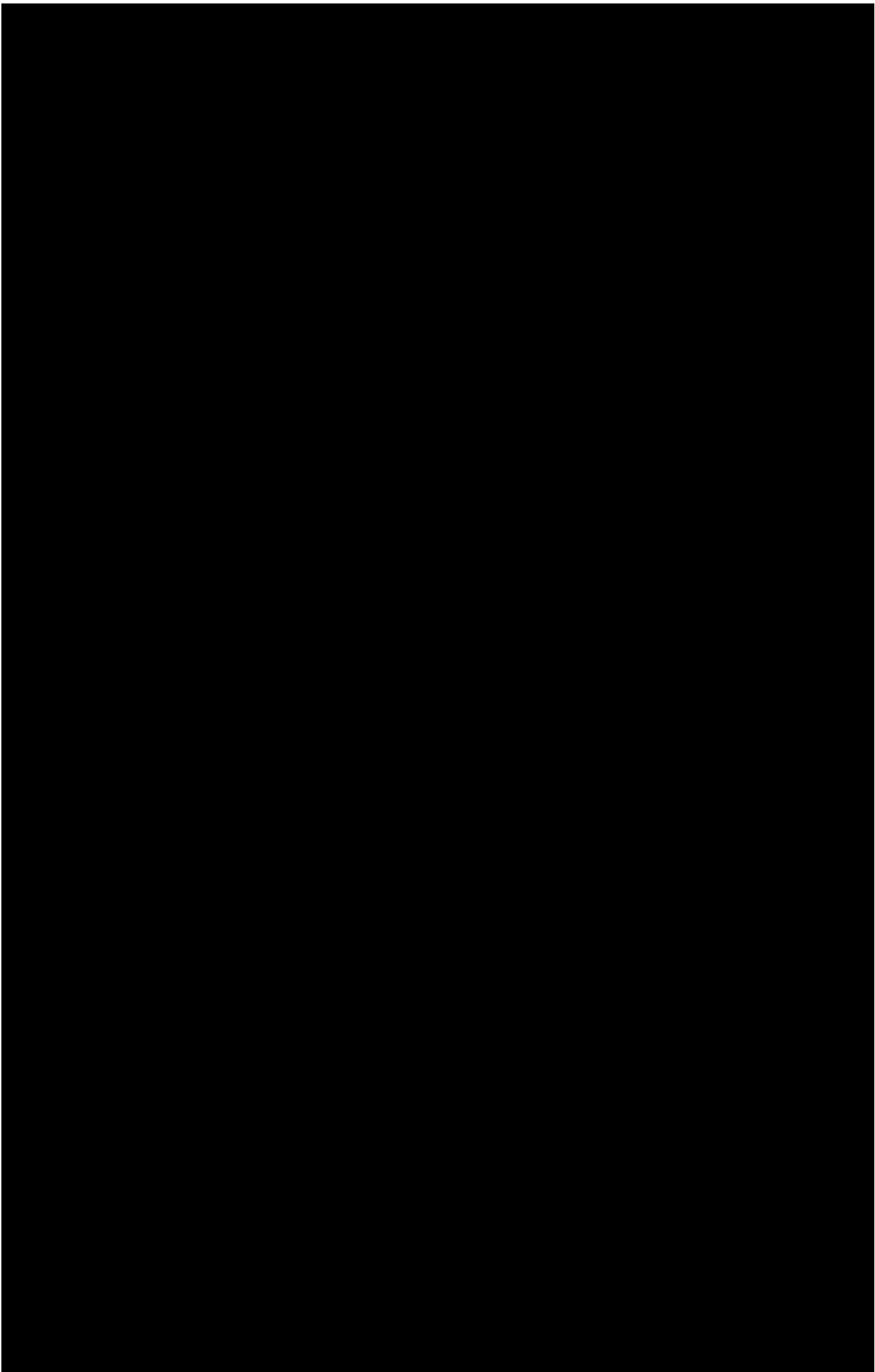


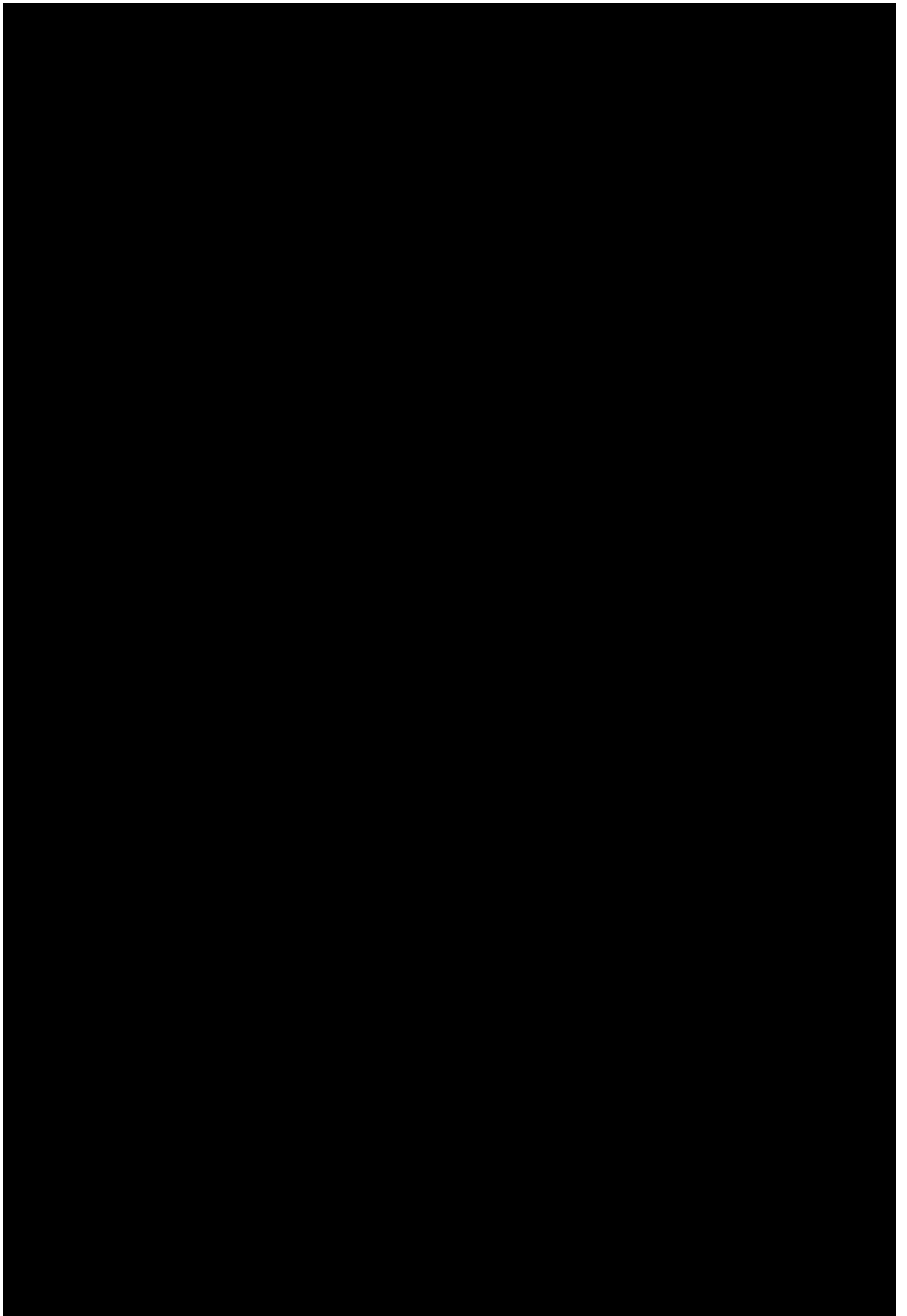


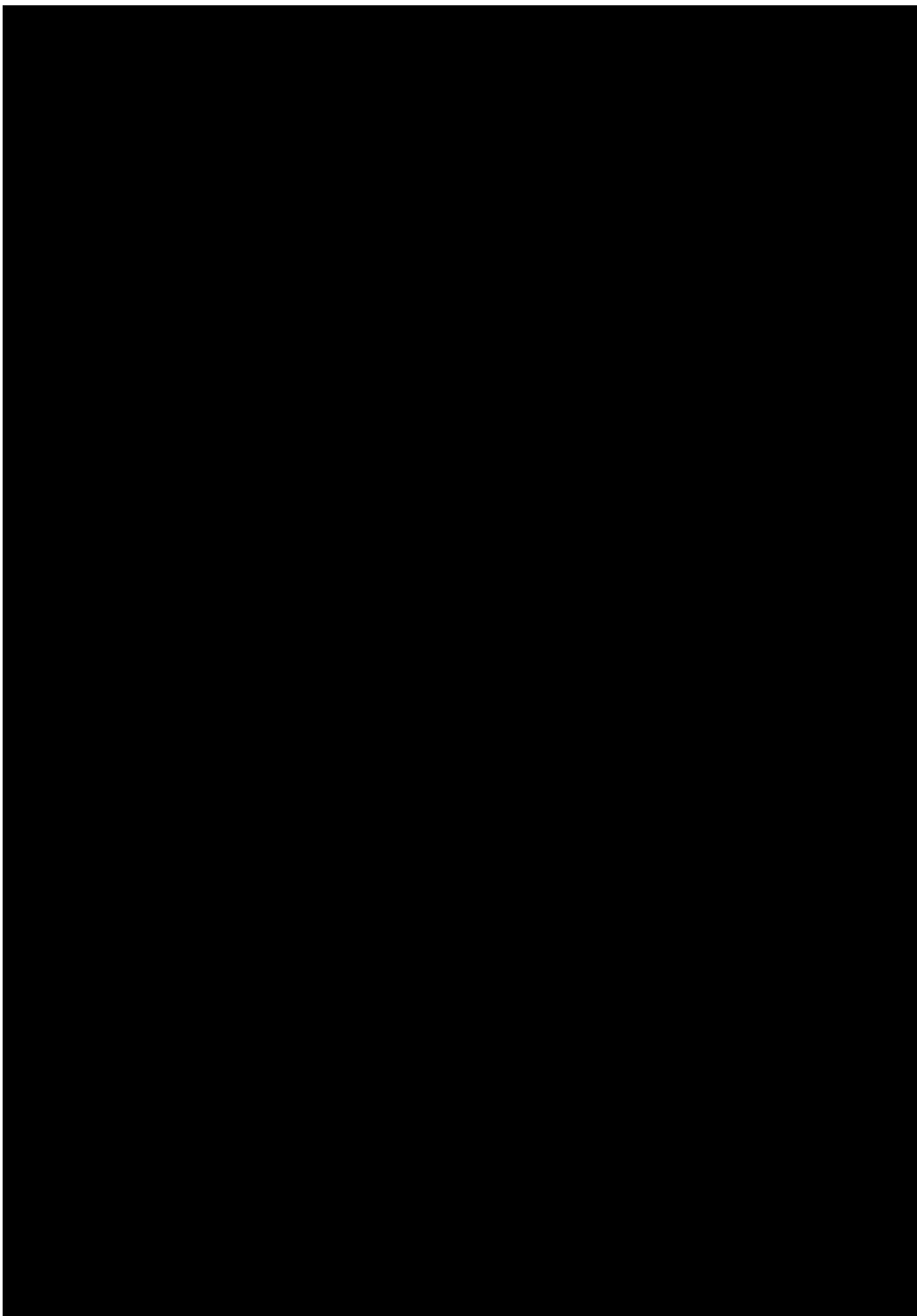


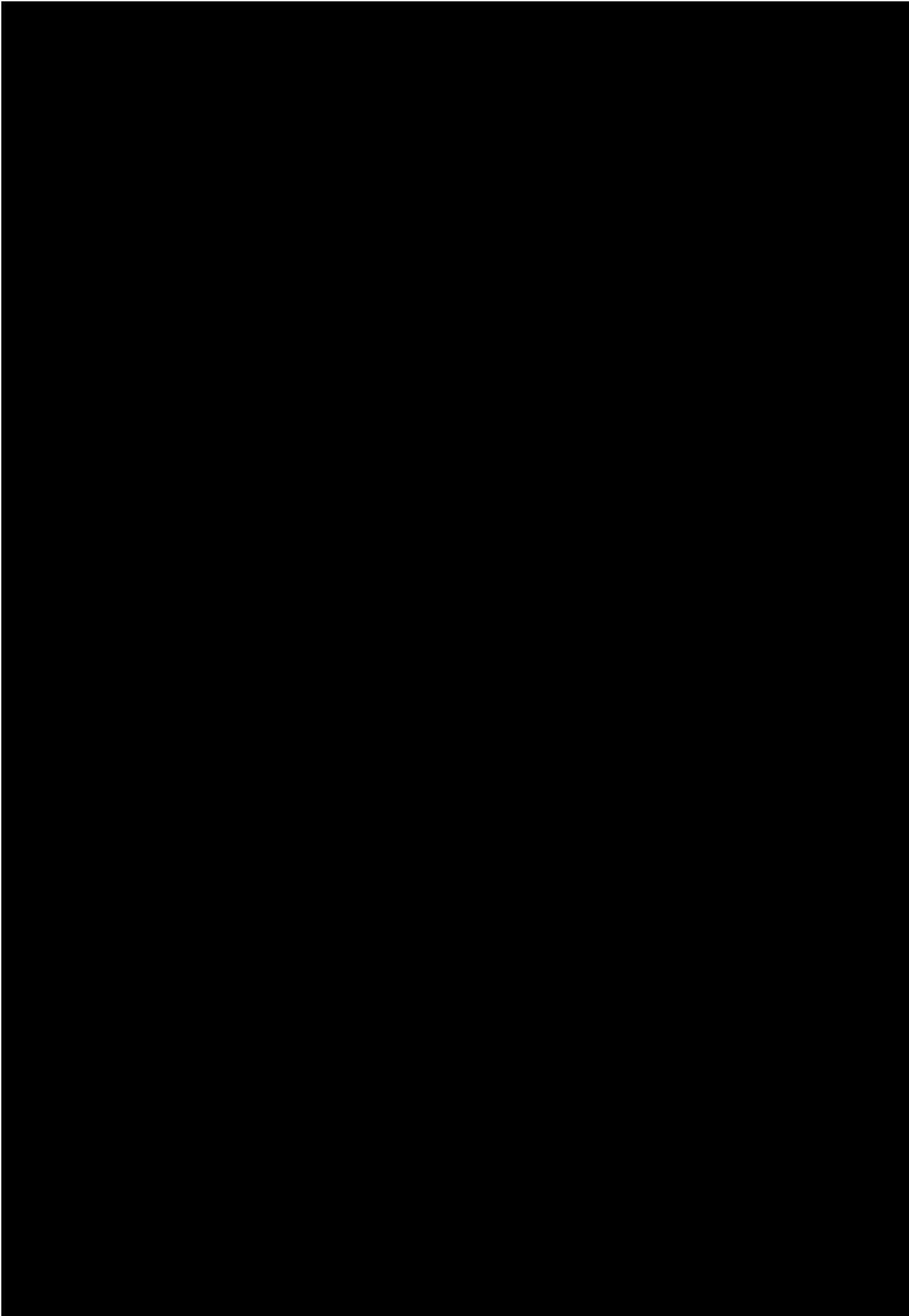


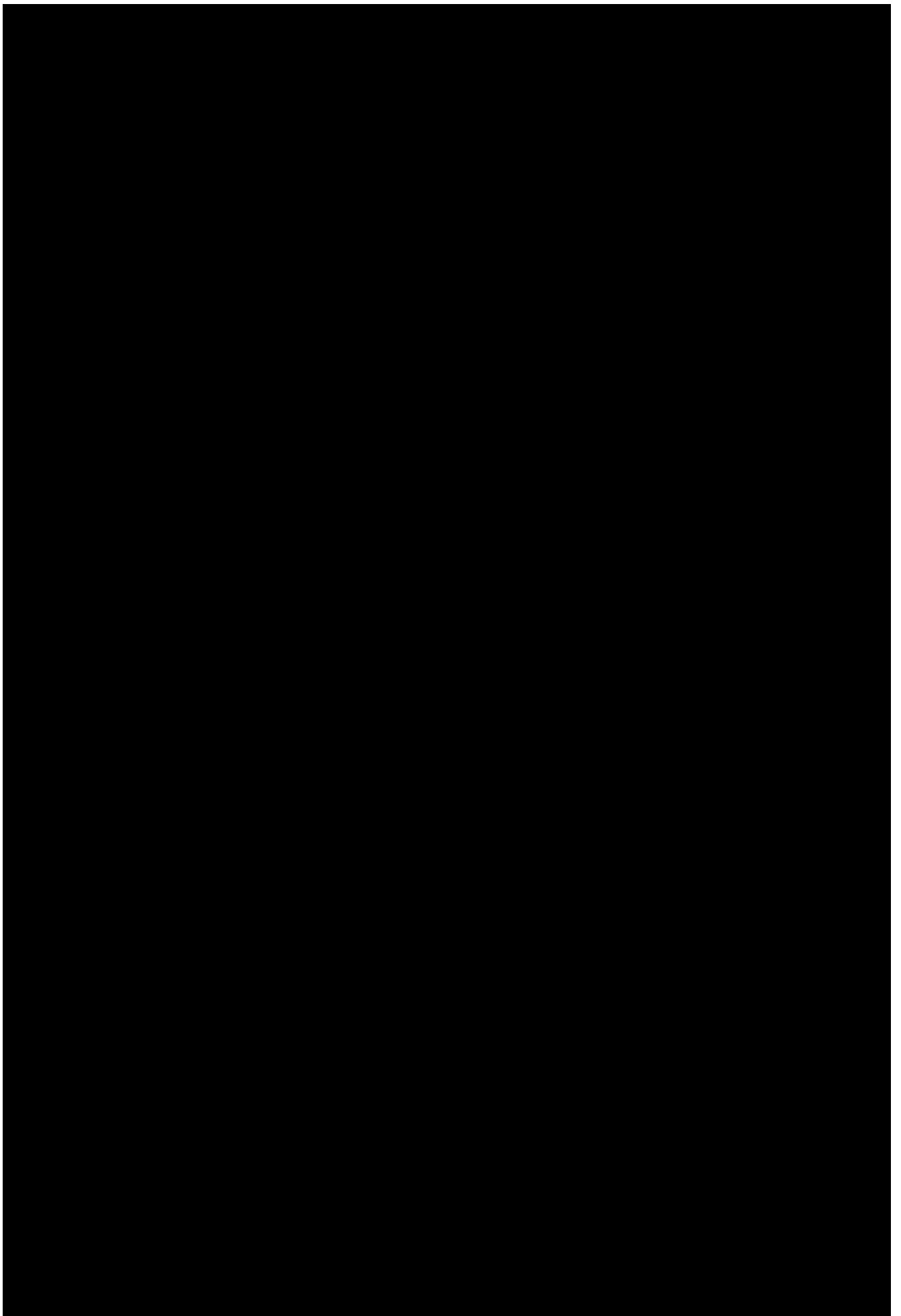


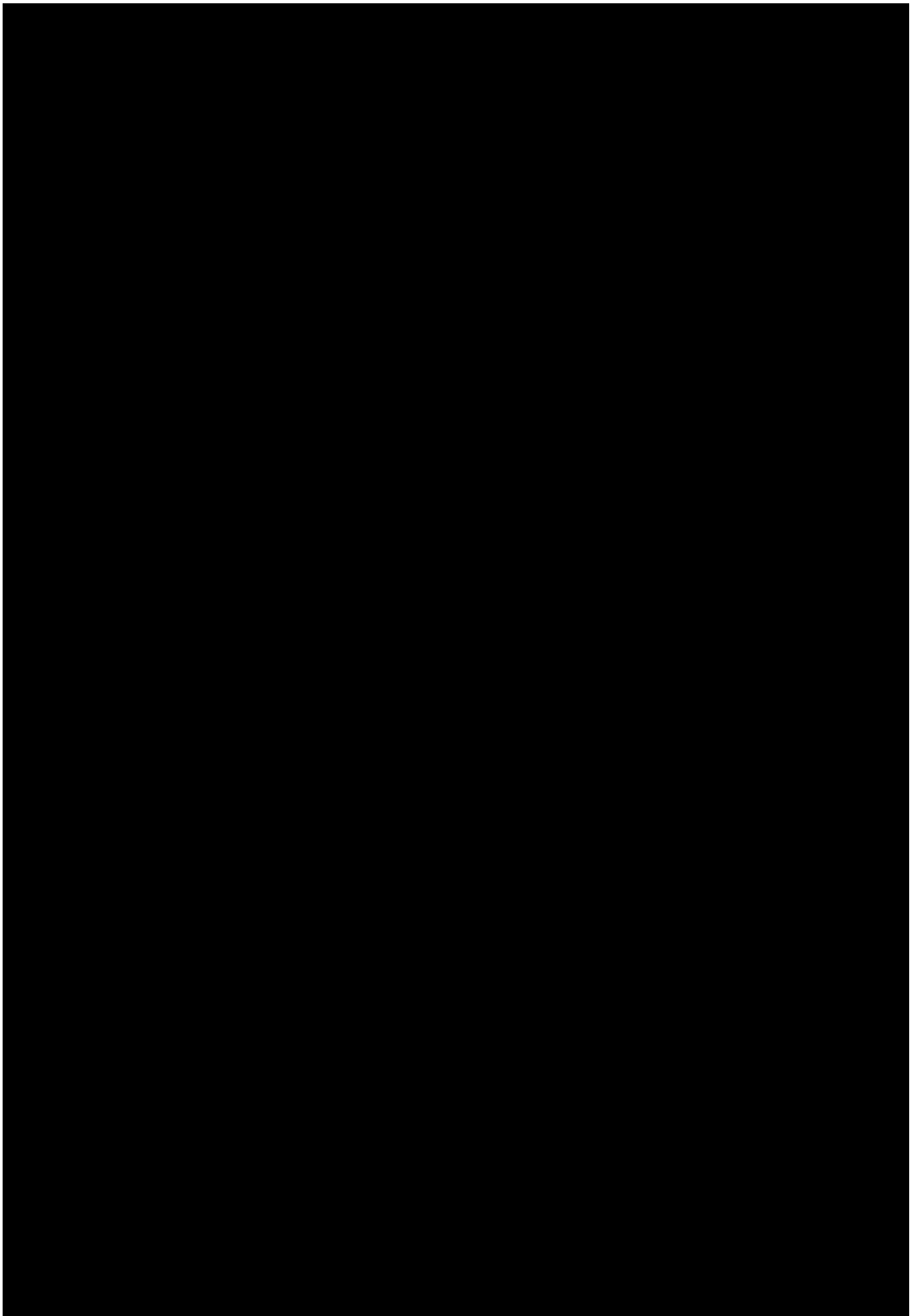




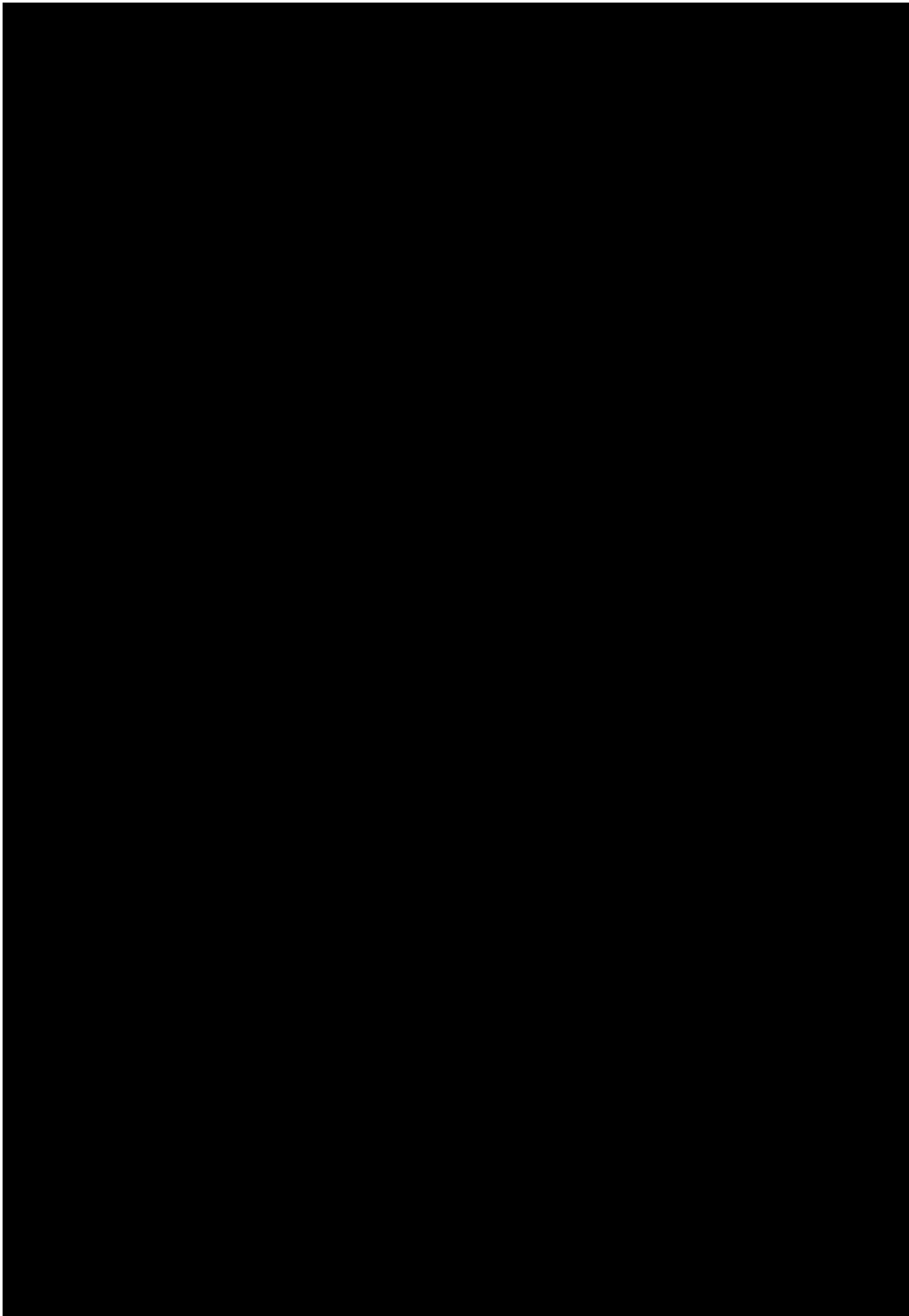


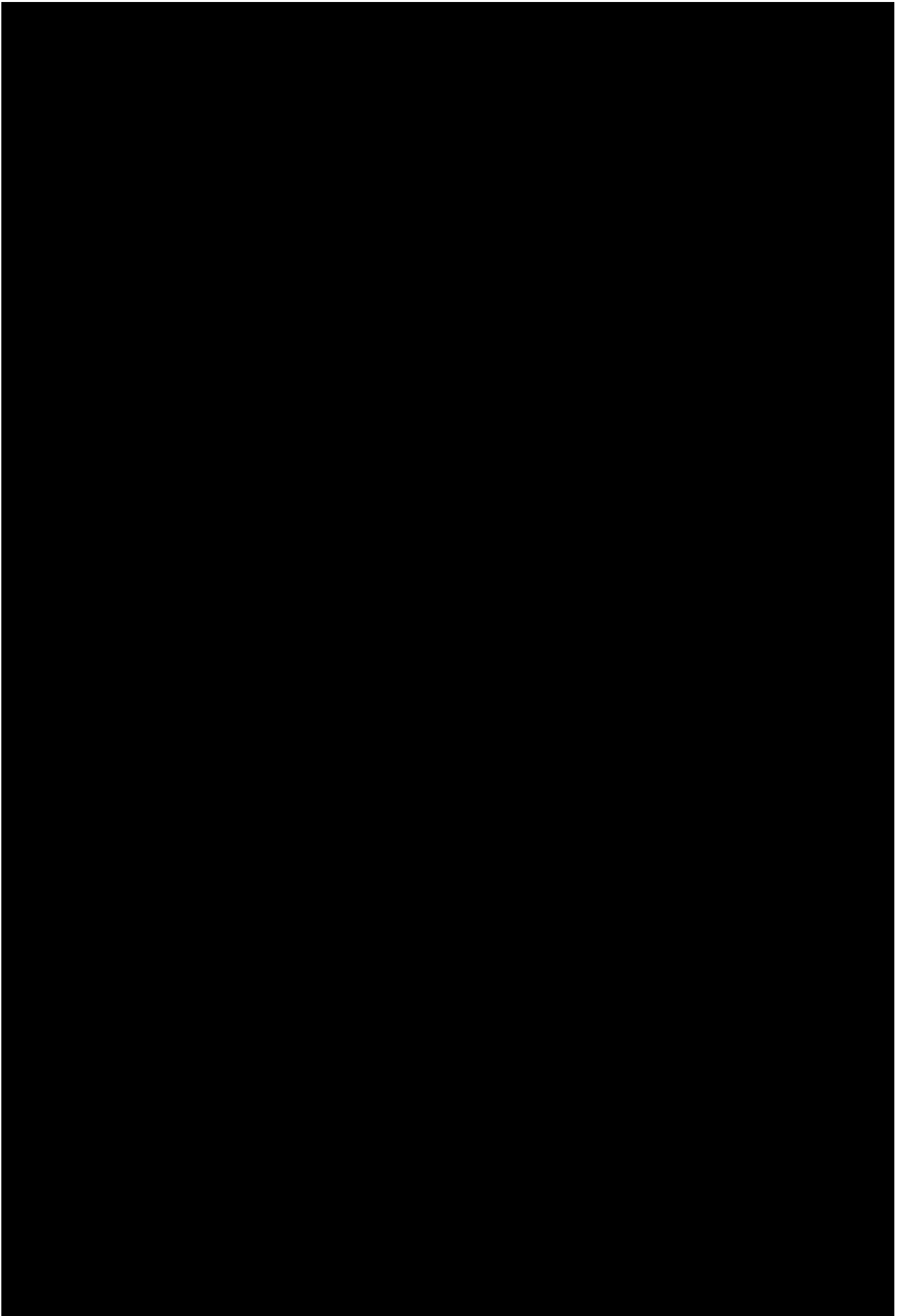


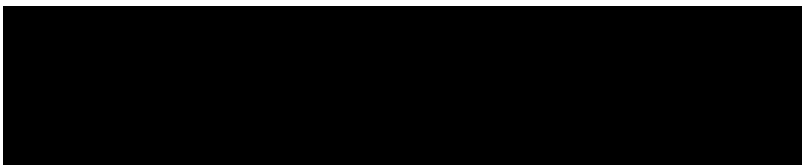
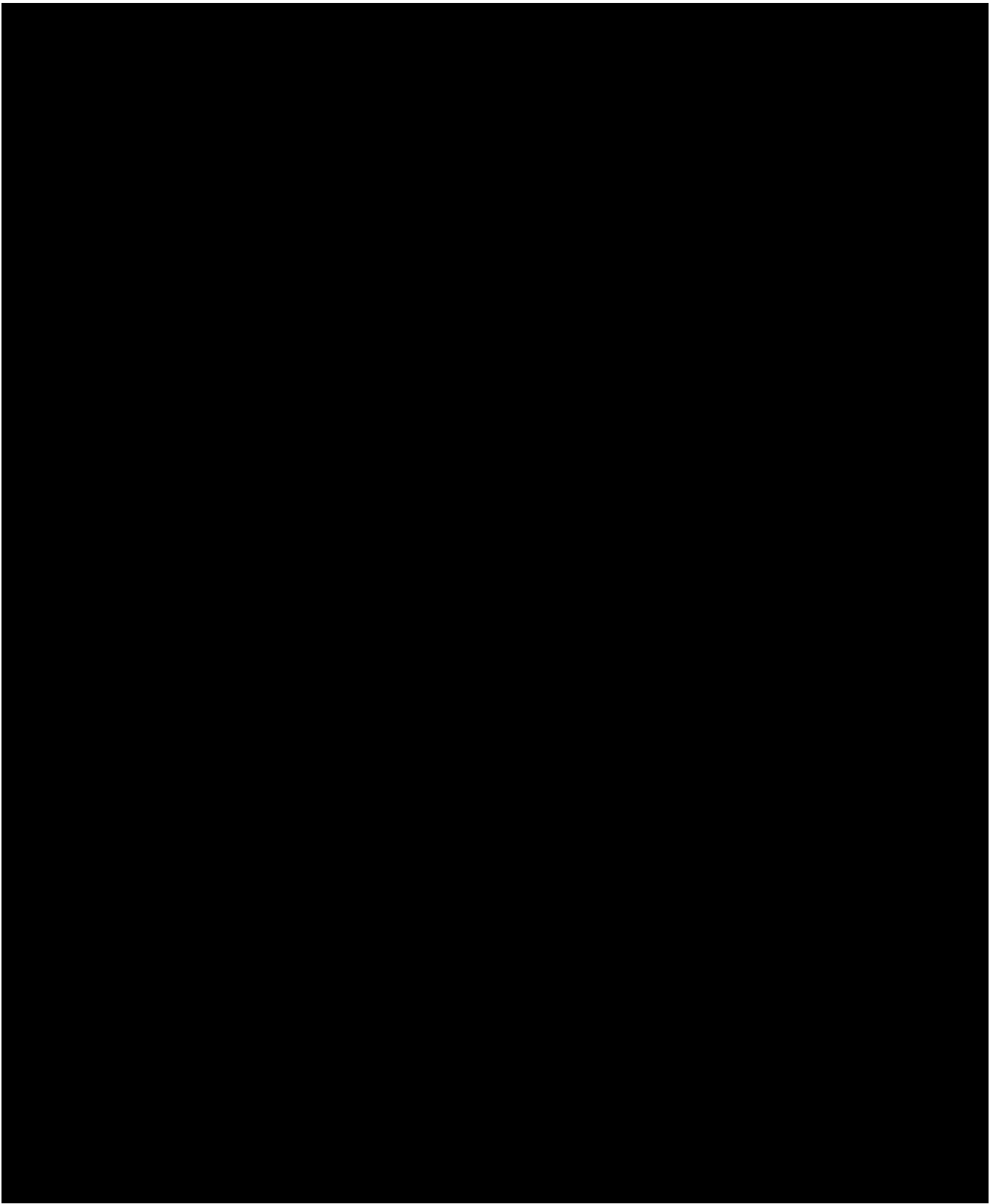


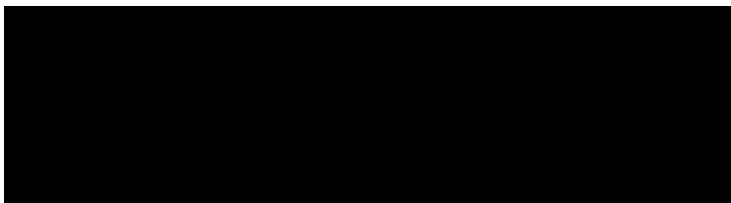


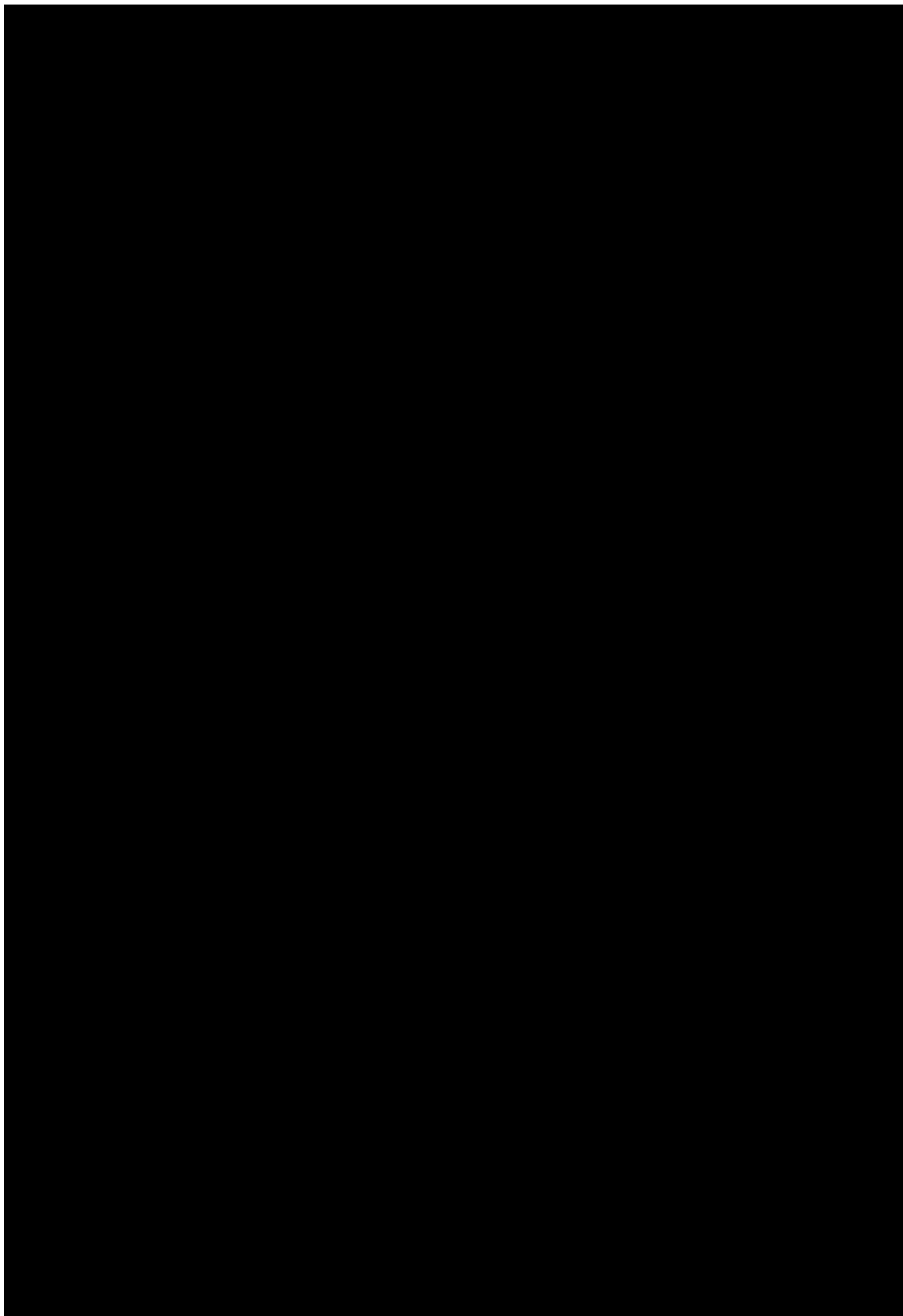


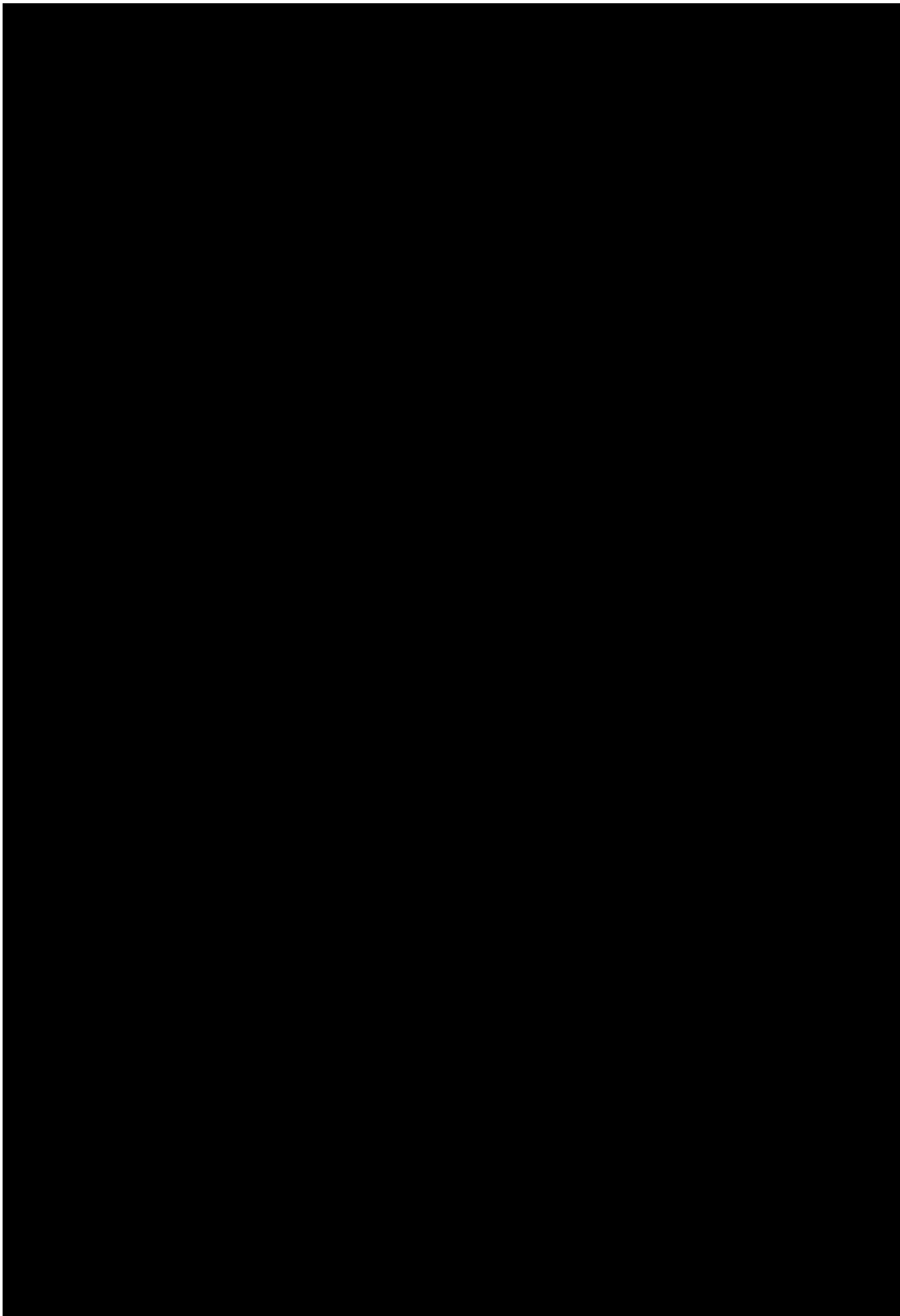


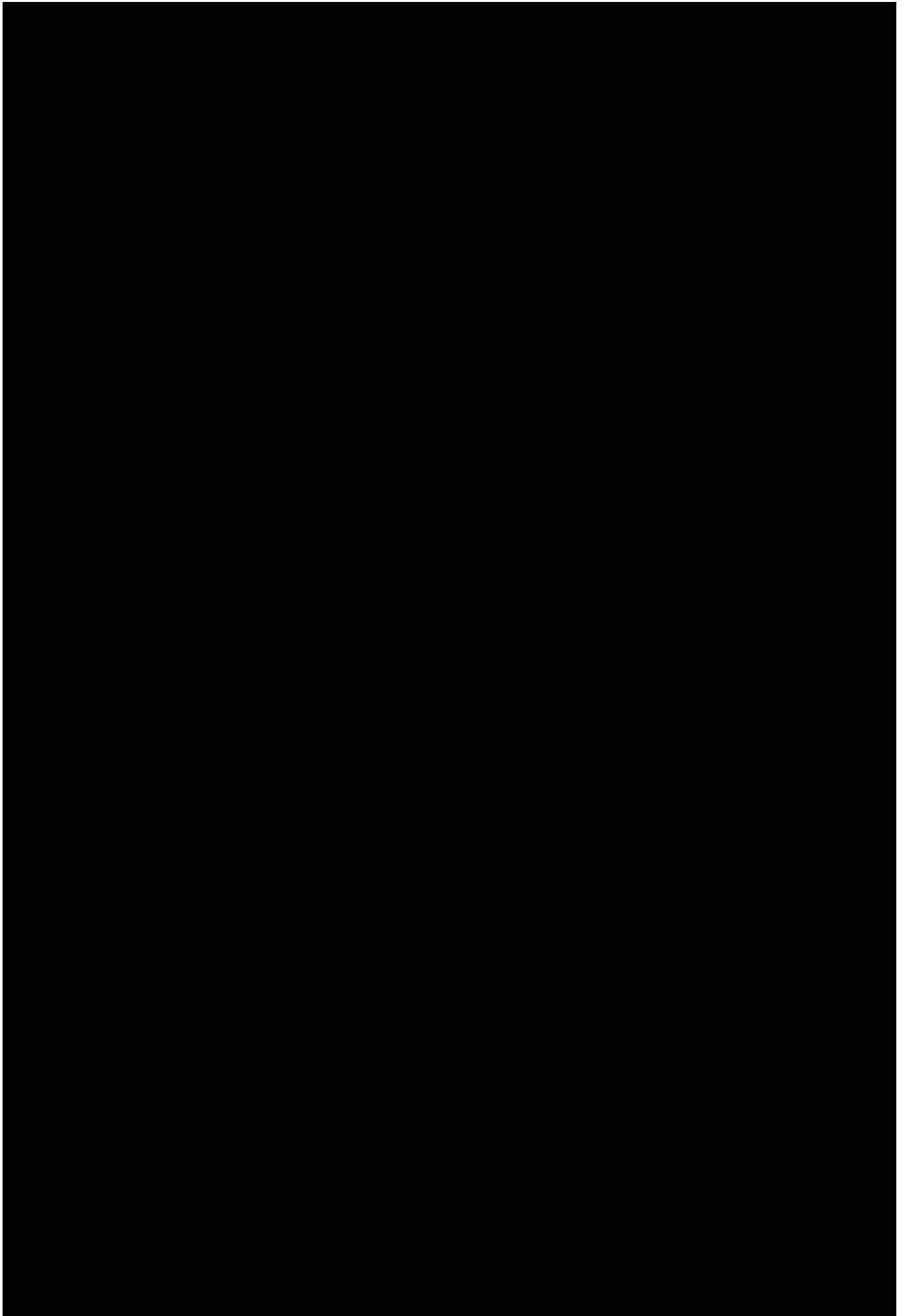


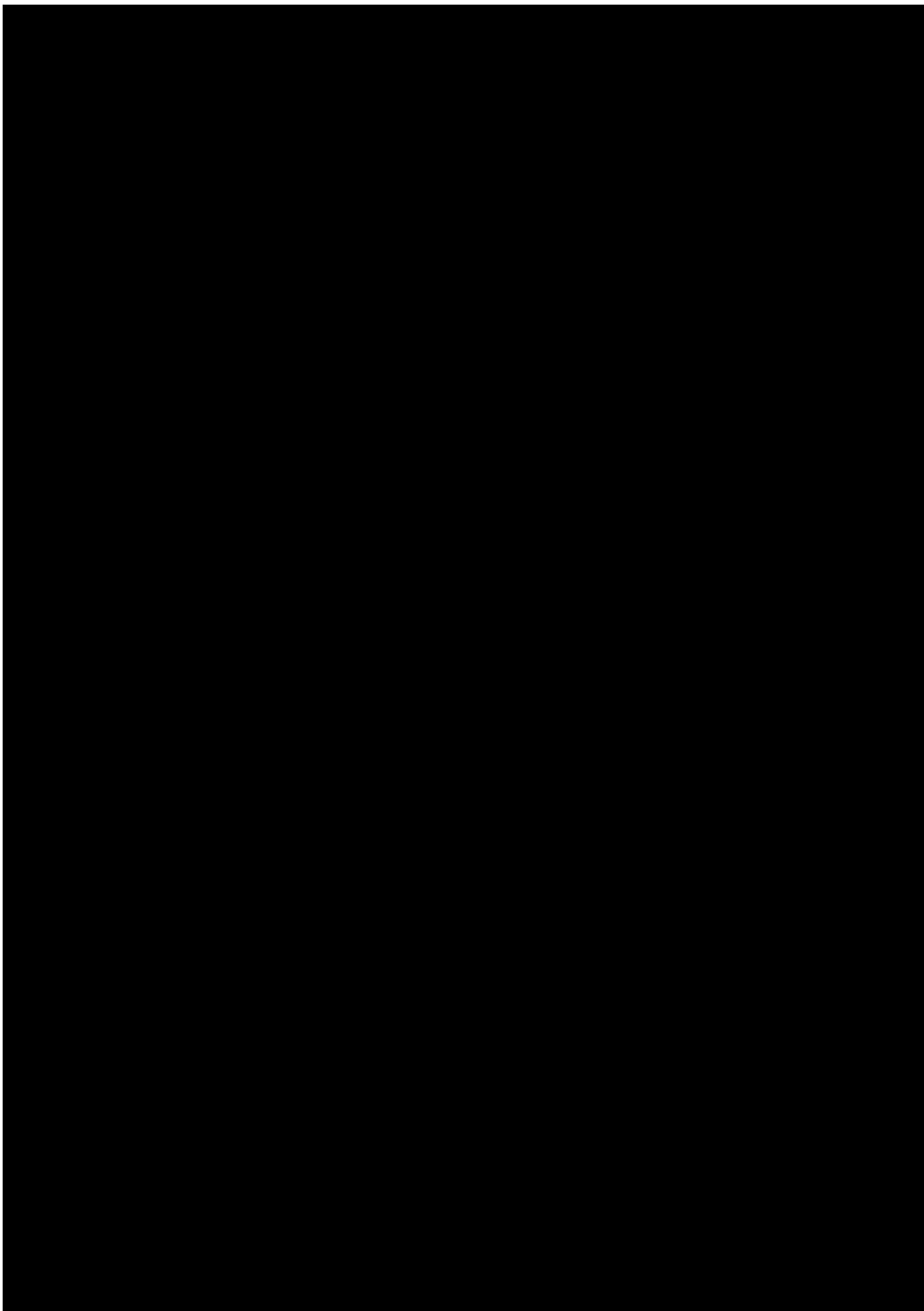




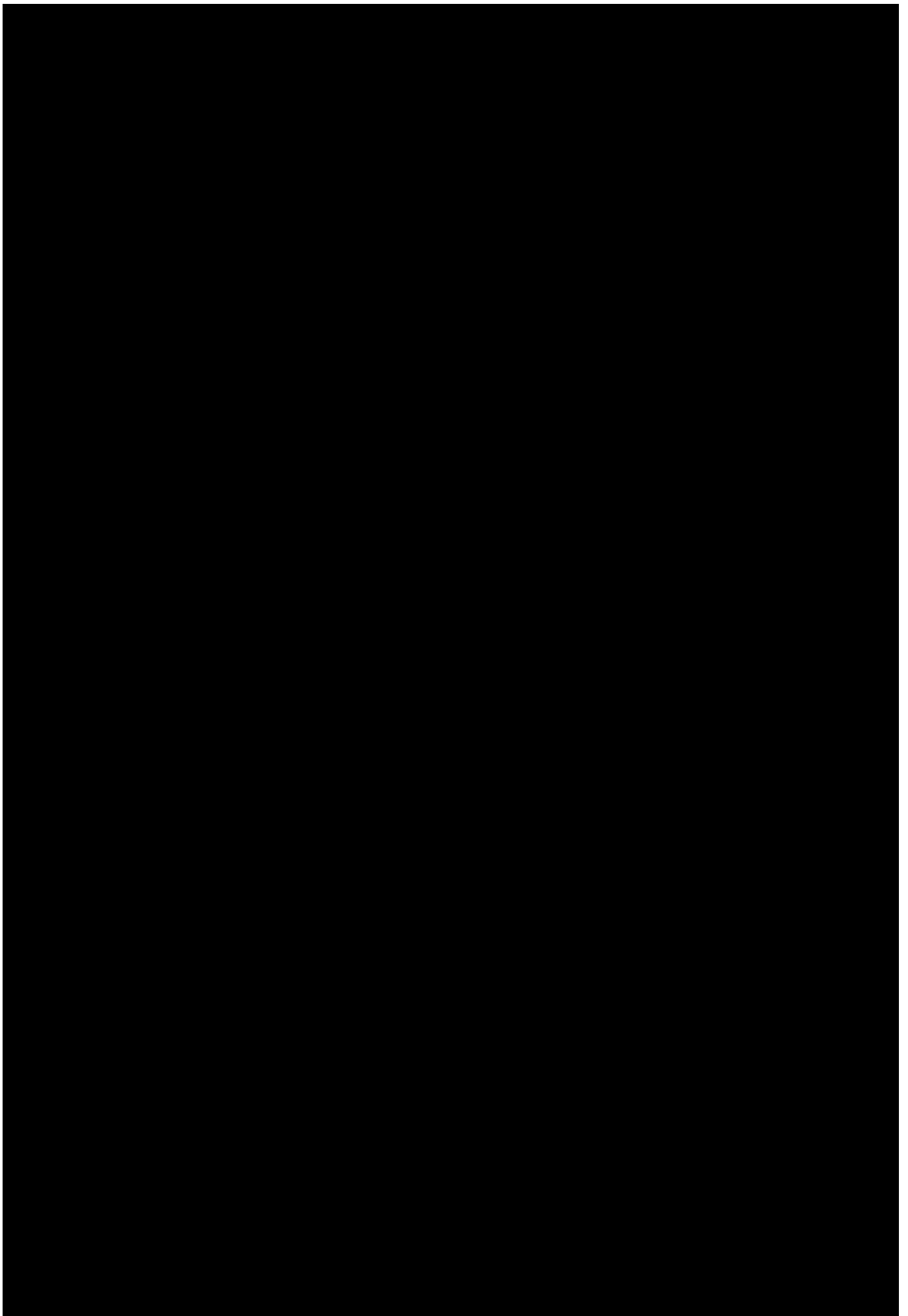


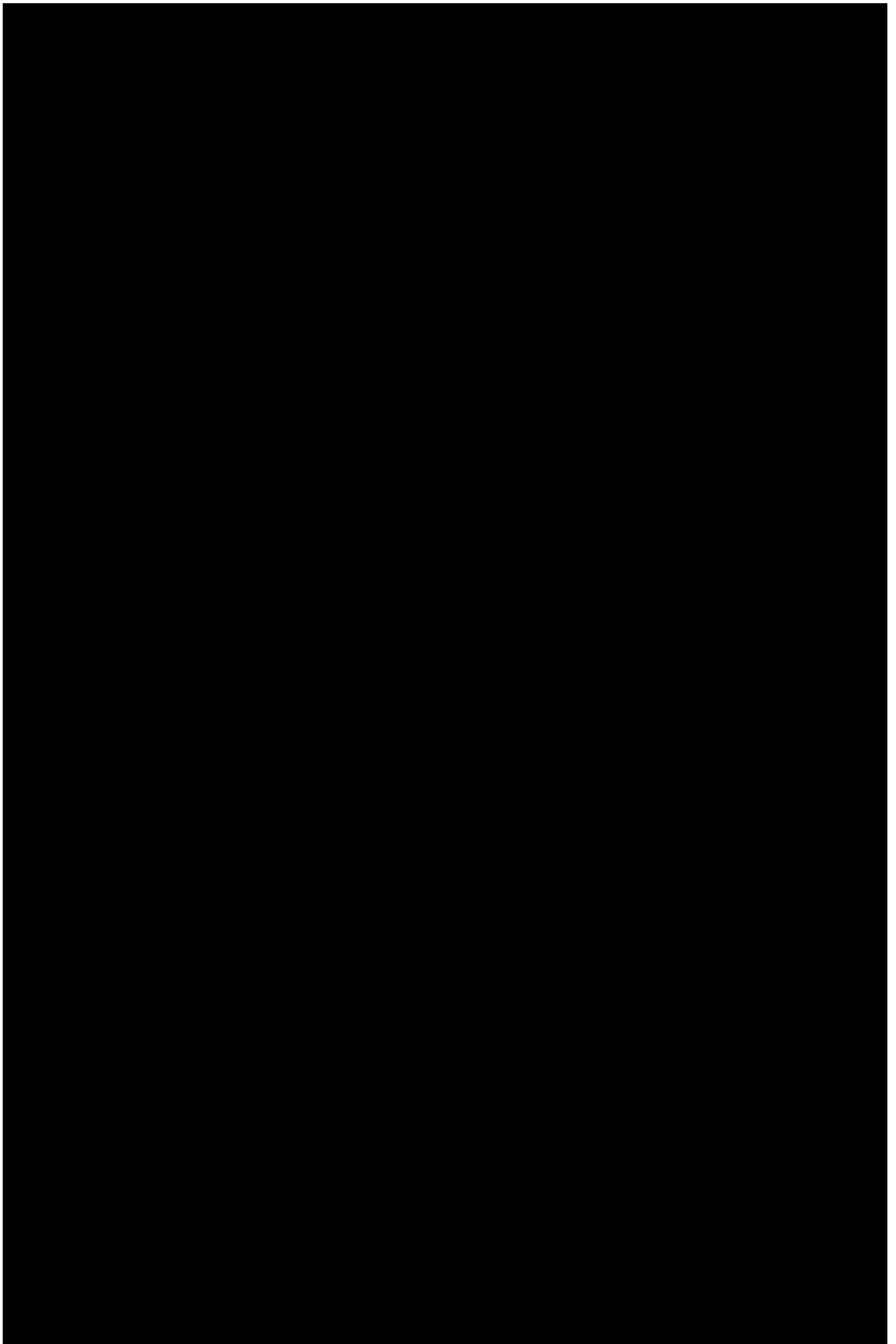


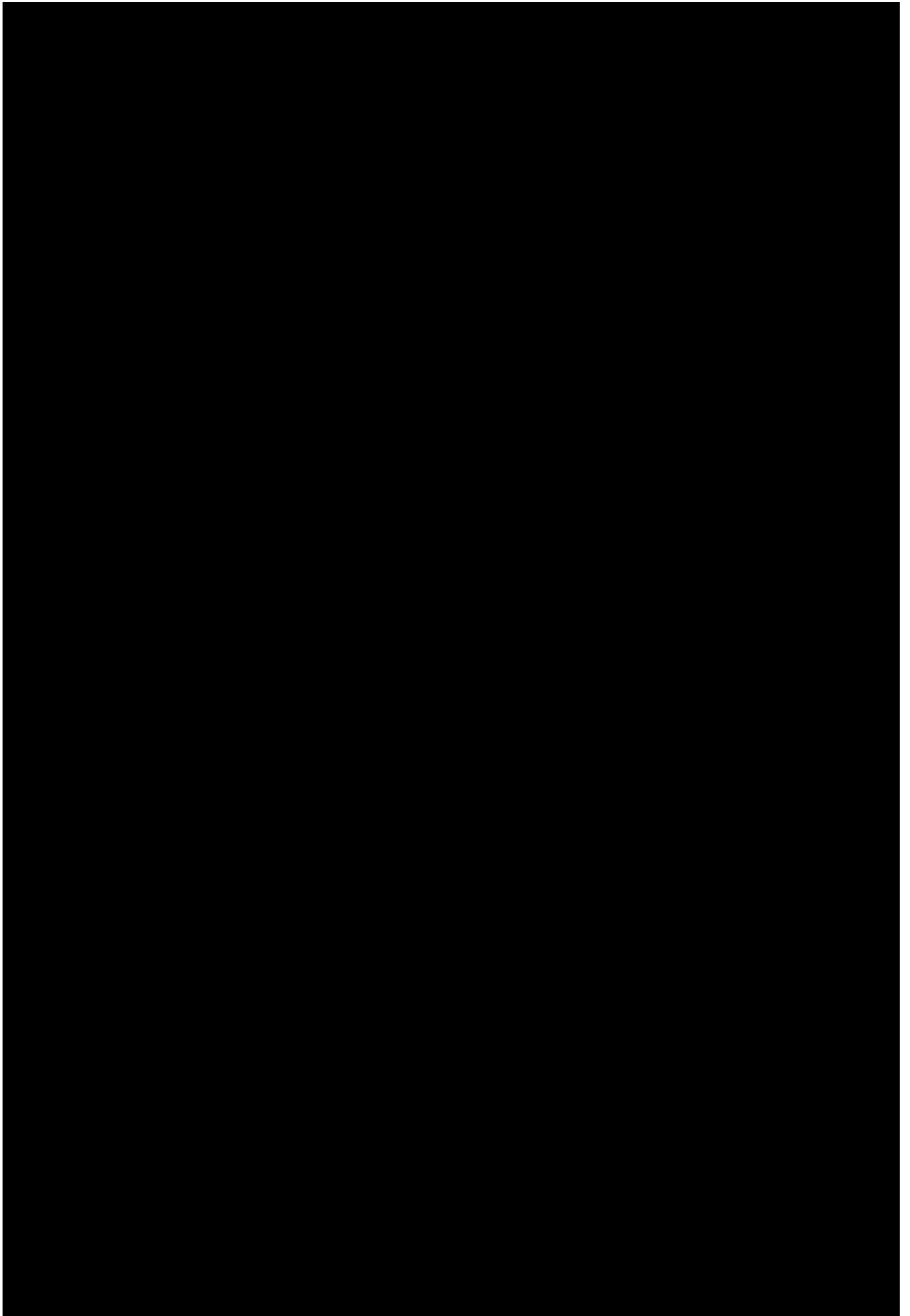


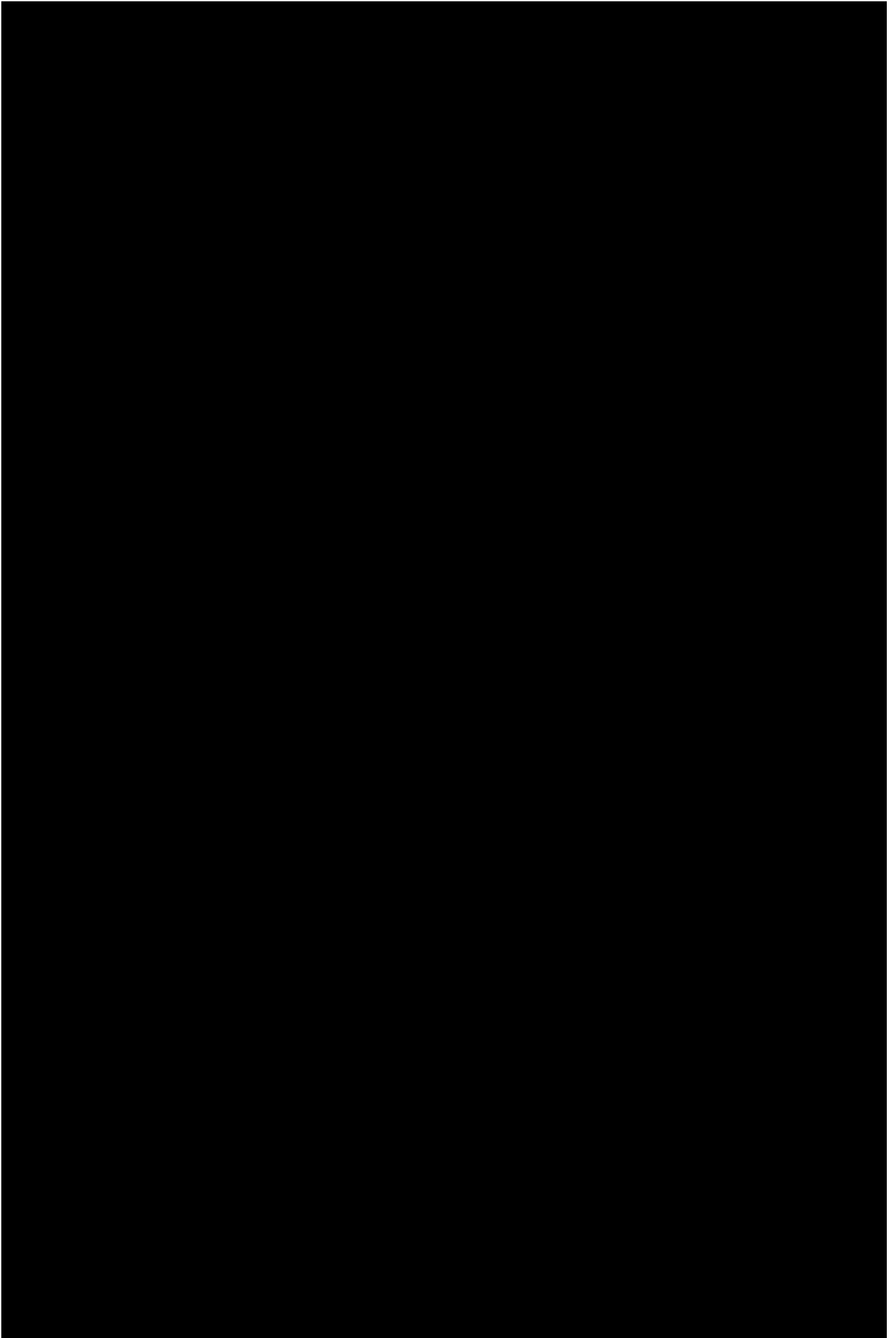


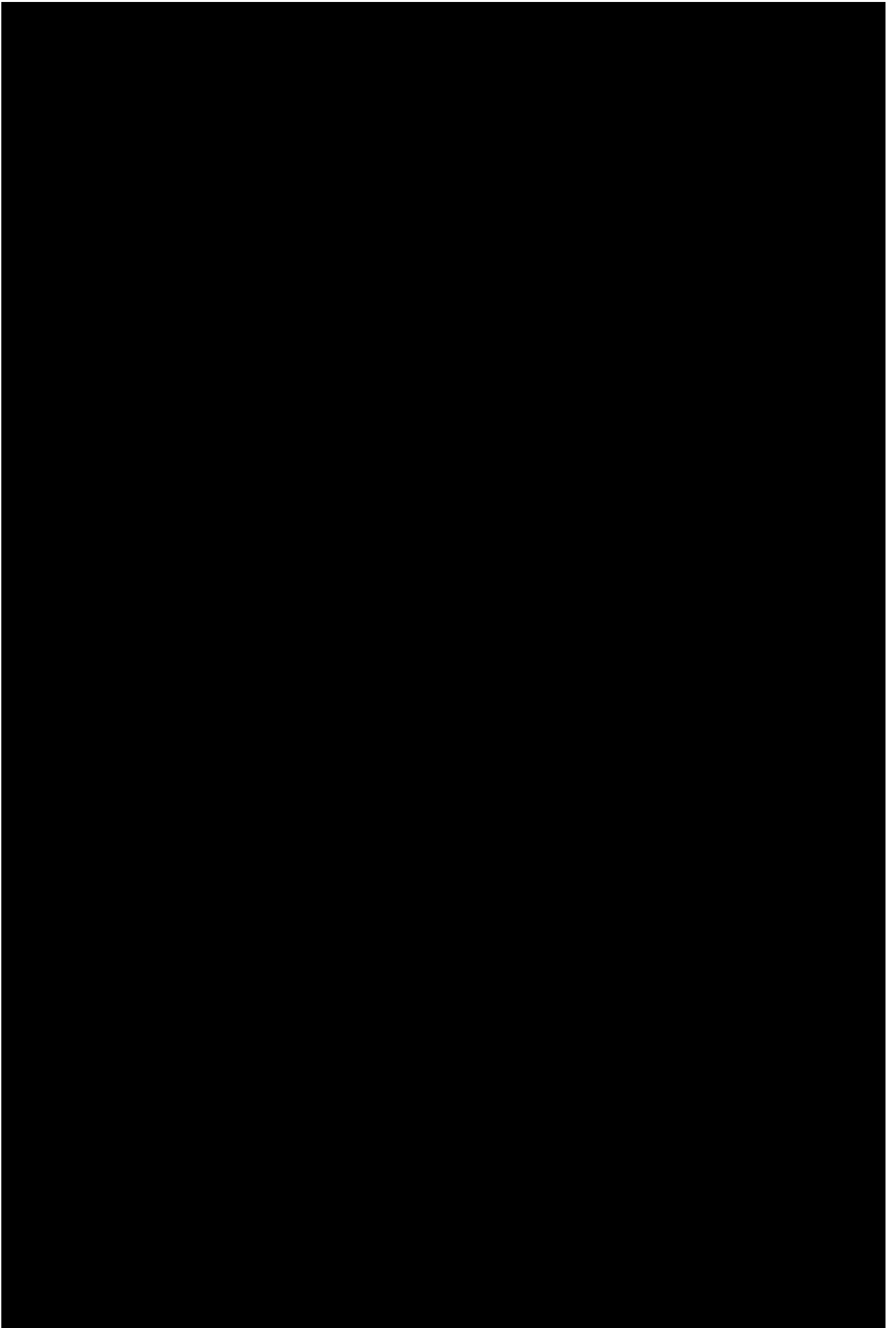


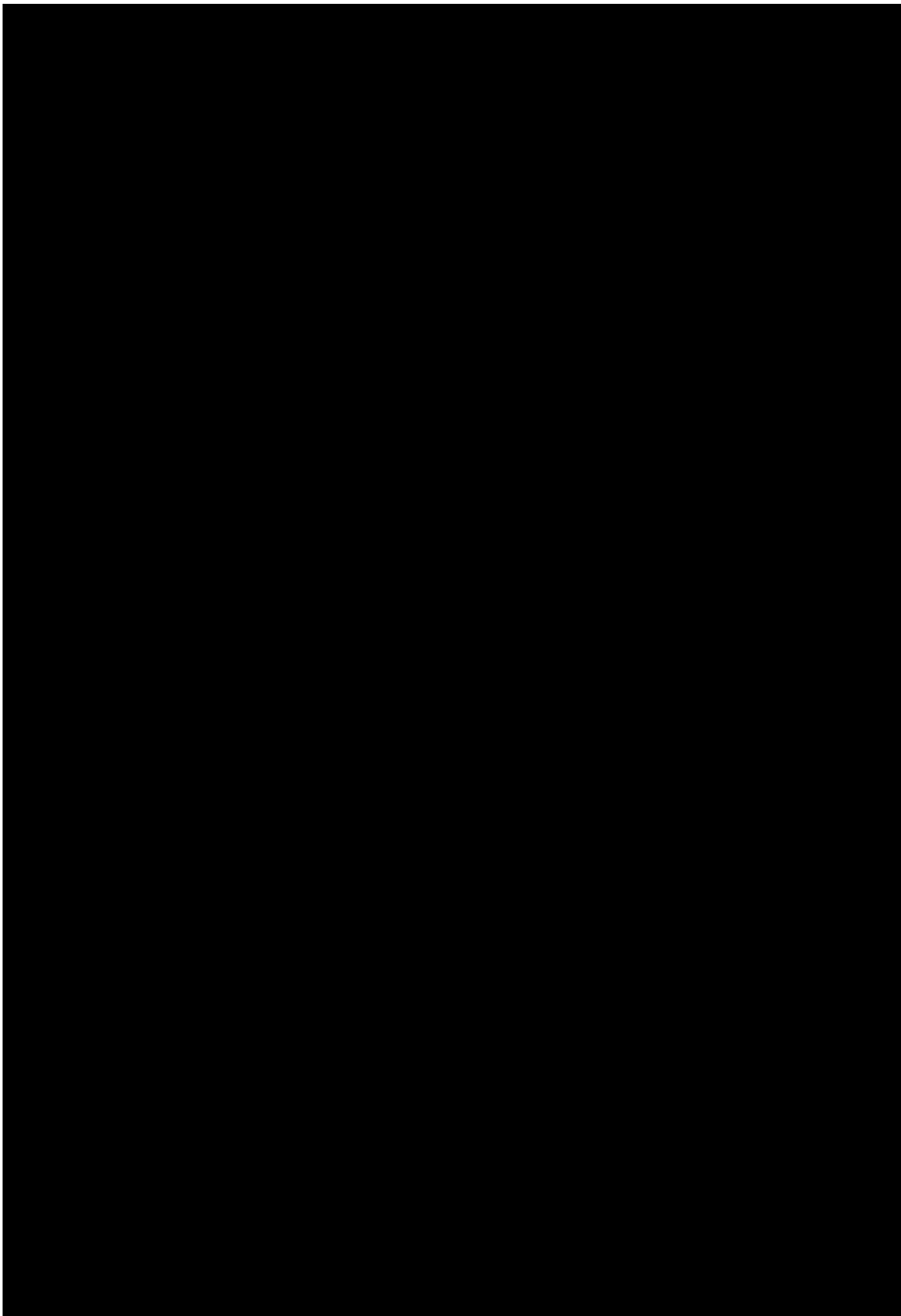


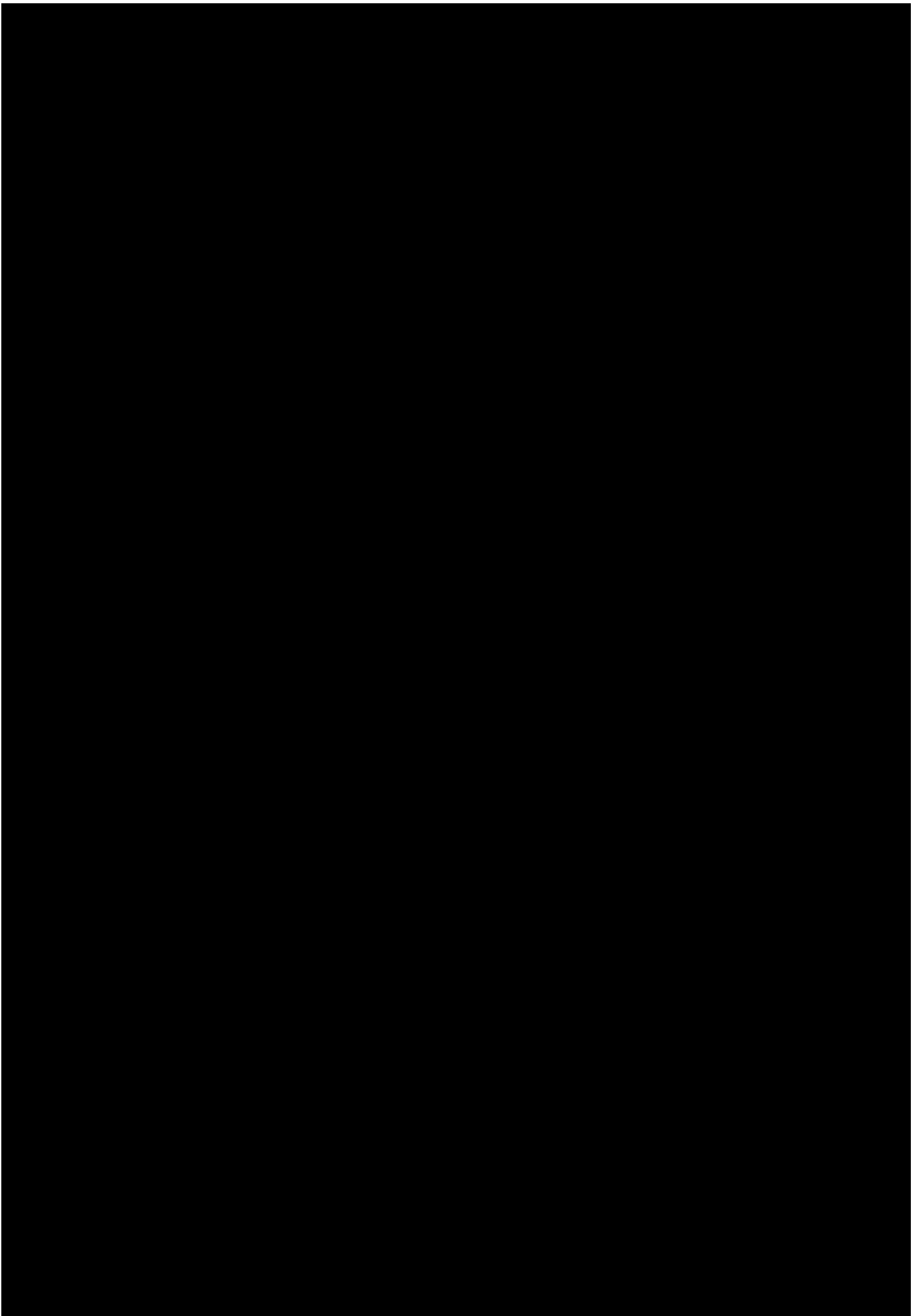


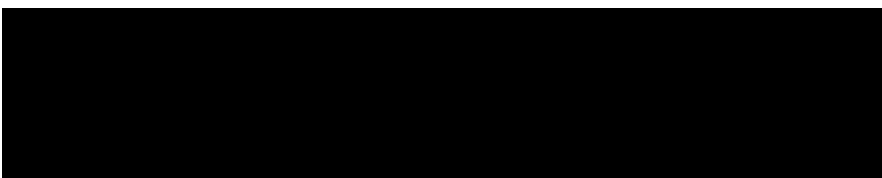




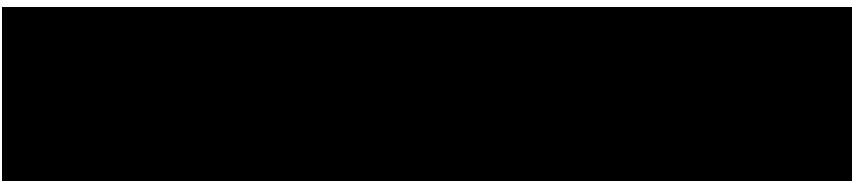


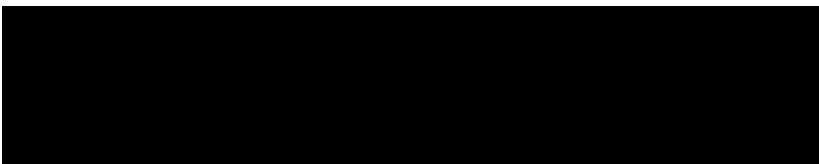


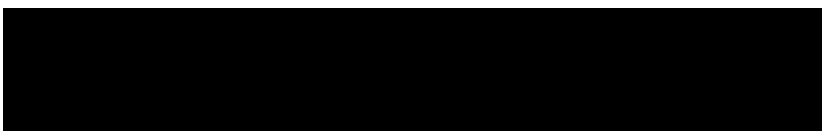
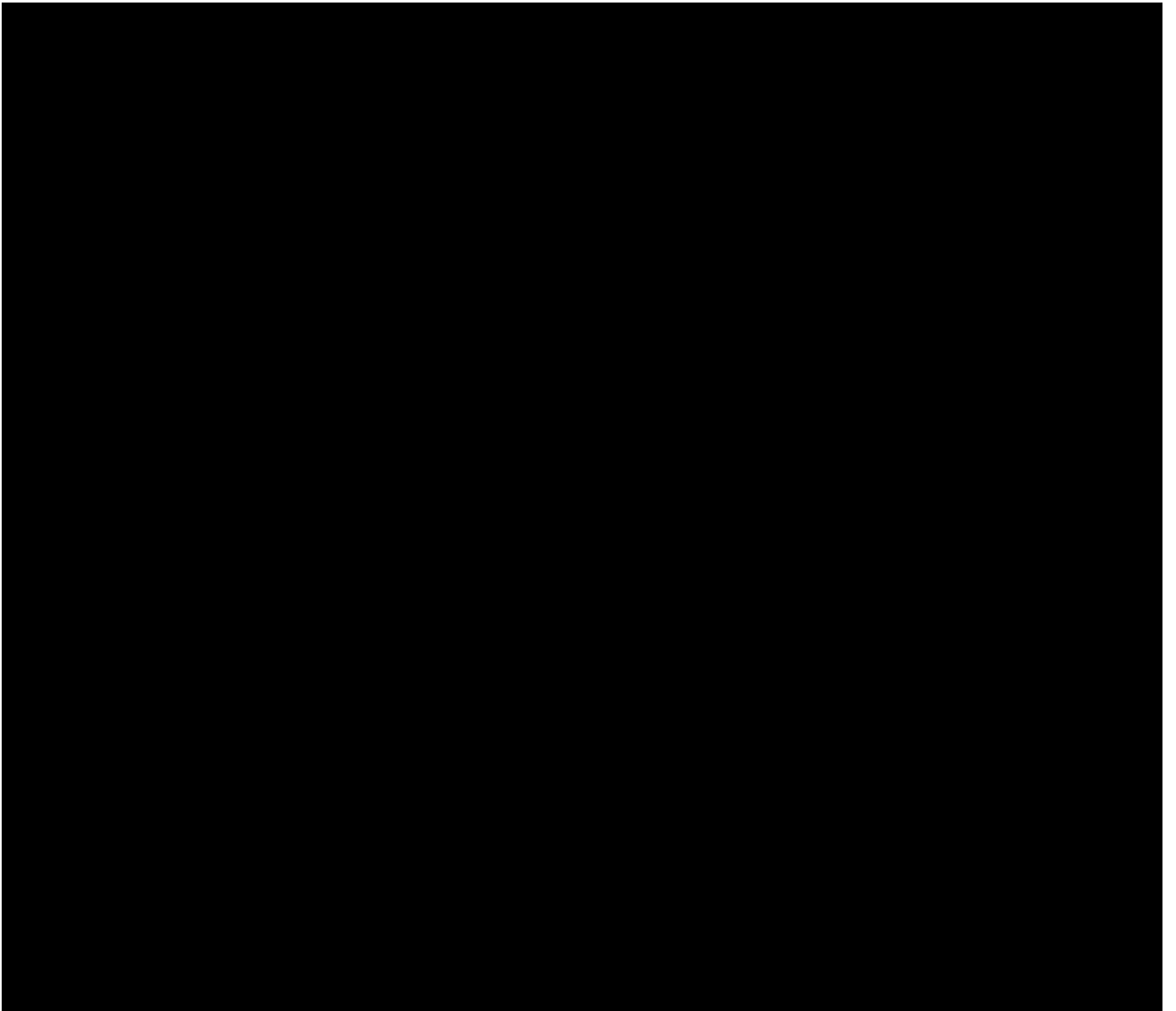


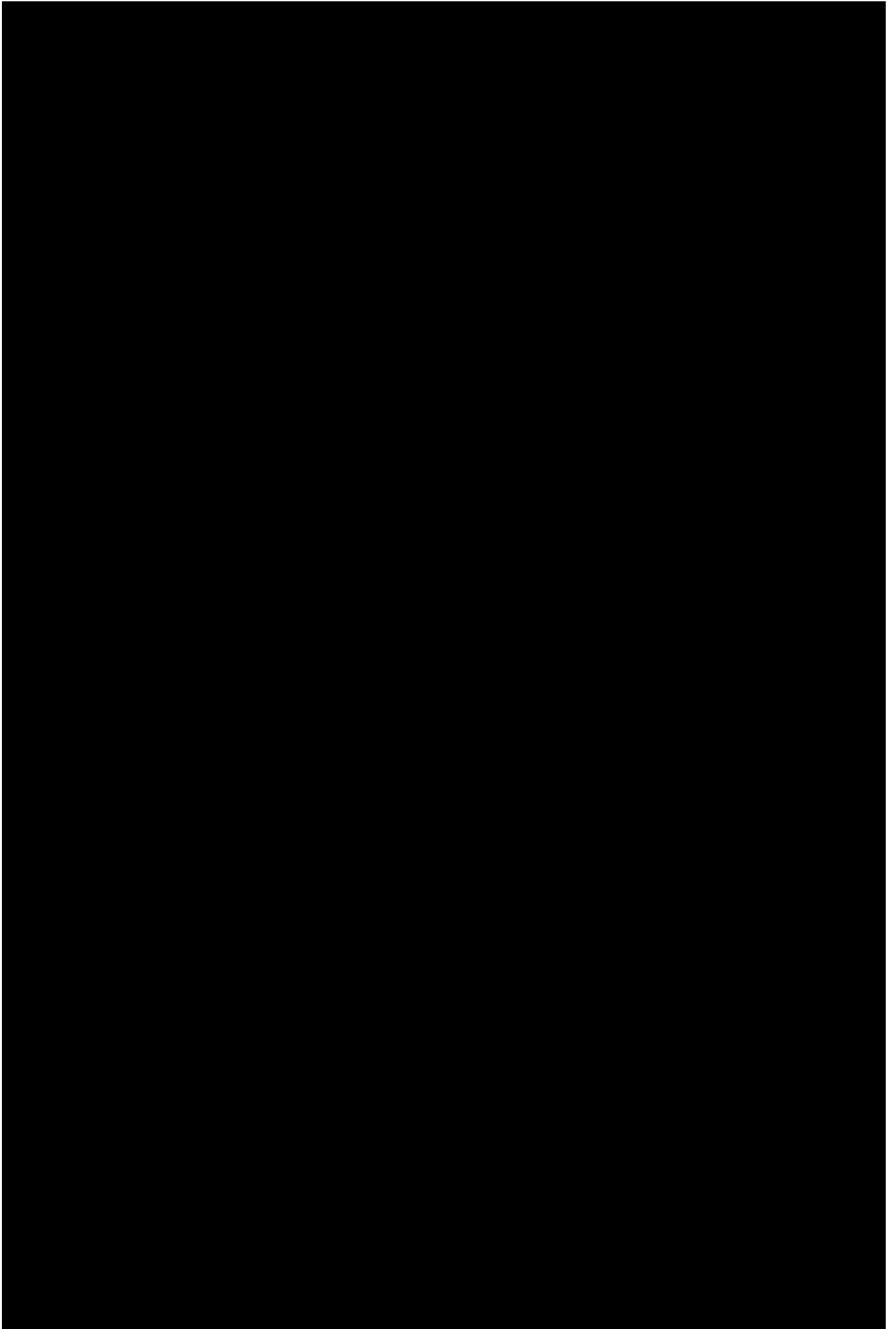


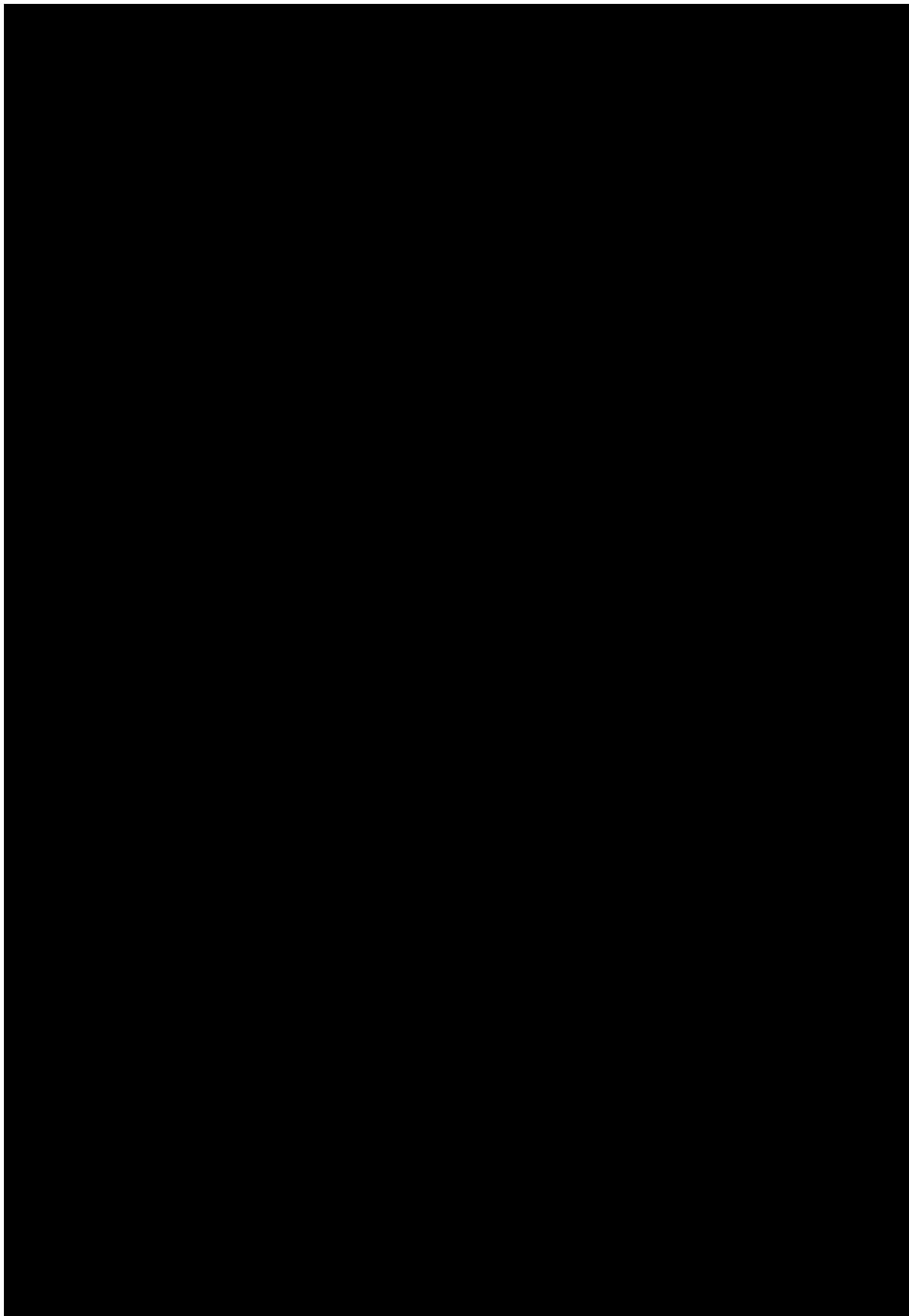


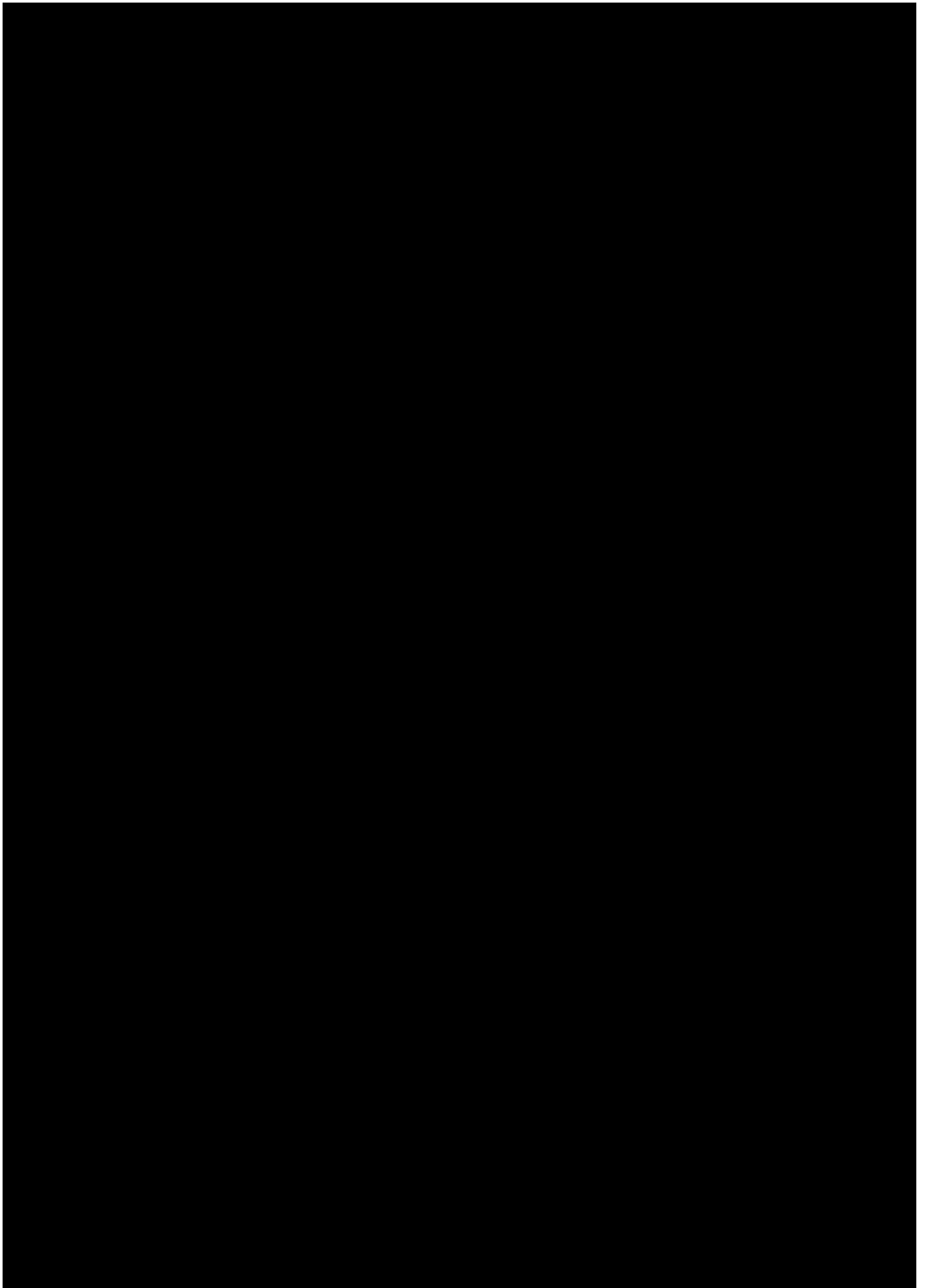


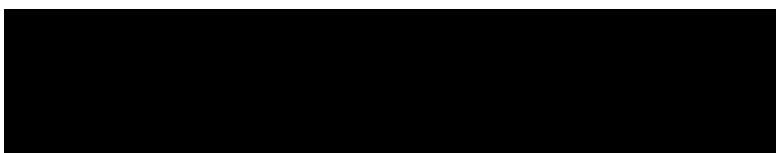
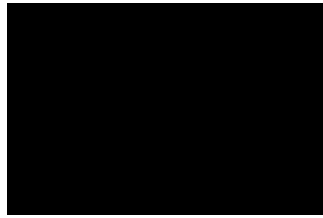


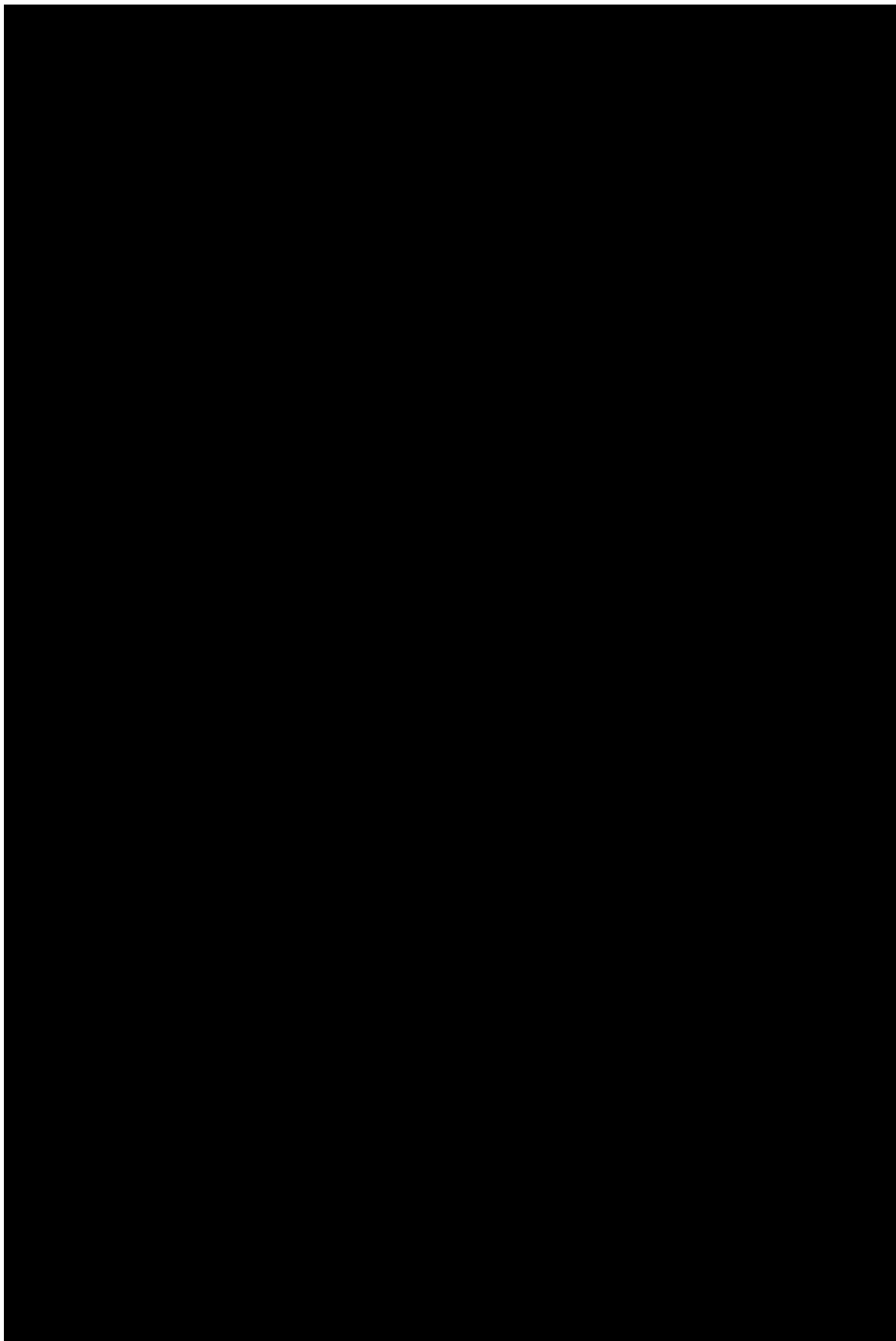




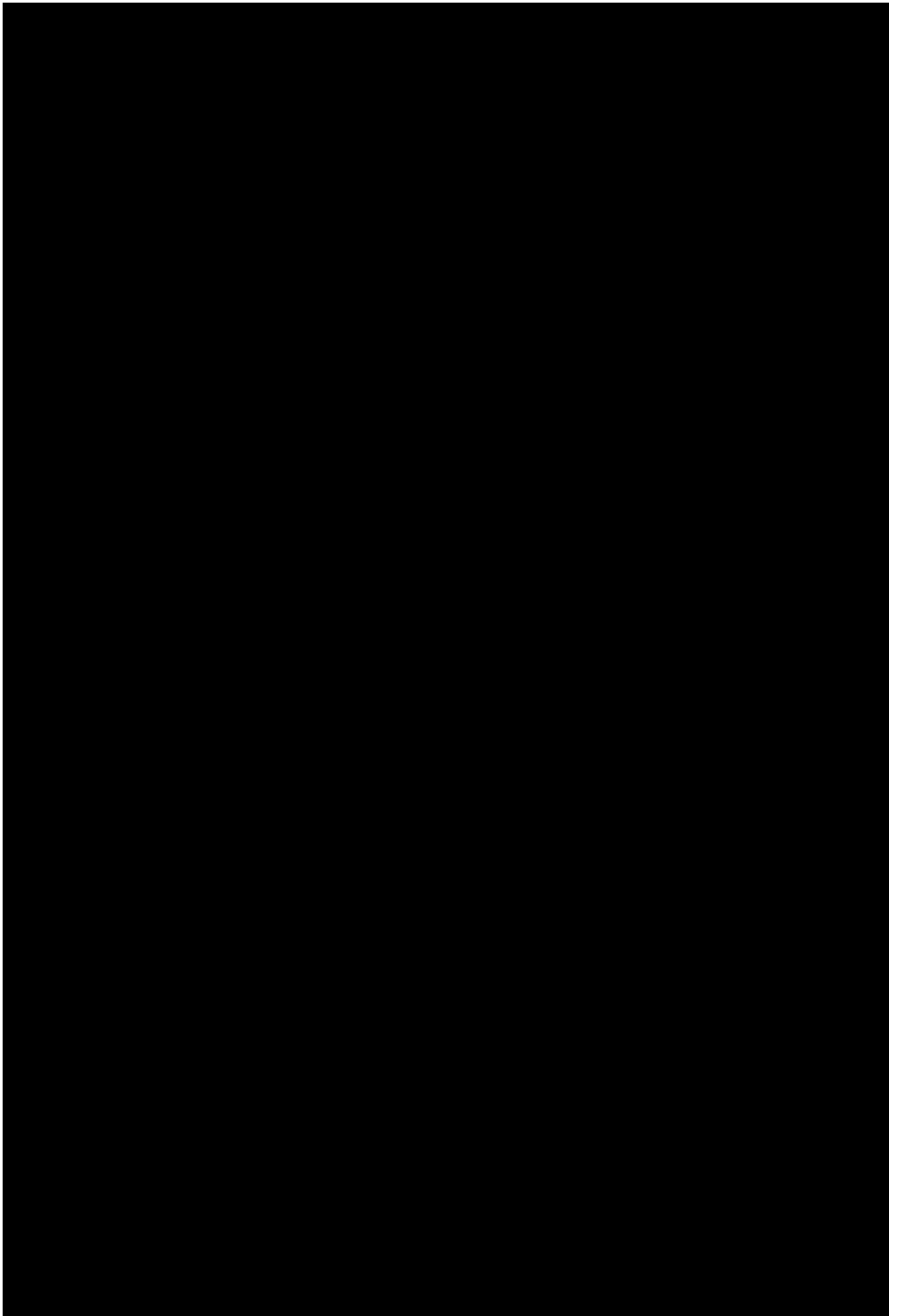


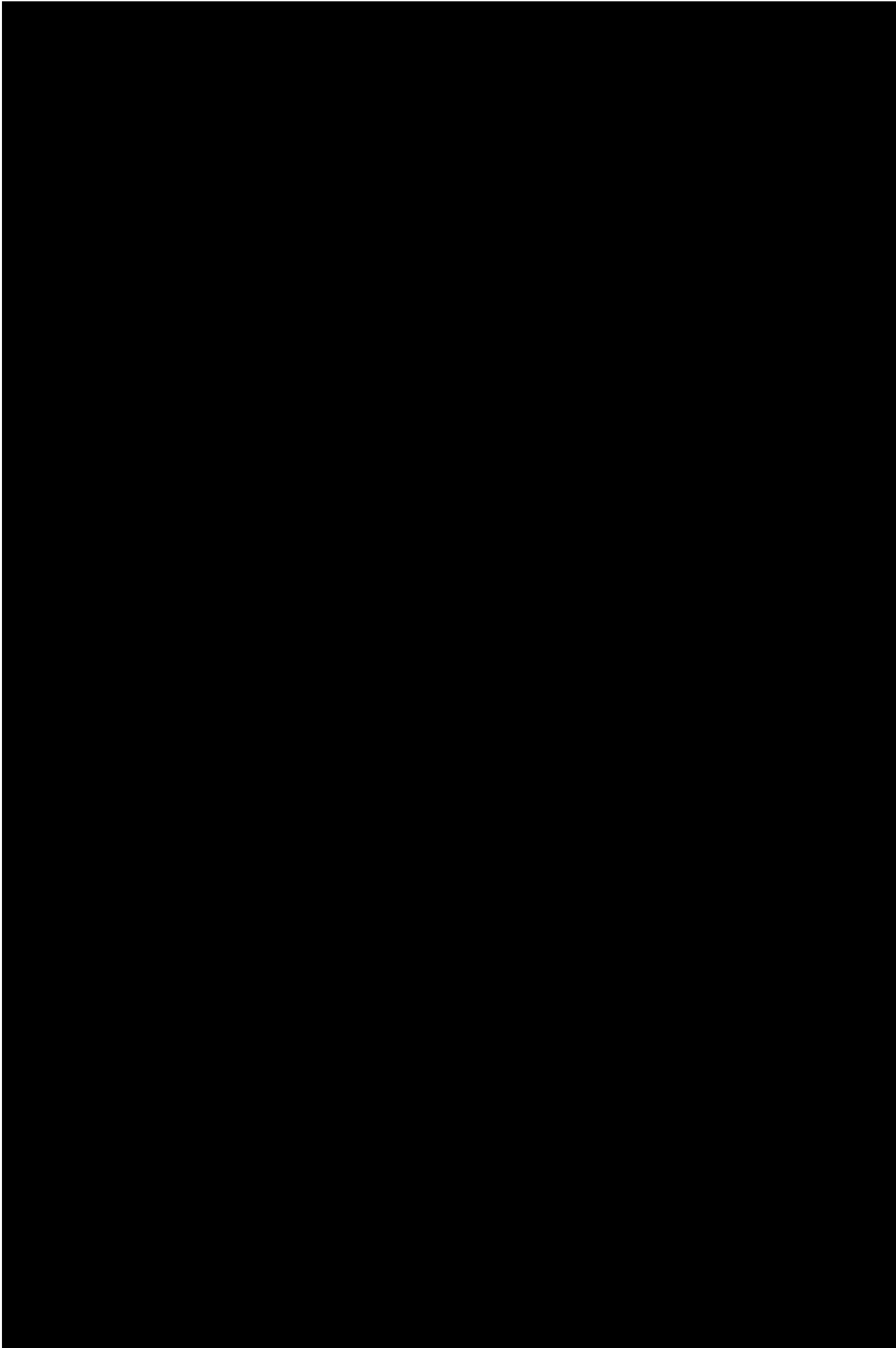


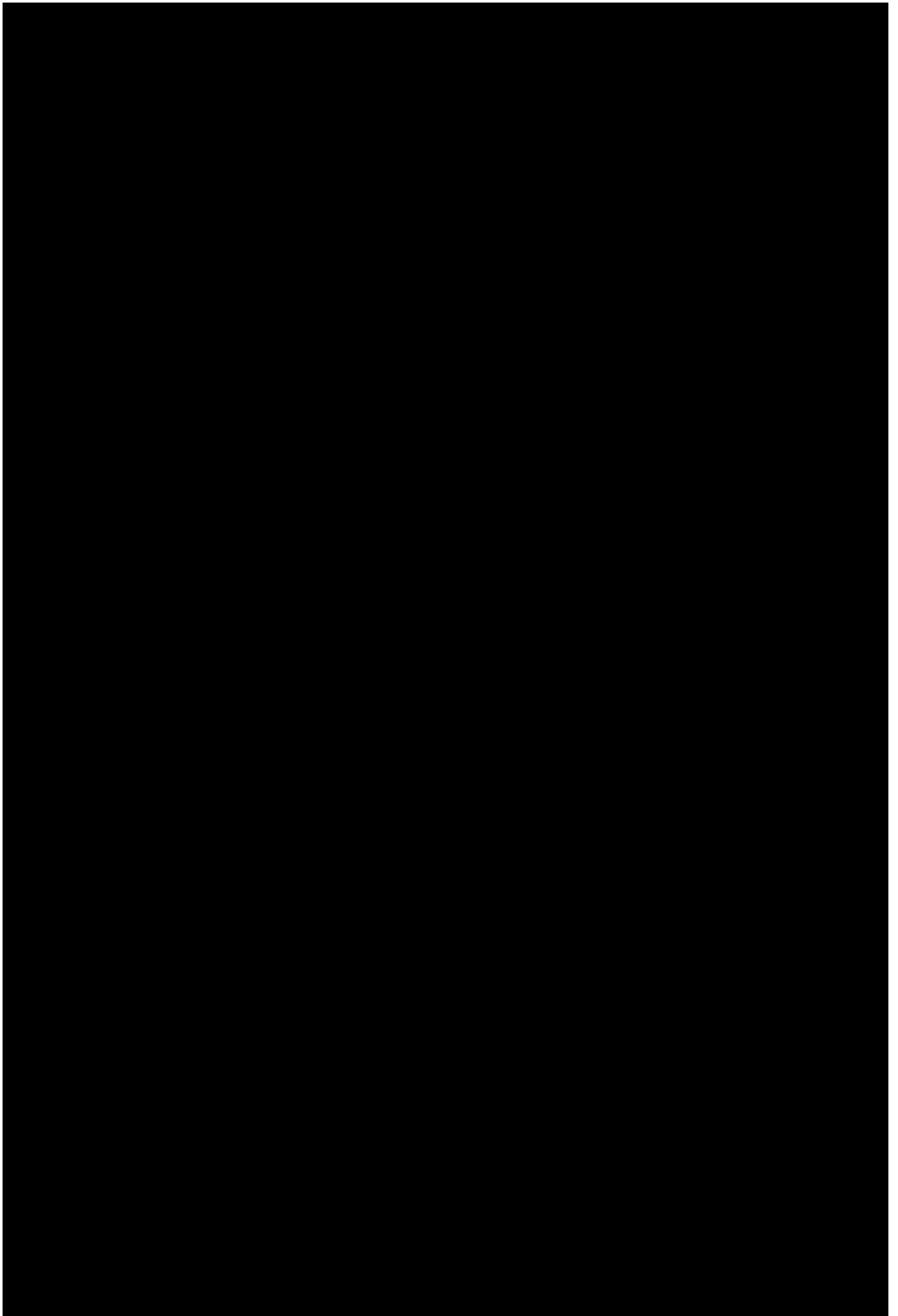


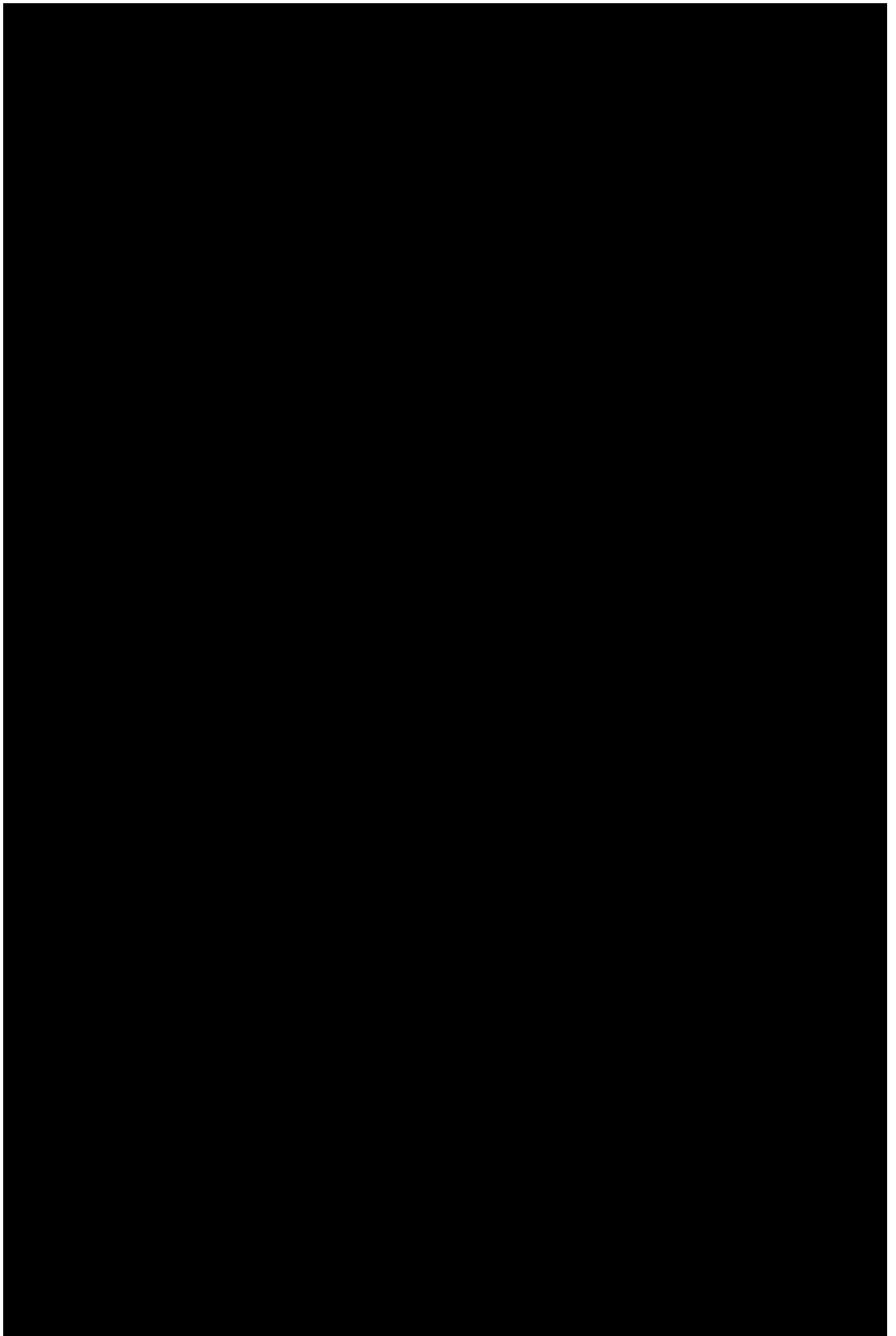












## **Schedule 42. Independent Certifier Deed**

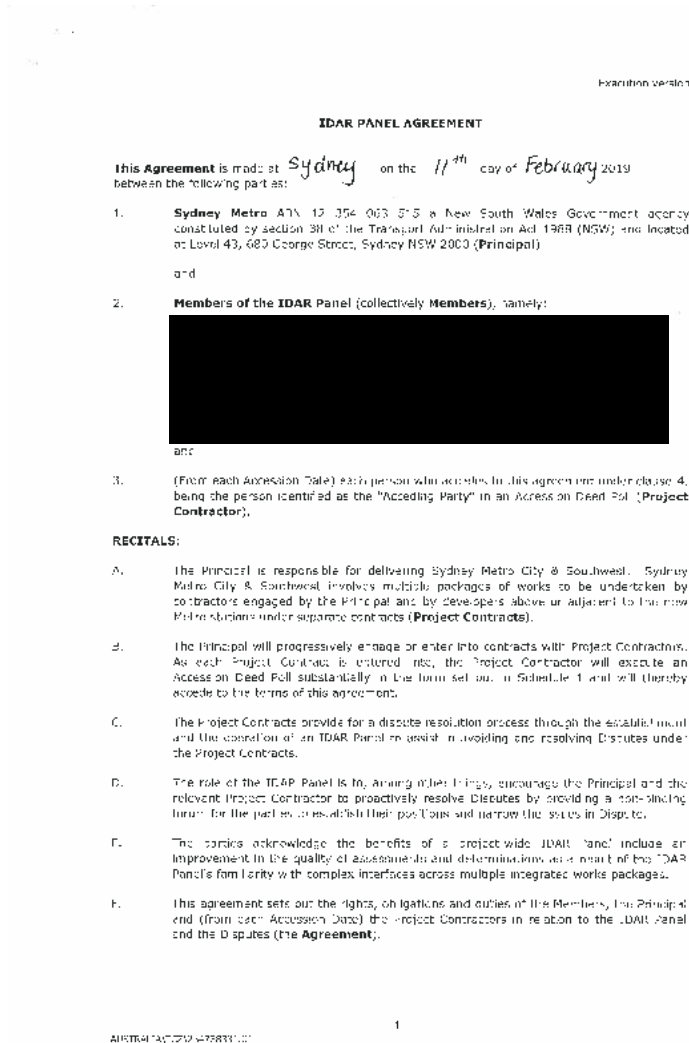
(Clause 12.6)

Please refer to the Independent Certifier Deed issued by Sydney Metro on 29<sup>th</sup> May 2023 via Ansarada.

# Schedule 43. IDAR Panel Agreement

(Clause 19.2)

Please refer to the IDAR Panel Agreement dated 11 February 2019 between Sydney Metro, members of the IDAR panel [REDACTED] and each person who accedes to the agreement under clause 4.



#### Schedule 44. Electronic files

(Clause 1.8)

All electronic files identified below are saved to Ansarada data room folder "*CIDS/IDS DSI Contract – Electronic Files*" as at the date of execution and are incorporated into this Agreement:

<b>Location</b>	<b>Description of Electronic File</b>
Schedule 35 ( <i>Site Access Schedule</i> )	The drawings referred to in clause 2.1 of Schedule 35 ( <i>Site Access Schedule</i> ).
Exhibit A ( <i>SWTC</i> )	The documents referred to in Exhibit A ( <i>Scope of Work Technical Criteria</i> )
Exhibit B ( <i>SWM Fencing Stage 2/3 Design Documentation</i> )	The document referred to in Exhibit B ( <i>SWM Fencing Stage 2/3 Design Documentation</i> )
Exhibit C ( <i>Principal's Insurance Policies</i> )	The documents referred to in Exhibit C ( <i>Principal's Insurance Policies</i> ).
Exhibit D ( <i>Information Documents and Materials</i> )	The documents referred to in Exhibit D ( <i>Information Documents and Materials</i> ).

## Schedule 45. CIDS/ODS O&M Principles

(Clause 3.19)

### 1. INTRODUCTION

These CIDS/ODS O&M Principles set out the basis for a support services contract to be entered into between the CIDS/ODS Contractor and the Operator under which the CIDS/ODS Contractor will be required to support and maintain the CIDS/ODS Assets that have been installed by the CIDS/ODS Contractor under the Contract and handed over to the Operator.

### 2. DEFINITIONS

In this Schedule 45:

**"Asset Information System"** means the system for the storage, processing, transmission and management of asset information to be developed and maintained by the Operator.

**"CIDS/ODS Assets"** means the assets forming part of the scope of the Support Services Contract, as agreed by the Operator and the CIDS/ODS Contractor, and which will include all elements of the CIDS/ODS installed by the CIDS/ODS Contractor under the Contract and handed over to the Operator.

**"Handback Condition"** means the required condition of the CIDS/ODS Assets as at the expiry or earlier termination of the Support Services Contract, to be developed by the Operator and the CIDS/ODS Contractor during negotiations regarding the Support Services Contract and described in the Support Services Requirements.

**"Support Services Requirements"** means the document, to be developed by the Operator and the CIDS/ODS Contractor during negotiations regarding the Support Services Contract and based on the O&M Manuals produced by the CIDS/ODS Contractor under the Contract, detailing the technical and procedural requirements applicable to the CIDS/ODS Contractor's maintenance and support of the CIDS/ODS Assets.

### 3. SUPPORT SERVICES

#### 3.1 Overview

- (a) The CIDS/ODS Assets form part of the assets that the Operator will be required to operate and maintain under the TSOM Contract with the Principal.
- (b) The Operator will be responsible for carrying out basic maintenance and asset management activities in respect of the CIDS/ODS Assets in accordance with the O&M Manuals to be developed by the CIDS/ODS Contractor under the Contract (as part of the Asset Management Information described in Appendix F06 of the SWTC).
- (c) The CIDS/ODS Contractor will be required to undertake asset maintenance activities in respect of the CIDS/ODS Assets (**Support Services**) for the term of the Support Services Contract.



- (d) The Support Services that the CIDS/ODS Contractor will be required to perform under the Support Services Contract will comprise:
  - (i) providing the Operator with support and advice in carrying out the maintenance and asset management activities described in section 3.1(b) above;
  - (ii) scheduled maintenance, as further described in section 3.2 below;
  - (iii) unscheduled maintenance and support, as further described in section 3.3 below; and
  - (iv) training of the Operator's maintenance personnel.
- (e) In performing the Support Services, the CIDS/ODS Contractor will be required to satisfy the technical and procedural requirements of the Principal, as passed through to the Operator, but only to the extent that those requirements apply to the maintenance and handback of the CIDS/ODS Assets.
- (f) Under the Support Services Contract, the CIDS/ODS Contractor will be required to demonstrate an appropriate application of whole of life considerations in the performance of the Support Services.
- (g) The CIDS/ODS Contractor will be required to:
  - (i) perform the Support Services in accordance with:
    - (A) the Support Services Requirements (including the CIDS/ODS asset management standards)
    - (B) the O&M Manuals developed by the CIDS/ODS Contractor under the Contract (as part of the Asset Management Information described in Appendix F06 of the SWTC); and
    - (C) the other requirements of the Support Services Contract,so that:
    - (D) the CIDS/ODS Assets comply with the requirements of the Support Services Contract; and
    - (E) the CIDS/ODS Assets are maintained in a way that enables them to:
      - (aa) remain fit for purpose during the term of the Support Services Contract; and
      - (bb) achieve their projected Design Life (as that term is defined in the SWTC);
  - (ii) maintain records of all Support Services carried out by the CIDS/ODS Contractor and include all relevant details in the Asset Information System so that at all times the Asset Information System accurately represents the true status and condition of the CIDS/ODS Assets;

- (iii) have available appropriate plant, tools and equipment to carry out the Support Services;
- (iv) retain appropriate replacement parts and spares to minimise the down time of any part of the CIDS/ODS in accordance with section 4 below;
- (v) maintain and update the Asset Management Information for the CIDS/ODS Assets that is developed and submitted by the CIDS/ODS Contractor under the Contract (as part of the Asset Management Information described in Appendix F06 of the SWTC).

### **3.2 Scheduled maintenance**

- (a) The CIDS/ODS Contractor will be required to undertake scheduled maintenance of the CIDS/ODS Assets to directly support the ongoing operation of the CIDS/ODS Assets, including:
  - (i) detailed fault finding and diagnostics;
  - (ii) component supply and replacement that requires specialist tools;
  - (iii) advanced fault finding and diagnostics that may require specialist and diagnostic hardware and software;
  - (iv) system configuration / reconfiguration; and
  - (v) calibration of relevant sensors and system parameters.
- (b) The CIDS/ODS Contractor will be required to establish, implement and maintain a software management system to the requirements of ISO 90003 to ensure that all software supplied by the CIDS/ODS Contractor for the CIDS/ODS Assets complies with the required quality standards.

### **3.3 Unscheduled maintenance and support**

- (a) The CIDS/ODS Contractor will be required to achieve industry standard response times and rectification times
- (b) The CIDS/ODS Contractor will be required to undertake obsolescence management activities, including periodic upgrades of hardware and software, to ensure full consideration is given to obsolescence during the term of the Support Services Contract. This is required to ensure that the CIDS/ODS software is always at a stage that it is capable of operation on an operating system that is supportable.

## **4. SPARE PARTS AND COMPONENTS**

- (a) The CIDS/ODS Contractor will be required to maintain, at its risk and cost, sufficient spare parts and components as are required to undertake the Support Services.
- (b) Without limiting section 4(a) or the CIDS/ODS Contractor's obligations under clause 15.6(b) of the Contract, the CIDS/ODS Contractor will be required to make available to the Operator for purchase spare parts and components to allow the Operator to perform maintenance and asset management activities in respect of the CIDS/ODS Assets, as described in section 3.1(b) above.

- (c) The Operator may:
  - (i) elect to purchase spare parts and components from CIDS/ODS Contractor under section 4(b) and store them on Site in inventory to ensure that any down time of the CIDS/ODS is minimised; and/or
  - (ii) require the CIDS/ODS Contractor to maintain the inventory of spare parts and components to ensure that any parts that are consumed as part of Support Services or the maintenance and asset management activities carried out by the Operator are replenished so that the minimum quantity required is always on Site.
- (d) Subject to section 4(e), risk and title in all spare parts and components will vest in the Operator upon payment.
- (e) Risk and title in all spare parts and components that the CIDS/ODS Contractor is required to maintain in an inventory in accordance with section 4(c)(ii) will pass to the Operator on the earlier of:
  - (i) payment for those spare parts and components; or
  - (ii) incorporation of those spare parts and components into the CIDS/ODS Assets.

## 5. **HANDBACK AND TRANSITION OUT**

- (a) Upon the expiry or earlier termination of the Support Services Contract, the CIDS/ODS Contractor will be required to ensure that the CIDS/ODS Assets are in a state and condition which complies with the requirements of the Support Services Contract including the Handback Condition (fair wear and tear excepted).
- (b) Prior to expiry of the Support Services Contract, the Operator may procure the carrying out of an audit of the CIDS/ODS Assets (**Handback Audit**) by an independent expert (**Handback Auditor**).
- (c) The Handback Auditor will inspect and assess the CIDS/ODS Assets and notify the Operator and the CIDS/ODS Contractor in writing of:
  - (ix) whether the CIDS/ODS Contractor has carried out all Support Services in accordance with the Support Services Contract, including whether all scheduled maintenance (as described in section 3.2 above) that was scheduled to have been carried out prior to the date of the Handback Audit have been satisfactorily completed; and
  - (x) any rectification, maintenance and remediation works required to be carried out by the CIDS/ODS Contractor to bring the condition of the CIDS/ODS Assets to the condition it would have been in had the CIDS/ODS Contractor complied with its obligations under the Support Services Contract.
- (d) The CIDS/ODS Contractor will be required to, at its cost, co-operate with the Handback Auditor and provide the Handback Auditor with any reasonable assistance it requires.
- (e) The CIDS/ODS Contractor will be required to carry out any required rectification, maintenance and remediation work notified by the Handback Auditor:

- (i) to the satisfaction of the Handback Auditor;
- (ii) in accordance with all applicable laws; and
- (iii) so as to satisfy the standards and other requirements applicable to the CIDS/ODS Assets under the Support Services Contract,

prior to the expiry of the Term and any costs it incurs in carrying out such rectification, maintenance or remediation work will be at its own expense.

- (f) The CIDS/ODS Contractor will be required to ensure the smooth transition of the provision of the Support Services from the CIDS/ODS Contractor to the entity or entities that will perform all or any part of the Support Services after the expiry or termination of the Support Services Contract.

## Schedule 46. Pandemic Mitigation Measures

(Clause 3.20)

Item	Mitigation category	Mitigation Measures
1	Design management	
2	Site cleaning and hygiene	
3	Social distancing in site offices/sheds/onsite including any physical barriers	
4	Procurement and supply chain measures	
5	Construction methods	
6	Methods of work including remote working and increased IT equipment/support	
7	Site management, inductions and record keeping	
8	Use of on-site vehicles and delivery of materials	

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**EXHIBIT A – SWTC**

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This Exhibit A is included in Schedule 44 as an electronic file.

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**EXHIBIT B – SWM FENCING STAGE 2/3 DESIGN DOCUMENTATION**

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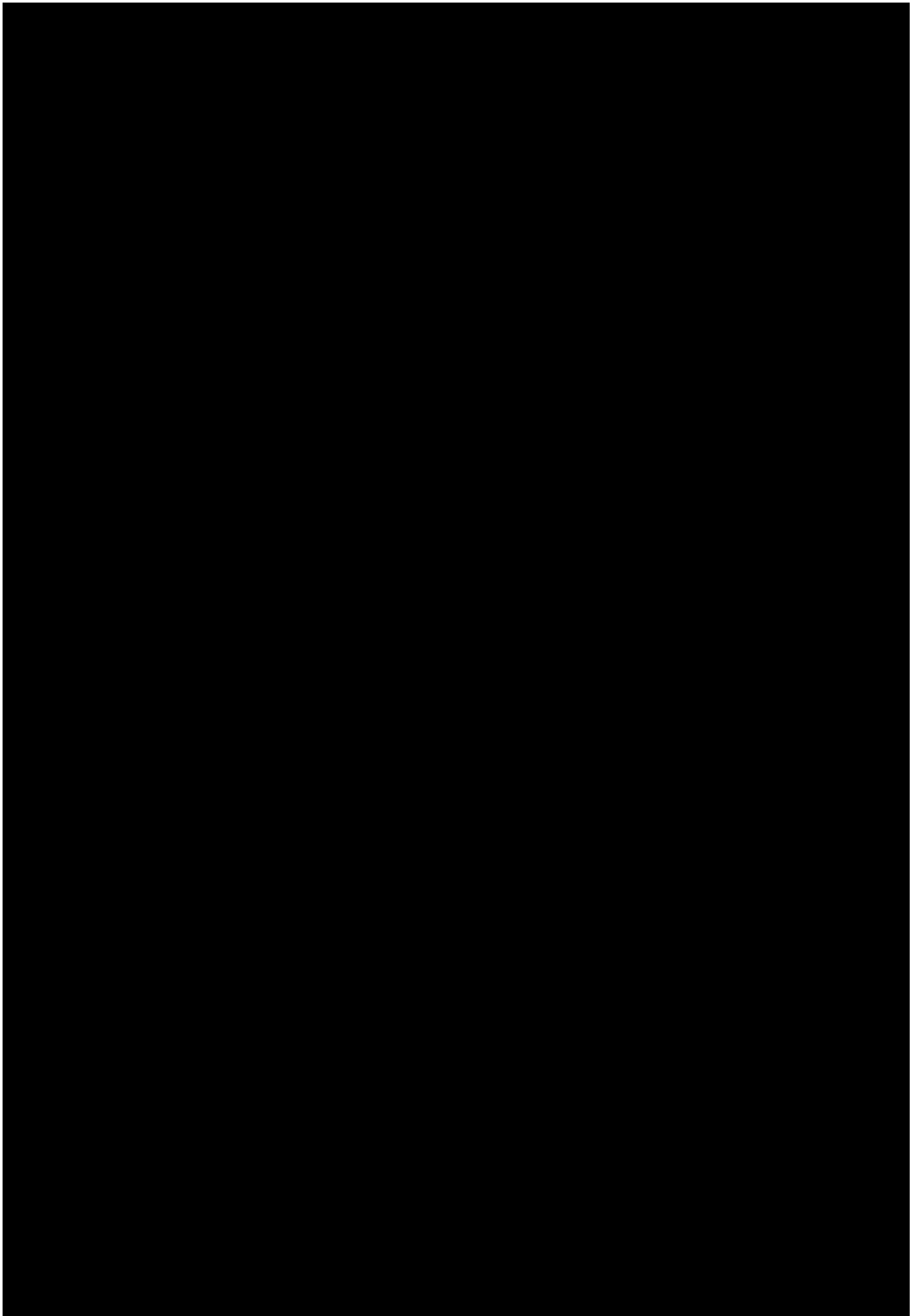
This Exhibit B is included in Schedule 44 as an electronic file.

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**EXHIBIT C – PRINCIPAL’S INSURANCE POLICIES**

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**EXHIBIT D – INFORMATION DOCUMENTS AND MATERIALS**

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This Exhibit D is included in Schedule 44 as an electronic file.