

# Deed of Variation

Transport for NSW

ABN 18 804 239 602

and

ALTRAC Light Rail Partnership

and

APP Corporation Pty Ltd

ABN 29 003 764 770

in relation to the Sydney Light Rail Independent Certifier Deed

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THIS DEED is made on

3 JUNE  
~~31 MAY~~

2019

**BETWEEN:**

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**);
- (2) **ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3 (**OpCo**); and
- (3) **APP Corporation Pty Ltd** (ABN 29 003 764 770) of Level 7, 116 Miller Street, North Sydney, NSW, 2060 (**Independent Certifier**).

**RECITALS:**

- (A) TfNSW, OpCo and the Independent Certifier have entered into the Independent Certifier Deed.
- (B) TfNSW, OpCo and the Independent Certifier wish to vary the Independent Certifier Deed.
- (C) TfNSW, OpCo and the Independent Certifier agree to enter into this deed to effect variations to the Independent Certifier Deed.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this deed.

**ALR Partners** has the meaning given to it in the Project Deed.

**Amended Independent Certifier Deed** means the Independent Certifier Deed as varied and amended pursuant to the terms of this deed.

**Authorisation** means:

- (a) an authorisation, consent, declaration, exemption, notarisisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or

- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Independent Certifier Deed** means the Sydney Light Rail Independent Certifier Deed between TfNSW, OpCo and the Independent Certifier dated 17 December 2014, as varied or amended by the parties from time to time prior to the date of this deed.

**Operative Provisions** means clauses 1 to 10 (inclusive) of the Independent Certifier Deed.

**Project Agreement** has the meaning given to it in the Project Deed.

**Project Deed** means the Sydney Light Rail Project Deed between TfNSW and OpCo dated 17 December 2014, as varied or amended by the parties from time to time prior to the date of this deed.

**Restructure Coordination Deed** means the SLR Restructure Coordination Deed dated on or about the date of this deed between TfNSW, OpCo, the D&C Contractor, the O&M Contractor, CBA Corporate Services (NSW) Pty Ltd (ACN 072 765 434) (as Security Trustee), Commonwealth Bank of Australia (ACN 123 123 124) (as Senior Facility Agent, SBLF Agent), each party listed in Schedule 1 of that deed and ALTRAC Finance SBLF Pty Ltd.

**Restructure Effective Date** has the meaning given to it in the Restructure Coordination Deed.

**TfNSW Project Agreements** has the meaning given to it in the Project Deed.

## 1.2 Terms defined in the Project Deed

Unless otherwise defined in this deed, capitalised terms which have a defined meaning in the Amended Independent Certifier Deed have the same meaning when used in this deed.

## 1.3 Rules for interpreting this deed

Clause 1.2 (Interpretation) of the Independent Certifier Deed will apply to the interpretation of this deed as if set out in full herein.

## 1.4 Consideration

Each party acknowledges it has received valuable consideration for entering into this deed.

## 1.5 Joint and several liability

- (a) The obligations, undertakings, representations, warranties, indemnities and liabilities of OpCo under this deed and the other TfNSW Project Agreements bind all ALR Partners jointly and severally as partners.
- (b) The rights of OpCo, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting OpCo (and not severally or jointly and severally).

## 1.6 General

Clause 4.2 (Confidentiality), clause 10.10 (Assignment), clause 10.1 (Notices), clause 10.7 (Cost of performing obligations), clause 10.18 (Severance) and clause 10.6 (Waiver) of the Amended Independent Certifier Deed apply to this deed as if they were fully set out in this deed with all necessary amendments.

## 2. AMENDMENTS

### 2.1 Amendments to the Independent Certifier Deed

- (a) On and from the Restructure Effective Date, the Independent Certifier Deed is varied and amended as follows:
  - (i) the Operative Provisions are amended as set out in Schedule 1 of this deed;
  - (ii) Schedule 1 (*Services*) of the Independent Certifier Deed is amended as set out in Schedule 2 of this deed;
  - (iii) Schedule 2 (*Payment Schedule*) of the Independent Certifier Deed is amended as set out in Schedule 2 of this deed;
  - (iv) Schedule 4 (*Initial Certification and Monitoring Plan*) of the Independent Certifier Deed is amended as set out in Schedule 2 of this deed;
  - (v) Schedule 5 (*Requirements for Certification and Monitoring Plan*) of the Independent Certifier Deed is amended as set out in Schedule 2 of this deed; and
  - (vi) Schedule 7 (*Deed Poll (AML Third Party Agreement)*) of the Independent Certifier Deed is amended as set out in Schedule 2 of this deed.
- (b) Paragraph (a) does not affect:
  - (i) any right or obligation of either party that arises before the Restructure Effective Date; or
  - (ii) the amendments to the Independent Certifier Deed effected by the deed titled "Independent Certifier Deed – deed of variation and release" executed by the parties on or about 30 May 2019.

### 2.2 Effect of amendment

- (a) This deed is intended only to vary the Independent Certifier Deed and not to terminate, discharge, rescind, restate or replace it.
- (b) The variations to the Independent Certifier Deed in clause 2.1(a) do not affect the validity or enforceability of the Independent Certifier Deed or any other Project Agreement.
- (c) Nothing in this deed, of itself:
  - (i) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Independent Certifier Deed or any other Project Agreement before the Restructure Effective Date; or
  - (ii) discharges, releases or otherwise affects any liability or obligation which arose under the Independent Certifier Deed or any other Project Agreement before the Restructure Effective Date.

3. **NOT USED**

4. **REPRESENTATIONS AND WARRANTIES**

4.1 **Representations and warranties of OpCo**

Each member of OpCo represents and warrants for the benefit of TfNSW and the Independent Certifier that:

- (a) **(status)** it is a duly incorporated entity in accordance with the laws of its country of incorporation;
- (b) **(power)** it has full legal capacity and power to:
  - (i) own its property and to carry on its business; and
  - (ii) enter into this deed and to carry out the transactions that it contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this deed and to carry out the transactions contemplated;
- (d) **(Authorisations)** it has taken all action required to enter into this deed and to authorise the execution and delivery of this deed and the satisfaction of its obligations under it;
- (e) **(document effective)** this deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (f) **(no contravention)** neither its execution of this deed, nor the carrying out by it of the transactions that this deed contemplates, does or will:
  - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any agreement binding on it or any of its property; or
  - (iv) contravene its constitution or the powers or duties of its directors;
- (g) **(commercial benefit)** the execution by it of this deed, and the carrying out by it of the transactions that this deed contemplates, is for its corporate benefit and in its commercial interests; and
- (h) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable.

4.2 **TfNSW representations and warranties**

TfNSW represents and warrants for the benefit of OpCo and the Independent Certifier that:

- (a) it is a statutory body validly constituted and existing under the Transport Administration Act;

- (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 deed (or will have them in full force and effect at the time the obligation is to be performed);
- (c) this deed constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) the execution, delivery and performance by it of this deed 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.

#### **4.3 Independent Certifier representations and warranties**

The Independent Certifier represents and warrants for the benefit of TfNSW and OpCo that:

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

#### **4.4 Reliance on representations and warranties**

Each party acknowledges that the other party has executed this deed and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made in this clause 4.

#### **4.5 No other reliance**

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

## 5. GENERAL

### 5.1 Governing law

- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them, in respect of any proceedings arising out of or in connection with this deed.

### 5.2 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this deed.

### 5.3 Giving effect to this deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

### 5.4 Operation of this deed

- (a) Subject to paragraph (b), this deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.
- (b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

### 5.5 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this deed is excluded to the full extent permitted by law.

### 5.6 Amendment

This deed can only be amended or replaced by another deed executed by or on behalf of TfNSW, OpCo and the Independent Certifier.

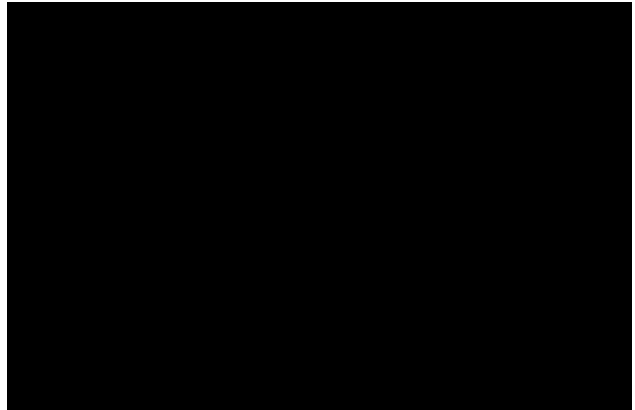
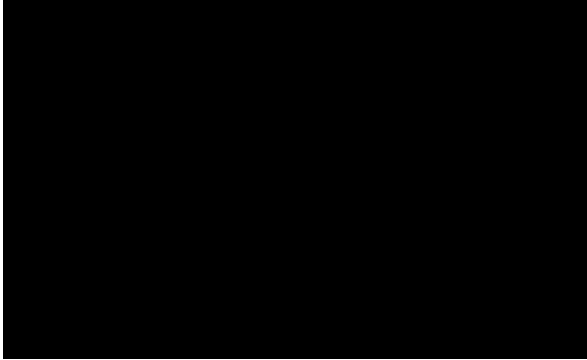
### 5.7 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.



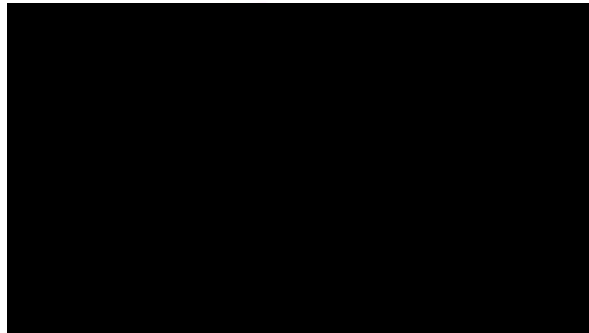
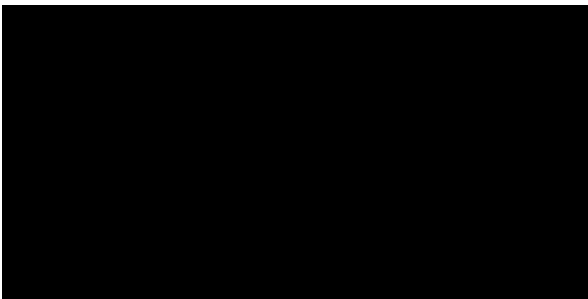
**EXECUTED** as a deed.

**EXECUTED** on behalf of **TRANSPORT FOR NSW** by its authorised delegate **IN THE PRESENCE OF:**

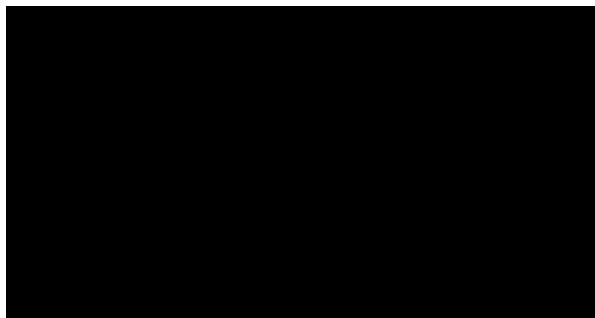
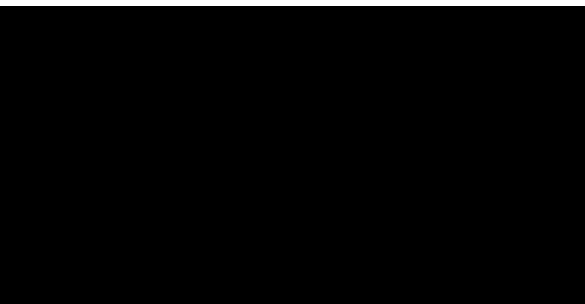


**Signed by the ALTRAC Light Rail Partnership by being signed by each of its partners as at the date of this deed**

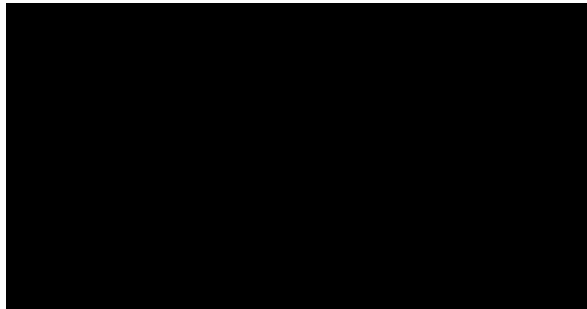
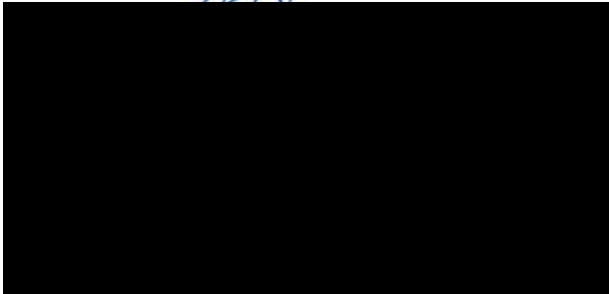
**SIGNED, SEALED AND DELIVERED** by **ALTRAC LIGHT RAIL 1 PTY LIMITED ACN 603 192 203** as trustee for **ALTRAC LIGHT RAIL TRUST 1:**



**SIGNED, SEALED AND DELIVERED** by **ALTRAC LIGHT RAIL 2 PTY LIMITED ACN 603 194 476** as trustee for **ALTRAC LIGHT RAIL TRUST 2:**



**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 3 PTY LIMITED**  
**ACN 603 190 601** as trustee for  
**ALTRAC LIGHT RAIL TRUST 3:**



**EXECUTED** by **APP CORPORATION PTY LTD ABN 29 003 764 770** under 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

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 3 PTY LIMITED**  
**ACN 603 190 601** as trustee for  
**ALTRAC LIGHT RAIL TRUST 3:**

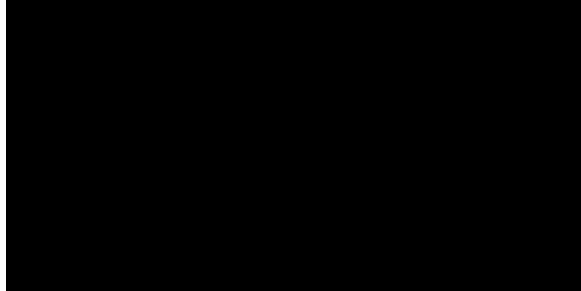
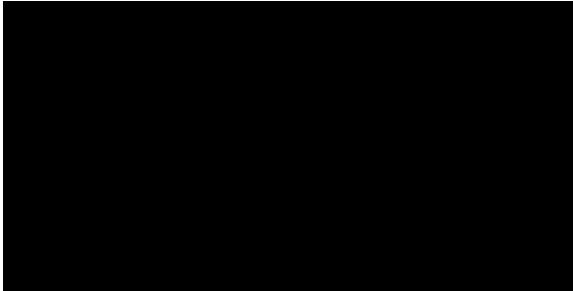
\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Company Secretary/Director (print)

\_\_\_\_\_  
Name of Director (print)

**EXECUTED** by **APP CORPORATION PTY**  
**LTD ABN 29 003 764 770** under section  
127 of the Corporations Act 2001 (Cth):



**SCHEDULE 1 – AMENDED INDEPENDENT CERTIFIER DEED**



# Sydney Light Rail Independent Certifier Deed

Transport for NSW

ABN 18 804 239 602

and

ALTRAC Light Rail Partnership

and

APP Corporation Pty Ltd

ABN 29 003 764 770

~~2014~~[2019](#)

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**THIS DEED** is made on 2014

**Between**

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**)
- (2) **ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3 of c/- Capella Capital, Level 31, AMP Centre, 50 Bridge Street, Sydney, NSW (**OpCo**)
- (3) **APP Corporation Pty Ltd** (ABN 29 003 764 770) of Level 7, 116 Miller Street, North Sydney, NSW, 2060 (**Independent Certifier**)

**RECITALS:**

- (A) On or about the date of this deed, OpCo entered into the Project Deed with TfNSW in respect of the SLR PPP.
- (B) The Independent Certifier represents that it is experienced generally in design, construction, installation, testing and commissioning and, in particular, in the design, construction, installation, testing and commissioning of works similar to the SLR Works and offers its expertise in those fields.
- (C) The Relevant Project Agreements contemplate that the Independent Certifier will discharge those functions set out in Schedule 1 (*Services*).
- (D) The Independent Certifier will perform its obligations on the terms and conditions of this deed.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The defined terms in clause 1.1 (*Definitions*) of the Project Deed have the same meaning in this deed unless a term is defined in this deed, in which case the meaning given in this deed will prevail.

In this deed:

**AML** means Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust.

**Certification and Monitoring Plan** means the plan that the Independent Certifier is required to prepare in accordance with clause 3.7 (*Certification and Monitoring Plan*), and in respect of which TfNSW has not issued a notice to the Independent Certifier under clause 3.7(b)(ii), as that plan is updated from time to time in accordance with clause 3.8 (*Revisions to Certification and Monitoring Plan*).



**Completion Phase Services** means all Services related to ~~the~~ FPS Stage 1 Readiness, FPS Stage 2 Readiness and Completion of the SLR Works (as applicable), and the performance by OpCo of its obligations in respect of FPS Stage 1 Readiness, FPS Stage 2 Readiness and Completion of the SLR Works, including those relating to testing, commissioning, operational readiness, ~~First Passenger Service~~ FPS Stage 1 Readiness, FPS Stage 2 Readiness and Completion as specified in clauses 18 (*Testing and Commissioning*) and 19 (~~First Passenger Service~~ FPS Operations, Completion, Full Operations, Final Completion and Early Completion) of the Project Deed.

**Construction Phase Services** means all Services directly related to the construction of the SLR Works and the performance by OpCo of its construction obligations in respect of the SLR Works, including those specified in clauses 15 (*Construction*) and 16 (*Quality*) of the Project Deed and in the Third Party Agreements and the Roads Act Approval.

**Deed Poll** has the meaning given in clause 3.1(b).

**Design Phase Services** means all Services related to the design of the SLR Works and the performance by OpCo of its design obligations in respect of the SLR Works, including those specified in clause 13 (*Design*) of the Project Deed and in the Third Party Agreements and the Roads Act Approval.

**Fee** means the amount payable to the Independent Certifier for the performance of the Services in accordance with Schedule 2 (*Payment Schedule*).

**Final Completion Phase Services** means the Services related to Defects, and the performance by OpCo of its obligations to correct Defects, to the Date of Final Completion.

**Financial Close** occurs when the last condition precedent set out in Schedule A1 to the Project Deed to be satisfied or waived has been satisfied or waived.

**GST, GST law** and other terms used in clause 9 (*GST*) have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 9 (*GST*)) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

**Independent Certifier's Representative** means the relevant person referred to in Schedule 3 (*Minimum Resources and Surveillance Levels*) or any other person holding that position in accordance with clause 3.4(b)(ii).

**Other Parties** means TfNSW and OpCo.

**Payment Schedule** means Schedule 2 (*Payment Schedule*) to this deed.

**Project Deed** means the deed titled "Sydney Light Rail - Project Deed" between TfNSW and OpCo dated on or about the date of this deed.

**Relevant Project Agreements** means:

- (a) the Project Deed;
- (b) the Third Party Agreements; and
- (c) the Roads Act Approval.

**Roads Act Approval** means the Roads Act Approval – CBD and South East Light Rail to be granted by Roads and Maritime Services substantially in the form of the document set out in Schedule B11 (*Roads Act Approval*) to the Project Deed.

**RMS** means Roads and Maritime Services.

**Services** means the services listed in Schedule 1 (*Services*) to this deed.

**SPR** means the Scope and Performance Requirements contained in the Project Deed at Schedule E1 (*Scope and Performance Requirements*).

**Substitute Certifier** has the same meaning as in clause 6(d).

**Term** means the term of this deed as set out in clause 3.13 (*Term*).

## 1.2 Interpretation

In this deed:

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

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

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **person** includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
- (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

- (j) **includes** in any form is not a word of limitation;
- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) where under this deed:
  - (i) a notice, certificate or direction is required to be given; or
  - (ii) a default must be remedied,  
within a stated number of days, only Business Days will be counted in computing the number of days;
- (m) for all purposes other than as set out in clause 1.2(l), **day** means calendar day;
- (n) a reference to a **month** is a reference to a calendar month;
- (o) a reference to a court or tribunal is to an Australian court or tribunal;
- (p) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (q) any reference to **information** will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

### 1.3 **Business Day**

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

### 1.4 **Ambiguous terms**

- (a) If TfNSW considers, or if the Independent Certifier or OpCo notifies TfNSW's Representative in writing that it considers, that there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed (including in any Schedules) or between this deed and other Relevant Project Agreements, TfNSW's Representative must direct the interpretation of this deed or between this deed and such other Relevant Project Agreement which the parties must follow.
- (b) TfNSW's Representative, in giving a direction in accordance with clause 1.4(a), is not required to determine whether or not there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which TfNSW's Representative gives in accordance with clause 1.4(a):
  - (i) will not relieve the Independent Certifier or OpCo from or alter its liabilities or obligations under this deed or otherwise according to law;
  - (ii) will not limit or otherwise affect TfNSW's rights against the Independent Certifier or OpCo, whether under this deed or otherwise according to law; and
  - (iii) must, in respect of a notice given under clause 1.4(a) by the Independent Certifier or OpCo, be given within 20 Business Days of receipt of that notice.

### 1.5 **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.

### 1.6 **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. **APPOINTMENT OF THE INDEPENDENT CERTIFIER**

### 2.1 **Appointment**

- (a) Each of TfNSW and OpCo appoint the Independent Certifier under this deed to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 2.1(a).
- (c) The Independent Certifier must carry out the Services in accordance with the requirements of this deed and, to the extent the Certification and Monitoring Plan is not inconsistent with the Relevant Project Agreements or the nature of the Services, it will carry out and perform the Services in accordance with the Certification and Monitoring Plan.

### 2.2 **Payment**

TfNSW and OpCo will pay the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.

### 2.3 **Nature of Services**

- (a) The Independent Certifier and the Other Parties acknowledge and agree that the Certification and Monitoring Plan is incidental to, and does not limit or otherwise affect, the Services or the Independent Certifier's obligations under this deed.
- (b) Where this deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then subject to clause 2.3(c) and clause 2.3(f) TfNSW must, acting reasonably, determine the appropriate action, agreement, decision, direction or the like.
- (c) Before TfNSW makes a determination under clause 2.3(b) as to the appropriate action, agreement, decision, direction or the like:
  - (i) TfNSW must give OpCo a notice requesting a meeting with OpCo;
  - (ii) TfNSW and OpCo must meet within 5 Business Days of OpCo receiving TfNSW's notice under clause 2.3(c)(i) to discuss the appropriate action, decision, direction or the like; and
  - (iii) TfNSW must take into account the views of OpCo in making TfNSW's determination.

- (d) TfNSW must give OpCo written notice of a determination made by TfNSW under clause 2.3(b) within 2 Business Days of making the determination.
- (e) In reaching decisions in relation to this deed which may affect the Other Parties, TfNSW may take into account representations made by OpCo.
- (f) Nothing in this clause 2.3 permits TfNSW to amend the Services without the consent of OpCo where such amendment would adversely affect OpCo's rights or obligations under the Project Deed.

### **3. INDEPENDENT CERTIFIER'S OBLIGATIONS**

#### **3.1 Acknowledgement and execution of deeds poll**

- (a) The Independent Certifier acknowledges that:
  - (i) it has received a copy of each of the Relevant Project Agreements and that it has read, and is familiar with, the terms of these documents to the extent they relate to the Services; and
  - (ii) its obligations extend to and include the obligations, functions, duties and services of the Independent Certifier under the Relevant Project Agreements.
- (b) The Independent Certifier must, as soon as practicable after the date of this document, execute and deliver to TfNSW deeds poll in the forms set out in Schedule 7 and Schedule 8 or in such other form required by the Other Parties (**Deeds Poll**).

#### **3.2 General representations and warranties**

The Independent Certifier represents and warrants that:

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

### 3.3 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
- (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
  - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Relevant Project Agreements (and, where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.3(a) and 3.3(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or any Relevant Project Agreement;
- (e) without limiting its obligations under any provision of this deed, warrants to the Other Parties that:
- (i) it will carry out and perform the Services;
  - (ii) in performing the Services it will provide, as a minimum, the levels of surveillance and resources specified in Schedule 3 (*Minimum Resources and Surveillance Levels*); and
  - (iii) without limiting subparagraphs (i) and (ii), to the extent the Certification and Monitoring Plan is not inconsistent with:
    - (A) the Relevant Project Agreements;
    - (B) the nature of the Services; or
    - (C) without limiting subparagraphs (A) or (B), the requirements of clause 4 (*Independence, Confidentiality and Exclusivity*),
 it will carry out and perform the Services in accordance with the Certification and Monitoring Plan;
- (f) will provide transport on site for the use of its site personnel and any equipment and software to support surveillance, monitoring and certification activities;
- (g) will, in carrying out the Services, carry out physical inspections of the Construction Site, the IWLR, any Extra Land, the SLR Works and OpCo's Activities when appropriate or necessary to do so (including for the purpose of determining whether FPS Stage 1 Readiness, FPS Stage 2 Readiness or Completion (as applicable) has been achieved by OpCo), and when reasonably

requested by TfNSW or OpCo, in a manner which satisfies or exceeds the requirements ascertainable of Schedule C15 (*Form of Deed Poll for Other Contractor*) of the Project Deed and the Certification and Monitoring Plan (including surveillance levels and resources) and will invite TfNSW to accompany it on all such inspections;

- (h) will carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including OpCo) except where it is the unavoidable consequence of performing the Services; and
- (i) in undertaking the Services, will comply with all the safe working requirements of OpCo.

### 3.4 Key Personnel

- (a) The Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the nominated people referred to in Schedule 3 (*Minimum Resources and Surveillance Levels*):
  - (i) perform the services required of their respective positions;
  - (ii) are not removed without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the people are removed:
    - (A) they must be replaced by people of at least equivalent skill, expertise and experience; and
    - (B) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Relevant Project Agreements and the Services; and
  - (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) The Other Parties (jointly) may direct the Independent Certifier to remove from the performance of the Services any of the people referred to in Schedule 3 (*Minimum Resources and Surveillance Levels*) and the Independent Certifier must comply with any such direction.
- (d) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 (*Services*) which the Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.

### 3.5 Subcontracting

- (a) Subject to clause 3.5(c), the Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request to subcontract).

- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Independent Certifier.
- (c) Unless the Other Parties otherwise approve in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 6 (*Subcontractors*) for the performance of the relevant parts of the Services.

### 3.6 Quality Assurance

- (a) The Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this deed as a result of:
  - (i) compliance with the quality assurance requirements of this deed; or
  - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this deed, including any review of, comments upon, or notice in respect of, the Certification and Monitoring Plan or any audit under clause 3.10 (*Audit and surveillance*).

### 3.7 Certification and Monitoring Plan

- (a) The Independent Certifier must prepare and submit to TfNSW and OpCo within 25 Business Days of the date of this deed a Certification and Monitoring Plan which must:
  - (i) be based on the initial Certification and Monitoring Plan contained in Schedule 4 (*Initial Certification and Monitoring Plan*);
  - (ii) meet or exceed the requirements of Schedule 3 (*Minimum Resources and Surveillance Levels*);
  - (iii) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the initial Certification and Monitoring Plan;
  - (iv) comply with the requirements for the Certification and Monitoring Plan in Schedule 5 (*Requirements for Certification and Monitoring Plan*) of this deed; and
  - (v) otherwise comply with the requirements of the Relevant Project Agreements.
- (b) The Other Parties may:
  - (i) review the Certification and Monitoring Plan submitted under clause 3.7(a); and
  - (ii) if the Certification and Monitoring Plan does not comply with this deed, or if the Other Parties believe that the Certification and Monitoring Plan does not provide the information required by Schedule 5 (*Requirements for Certification and Monitoring Plan*), notify the Independent Certifier in writing of the non-compliance.



- (c) If the Independent Certifier receives a notice under clause 3.7(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to TfNSW and OpCo, after which clause 3.7(b) will reapply.
- (d) If the Independent Certifier does not receive a notice under clause 3.7(b)(ii) within 15 Business Days after the submission of the relevant Certification and Monitoring Plan, the relevant Certification and Monitoring Plan submitted by the Independent Certifier will be the Certification and Monitoring Plan with which the Independent Certifier must comply (as it is updated under clause 3.8 (*Revisions to Certification and Monitoring Plan*)).

### 3.8 Revisions to Certification and Monitoring Plan

- (a) The Independent Certifier must:
  - (i) progressively amend, update and develop the Certification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the SLR Works, any Modifications and any changes in the manner of performing the Services;
  - (ii) ensure that any amendments, updates or developments of the Certification and Monitoring Plan under clause 3.8(a) are consistent with, and provide, the information set out in Schedule 5 (*Requirements for Certification and Monitoring Plan*); and
  - (iii) submit each revision of the Certification and Monitoring Plan to the Other Parties for their review and comment.
- (b) The Other Parties may:
  - (i) review the Certification and Monitoring Plan submitted under clause 3.8(a)(iii); and
  - (ii) if the Certification and Monitoring Plan does not comply with this deed or the Other Parties believe that the revised Certification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification and Monitoring Plan, notify the Independent Certifier of that non-compliance or reduction.
- (c) If the Independent Certifier receives a notice under clause 3.8(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Other Parties after which clause 3.8(b) will reapply.
- (d) Neither TfNSW nor OpCo owes any duty to the Independent Certifier to review the Certification and Monitoring Plan for errors, omissions or compliance with this deed.
- (e) Without limiting clauses 2.1(c) or 3.3(e), the Independent Certifier must not, either in the preparation of the Certification and Monitoring Plan required by clause 3.7 (*Certification and Monitoring Plan*) or the amending, updating and development of the Certification and Monitoring Plan required by clauses 3.8(a) and 3.8(c), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the initial Certification and Monitoring Plan or the then existing Certification and Monitoring Plan without the written approval of TfNSW's Representative.
- (f) The Independent Certifier may not amend the Certification and Monitoring Plan other than in accordance with this clause 3.8 (*Revisions to Certification and Monitoring Plan*).

### 3.9 Progress Reports by the Independent Certifier

Throughout the Term of this deed, the Independent Certifier must provide a monthly progress report to TfNSW's Representative and OpCo by the seventh day of the following month and in such format as is required by TfNSW's Representative and OpCo's Representative, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period;
- (c) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and the Other Parties;
- (d) a summary of key risks and issues relating to the Services;
- (e) details of any OpCo non-conformances raised by the Independent Certifier or TfNSW and details on the verification of the rectification by OpCo of non-conformances;
- (f) details of the surveillance, monitoring and auditing proposed to be undertaken by the Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (g) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan during the reporting period; and
- (h) a list of all potential non-compliances with the requirements of the Project Deed which TfNSW has raised with the Independent Certifier and which the Independent Certifier has determined are not non-compliances, accompanied by a written statement which explains the reason for the Independent Certifier's determination.

### 3.10 Audit and surveillance

- (a) The Independent Certifier must:
  - (i) on reasonable notice, allow any audit of its quality assurance system under this deed by a third party, at the request of the Other Parties or any one of the Other Parties; and
  - (ii) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Independent Certifier must, at all times:
  - (i) give the third party access to premises occupied by the Independent Certifier where the Services are being undertaken; and
  - (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.

### 3.11 Access to records

The Independent Certifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents received, prepared or generated by the Independent Certifier in the course of carrying out the Services.

### 3.12 Copies of notices and documents

All notices and documents:

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

### 3.13 Term

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

- (a) completion of the Services; and
- (b) termination in accordance with clause 8 (*Termination of Appointment*).

## 4. INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY

### 4.1 Independent Certifier to be independent

The Independent Certifier warrants to the Other Parties that in performing the Services, it will act:

- (a) independently of the Other Parties and any beneficiary to a deed poll executed by the Independent Certifier in accordance with clause 3.1(b);
- (b) honestly and reasonably;
- (c) with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular; and
- (d) within the times prescribed under the Relevant Project Agreements or as anticipated by the Delivery Program.

### 4.2 Confidentiality

The Independent Certifier must:

- (a) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the SLR Works, this deed, the Relevant Project Agreements or the SLR and not provide, disclose or use the information or documents except:
  - (i) to disclose them to the Other Parties;
  - (ii) for the purposes of performing the Services;
  - (iii) where required by law or to obtain legal advice on this deed; or

- (iv) with the prior written consent of the Other Parties; and
- (b) ensure that its subcontractors comply with the terms of clause 4.2(a).

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

#### 4.3 **Exclusivity**

- (a) The Independent Certifier must not, and must ensure that:
  - (i) any related body corporate (as defined by sections 9 and 50 of the *Corporations Act 2001* (Cth)) of the Independent Certifier; and
  - (ii) any employees, agents, subcontractors and consultants who are involved in the provision of the Services,

do not, from the date of execution of this deed until the date of expiry of the Term in accordance with clause 3.13 (*Term*):

  - (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
    - (A) with OpCo or any of its contractors, consultants or providers; or
    - (B) in the Relevant Project Agreements; or
  - (iv) provide services to or advise any other person in relation to the Relevant Project Agreements,

other than the provision of the Services under this deed, except with the prior written consent of TfNSW which may be withheld or granted in its absolute discretion.
- (b) The Independent Certifier agrees that:
  - (i) having regard to the Relevant Project Agreements and the Services, clause 4.3 (*Exclusivity*) is reasonable with regards to the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Relevant Project Agreements and to ensure the best value for money of the Relevant Project Agreements; and
  - (ii) in addition to any other remedies available at law or in equity, damages may not be a sufficient remedy for a breach of clause 4.3 (*Exclusivity*) and TfNSW may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Certifier.

## 5. **OBLIGATIONS OF THE OTHER PARTIES**

### 5.1 **No interference or influence**

- (a) The Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this deed will not of itself constitute a breach of this clause 5.1 (*No interference or influence*).

- (b) Clause 5.1(a) will not prevent the Other Parties from providing written comments to the Independent Certifier in respect of the Design Documentation, the Project Plans or any other aspect of OpCo's Activities (including in connection with the Independent Certifier's determination of whether FPS Stage 1 Readiness, FPS Stage 2 Readiness or Completion (as applicable) has been achieved by OpCo) and the Independent Certifier must consider any comments received from the Other Parties.

## 5.2 Co-operation

- (a) Without limiting or otherwise affecting any of the Other Parties' obligations under this deed or the Relevant Project Agreements, the Other Parties must:
- (i) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise requested by the Independent Certifier or directed by the Other Parties (jointly); and
  - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to such premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as requested by the Independent Certifier or directed by the Other Parties (jointly), including allowing access to the SLR Site and any Extra Land and all areas where the SLR Works are being carried out.
- (b) OpCo must ensure that Hold Points and Witness Points are included in the Delivery Program as required by the Independent Certifier to enable the Independent Certifier to perform the Services.

## 5.3 TfNSW to have no liability

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

- (a) to any party to this deed by reason of TfNSW being a party to this deed; or
- (b) for the performance of any obligation of OpCo or the Independent Certifier under this deed or under any Relevant Project Agreement.

## 6. CHANGE TO SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER

- (a) TfNSW and OpCo (jointly) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Services (including an addition or omission) and the Independent Certifier must comply with that direction.
- (b) The Fee to be paid to the Independent Certifier in relation to a change to the Services referred to in clause 6(a) will be determined in accordance with the schedule of rates set out in the Payment Schedule. If an amount for the change to the Services cannot be determined by reference to the schedule of rates, the amount will be a reasonable amount as stated in writing by the Other Parties.
- (c) TfNSW and OpCo (jointly) may, by written notice to the Independent Certifier (copied to OpCo), direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.

- (d) The Independent Certifier acknowledges and agrees that the Other Parties may appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Services as directed under clause 6(a), and any decision of a Substitute Certifier appointed shall be treated (between TfNSW, OpCo and the Independent Certifier) as if it is a decision of the Independent Certifier, and the Substitute Certifier shall have all of the rights and powers of the Independent Certifier under the Relevant Project Agreements in connection with those Services.
  
- (e) Notwithstanding a change to the Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 6 (*Change to Services, Suspension of Services and Appointment of Substitute Certifier*), in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

**7. LIABILITY, INSURANCE AND INDEMNITY**

7.1 [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7.2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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7.3 [Redacted]  
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7.4 [Redacted]  
[Redacted]  
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7.5 [Redacted]  
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7.6 [Redacted]  
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█ [REDACTED]

█ [REDACTED]

7.7 [REDACTED]

[REDACTED]

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[REDACTED]

7.8 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**8. TERMINATION OF APPOINTMENT**

**8.1 Notice of termination**

TfNSW and OpCo (jointly) may terminate the appointment of the Independent Certifier under this deed by notice in writing served on the Independent Certifier if:

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

**8.2 Termination**

Where a notice is served on the Independent Certifier under clause 8.1 (*Notice of termination*), the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 8.1 (*Notice of termination*); and
- (b) the appointment of a replacement for the Independent Certifier.



### 8.3 Delivery of documents

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

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services; and
- (b) acknowledges that the Other Parties have the right to use all such documents for any purposes in connection with the SLR, the SLR Works, OpCo's Activities or the Relevant Project Agreements.

### 8.4 Reasonable assistance

Where the Other Parties give a notice under clause 8.1 (*Notice of termination*) of termination of the appointment of the Independent Certifier, the Independent Certifier must provide full assistance to the Other Parties and any appointed replacement for the Independent Certifier in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

### 8.5 Payment until date of termination

Where the appointment of the Independent Certifier is terminated under clause 8.1(d), the Independent Certifier is only entitled to be paid by the Other Parties the proportion of the Fee for Services performed up to the date of the termination.

### 8.6 Termination without prejudice

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

### 8.7 Survive termination

This clause 8 (*Termination of Appointment*) will survive the termination of this deed by the Other Parties under clause 8.1 (*Notice of termination*).

### 8.8 Rights upon termination

If the appointment of the Independent Certifier is terminated pursuant to clauses 8.1(a) to 8.1(c), the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing this deed had the Independent Certifier repudiated this deed and the Other Parties elected to treat this deed as at an end and recover damages.

## 9. GST

- (a) Except where the context suggests otherwise, terms used in this clause 9 (*GST*) have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9 (*GST*).

- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 9 (GST)) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9 (GST).
- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 9(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 9(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

## 10. GENERAL

### 10.1 Notices

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

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

**Name:** Transport for NSW, a NSW government agency

**Address:** Level 11  
338 Pitt43  
680 George Street  
Sydney NSW 2000

**Fax no:** 02 9200 0290

For the attention of: TfNSW's Representative

With a copy to:

**Address:** Level 5  
Tower A, Zenith Centre 821 Pacific Highway  
Chatswood NSW 2067

Fax no: 02 9200 0290

For the attention of: ~~Deputy Director General, Transport Projects~~  
~~Division TfNSW's Representative~~

Name: **OpCo**

Address: ~~c/- Capella Capital~~  
~~Level 31, AMP Centre~~  
~~50 Bridge Level 7,~~  
~~280 Elizabeth Street~~  
~~Sydney Surry Hills NSW 2000~~ 2010

Fax no: ~~02 8224 3800~~ Not applicable

For the attention of: [REDACTED]

Name: **Independent Certifier**

Address: Level 7  
116 Miller Street, North Sydney, NSW, 2060

Fax no: 02 9954 1951

For the attention of: [REDACTED]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number of the addressee, in accordance with clause 10.1(b); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5:00pm, it is taken to be received at 9:00am on the next Business Day.

## 10.2 **Governing law**

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

## 10.3 **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 10.3(a).

## 10.4 **TfNSW as a public authority**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any law.
- (b) The Independent Certifier and OpCo acknowledge and agree that, without limiting clause 10.4(a), anything which TfNSW 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 TfNSW under this deed and will not entitle the Independent Certifier or OpCo to make any claim against TfNSW.
- (c) The parties agree that clauses 10.4(a) and 10.4(b) are taken not to limit any liability which TfNSW would have had to the Independent Certifier or OpCo under this deed as a result of a breach by OpCo of a term of this deed but for clauses 10.4(a) and 10.4(b) of this deed.

## 10.5 **Amendments**

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

## 10.6 **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.

## 10.7 **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.

#### 10.8 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.

#### 10.9 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.

#### 10.10 Assignment

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

#### 10.11 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.

#### 10.12 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.

#### 10.13 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.

#### 10.14 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.

#### 10.15 Entire agreement

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

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

- (b) supersedes any prior written or other agreement of the parties.

**10.16 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.

**10.17 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 or more of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

**10.18 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.

**10.19 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.

Executed as a deed.

**EXECUTED** on behalf of **TRANSPORT FOR NSW** by its authorised delegate **IN THE PRESENCE OF:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Authorised Delegate

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Delegate (print)

**Signed by the ALTRAC Light Rail Partnership by being signed by each of its partners as at the date of this deed**

**SIGNED, SEALED AND DELIVERED** by **ALTRAC LIGHT RAIL 1 PTY LIMITED ACN 603 192 203** as trustee for **ALTRAC LIGHT RAIL TRUST 1:**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by **ALTRAC LIGHT RAIL 2 PTY LIMITED ACN 603 194 476** as trustee for **ALTRAC LIGHT RAIL TRUST 2:**

\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Company Secretary/Director (print)

\_\_\_\_\_  
Name of Director (print)

**SIGNED, SEALED AND DELIVERED** by  
**ALTRAC LIGHT RAIL 3 PTY LIMITED**  
**ACN 603 190 601** as trustee for **ALTRAC**  
**LIGHT RAIL TRUST 3** by its Attorney **IN**  
**THE PRESENCE OF:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Attorney (print)

**EXECUTED** by **APP CORPORATION PTY**  
**LTD ABN 29 003 764 770** by or **IN THE**  
**PRESENCE OF:**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director



**SCHEDULE 2 – AMENDED INDEPENDENT CERTIFIER DEED SCHEDULES**

## Schedule 1 – Services

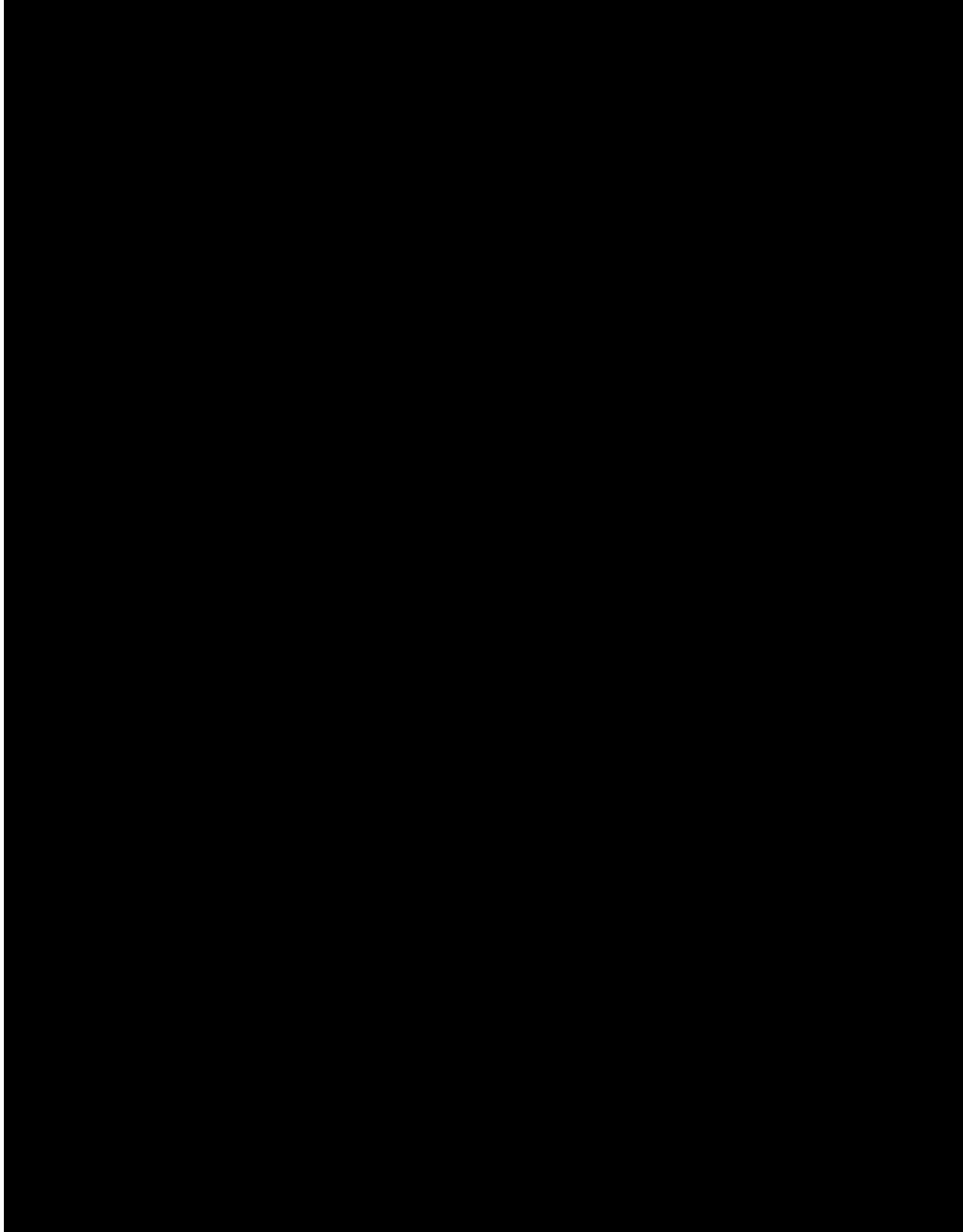
### 1. ~~1.0~~ **General**

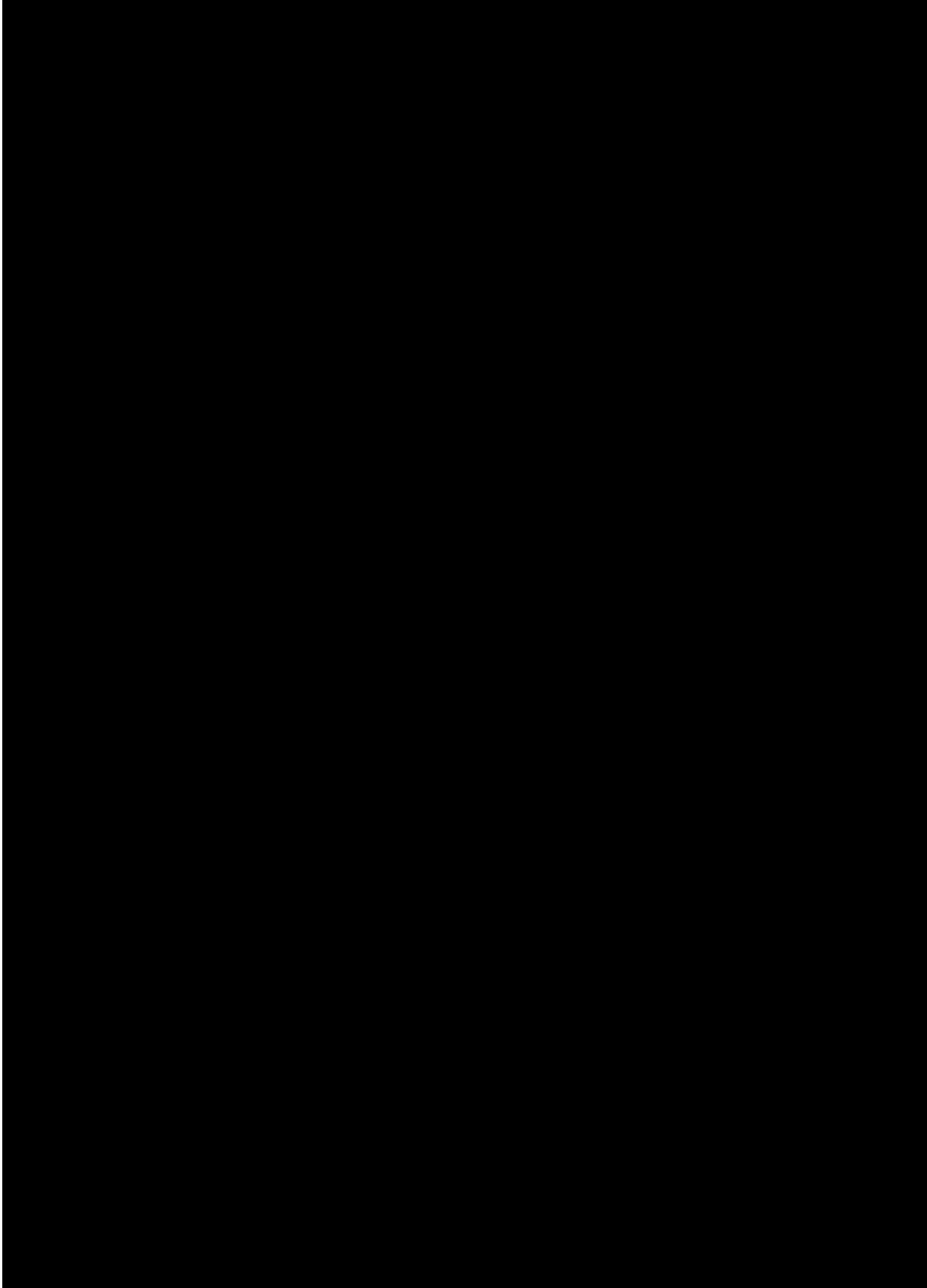
The Services include all the functions, obligations, duties and services which the Relevant Project Agreements contemplate will be discharged by the Independent Certifier, including providing various certificates required under the Relevant Project Agreements.

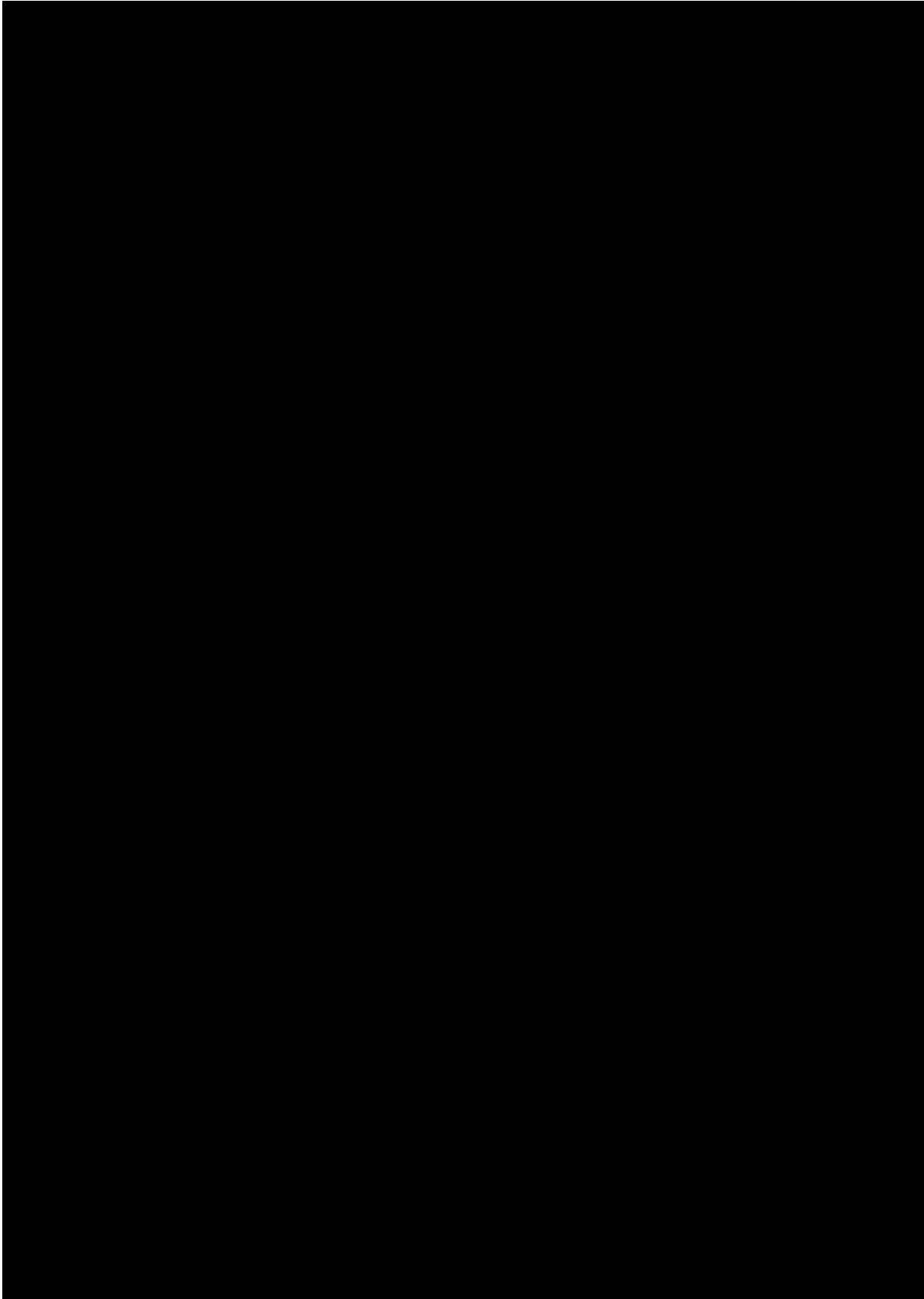
### 2. ~~2.0~~ **Initial Certification and Monitoring Plan**

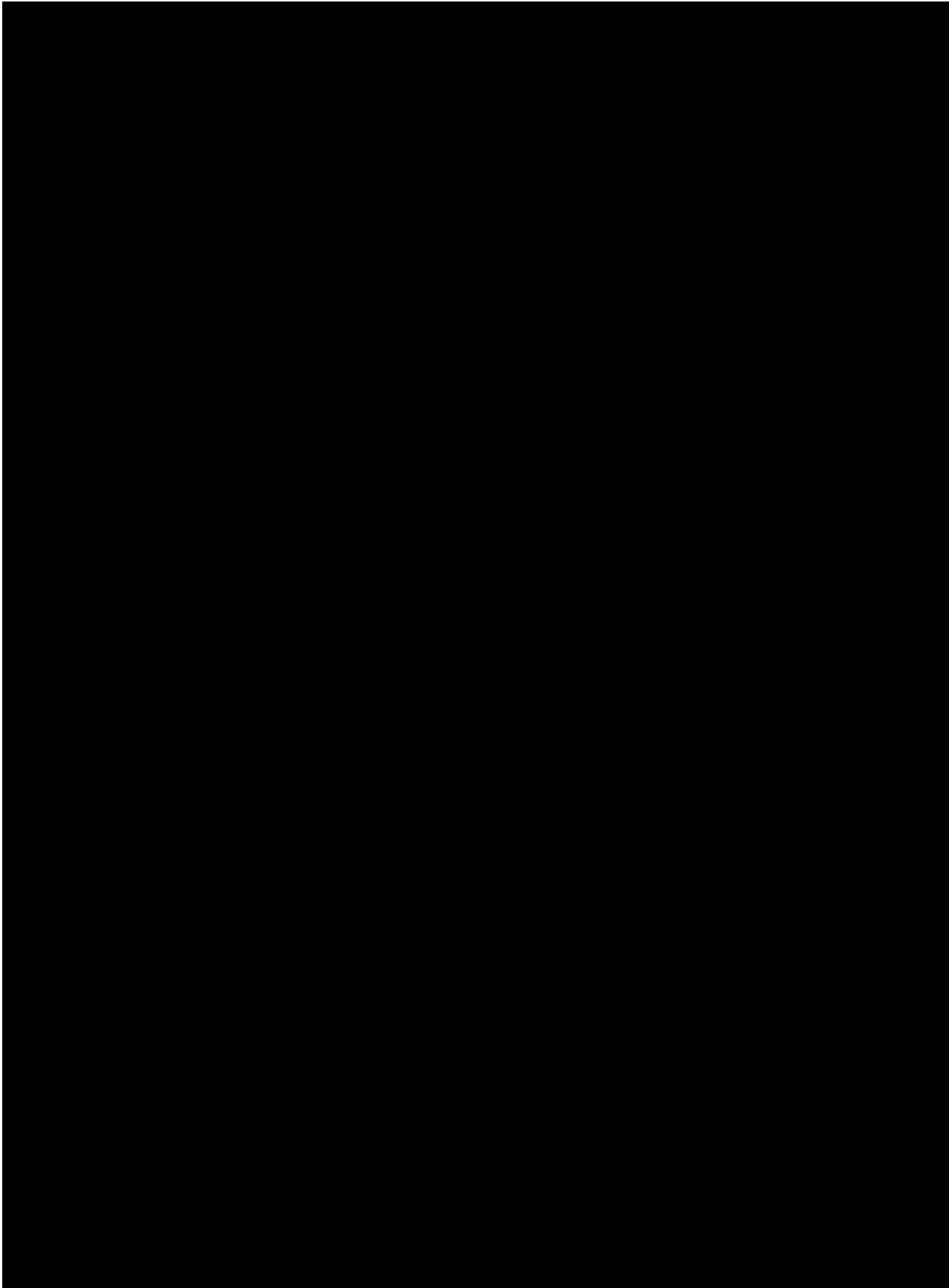
The Independent Certifier must provide the Services to no lesser effort, quality or standard than that detailed in Schedule 3 (*Minimum Resources and Surveillance Levels*) and the ~~initial~~ Certification and Monitoring Plan ~~included in Schedule 4 (Initial~~ (as that plan is updated from time to time in accordance with clause 3.8 (Revisions to Certification and Monitoring Plan)).

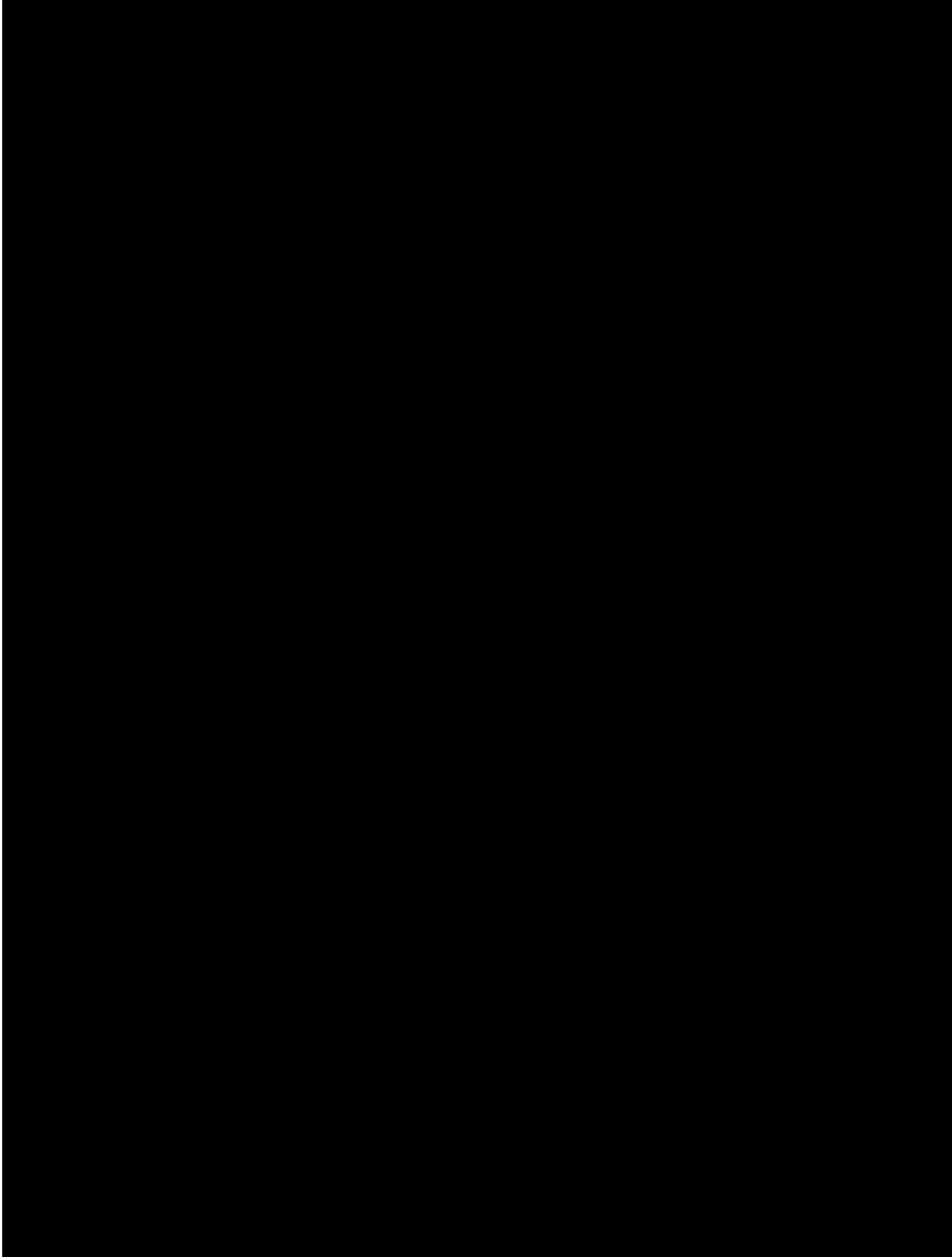
**Schedule 2 - Payment Schedule**

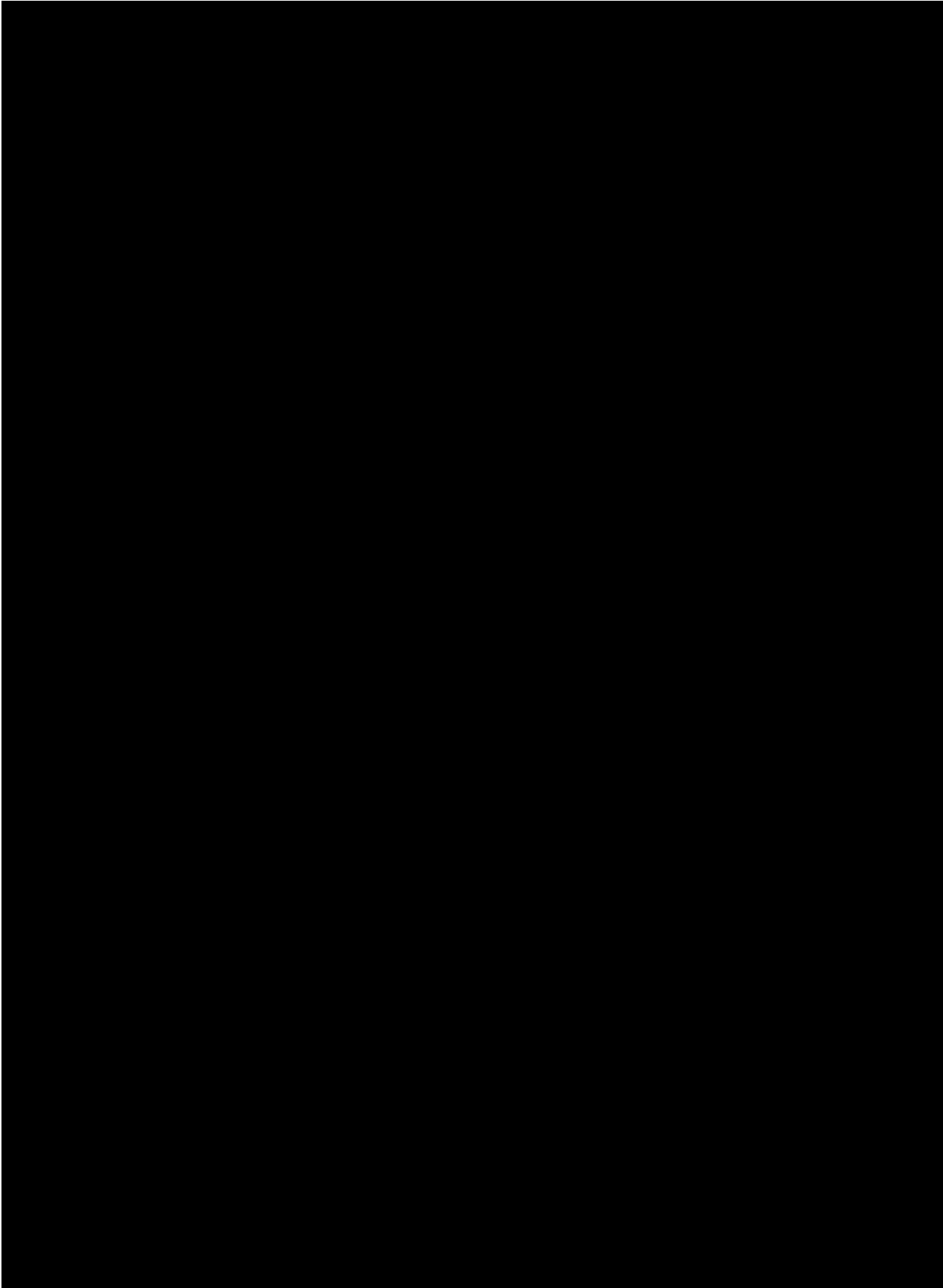




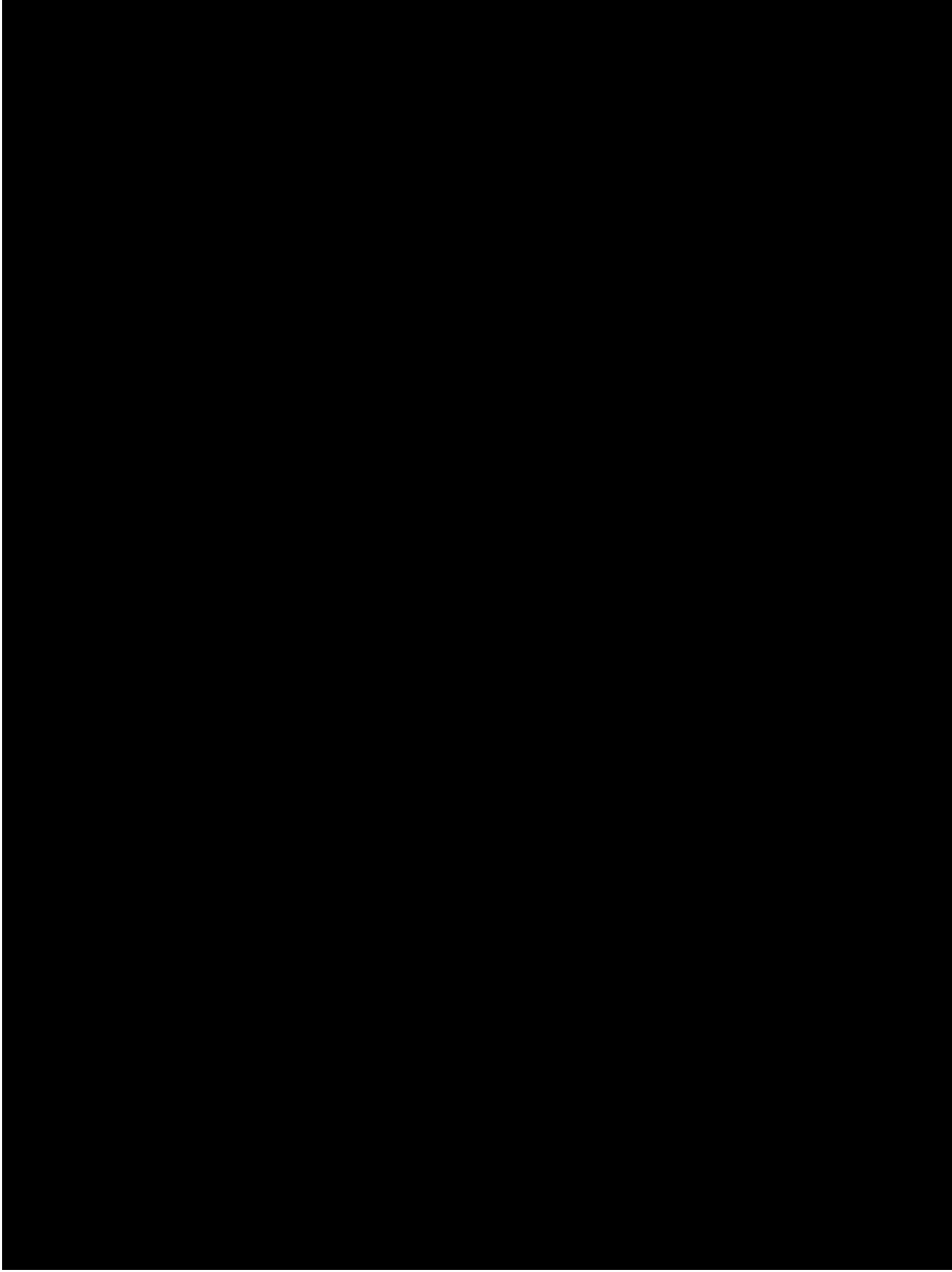


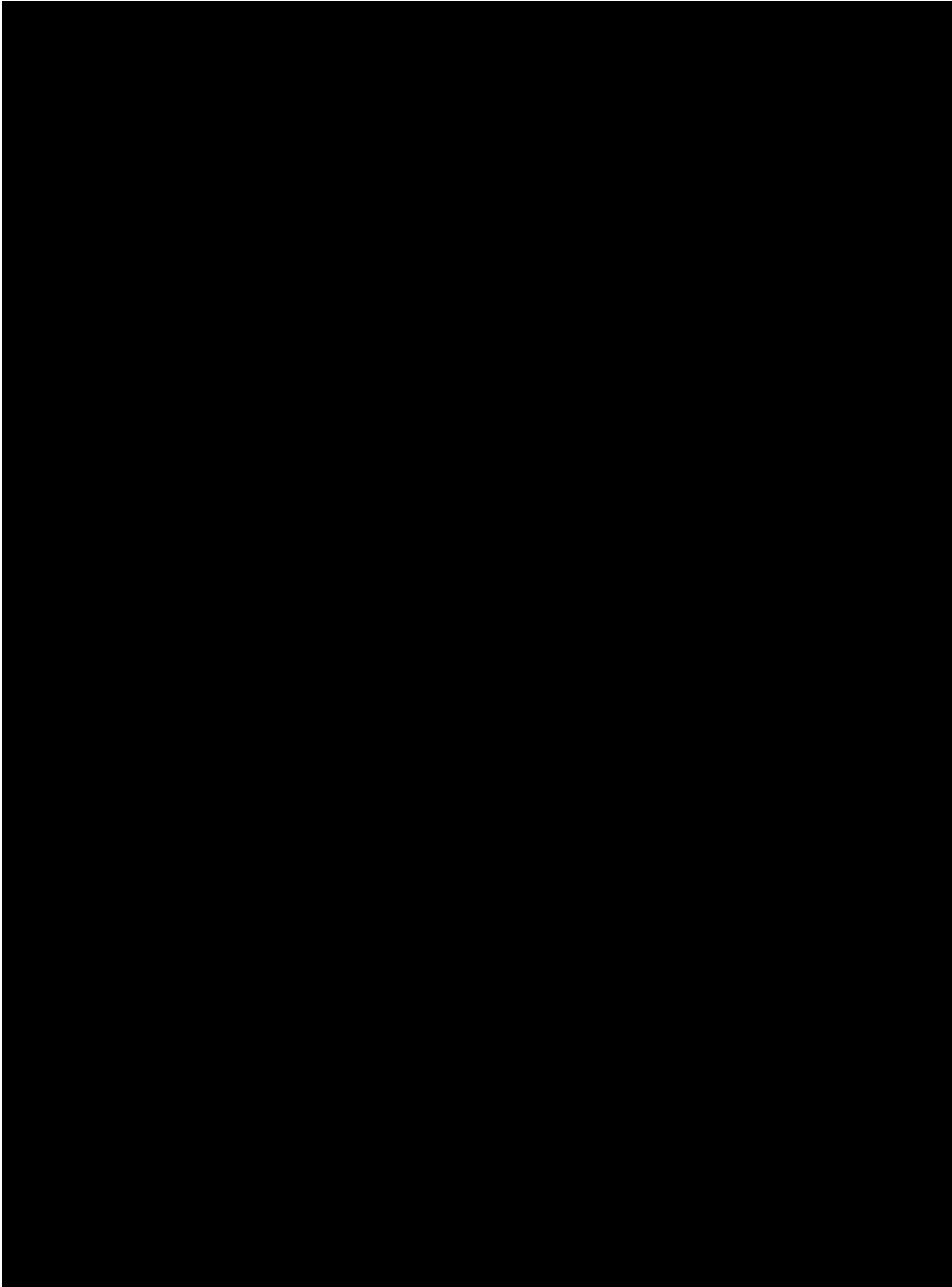


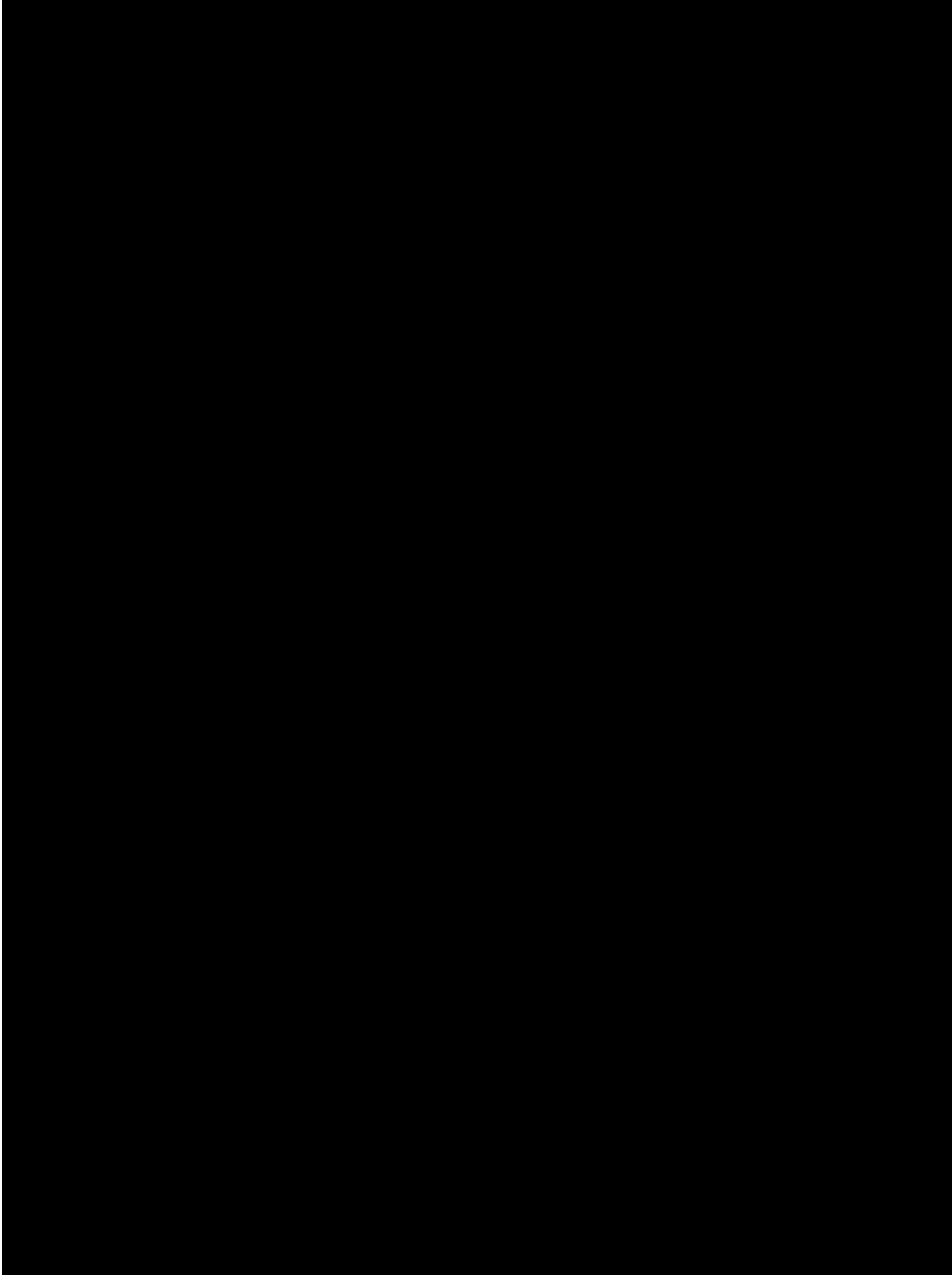


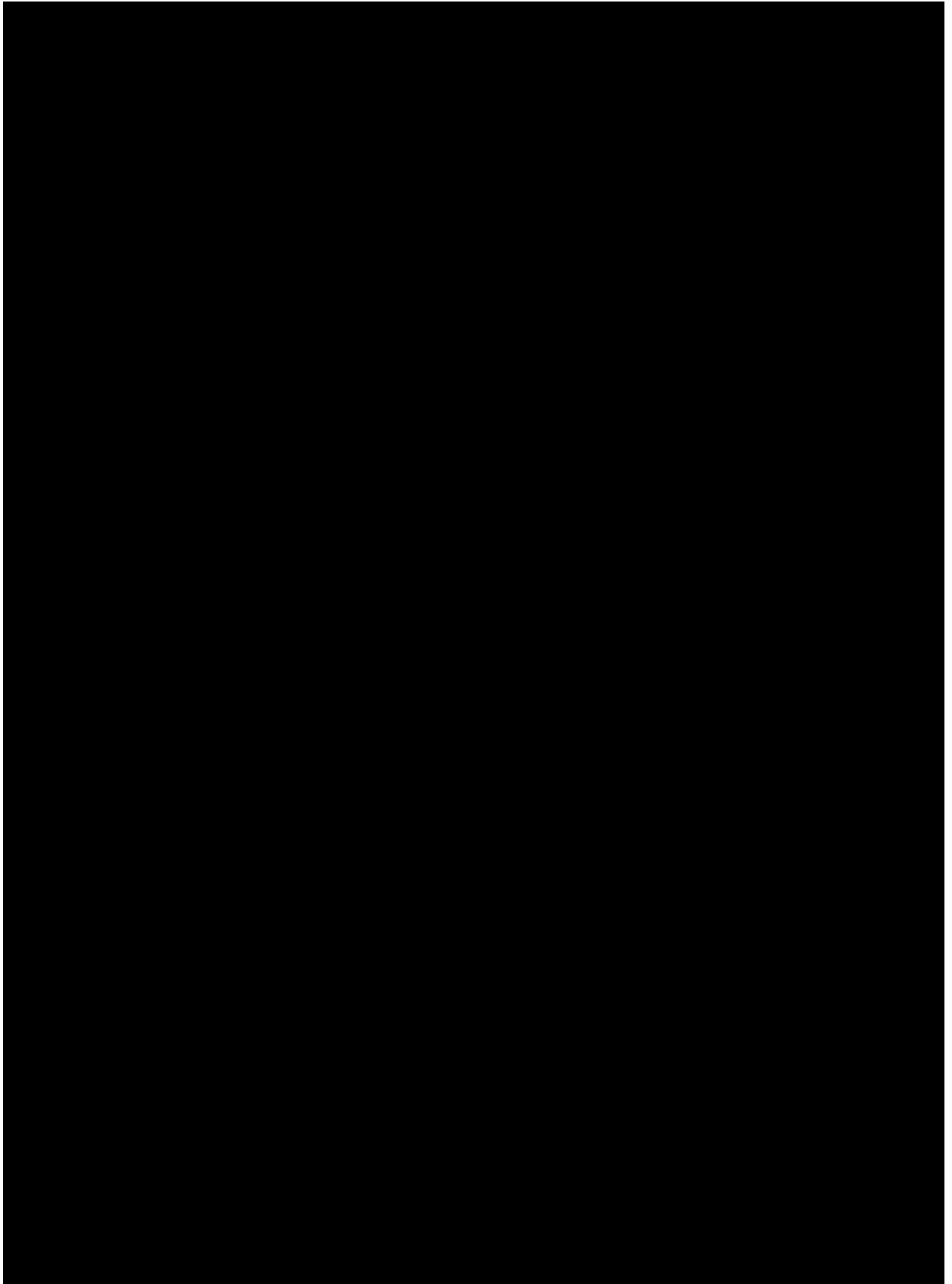


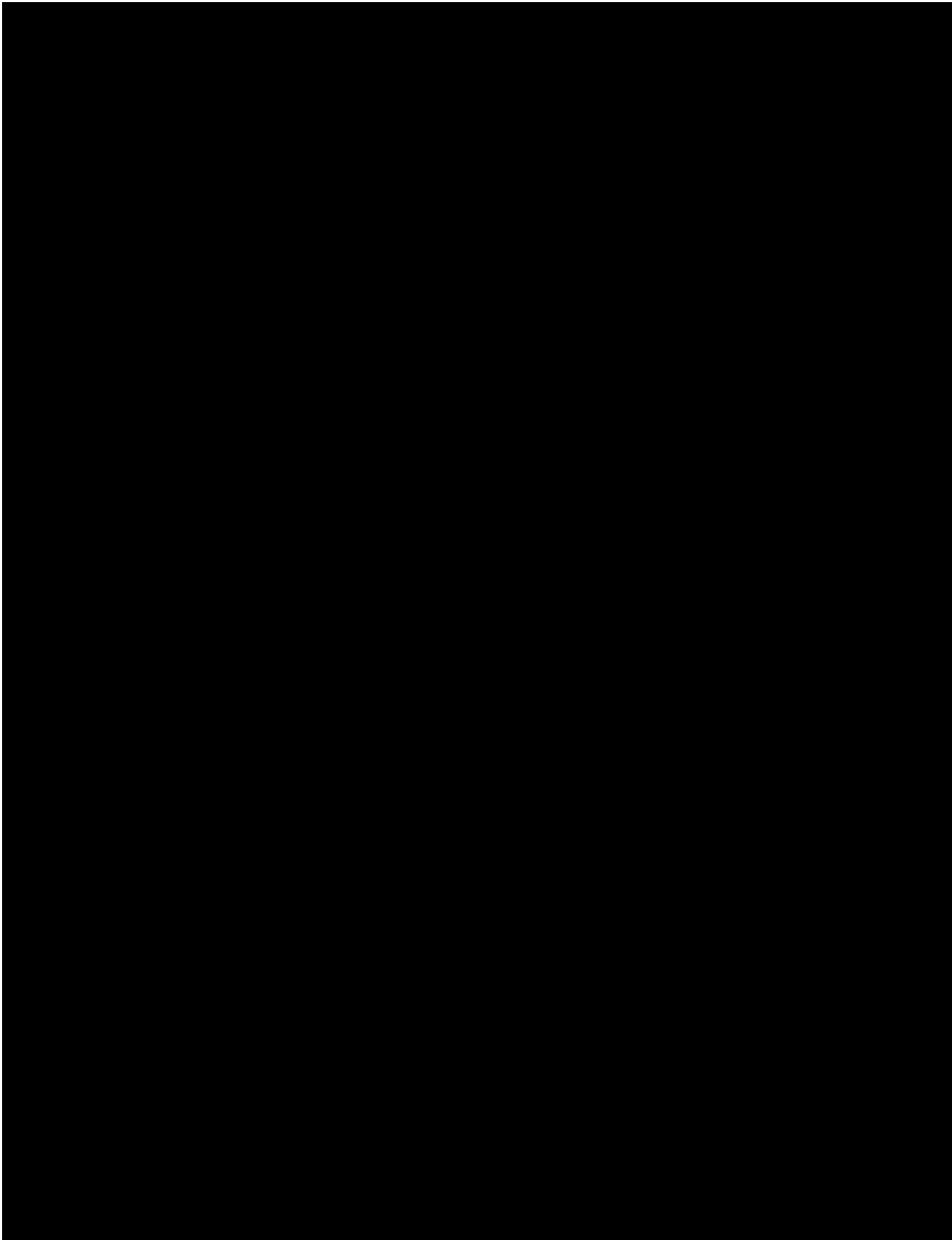


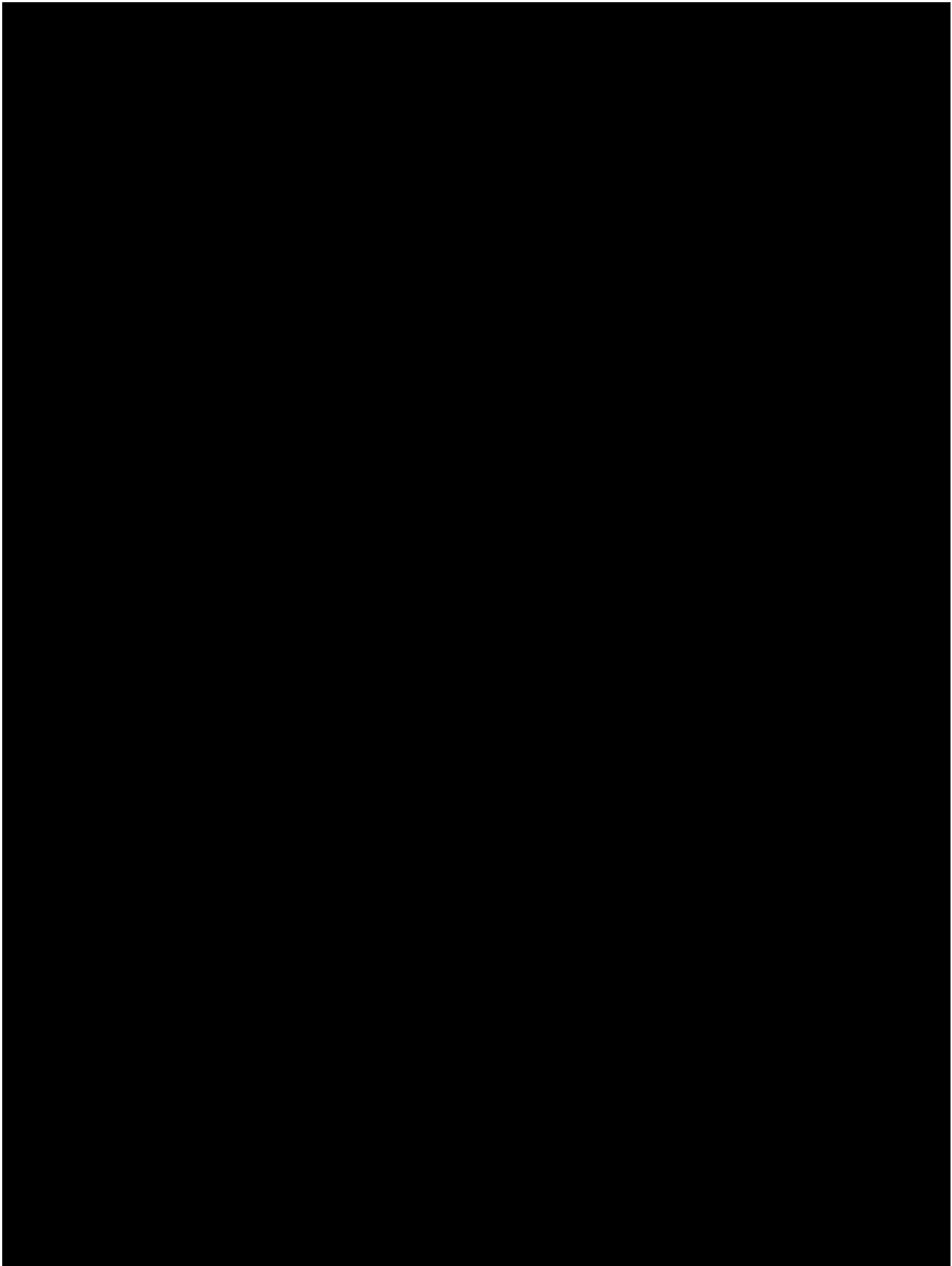


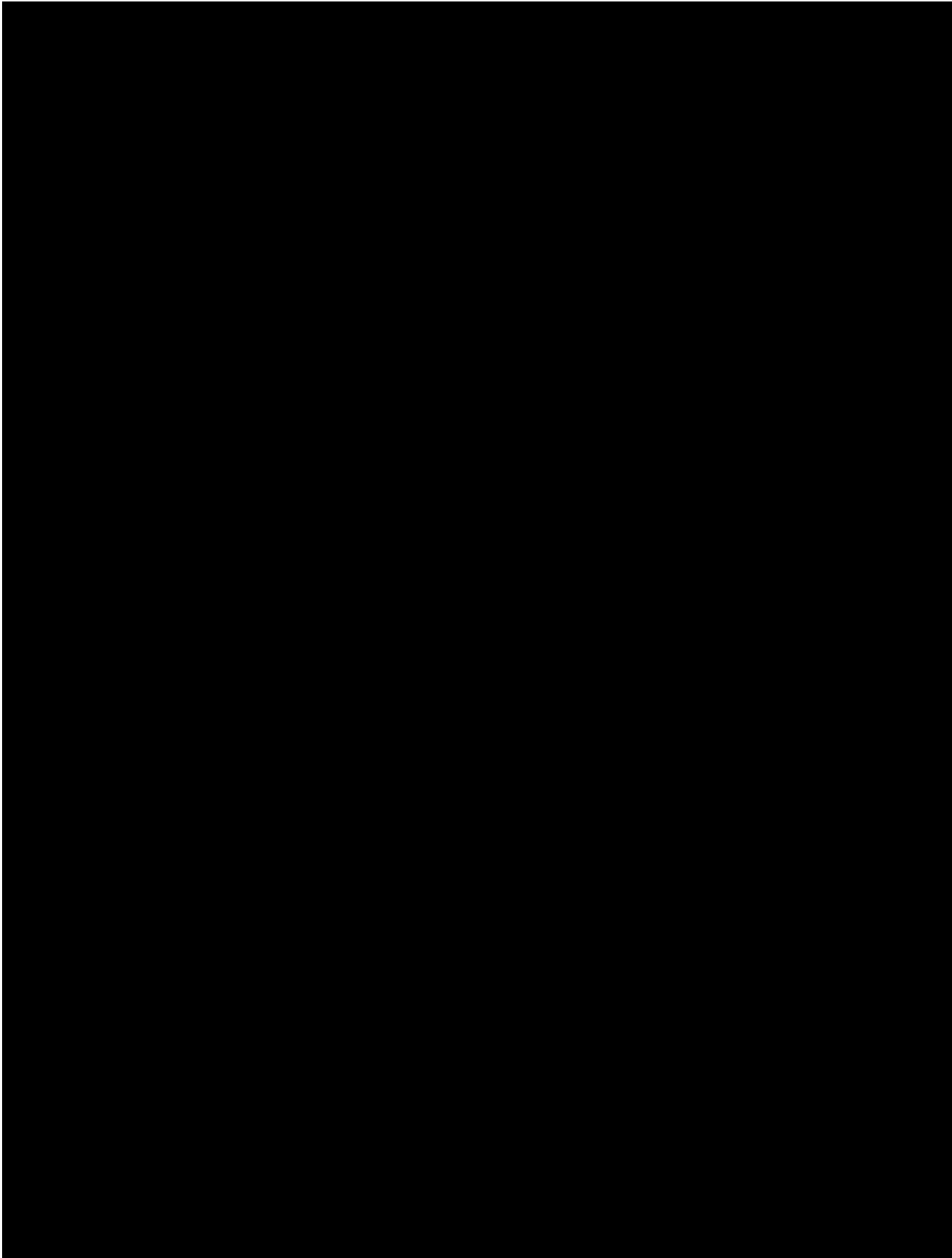


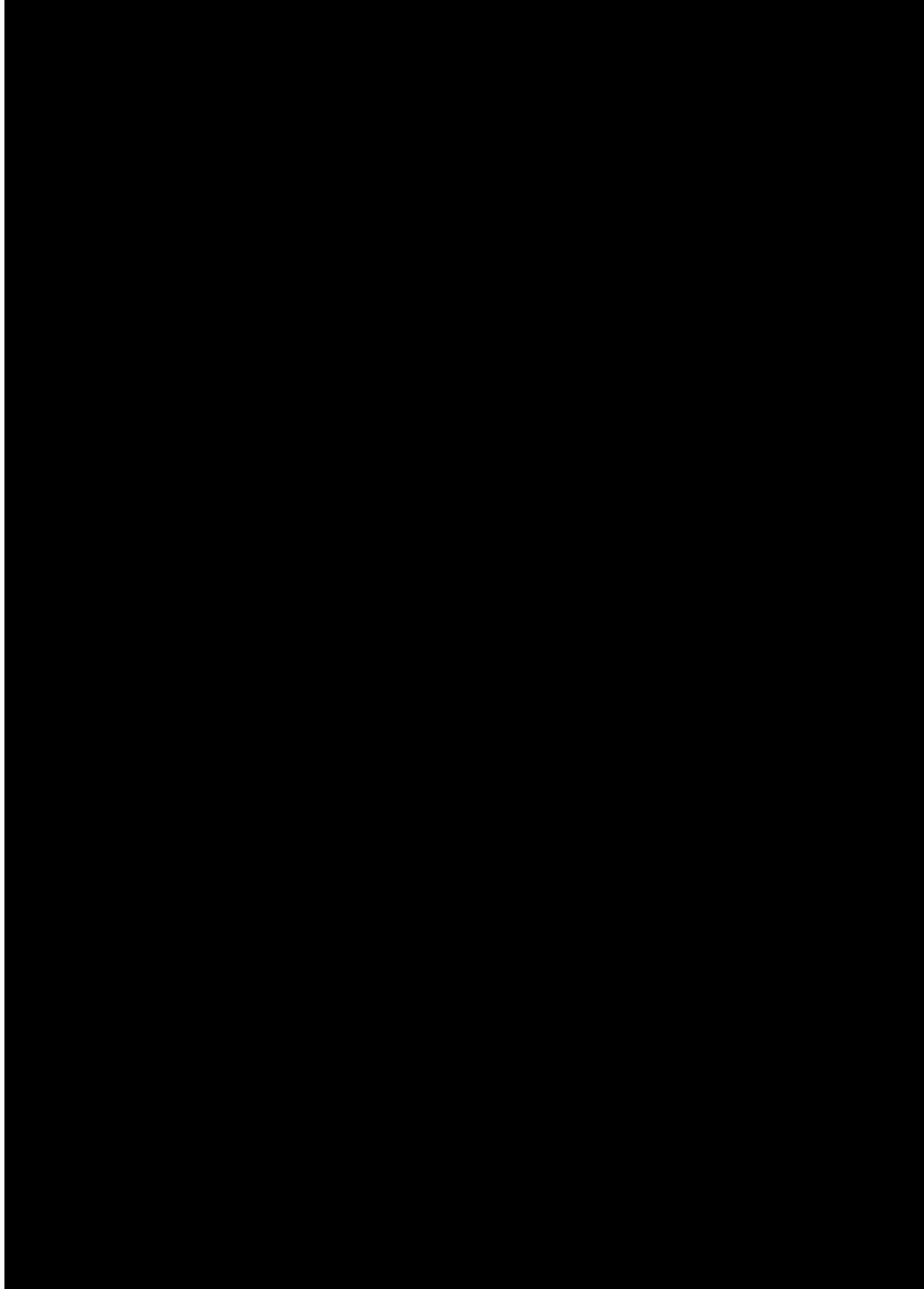




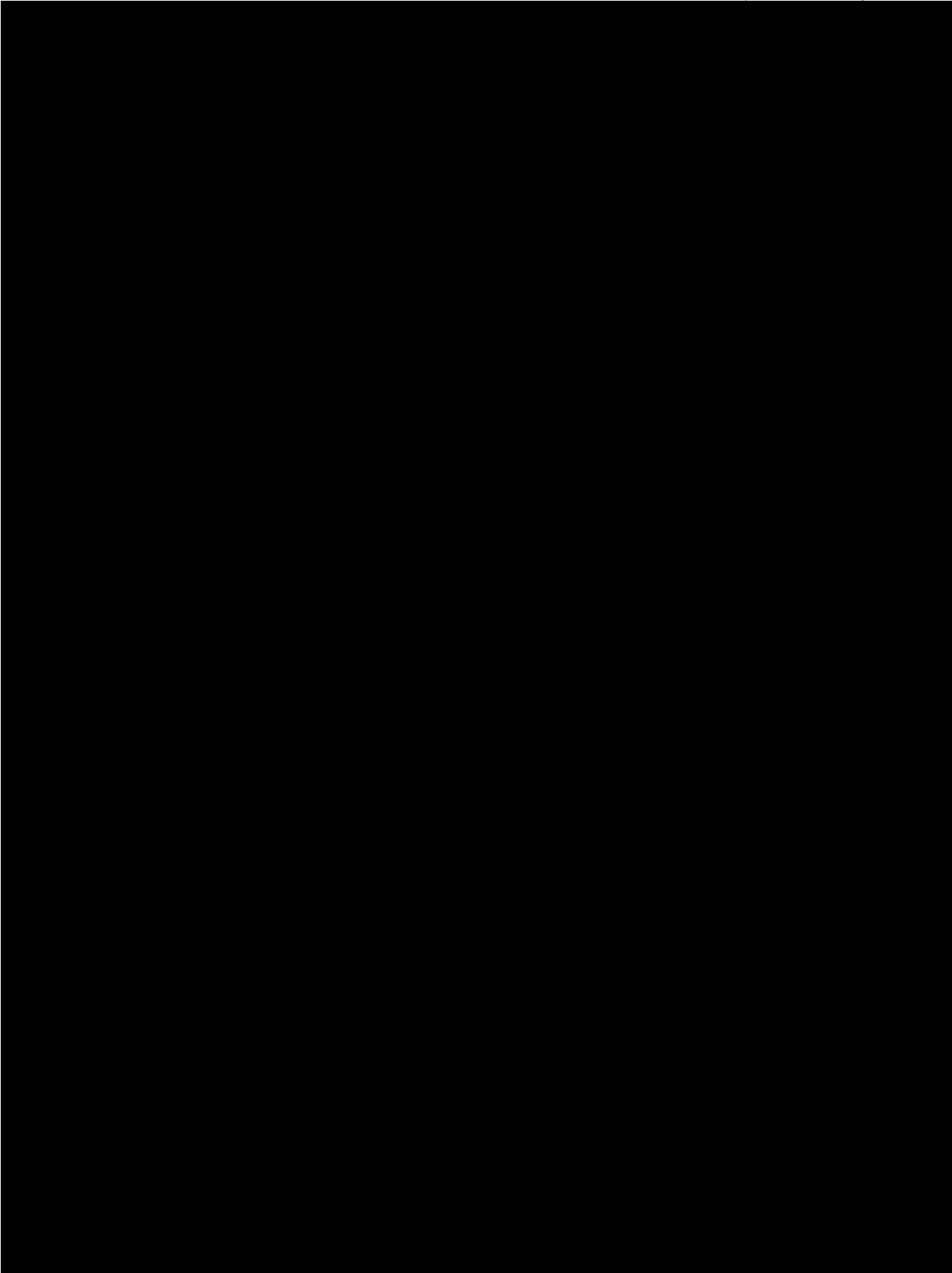


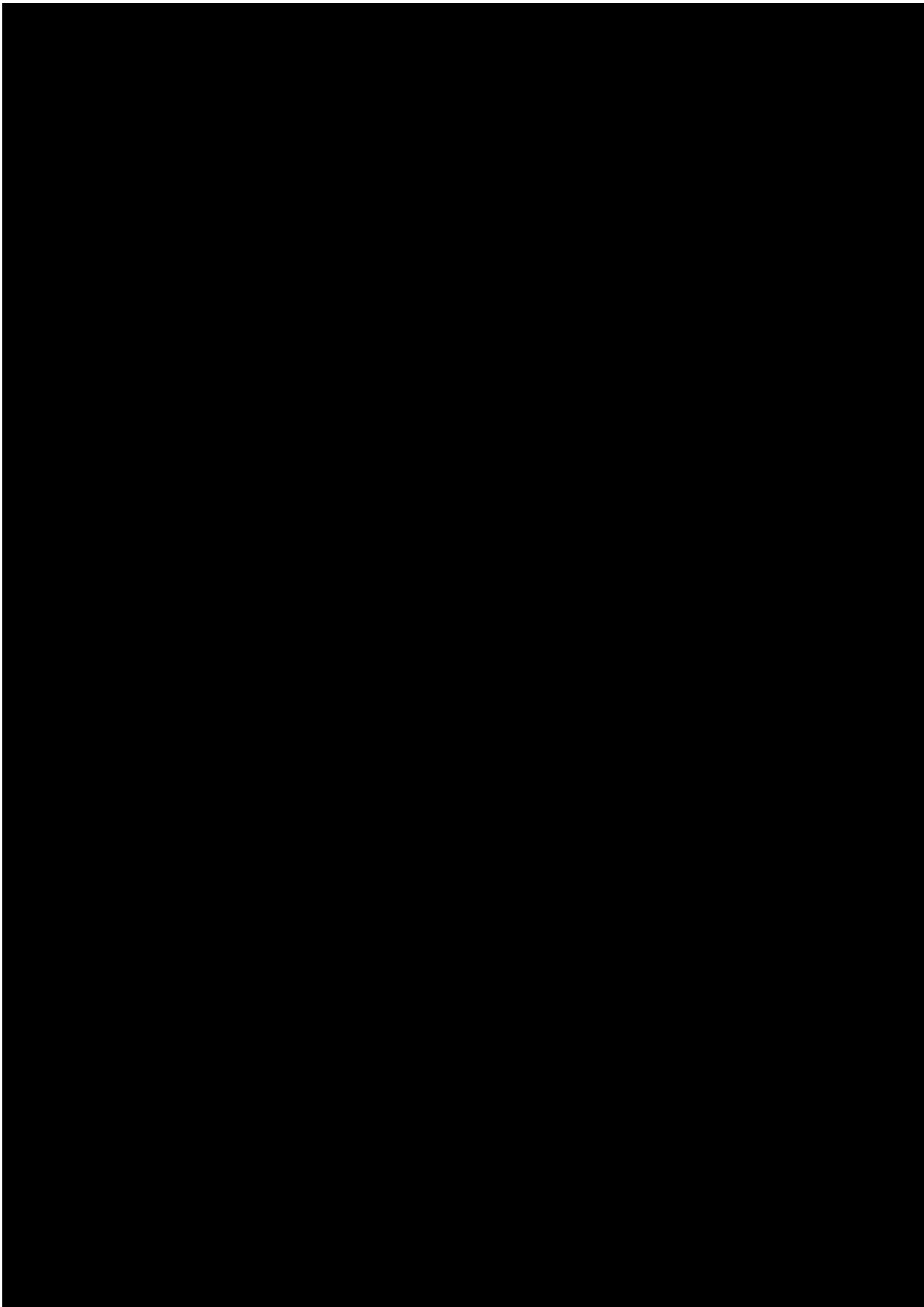


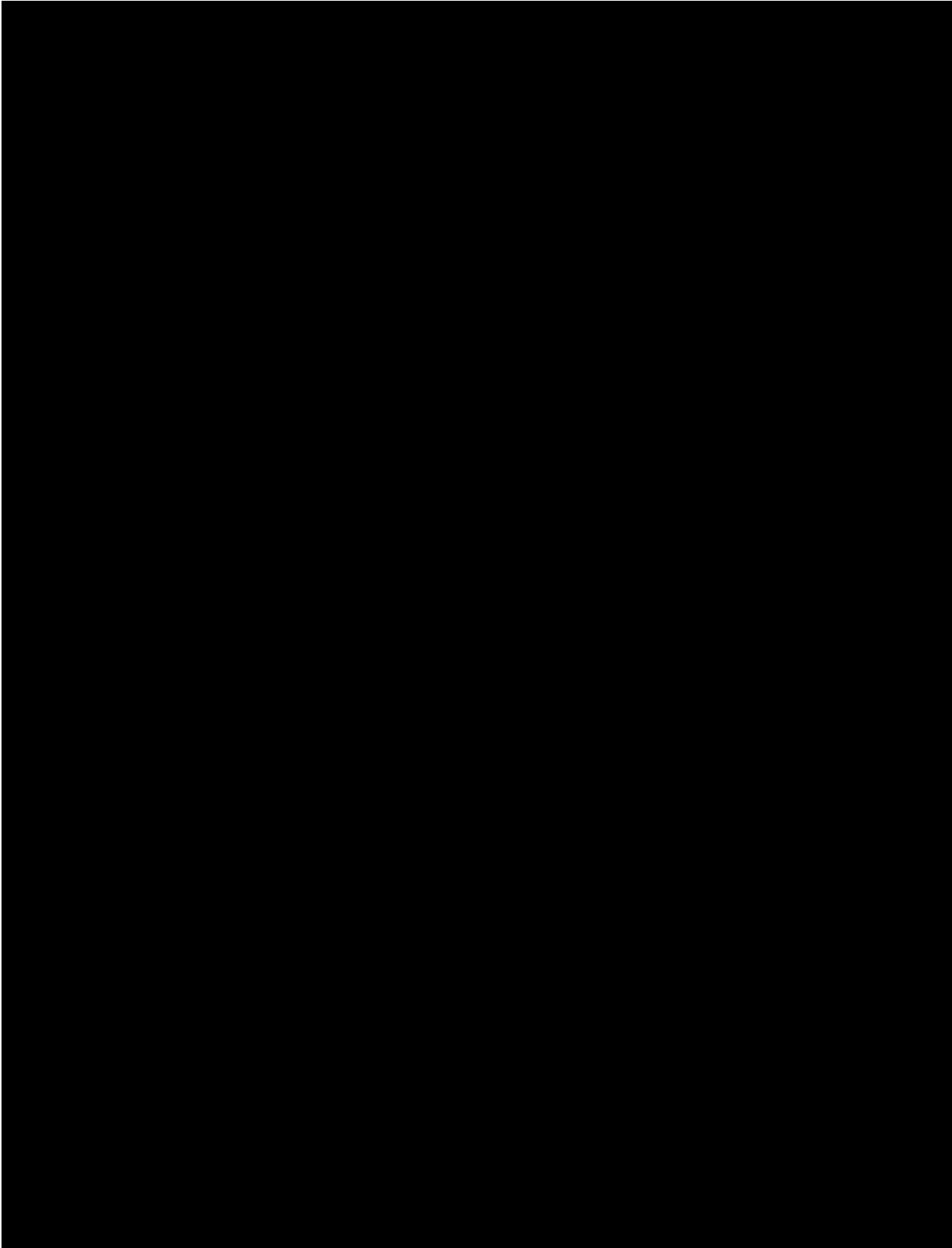


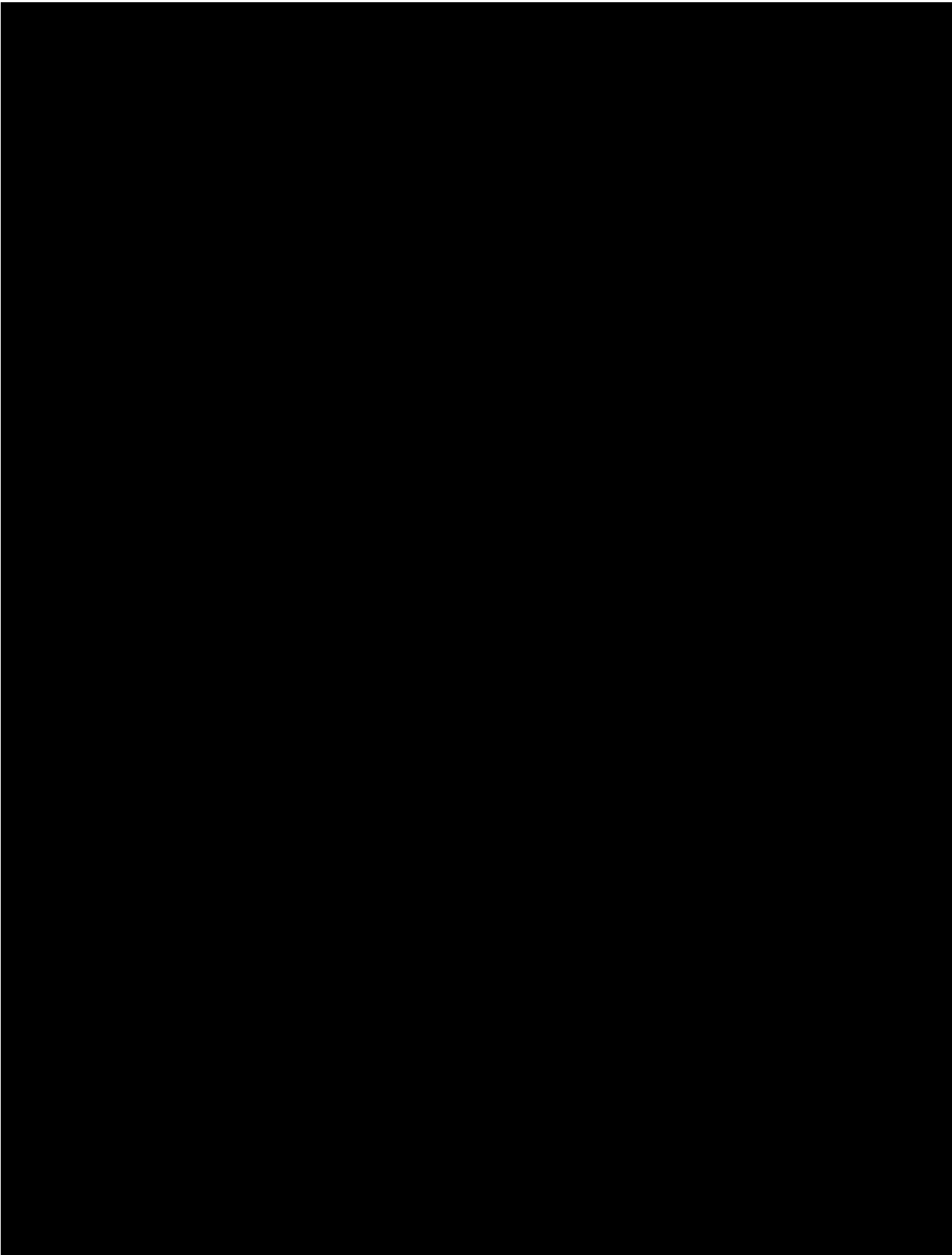












### Schedule 3 - Minimum resources and surveillance levels

#### 1. ~~1.0~~ Minimum resources commitment

The Independent Certifier acknowledges and agrees that the minimum levels of resources, including man-days, set out in this Schedule 3 (*Minimum Resources and Surveillance Levels*) are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.

In this Schedule 3, a reference to "days" excludes public holidays and includes only those days which are stated in the Delivery Program as working days.

#### 1.1 Design Phase Services

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

Position	Name	Minimum commitment (man-days)	
		During performance of OpCo's Activities relating to design, until all discrete design elements/components have passed Design Stage 3	During performance of OpCo's Activities relating to construction, until the Date of Final Completion
Environmental Representative			
Independent Certifier's Project Director			
Independent Certifier's Representative Design			
Discipline Lead - Civil / Structural Engineering			
Discipline Lead - Track Engineering			
Discipline Lead - High Voltage			
Discipline Lead - Signalling			
Discipline Lead -			

Schedule 3 – Minimum resources and surveillance levels

Position	Name	Minimum commitment (man-days)	
		During performance of OpCo's Activities relating to design, until all discrete design elements/components have passed Design Stage 3	During performance of OpCo's Activities relating to construction, until the Date of Final Completion
Traction Power			
Discipline Lead - Substations			
Discipline Lead – Road Works			
Discipline Lead - Systems and Safety Assurance			
Discipline Lead - Urban Design			
Discipline Lead - Fire Engineering			
Discipline Lead – Traffic and Transport Management			
Discipline Lead – Earthing and Bonding, Electrolysis and EMC			
Other Design Phase Disciplines			
Discipline Lead - Communications and Passenger Information			
Discipline Lead - Mechanical Services			

**1.2 Construction Phase Services**

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Construction Phase Services:

Schedule 3 – Minimum resources and surveillance levels

Role/Position	Name(s)	Minimum Attendance (in man-days) and Location
Independent Certifier's Project Director		
Independent Certifier's Representative - Construction		
Environmental Representative		
Construction Manager		
Quality Manager		
Safety Review Manager		
Program Reviewer		
Senior Engineer Const		
LRV Engineer		
Project Engineer Const		
Project Engineer Const		
Project Engineer Const		
Surveillance Officer/Civil		
Surveillance Officer/Elec		
Technical Specialists		

Role/Position	Name(s)	Minimum Attendance (in man-days) and Location

Note: In the table above, full time means a minimum of 10 hours per day Monday to Friday and a minimum of 6 hours on Saturday.

**1.3 Completion Phase Services**

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Completion Phase Services:

Role/Position	Name(s)	Minimum Attendance (in man-days) and Location
Independent Certifier's Representative - Construction		
ITS Testing/Commissioning		
OMCS Testing/Commissioning		
LRV Commissioning		
Other Construction Phase Staff		
Environmental Representative		

Note: In the table above, full time means a minimum of 10 hours per day Monday to Friday and a minimum of 6 hours on Saturday.

**1.4 Final Completion Phase Services**

The Independent Certifier must provide the following personnel, as a minimum, for the durations set out below to perform the relevant aspects of the Final Completion Phase Services:



Position	Name	Minimum man-days to be committed to the SLR Works
Project Engineer		
Surveillance Officer		
Environmental Representative		

Note: In the table above, full time means a minimum of 10 hours per day Monday to Friday and a minimum of 6 hours on Saturday.

**2. ~~2.0~~ Minimum ability, knowledge, skill, expertise and experience of Independent Certifier's personnel**

**2.1 Independent Certifier's project director**

- (a) The Independent Certifier's project director must possess a recognised qualification relevant to the position and the Services and have extensive experience in the project certification of large projects similar to the SLR Works and OpCo's Activities.
- (b) The Independent Certifier's project director must at all times have authority to act on behalf of the Independent Certifier in respect of the Services.

**2.2 Independent Certifier's Representative for the Design Phase Services**

The Independent Certifier's Representative for the Design Phase Services must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the design certification of large projects similar to the SLR Works and OpCo's Activities and at least 20 years of experience in the design of major infrastructure projects.

**2.3 Independent Certifier's Representative for the Construction Phase Services**

The Independent Certifier's Representative for the Construction Phase Services must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the construction certification of large projects similar to the SLR Works and OpCo's Activities and at least 20 years of experience in construction including strong experience in infrastructure construction.

**2.4 Document Controller/Site Administrative Assistant**

The Document Controller/Site Administrative Assistant must have experience in document control and site administration on major civil engineering projects.

**2.5 Environmental Representative**

The Environmental Representative for the Construction Phase Services must be approved by the Department of Planning and Environment and must possess:

- (a) a recognised tertiary qualification in science, environmental engineering, environmental management or equivalent;

- (b) a minimum of 10 years of industry experience including relevant construction experience in senior management and/or environmental management representative/auditing roles on linear infrastructure projects;
- (c) proven understanding and application of relevant legislation and TfNSW procedures;
- (d) relevant licences and certificates necessary to perform the role; and
- (e) Rail Industry Safety Induction (RISI) certification.

#### 2.6 **Independent Certifier's discipline leads for Design Phase Services**

The Independent Certifier's discipline lead in each design discipline for the Design Phase Services must:

- (a) possess a recognised qualification in the relevant field of expertise;
- (b) have at least ten years' experience in the design certification of large projects similar to the SLR Works and OpCo's Activities;
- (c) have at least 15 years of experience in the design of major infrastructure projects similar to SLR Works and OpCo's Activities; and
- (d) for RMS relevant design disciplines, each Independent Certifier discipline lead must be a suitably qualified Chartered Professional Engineer registered with the Institute of Engineers Australia, who is:
  - (i) familiar with and experienced in using the Roads and Maritime Services QA Specifications;
  - (ii) independent of RMS and any person or consultancy involved in the preparation of the Design Documentation or the carrying out of the Works as defined under the Roads Act Approval; and
  - (iii) appropriately insured for professional indemnity including for any liability to TfNSW.

#### 2.7 **Construction surveillance personnel**

The Independent Certifier's construction surveillance personnel for the Construction Phase Services must have at least five years' experience in construction of major infrastructure projects.

### **3. ~~3.0~~ Minimum surveillance commitment**

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

The Independent Certifier must carry out, as a minimum, the following surveillance activities at the frequencies set out below:

Surveillance Activity	Minimum Frequency
<p><b>Local Area Works (SPR Appendix 14, 15 and 16)</b> Modification to existing and establishment of new works:</p> <ul style="list-style-type: none"> <li>• Roadworks</li> <li>• Pedestrian areas</li> <li>• Stormwater infrastructure</li> <li>• Interfaces with Utility Services</li> <li>• Street Furniture</li> <li>• Street Lighting</li> <li>• Landscaping</li> <li>• Paths</li> <li>• Signage, wayfinding and linemarking</li> </ul>	<p>Daily</p>
<p><b>Stops, Precinct and Public Domain and Architectural Building Works (SPR Appendices 13 and 14)</b> Finishes, fixtures, fittings and material for each Stop and public domain area including:</p> <ul style="list-style-type: none"> <li>• Pavements and footpaths</li> <li>• Street furniture</li> <li>• Shelters</li> <li>• Landscaping</li> <li>• Finishes, fixtures, fittings and material for each Stop.</li> </ul>	<p>Upon completion</p> <p>Upon completion</p>
<p><b>Trackwork (SPR Appendix 17)</b></p> <ul style="list-style-type: none"> <li>• Installation of track including</li> <li>• Track fastening system</li> <li>• Turnouts</li> <li>• Trackform</li> <li>• Non-destructive testing of track</li> <li>• No destructive testing of welds</li> </ul>	<p>Each test</p>
<p><b>Civil and structural works (SPR Appendix 18)</b> Structural works Civil works including:</p> <ul style="list-style-type: none"> <li>• Earthworks</li> <li>• Retaining Walls</li> </ul>	<p>Daily</p> <p>Daily</p>

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>• Roadworks</li> <li>• Drainage works and drainage systems</li> </ul> <p>Site Contamination remediation</p>	Daily
<p><b>Rolling Stock (SPR Appendix 37)</b></p> <ul style="list-style-type: none"> <li>• Static testing including: <ul style="list-style-type: none"> <li>– Detrainment</li> <li>– LRV control</li> <li>– Fire system</li> <li>– Torsional stiffness</li> <li>– Static wheel loading</li> <li>– Waterproofing</li> <li>– Bogie rotation</li> <li>– Static interior and exterior noise</li> <li>– Climatic testing</li> </ul> </li> <li>• Dynamic testing</li> <li>• Integrated Factory Acceptance Tests for LRVs, signalling and control systems</li> </ul>	Each test event
<p><b>Maintenance and Stabling Facilities (SPR Appendix 19)</b></p> <ul style="list-style-type: none"> <li>• Maintenance facility</li> <li>• Servicing tracks</li> <li>• Component exchange facility</li> <li>• Automatic train wash</li> <li>• Automatic wheel monitoring</li> <li>• Power supply</li> <li>• Vehicle access, internal roads, car parking and stormwater drainage</li> <li>• Permanent Utility Services connections</li> <li>• Administration building</li> <li>• Landscaping</li> <li>• Security and outdoor lighting</li> </ul>	Daily
<p><b>Operation Control Centre (SPR Appendix 20)</b></p> <ul style="list-style-type: none"> <li>• Management and control facilities</li> <li>• Administration offices and data storage rooms</li> </ul>	Weekly

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>• Equipment rooms</li> <li>• Security</li> <li>• Staff amenities including toilets, kitchens and break out areas</li> <li>• Furniture, fixtures and fittings</li> </ul>	
<p><b>Utility Services Treatments (SPR Appendix 30)</b> Monitor all works affecting Utility Services</p>	Daily
<p><b>Testing and Commissioning (SPR Appendix 33)</b></p> <ul style="list-style-type: none"> <li>• First article inspection tests of defined unproven items</li> <li>• Type tests of defined unproven items</li> <li>• Factory inspection tests of define unproven items</li> <li>• Integrated factory acceptance tests for LRVs, signalling and control systems</li> <li>• CSELR site tests</li> <li>• CSELR railway initial performance test</li> <li>• Trial running of CSELR</li> <li>• Permanent Light Rail Corridor Tests</li> <li>• System performance Test</li> <li>• Capacity performance Test</li> <li>• Final Performance Test</li> </ul>	Each test event
<p><b>Signalling and Movement Control Systems (SPR Appendix 21)</b></p> <ul style="list-style-type: none"> <li>• Cable and major equipment installation</li> <li>• Major equipment and systems testing</li> <li>• Major systems commissioning</li> </ul>	As required Each test event Each test event
<p><b>Earthing and Bonding, Electrolysis and EMC (SPR Appendix 28)</b></p> <ul style="list-style-type: none"> <li>• Earthing and bonding installations</li> <li>• Final Earthing and Bonding testing</li> <li>• Base line electrolysis model</li> <li>• Electrolysis mitigations/installations</li> <li>• Final Electrolysis verification/testing</li> <li>• Base line EMC model</li> <li>• EMC mitigations/installations</li> </ul>	Daily Each test event Each test event Daily Each test event Each test event Daily

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>Final EMC verification</li> </ul>	Each test event
<b>Communications Systems and Passenger Information (SPR Appendix 23)</b> <ul style="list-style-type: none"> <li>Cable and major equipment installation</li> <li>OpCo connections into other parties' networks/systems)</li> <li>Major equipment and systems testing</li> <li>Major systems commissioning</li> </ul>	As required Each event Each test event Each test event
<b>Ticketing System (SPR Appendix 24)</b> <ul style="list-style-type: none"> <li>Civil and cabling works for power supply to ETS equipment at stations</li> <li>Secure storage for rotatables and consumables</li> <li>Storage and charging of portable card readers</li> <li>Civil works for ETS equipment</li> <li>Data communications infrastructure</li> </ul>	Daily
<b>Tunnel Ventilation System (SPR Appendix 25)</b> <ul style="list-style-type: none"> <li>Tunnel ventilation system</li> <li>Trackway exhaust system for enclosed station track areas</li> <li>Environmental control system</li> <li>Smoke management system</li> </ul>	Daily
<b>Low Voltage Distribution and Building Services (SPR Appendix 26)</b> <ul style="list-style-type: none"> <li>Switchboards and distribution boards</li> <li>Electrical works</li> <li>UPS and facilities</li> <li>Cable installation</li> </ul>	Daily
<b>High Voltage Supply and Reticulation (SPR Appendix 27)</b> <ul style="list-style-type: none"> <li>Bulk power supply equipment and cables including protection and control equipment</li> <li>HV reticulation equipment and cables including protection and control equipment</li> <li>SCADA and communications equipment</li> <li>Auxiliary systems and backup power supply</li> <li>Lighting and surge protection equipment</li> <li>Harmonic suppression and filtering</li> </ul>	Daily

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>Isolation and earthing equipment</li> </ul>	
<p><b>Traction Power, Electrification Systems and Control (SPR Appendix 29)</b></p> <ul style="list-style-type: none"> <li>Traction power supply equipment and cables, including Traction return, rectification, protection and control equipment</li> <li>Overhead wiring systems</li> <li>SCADA and communications equipment for operational control and monitoring by a Power Control System (PCS)</li> <li>Auxiliary systems and backup power supply for operations critical and safety service components including protection, control and monitoring devices</li> <li>Lightning and surge protection equipment</li> <li>Harmonic suppression and filtering</li> <li>Rail voltage limiting devices</li> <li>Isolation and earthing equipment</li> </ul>	Daily
<p><b>Hydraulic Systems</b></p> <ul style="list-style-type: none"> <li>Water services systems</li> <li>Potable domestic cold water</li> <li>Potable domestic heated water</li> <li>Recycled non-potable cold water, where external supply is available</li> <li>Drainage systems</li> <li>Sewer drainage, including tradewaste management</li> <li>Rainwater capture and drainage</li> <li>Tunnel drainage of all tunnel water inflows, including seepage water</li> <li>Associated equipment and system component supports, connections, discharge points, risers, civil and structural works, and acoustic treatments</li> <li>Respective power supply, control, and monitoring systems and interfaces</li> <li>Respective fire separation, fire stopping, fire proofing, and fire system interfaces</li> </ul>	Daily

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<p><b>Fire Engineering (SPR Appendix 25)</b></p> <p>Fire engineering works for:</p> <ul style="list-style-type: none"> <li>• Stops</li> <li>• Tunnels</li> <li>• Rolling stock</li> </ul>	<p>Weekly</p>
<p><b>Environmental Observation</b></p> <ul style="list-style-type: none"> <li>• Observe the implementation of physical environmental controls, in accordance with OpCo's Construction Environmental Management Plan and sub-plans, including: <ul style="list-style-type: none"> <li>– noise and vibration;</li> <li>– air quality;</li> <li>– mud, dirt and debris on roadways;</li> <li>– water quality;</li> <li>– contamination;</li> <li>– property accesses;</li> <li>– temporary pedestrian pathways and cycleways;</li> <li>– working within the approved hours;</li> <li>– spoil stockpiling and disposal;</li> <li>– waste management and disposal;</li> <li>– heritage management;</li> <li>– landscape maintenance; and</li> <li>– report to TfNSW and OpCo.</li> </ul> </li> </ul>	<p>Daily</p>
<p><b>Traffic and Transport Surveillance (SPR Appendix 12)</b></p> <ul style="list-style-type: none"> <li>• Monitor the traffic and transport management and control provisions for compliance with the relevant Project Plans, compliance with road occupancy licences and compliance with property access provisions including: <ul style="list-style-type: none"> <li>– layouts for compliance with approved Traffic and Transport Management Plans and control plans, including sign maintenance and delineation;</li> <li>– provisions for cyclists, pedestrians, disabled persons, public transport passengers, public transport operators and road traffic;</li> <li>– timing and duration of road occupancies;</li> <li>– qualifications of traffic control personnel; and</li> <li>– truck haulage routes off the Construction Site.</li> </ul> </li> </ul>	<p>Daily</p> <p>Daily</p>



Schedule 3 – Minimum resources and surveillance levels

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>Monitor Fee Zone occupation</li> </ul>	Daily
<p><b>Work Health and Safety Observation</b></p> <ul style="list-style-type: none"> <li>In conjunction with provision of the other Services, advise OpCo of issues that the Independent Certifier becomes aware of which may affect the safety of persons or property.</li> </ul>	As required
<p><b>Quality Management Surveillance</b></p> <ul style="list-style-type: none"> <li>Inspect OpCo's Activities for compliance with the requirements of the Project Deed. Daily</li> <li>Inspect circumstances where significant non-conformances are or will be reported. Each occurrence</li> <li>Check compliance with the Project Plans, process control plans and work processes. Each method statement</li> <li>Check implementation of inspection and test plans, including:               <ul style="list-style-type: none"> <li>testing frequencies;</li> <li>test methods;</li> <li>test result verifications; and</li> <li>release of Hold Points.</li> </ul> </li> <li>Monitor the rectification of non-conforming product or work. All rectifications</li> </ul>	Weekly All Hold Points All Hold Points
<p><b>Construction Surveillance</b></p> <ul style="list-style-type: none"> <li>Monitor OpCo's obligations to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses. Weekly</li> <li>Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with the Project Deed. Weekly</li> </ul>	
<ul style="list-style-type: none"> <li>Check that durability requirements of the SLR Works are being addressed and applied; Weekly</li> <li>Witness construction trials and commissioning tests, including:               <ul style="list-style-type: none"> <li>use of any materials, plant and equipment that differs from accepted industry standards;</li> <li>concrete including in-situ concrete and precast elements;</li> <li>water collection, treatment and discharge systems;</li> </ul> </li> </ul>	Each trial and test

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<p style="text-align: center;"><i>and</i></p> <ul style="list-style-type: none"> <li>- <i>Utility Service diversions.</i></li> </ul> <ul style="list-style-type: none"> <li>• <i>Record photographically and catalogue general and detailed work in progress and occupation of Fee Zones.</i></li> <li>• <i>Witness the construction of the SLR Works and Temporary Works including:</i> <ul style="list-style-type: none"> <li>- <i>provisions to access, secure, support and hand over the Local Area Works, Utility Service Works and any unknown works;</i></li> <li>- <i>Utility Service diversions; and</i></li> <li>- <i>adjustments to or demolition of existing infrastructure and buildings.</i></li> </ul> </li> </ul>	<p><i>20 digital photographs/day of work areas</i></p> <p><i>Daily</i></p>
<p><b>Quality Product Surveillance Monitoring</b></p> <ul style="list-style-type: none"> <li>• <i>Monitor structure foundation and subgrade preparation and treatments.</i></li> <li>• <i>Monitor compaction of earthworks and spoil.</i></li> <li>• <i>Monitor manufacture of off-site elements.</i></li> <li>• <i>Monitor concreting and associated works, including:</i> <ul style="list-style-type: none"> <li>- <i>preparation;</i></li> <li>- <i>formwork;</i></li> <li>- <i>bracing;</i></li> <li>- <i>reinforcement;</i></li> <li>- <i>placing;</i></li> <li>- <i>stressing;</i></li> <li>- <i>finishing;</i></li> <li>- <i>curing; and</i></li> <li>- <i>stripping formwork.</i></li> </ul> </li> <li>• <i>Sprayed concrete, including:</i> <ul style="list-style-type: none"> <li>- <i>batching and mixing;</i></li> <li>- <i>application;</i></li> <li>- <i>depth control;</i></li> <li>- <i>curing;</i></li> <li>- <i>production tests;</i></li> <li>- <i>monitor steel fabrication; and</i></li> </ul> </li> </ul>	<p><i>Initial preparation and treatment</i></p> <p><i>Weekly</i></p> <p><i>Weekly</i></p> <p><i>Initial activity and twice weekly thereafter</i></p> <p><i>Initial activity and twice weekly thereafter</i></p>

<b>Surveillance Activity</b>	<b>Minimum Frequency</b>
<ul style="list-style-type: none"> <li>- reviews of welding procedures.</li> <li>• Monitoring of the fabrication and welding processes for major members (off-site).</li> <li>• Monitor protective treatment systems (off-site).</li> <li>• Monitor equipment monitors of construction impacts including:               <ul style="list-style-type: none"> <li>- audit of measurements</li> <li>- audits of equipment; and</li> <li>- review of results.</li> </ul> </li> </ul>	<p>Initial activity and twice weekly thereafter</p> <p>Initial activity and twice weekly thereafter</p> <p>Weekly</p>

#### **Schedule 4 - Initial Certification and Monitoring Plan**

Attached to this Schedule 4 is indicative information relating to the functions, obligations, duties and services which the Project Deed contemplates will be discharged by the Independent Certifier (Attachment 1).

## Attachment 1 – Indicative Information for IC tenderers relating to the Services

### A.1 General

- (a) The Independent Certifier will be closely involved in the SLR PPP from its commencement, including throughout the design and construction phases of the SLR Works and through until the correction of all Defects in the SLR Works up to the Date of Final Completion.
- (b) Without limiting OpCo's obligations or liability under the Project Deed, the Independent Certifier's certification of the SLR Works having achieved Completion will be final and binding on TfNSW and OpCo (in the absence of manifest error by the Independent Certifier).
- (c) The Independent Certifier is obliged to act independently of TfNSW, OpCo, OpCo and any of their Associates.
- (d) The specific tasks and functions of the Independent Certifier are those contemplated by the Project Deed, including those in section A.2 of this Attachment.
- (e) The Other Parties consider the role of the Independent Certifier to be vital and therefore are keen to ensure that the entity appointed to the role and the entity's personnel have the skills and experience and independence appropriate for the role as well as providing the best value for money to TfNSW and OpCo.
- (f) The Independent Certifier must:
  - (i) become familiar with the role, functions, obligations, duties and services (express or implied) under the Relevant Project Agreements of the "Independent Certifier" and review information made available to the Independent Certifier by the Other Parties in order to become fully acquainted with the SLR Works;
  - (ii) attend meetings and report as required from time to time by the Other Parties;
  - (iii) carry out any additional services in relation to the SLR Works as directed in writing by the Other Parties under this deed;
  - (iv) undertake the surveillance listed in the Certification and Monitoring Plan which, as a minimum, must include the surveillance in Schedule 3 (*Minimum Resources and Surveillance Levels*) and in the initial Certification and Monitoring Plan ultimately incorporated in this Schedule 4 (*Initial Certification and Monitoring Plan*) to this deed; and
  - (v) provide the surveillance resources in the performance of the Construction Phase Services listed in the Certification and Monitoring Plan which, as a minimum, must include the surveillance resources in Schedule 3 (*Minimum Resources and Surveillance Levels*) and in the initial Certification and Monitoring Plan ultimately incorporated in

this Schedule 4 (*Initial Certification and Monitoring Plan*) to this deed.

- (g) The Independent Certifier must ensure that the Environmental Representative:
- (i) fulfils the requirements of the Environmental Representative under the Project Planning Approval;
  - (ii) reviews and provides comment on environmental documentation prepared to meet the requirements of the Project Planning Approval conditions, relevant environmental legislation, other relevant regulatory requirements and relevant standards;
  - (iii) reviews and certifies the "Environmental Control Maps" prior to their implementation;
  - (iv) monitors and reports on the effective ongoing implementation of, and performance against, the environmental documentation referred to in paragraph (ii), including compliance with the conditions of the Project Planning Approval and other relevant regulatory authorisations for the Project, using the TfNSW compliance monitoring system (PECOMS or equivalent);
  - (v) reviews and certifies revisions to the environmental management documentation as required;
  - (vi) carries out weekly physical inspections (surveillance) of the Construction Site (in a format agreed with the Other Parties) to verify compliance with environmental controls as documented in "Environmental Control Maps" and relevant management plans;
  - (vii) provides independent guidance and advice to TfNSW and OpCo throughout the Construction Phase, on an as required basis, in relation to key emerging environmental and compliance issues, Project Planning Approval conditions, relevant environmental legislation, other relevant regulatory requirements and relevant standards; and
  - (viii) recommends to TfNSW and OpCo reasonable and feasible steps to be taken to avoid or minimise unintended or adverse environmental impacts (including the cessation of works).

## **A.2 Services**

The Independent Certifier must discharge the functions, obligations, duties and services which the Relevant Project Agreements contemplate will be discharged by the Independent Certifier, including providing various certifications under the Project Deed. Indicatively, the Services include the following.

### **A.2.1 Project Deed functions**

This section A.2.1 refers to clauses under the Project Deed.

**A.2.1.1** Clause 5.4(b)(i) - independently certify in accordance with this deed:

- (a) that the Traffic and Transport Management Plan and the Testing and Commissioning Plan comply with the requirements of the Project Deed;
- (b) that the Design Documentation complies with the requirements of the Project Deed;
- (c) that the SLR Works have been completed, tested and commissioned in accordance with the Project Deed;
- (d) that the Tests and Approvals required by the Testing and Commissioning Plan will, if satisfied, allow it to certify Completion of the SLR Works;
- (e) that the OpCo ETS Works have been completed, tested and commissioned in accordance with the SPR;
- (f) ~~that the requirements for First Passenger Service have been satisfied;~~the achievement of FPS Stage Readiness;
- (g) the achievement of Completion;
- ~~(h) the achievement of the Additional CSELRV Acceptance Requirements;~~
- ~~(i) (h) the achievement of Final Completion;~~
- ~~(j) (i) the achievement of Civils and Systems Completion (if applicable); Milestone Completion of each Public Precinct Milestones, and achievement of each Incentive Trigger Event;~~
- ~~(k) (j) readiness for First Passenger Service; not used;~~
- ~~(l) (k) completion of each discrete part of the Local Area Works;~~
- ~~(m) (l) the Occupation Commencement Date for each Fee Zone; and~~
- ~~(n) (m) the Occupation Cessation Date and the Actual Fee Zone Occupation Period for each Fee Zone;~~

**A.2.1.2** Clause 5.4(b)(ii) - independently audit in accordance with ~~the Independent Certifier Deed~~this deed:

- (a) that the Project Plans comply with the requirements of the Project Deed;
- (b) OpCo's compliance with Third Party Agreements and the Third Party requirements specified in Schedule B3 (Requirements of Third Parties);
- (c) the effects of OpCo's Activities, as described in section 4.3 of the SPR;
- (d) that OpCo's Activities and Temporary Works comply with the traffic and transport management and the road, footpath and shared path requirements in the ~~deed~~Project Deed; and
- (e) OpCo's compliance with the Planning Approval;

**A.2.1.3** Clause 5.4(b)(iii) - participate in meetings as specified in the Design Management Plan;

**A.2.1.4** Clause 5.4(b)(iv) – attend Tests, Hold Points and Witness Points;

**A.2.1.5** Clause 5.4(b)(v) - undertake the role of the Environmental Representative, including those obligations in the Planning Approval;

**A.2.1.6** Clause 5.4(b)(vi) - make determinations on matters that the Project Deed (including the SPR) expressly requires be determined by the Independent Certifier;

**A.2.1.7** Clause 5.4(b)(vii) - issue certificates as contemplated by the Project Deed;

**A.2.1.8** Clause 5.4(b)(viii) - undertake surveillance of OpCo's Activities; **and**

**A.2.1.9** Clause 5.4(b)(ix) - provide written confirmation of completion of discrete parts of Utility Services Works and Property Works;

**A.2.1.9A** Clause 5.4(b)(x) – confirm the completion, testing and commissioning of the Journey Time Detection Device;

**A.2.1.10** Clause 5.4(c) - In certifying Design Documentation, the Independent Certifier is not required to act as an AEO.

**A.2.1.11** Clause 5.4(d) - act independently of TfNSW, OpCo and OpCo's Contractors;

**A.2.1.12** Clause 5.4(h) – receive all information and documents and:

- (a) attend meetings (including any Senior Project Group meetings);
- (b) access all premises; and
- (c) insert Hold Points or Witness Points in the Project Plans and designate the authority to release the Hold Points,

all as may be necessary or required to perform its obligations under this deed.

**A.2.1.13** Clause 5.4(j) – receive comments from TfNSW's Representative in respect of OpCo's Activities;

**A.2.1.14** Clause 8.3(c) - receive each updated Traffic and Transport Management Plan and Testing and Commissioning Plan during the Delivery Phase;

**A.2.1.15** Clause 8.5(b)(i) - receive any comments from TfNSW's Representative on submitted Traffic and Transport Management Plan and Testing and Commissioning Plan during the Delivery Phase;

**A.2.1.16** Clause 8.5(b)(ii) – review each Traffic and Transport Management Plan and Testing and Commissioning Plan submitted ~~during the Delivery Phase~~, under clause 8 of the Project Deed (taking into account any comments received from TfNSW under clause 8.5(b)(i) of the Project Deed) and either notify OpCo of any non-compliances with the Project Deed (including detailed reasons) or certify that the Project Plan complies with the Project Deed, within 20 Business Days following submission of the Project Plan to the Independent Certifier;



**A.2.1.17** Clause 8.5(c) – receive any revised Project Plan during the Delivery Phase and clause 8.5 of the Project Deed will re-apply;

**A.2.1.18** Clause 12.2(b) – receive written notice from OpCo prior to OpCo vacating a Section;

**A.2.1.19** Clause 12.2(c) – within 2 Business Days of the receipt of OpCo's notice, provide a notice to TfNSW's Representative and OpCo certifying that OpCo has or has not complied with the requirements of clause 12.2(b) of the Project Deed;

**A.2.1.19A** Clause 12.3(e) – receive from OpCo a written notice of:

- (i) \_\_\_\_\_ the Occupation Commencement Date;
- (ii) \_\_\_\_\_ the Occupation Cessation Date; and
- (iii) \_\_\_\_\_ any revised Occupation Cessation Dates,

within 5 Business Days of each of these dates occurring.

**A.2.1.20** Clause 13.4(c) – receive Design Documentation at each Design Stage during the Delivery Phase;

**A.2.1.21** Clause 13.6(b) – require that OpCo make available the appropriate design personnel to explain Design Documentation and provide other information regarding the Design Documentation;

**A.2.1.22** Clause 13.7(a) – receive any comments from TfNSW's Representative on submitted Design Documentation;

**A.2.1.23** Clause 13.7(b) – review the Design Documentation submissions (taking into account any comments received from TfNSW under clause 13.7(a) and any comments from the Urban Design Reference Group under clause 13.8(b) and 13.8(c) of the Project Deed) within 22 Business Days and:

- (a) in respect of Design Stage 1 or Design Stage 2, notify OpCo of any actual non-compliance or any potential non-compliance with the requirements of the Project Deed (with detailed reasons) or any other observation or comment which the Independent Certifier has on the Design Documentation; and
- (b) in respect of Design Stage 3, either:
  - (i) reject the Design Documentation with detailed reasons if it does not comply with the Project Deed or is not sufficiently complete to enable a view of compliance to be formed; or
  - (ii) certify the Design Documentation;
- (c) \_\_\_\_\_ in respect of CSELRVs, either:
  - (i) \_\_\_\_\_ reject the Design Documentation with detailed reasons if it does not comply with the Project Deed or is not sufficiently complete to enable a view of compliance to be formed; or
  - (ii) \_\_\_\_\_ certify the Design Documentation.

**A.2.1.24** Clause 13.7(e) – receive amended Design Documentation and other information regarding the Design Documentation from OpCo and the process in clause 13.7 of the Project Deed will be reapplied;

**A.2.1.25** Clause 13.7(g)(i) – recommend the action that could be taken by OpCo to address any minor error or omissions;

**A.2.1.26** Clause 13.10 – receive amended Final Design Documentation, certifications or explanations from OpCo and the process in clause 13.7 of the Project Deed will be reapplied;

**A.2.1.26AA** Clause 14.5(b) – receive notice from TfNSW in writing (with a copy to OpCo) at least 15 Business Days prior to the date on which TfNSW expects the installation of the Journey Time Detection Device to be completed, together with any information that may be reasonably required by the Independent Certifier;

**A.2.1.26A** Clause 14.5(c) – Within 5 Business Days of receipt of a notice from TfNSW under clause 14.5(b), notify TfNSW in writing (with a copy to OpCo) that either:

- (a) the Installation Works are complete and the Journey Time Detection Device is fit for its intended purpose (as at the date of completion of the Installation Works) to enable OpCo to comply with its obligations under Schedule D1 (*Service Payment Regime*); or
- (b) the installation of the Journey Time Detection Device is not sufficiently complete to enable the Independent Certifier to form a view.

**A.2.1.27** Clause 17.3(~~bc~~)(v)-(vi) – receive and review any updates to the Delivery Program within the 20 Business Day Period referred to in clause 8.5 or the periods referred to in clause 13 of the Project Deed (as the case may be);

**A.2.1.28** Clause 18.2(a) and (b) – receive Test Procedures and any comments from TfNSW's Representative on Test Procedures;

**A.2.1.29** Clause 18.2(~~c~~) and (~~d~~) – within 20 Business Days of receiving a Test Procedure (or any amended Test Procedure), review each Test Procedure (taking into account any comments received from TfNSW's Representative) and either:

- (a) notify OpCo of any non-compliances with the Project Deed (with detailed reasons); or
- (b) certify the Test Procedure;

**A.2.1.30** Clause 18.2(~~ed~~) – receive a revised Test Procedure, whereupon the provisions of clause 18.2 of the Project Deed will reapply;

**A.2.1.31** Clause 18.3 – receive ~~2017~~ Business Days' notice of each Test and receive Test Programs and updated Test Programs, from OpCo;

**A.2.1.32** Clause 18.4(c) – may (but not obliged) attend and witness the conduct of all Tests;

**A.2.1.33** Clause 18.5(c) – receive Test Reports from OpCo and, within ~~105~~ Business Days, either:

- (a) certify that the Test has been passed in accordance with the Test Procedure; or

- (b) notify OpCo that the Test has been failed and/or the Test Report does not comply with the requirements of the Project Deed;

**A.2.1.34** ~~Clause 18.8(a) – receive notice from TfNSW’s Representative of additional tests required by TfNSW;~~ Not used;

**A.2.1.35** Clause 19.1(d) – receive from OpCo copies of all Approvals which the Project Deed requires OpCo to obtain prior to ~~First Passenger Service~~commencement of FPS Stage 1 Operations or FPS Stage 2 Operations (as applicable) (including any variation required to OpCo's Accreditation;

**A.2.1.36** Clause 19.1(e) – receive from OpCo certificates in the form of Schedule C7 (*Form of Certificate for ~~First Passenger Service~~ of the Project Deed; FPS Operations*) of the Project Deed from:

- (a) the D&C Contractor certifying that the SLR Works for FPS Stage 1 or FPS Stage 2 (as applicable) (excluding the 755 Feeder, Additional Required CSELRVs and Option 1A CSELRVs) have been constructed in accordance with the Design Documentation which OpCo is entitled to use for construction purposes under clause 13.9(a) of the Project Deed, except for Minor Defects;
- (b) from OpCo certifying that the SLR Works for FPS Stage 1 or FPS Stage 2 (as applicable) (excluding the Additional Required CSELRVs and Option 1A CSELRVs) comply with all the requirements of the Project Deed (including the SPR), except for Minor Defects and have been constructed in accordance with the Design Documentation which OpCo was entitled to use for construction purposes (but without prejudice to clause 13.9(ab) of the Project Deed); and
- (c) from the O&M Contractor certifying that the SLR Works for FPS Stage 1 or FPS Stage 2 (as applicable) (excluding the Additional Required CSELRVs and Option 1A CSELRVs) are acceptable to the O&M Contractor and will enable it to comply with its obligations under the O&M Contract;

**A.2.1.36A** Clause 19.1(j) – where a Scope Transfer has occurred under clause 19.1(j) of the Project Deed, receive from OpCo an executed agreement signed by OpCo and the Other Contractor or developer (as applicable) as approved by TfNSW;

**A.2.1.37** Clause 19.2(a)-~~(c)~~ – receive at least 20 Business Days' notice of the date on which OpCo expects to satisfy the requirements for ~~First Passenger Service~~FPS Stage 1 Readiness or FPS Stage 2 Readiness (as applicable) and a list of items which OpCo has not, at the date completed, but is required to complete in order to satisfy the requirements referred to in clause 19.1 of the Project Deed to reach FPS Stage 1 Readiness or FPS Stage 2 Readiness (as applicable);

**A.2.1.37A** Clause 19.2A – receives notice of the list of items under clause 19.2(b) for each of FPS Stage 1 Readiness and FPS Stage 2 Readiness (as applicable) and, within 5 Business Days of receipt of the list referred to in clause 19.2(b) of the Project Deed, issue a notice to OpCo and TfNSW which either:

- (a) confirms that it agrees with the list proposed by OpCo or alternatively provides an amended list of items which it considers remain to be completed to satisfy the requirements referred to in clause 19.1 of the Project Deed (Requirements for FPS Stage Readiness); or

(b) states that OpCo is so far from satisfying the requirements referred to in clause 19.1 of the Project Deed (Requirements for FPS Stage Readiness) that it is not practical to provide the list referred to in clause 19.2A(a)(i) of the Project Deed.

**A.2.1.38** Clause 19.2 and 19.3 – receive a written request from OpCo or the D&C Contractor for a Certificate of Readiness for First Passenger Service and, within 5 Business Days, either FPS Stage 1 Operations or a Certificate of Readiness for FPS Stage 2 Operations (as applicable) (Certificate Request) and, as soon as reasonably practicable, and in any case:

(a) if the Certificate Request is received by the Independent Certifier by noon AEST, on the same day as the Certificate Request is received by the Independent Certifier; and

(b) otherwise, within 1 day of receipt by the Independent Certifier of the Certificate Request,

for each of FPS Stage 1 Readiness and FPS Stage 2 Readiness, the Independent Certifier must either:

(c) ~~(a)~~ if the requirements referred to in clause 19.1 (Requirements for FPS Stage Readiness) have been satisfied, issue a Certificate of Readiness for First Passenger Service FPS Stage 1 Operations or a Certificate of Readiness for FPS Stage 2 Operations (as applicable) to OpCo and TfNSW; or

(d) ~~(b)~~ if the requirements referred to in clause 19.1 (Requirements for FPS Stage Readiness) have not been satisfied, issue a notice to OpCo and TfNSW which: ~~(i)~~ lists the items which remain to be completed to satisfy the requirements for First Passenger Service; or referred to in clause 19.1 (Requirements for FPS Stage Readiness).

~~(ii) states that OpCo is so far from satisfying the requirements for First Passenger Service that it is not practicable to provide the list;~~ **A.2.1.38A** Clause 19.4(b) – certify that the SLR Works (excluding the Additional Required CSELRVs and Option 1A CSELRVs) have passed the Final Performance Test;

**A.2.1.39** Clause 19.4~~(a)(ii)c)~~ – receive from OpCo a certificate in the form of Schedule C8 ~~of the Project Deed (Form of Certification for Completion);~~ of the Project Deed;

**A.2.1.39AA** Clause 19.4(d) – certify that not less than 25 CSELRVs have passed the CSELRV Completion Tests;

**A.2.1.39A** Clause 19.4A~~(eb)~~(ii) – receive from OpCo a certificate in the form of Schedule C20 (Form of Certificate for Additional CSELRV Acceptance Requirements) of the Project Deed from:

(a) the D&C Contractor certifying that the CSELRV has been constructed in accordance with the Design Documentation which OpCo is entitled to use for CSELRV construction purposes under clause 13.9(a)(i), except for Minor Defects;

(b) OpCo certifying that the CSELRV complies with all the requirements of this deed (including the SPR), except for Minor Defects and has been constructed in accordance with the Design Documentation which OpCo was entitled to use for CSELRV construction purposes; and

(c) The O&M Contractor certifying that the CSELRV is acceptable to the O&M Contractor and will enable it to comply with its obligations under the O&M Contract;

**A.2.1.39B** Clause 19.4A(eb)(iii) – certify that the CSELRV has passed the CSELRV Completion Tests;

**A.2.1.40** Clause 19.5 (b) – (c) – receive notification from OpCo in writing that it considers that a discrete part of the Local Area Works is complete, inspect the relevant Local Area Works, determine whether the discrete part of the Local Area Works has been completed in accordance with the Project Deed and, within 5 Business Days of inspection, will:

- (a) if the discrete part is complete, execute and provide a certificate in the form of Schedule C9 (*Certificate of Local Area Works Completion*) of the Project Deed to TfNSW's Representative and OpCo stating the date on which OpCo has completed the discrete part of the Local Area Works in accordance with the Project Deed; or
- (b) if the discrete part is not complete, notify OpCo and TfNSW in writing of the items which remain to be completed (after which the procedure in clause 19.5 of the Project Deed will reapply);

**A.2.1.40A** Clause 19.5A(b) – receive notification and evidence from OpCo that it considers that a discrete part of the Local Area Works has been handed over to the relevant Authority;

**A.2.1.40B** Clause 19.5A(c) – determine whether the discrete part of the Local Area Works has been handed over to the relevant Authority in accordance with the Project Deed, within 5 Business Days of receiving documents required under clause 19.5A(b) of the Project Deed;

- (a) if the discrete part is handed over, execute and provide a certificate in the form of Schedule C9A (*Certificate of Local Area Works Hand Over*) of the Project Deed to TfNSW's Representative and OpCo stating the date on which OpCo has handed over the discrete part of the Local Area Works in accordance with the Project Deed; or
- (b) if the discrete part is not handed over, notify OpCo and TfNSW in writing of the items which remain to be handed over (after which the procedure in clause 19.5A(b) and (c) of the Project Deed will reapply);

**A.2.1.40C** Clause 19.6 (a)(ii)(B) – provide written confirmation that a discrete part of the Utility Service Works are complete, if OpCo is unable to obtain written notice from the relevant Authority that such Utility Service Works are complete;

**A.2.1.40D** Clause 19.7(a)(iii) – provide written confirmation that a discrete part of the Property Works are complete, if the owner or owners have failed or refused to sign a certificate in the form of Schedule C10 (*Property Owners Certificate*) of the Project Deed as contemplated by clause 19.7(a)(ii) of the Project Deed;

**A.2.1.41** Clause 19.8 – receive from OpCo:

- (a) at least **53** Business Days' notice of the date on which it expects to achieve Completion; and
- (b) a written request for a Certificate of Completion;

**A.2.1.42** Clause 19.9 - within **53** Business Days of receipt of OpCo's request for a Certificate of Completion, either:

- (a) if Completion has been achieved, issue a Certificate of Completion to TfNSW and OpCo stating the Date of Completion and specifying any Minor Defects; or
- (b) if Completion has not been achieved, issue a notice to OpCo and TfNSW which:
  - (i) lists the items which remain to be completed before Completion; or
  - (ii) states that the SLR Works are so far from achieving Completion that it is not practicable to provide the list of remaining works;

**A.2.1.42A** Clause 19.9A – receive from OpCo:

- (a) at least 5 Business Days' notice of the date on which it expects to achieve Additional CSELRV Acceptance Requirements in respect of an Additional Required CSELRV or an Option 1A CSELRV; and
- (b) a written request for a Certificate of Additional CSELRV Acceptance;

**A.2.1.42B** Clause 19.9B(a) – within 5 Business Days of receipt of OpCo's request for a Certificate of Additional CSELRV Acceptance under clause 19.9A(b) of the Project Deed, either:

- (a) if the Additional CSELRV Acceptance Requirements have been achieved, issue to TfNSW and OpCo a Certificate of Additional CSELRV Acceptance:
  - (i) stating the date on which the Additional CSELRV Acceptance Requirements was achieved; and
  - (ii) specifying any Minor Defects; or
- (b) if the Additional CSELRV Acceptance Requirements have not been achieved, issue to TfNSW and OpCo a notice which:
  - (i) lists the items which remain to be completed before the Additional CSELRV Acceptance Requirements are achieved; or
  - (ii) states that the Additional CSELRV Acceptance Requirements are so far from being achieved that it is not practicable to provide such a list;

**A.2.1.43** Clause 19.10(c) - receive from OpCo:

- (a) notice from OpCo that it considers that Final Completion has been achieved; and
- (b) a request to issue a Certificate of Final Completion; ~~and~~

**A.2.1.44** Clause 19.10(d) and (e) - within 15 Business Days of receipt of OpCo's request under clause 19.10(c) of the Project Deed, either:

- (a) if Final Completion has been achieved, issue to TfNSW and OpCo a Certificate of Final Completion; or

- (b) if Final Completion has not been achieved, issue a notice to the TfNSW and OpCo listing the work remaining to be performed to achieve Final Completion (after which the procedure in clause 19.10 (*Final Completion*) of the Project Deed will re-apply).

**A.2.1.45** ~~Clause 19.16(b)(ii) – issue to TfNSW and OpCo a Certificate of Civils and Systems Completion substantially in the form of Schedule C22 (Certificate of Civils and Systems Completion);~~ 25.2A(c) – if applicable to the relevant Public Precinct Milestone, receive from OpCo:

- (a) at least 5 Business Days' notice of the date on which it expects to achieve Milestone Completion of the Public Precinct Milestone; and
- (b) a written request for a Certificate of Milestone Completion;

**A.2.1.46** Clause 25.2A(d) – if applicable to the relevant Public Precinct Milestone, determine whether Milestone Completion has been achieved with respect to the relevant Public Precinct Milestone in accordance with Section 3 of Part A of Schedule D15. Section 3 of Part A of Schedule D15 provides that:

- (a) following receipt of a notice under clause 25.2A(c)(ii) of the Project Deed, the Independent Certifier must jointly inspect the relevant Public Precinct Milestone with TfNSW's Representative, any relevant Authority and any invitee of TfNSW; and
- (b) following the joint inspection, the Independent Certifier will determine whether the Public Precinct Milestone has been completed and, within 5 Business Days of the inspection:
- (i) if Milestone Completion of that Public Precinct Milestone has been achieved, issue a Certificate of Milestone Completion to OpCo and TfNSW; or
- (ii) if Milestone Completion of that Public Precinct Milestone has not been achieved, issue a notice to OpCo and TfNSW which:
- A. list the items which remain to be completed before Milestone Completion of that Public Precinct Milestone can be achieved; or
- B. states that OpCo is so far from achieving Milestone Completion of that Public Precinct Milestone that it is not practicable to provide such a list;

**A.2.1.46A** Clause 25.2A(d) – if applicable to the relevant Public Precinct Milestone, determine whether Milestone Completion has been achieved with respect to the relevant Public Precinct Milestone in accordance with Section 4 of Part A of Schedule D15. Section 4 of Part A of Schedule D15 provides that:

- (a) ~~certifying that the Civils and Systems Works are complete;~~ following receipt of the notice under clause 4(a)(i) of Schedule D15, the Independent Certifier will determine whether the Public Precinct Milestone has been achieved in accordance with Schedule B16 and will within 5 Business Days of the date of the notice:

- (i) if Milestone Completion of that Public Precinct Milestone has been achieved, issue a Certificate of Milestone Completion to OpCo and TfNSW:
- A. ~~(b)~~ stating the date on which ~~completion of the Civils and Systems Works~~ Milestone Completion of that Public Precinct Milestone was achieved; and
  - B. ~~(e)~~ specifying any Minor ~~Defects~~ Non-Compliances; and ~~minor finishes~~;
- (ii) if Milestone Completion of that Public Precinct Milestone has not been achieved, issue a notice to OpCo and TfNSW which:
- A. lists the items which remain to be completed before Milestone Completion of that Public Precinct Milestone can be achieved; or
  - B. states that OpCo is so far from achieving Milestone Completion of that Public Precinct Milestone that it is not practicable to provide such a list;

**A.2.1.47** Clause 25.2B(b) – receive from OpCo at least 5 Business Days' notice of the date on which it expects to satisfy an Incentive Trigger Event; and

**A.2.1.48** Clause 25.2B(c) – within 10 Business Days of receipt of OpCo's notice under clause 25.2B(b) of the Project Deed, either:

- (a) if an Incentive Trigger Event has been satisfied, issue to TfNSW and OpCo a written notice stating the date on which the Incentive Trigger Event was satisfied; or
- (b) if an Incentive Trigger Event has been not satisfied, issue to TfNSW and OpCo a written notice stating the Incentive Trigger Event has not been satisfied and list the items which remain to be completed before the Incentive Trigger Event will be achieved.



## **A.2.2 SPR functions**

This section A.2.2 refers to sections under the SPR.

**A.2.2.1** Section 4.3(k) – progressively receive from OpCo:

- (a) analysis and determinations, including any revisions and re-evaluations, of the Predicted Effects and the Acceptable Effects;
- (b) results of monitoring the actual effects of OpCo’s Activities, in a form which is directly comparable to the Acceptable Effects and Predicted Effects;
- (c) details of any adjustments to the manner in which OpCo’s Activities are carried out which are necessary as a consequence of any re-evaluation of Predicted Effects; and
- (d) details of designs and materials for the repair and reinstatement of infrastructure required by section 4.3(j) of the SPR;

**A.2.2.2** Section 4.5(b)– receive from OpCo two copies of all site investigation reports, property and land surveys and ground and infrastructure condition surveys, including progressive copies of such documents as each is developed, promptly, and in any event within 5 Business Days of OpCo receiving such reports;

**A.2.2.3** Section 4.6(d) – receive evidence of Approvals from Authorities in accordance with the Project Deed;

**A.2.2.4** Section 4.8(i) – may attend Utility Service owner or Authority meetings as may be required from time to time;

**A.2.2.5** Section 4.8(j) – receive as constructed details of the locations of Utility Services on progressive completion of the SLR Works;

**A.2.2.6** Section 4.9(e) – receive copies of traffic control plans approved by relevant Authorities that set out specific traffic and transport management arrangements to be implemented at specific locations during the construction of the SLR Works and Temporary Works;

**A.2.2.7** Section 6.3(a) – receive details of all proposed design changes and actions to address construction non-conformances;

**A.2.2.8** Section 6.9(b) – receive and review sample as-built Design Documentation for all Assets;

**A.2.2.9** Section 11.5.1(c) – access All Management Systems records and all records relating to the quality of the SLR Works until all the Delivery Activities have been completed;

**A.2.2.10** Section 11.5.3(b) – may, at any stage during the performance of OpCo's Activities, nominate Hold Points and Witness Points for inclusion in the Project Plans;

**A.2.2.11** Section 11.5.3(d) – may nominate persons to attend or witness the release of any Hold Point or to attend any Witness Point;

**A.2.2.12** Section 11.5.4(a) – approve the designated authority assigned by OpCo to each Hold Point for the purpose of releasing the Hold Point, and the release of any Hold Points;

**A.2.2.13** Section 11.5.4(e) - may witness any inspections and tests preceding the release of any Hold Points and the release of any Hold Points;

**A.2.2.14** Section 11.5.5(b) and (d) - may advise OpCo of apparent quality non-conformances and receive details of such corrective actions from OpCo;

**A.2.2.15** Section 11.5.5(g) - receive reports of non-conformances by OpCo;

**A.2.2.16** Section 11.5.5(h) - receive and review proposals for rectification work;

**A.2.2.17** Section 11.5.6(b) - may attend any audits by an independent auditor of compliance with the Quality Plan and other Project Plans;

**A.2.2.18** Section 11.5.6(c) - receive copies of audit reports in respect of the Quality Plan and other Project Plans;

**A.2.2.19** Section 11.12(a) – receive from OpCo copies of notices, reports and submissions it gives to Authorities as well as any responses from, and details of any consultations with, Authorities;

**A.2.2.20** Section 11.12(b) - receive copies of Approvals obtained by OpCo;

**A.2.2.21** Section 11.12(c) - receive progress reports, updates of the Delivery Program, durability assessment reports, Design Documentation, as constructed documentation, construction completion reports, site investigation reports, property and land surveys, ground and infrastructure condition surveys, geotechnical mapping records and inferred ground condition reports and other documents in accordance with the Project Deed; and

**A.2.2.22** Appendices 1 (*Definitions and Acronyms*) to 49 (*Operation Commitments*) inclusive to the SPR – must discharge the role, functions, obligations and duties of the Independent Certifier identified within the Appendices.

### **A.2.3 Roads Act Approval functions**

This section A.2.3 refers to clauses under the Roads Act Approval.

#### **A.2.3.1** Schedule 3, clause 7:

- (a) provide independent review and certification of the relevant design documentation, design development and construction of the works under the Roads Act Approval;
- (b) certify the achievement of completion under the Roads Act Approval;
- (c) provide independent review and certification that the requirements of the conditions in Schedule 3 to the Roads Act Approval have been met including that the relevant works comply with all relevant codes and standards and that the quality of work and materials incorporated into the relevant works are in accordance with the design documentation and the project requirements set out in schedule 4 to the Roads Act Approval;
- (d) independently audit that the project plans set out in clause 21 of the Roads Act Approval comply with the requirements of the conditions in Schedule 3 to the Roads Act Approval;
- (e) issue the certificates (in the form agreed between TfNSW and RMS) as set out in the deed poll in Schedule 8 at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;
- (f) make determinations on any matters that the conditions in Schedule 3 to the Roads Act Approval requires be determined by the Independent Certifier;
- (g) perform any other functions identified in this deed;

**A.2.3.2** Schedule 3, clause 11 – cooperate with and receive from TfNSW all information and documents and access to the site and other premises, necessary or reasonably required by the Independent Certifier, so as to enable the Independent Certifier to exercise its functions appropriately and perform its obligations under this deed;

**A.2.3.3** Schedule 3, clause 12 – endorse the relevant design documentation under the Roads Act Approval with a certificate in the form agreed by RMS and TfNSW as set out in the deed poll in Schedule 8;

**A.2.3.4** Schedule 3, clause 17(a)(5) – if requested by RMS and facilitated by TfNSW, meet with RMS to discuss the relevant design documentation under the Roads Act Approval;

**A.2.3.5** Schedule 3, clause 17(e) – receive from TfNSW comments on the relevant design documentation by RMS and take such comments into account in its review of the relevant design documentation;

**A.2.3.6** Schedule 3, clause 24 – receive comments on the project plans provided by RMS from TfNSW and take such comments into account in its review of the project plans;

A.2.3.7 Schedule 3, clause 34(f) – certify the Project Plans under the Roads Act Approval by providing a certificate on the form agreed by RMS and TfNSW as set out in the deed poll in Schedule 8;

**A.2.3.8** Schedule 3, clause 37(a) and (b) – receive notices from TfNSW of:

- (a) the anticipated completion of each discrete part of the relevant works under the Roads Act Approval; and
- (b) the completion of each discrete part of the relevant works under the Roads Act Approval, including details of compliance with the testing and commissioning plan requirements (including all required test certificates and conformance data) under the Roads Act Approval;

**A.2.3.9** Schedule 3, clause 38 – inspect each discrete part of the relevant works under the Roads Act Approval jointly with RMS, receive any submissions from RMS about whether the discrete part of the relevant works is complete, and determine whether the discrete part is complete in accordance with the conditions in Schedule 3 to the Roads Act Approval requirements;

**A.2.3.10** Schedule 3, clause 39 – if it determines that the discrete part of the relevant works under the Roads Act Approval is not complete, issue a notice to TfNSW identifying the work to be done to achieve completion;

**A.2.3.11** Schedule 3, clause 40 – if it determines that the discrete part of the relevant works under the Roads Act Approval is complete, within 5 business days of the date of inspection with RMS under Schedule 3 clause 38 of the Roads Act Approval, execute and provide to RMS a certificate in the form agreed by RMS and TfNSW as set out in the deed poll in Schedule 8;

**A.2.3.12** Schedule 4, clause 5.4 – provide certification to RMS stating that all findings / non-conformances of the road safety audits referred to in clauses 5.1 and 5.3 of Schedule 4 of the Roads Act Approval have been satisfactorily addressed and closed out (in the form agreed by RMS and TfNSW as set out in the deed poll in Schedule 8).

#### **A.2.4 City of Sydney Third Party Agreement**

This section A.2.4 refers to clauses under the City of Sydney Third Party Agreement.

**A.2.4.1** Clause 5.4(c) – supply information to the City of Sydney as soon as is practicable in the circumstances if in carrying out its functions it receives information that would reasonably be considered relevant to TfNSW's obligations under the City of Sydney Third Party Agreement and TfNSW has not already provided the City of Sydney with a copy of that information;

**A.2.4.2** Clause 5.4(e) – issue a copy of all its certifications or determinations under the City of Sydney Third Party Agreement to both the City of Sydney and TfNSW;

**A.2.4.3** Clause 11.3(b), (c) and (d) – in relation to disputes:

- (a) initiate such enquiries and investigations as it considers necessary or desirable in order to resolve disputes;
- (b) determine whether the dispute is of a technical nature which it can determine;
- (c) schedule a time for the parties to present their respective positions on a dispute, and inform the parties of this time. The presentation must be no later than 10 business days after the independent certifier's appointment, and unless otherwise agreed by the parties, the independent certifier may ignore any submission or response made after that time;
- (d) may request further information from either party, in writing and within the time period required for the response; and
- (e) must:
  - (i) send a copy of the response referred to in clause 11.3(c) of the City of Sydney Third Party Agreement to the other party and give them a reasonable opportunity to comment;
  - (ii) make a determination or finding in respect of the dispute within 20 business days after the presentation referred to in paragraph 11.3(b)(iii) of the City of Sydney Third Party Agreement and include reasons;
  - (iii) act as an expert and not an arbitrator;
  - (iv) have no interest or duty which conflicts with its role as an independent expert; and
  - (v) keep confidential all materials and information made available to it in respect of the dispute;

**A.2.4.4** Clause 20.2(b) and (c) - following receipt of an inspection point notice:

- (a) notify the City of Sydney and TfNSW of the date and time on which it will inspect the relevant works;
- (b) inspect the progress of the relevant Works to verify whether they have been undertaken in accordance with the City of Sydney codes and standards; and

- (c) provide to the City of Sydney and TfNSW a written copy of its findings within 5 days of the inspection;

**A.2.4.5** Clause 20.5(c)(iv) and (v) – if the City of Sydney issues an objection to the handover of relevant permanent City of Sydney assets as per the proposed handover notice:

- (a) determine whether the objections are valid matters which prevent completion of the permanent City of Sydney assets in accordance with the City of Sydney Third Party Agreement; and
- (b) once TfNSW has rectified those matters, issue a certification to that effect;

**A.2.4.6** Clause 20.5(e)(ii) – if the City of Sydney identifies what it considers to be any defects in the permanent City of Sydney assets during the defects liability period:

- (a) determine whether the City of Sydney has identified defects which require rectification by TfNSW in accordance with the City of Sydney Third Party Agreement; and
- (b) notify the City of Sydney and TfNSW of the defects that must be rectified by TfNSW;

**A.2.4.7** Clause 21.2(a) - no earlier than 45 business days before a City of Sydney contribution payment date, issue a certification that:

- (a) work:
  - (i) is continuing generally in accordance with the indicative project program; or
  - (ii) is complete; or
  - (iii) is not continuing generally in accordance with the indicative project program; or
  - (iv) is temporarily not continuing; or
  - (v) will no longer proceed; and
- (b) the fundamental obligations (in relation to both the design documentation and the works in the local government area administered by the City of Sydney) are:
  - (i) being satisfied or, in relation to the Fundamental Obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, being materially satisfied; or
  - (ii) not being satisfied or, in relation to the fundamental obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, not being materially satisfied;

**A.2.4.8** Clause 21.2(b) - on completion of the works, issue a certification certifying whether the fundamental obligations:

- (a) have been satisfied or, in relation to the fundamental obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, have been materially satisfied; or

- (b) have not been satisfied or, in relation to the fundamental obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, have not been materially satisfied;

**A.2.4.9** Clause 21.2(c) - if, at any time before the City of Sydney pays the final City of Sydney contribution payment, the independent certifier becomes aware that work on the project is temporarily not continuing or will no longer proceed, promptly issue a certification to that effect;

**A.2.4.10** Clause 21.4(a)(i) – issue a certification that the project has recommenced;

**A.2.4.11** Clause 21.4(b)(i) – issue a certification that the fundamental obligations are now being satisfied or materially satisfied (as applicable);

**A.2.4.12** Clause 21.7(a) – if it issued a certification under clause 21.2(b) of the City of Sydney Third Party Agreement on completion of the works that the fundamental obligations have not been satisfied or, in relation to the fundamental obligations numbered 6, 7 and 8 in Schedule 4 of the City of Sydney Third Party Agreement, have not been materially satisfied, once rectification works have occurred, certify, within 12 months of the date of the independent certifier's initial certification (time is of the essence), that the fundamental obligations have now been satisfied or materially satisfied (as applicable);

**A.2.4.13** Clause 21.7(e) – may issue a certification that:

- (a) the works are nearing completion;
- (b) only residual works outside of the local government area administered by the City of Sydney remain to be completed; and
- (c) the residual works are programmed for completion, and reasonably anticipated by the independent certifier to be completed, within 12 months of the date of the independent certifier's certification;

**A.2.4.14** Clause 21.8 – calculate the total value of all permanent City of Sydney assets handed over to the City of Sydney in accordance with clause 20.5 of the City of Sydney Third Party Agreement, for the purpose of calculating any refund under clause 21 of the City of Sydney Third Party Agreement; and

**A.2.4.15** Schedule 7, clause 1.6.10 – determine whether tactile ground surface indicators are required to comply with law.

### **A.2.5 Centennial Park and Moore Park Trust Third Party Agreement**

This section A.2.5 refers to clauses under the Centennial Park and Moore Park Trust Third Party Agreement.

**A.2.5.1** Clause 2.4(a)(iii) - supply information to the Trust as soon as is practicable in the circumstances if in carrying out its functions it receives information that would reasonably be considered relevant to TfNSW's obligations under the Centennial Park and Moore Park Trust Third Party Agreement and TfNSW has not already provided the Trust with a copy of that information;

**A.2.5.2** Clause 2.4(a)(v) - issue a copy of all its notices, certifications or determinations under the Centennial Park and Moore Park Trust Third Party Agreement to both the Trust and TfNSW;

**A.2.5.3** Clause 7.3(b), (c) and (d) – in relation to disputes:

- (a) initiate such enquiries and investigations as it considers necessary or desirable in order to resolve disputes;
- (b) determine whether the dispute is of a technical nature which it can determine;
- (c) schedule a time for the parties to present their respective positions on a dispute, and inform the parties of this time. The presentation may be by written submissions, evidence and/or oral presentation to the independent certifier, with the other party to be invited to be present at any oral presentation and be provided with a copy of any written submissions or evidence at the same time it is provided to the independent certifier. The presentation must be no later than 10 business days after the independent certifier's appointment, and unless otherwise agreed by the parties, the independent certifier may ignore any submission or response made after that time;
- (d) may request further information from either party, in writing and within the time period required for the response;
- (e) must:
  - (i) send a copy of the request for further information and the response referred to in clause 7.3(d) of the Centennial Park and Moore Park Trust Third Party Agreement to the other party and give them a reasonable opportunity to comment;
  - (ii) determine the dispute in accordance with the parties' rights and obligations under the Centennial Park and Moore Park Trust Third Party Agreement;
  - (iii) make a determination or finding in respect of the dispute within 20 business days after the presentation referred to in clause 7.3(b)(iii) of the Centennial Park and Moore Park Trust Third Party Agreement and include reasons;
  - (iv) act as an expert and not an arbitrator;
  - (v) have no interest or duty which conflicts with its role as an independent expert; and
  - (vi) keep confidential all materials and information made available to it in respect of the dispute;



- (f) determine disputes regarding notification of defects in utilities if the parties cannot resolve them;

**A.2.5.4** Clause 13.3(b) – if the trust issues an objection to the handover of relevant permanent trust assets as per the proposed handover notice, make a determination within 10 business days either agreeing or disagreeing with the Trust objections;

**A.2.5.5** Clause 13.3(c) - if the trust fails to issue a notice to TfNSW accepting handover of the relevant permanent Trust assets as described in the proposed handover notice on the hand over date proposed in the handover notice, make a determination within 10 business days either agreeing or disagreeing whether completion of the permanent Trust assets has been achieved;

**A.2.5.6** Clause 13.3(e) – issue a written certification confirming the independent certifier's disagreement with the Trust's objections or confirming completion of the permanent Trust assets, within 10 business days of making a determination;

**A.2.5.7** Clause 13.4(b)(ii) – if the trust identifies what it considers to be any defects in the permanent trust assets during the defects liability period:

- (a) determine whether the trust has identified defects which require rectification by TfNSW in accordance with the Centennial Park and Moore Park Trust Third Party Agreement; and
- (b) notify the trust and TfNSW of the defects that must be rectified by TfNSW;

## **A.2.6 Randwick City Council Third Party Agreement**

This section A.2.6 refers to clauses under the Randwick City Council Third Party Agreement.

**A.2.6.1** Clause 5.4(c) – supply information to the Randwick City Council as soon as is practicable in the circumstances if in carrying out its functions it receives information that would reasonably be considered relevant to TfNSW's obligations under the Randwick City Council Third Party Agreement and TfNSW has not already provided the Randwick City Council with a copy of that information;

**A.2.6.2** Clause 5.4(e) – issue a copy of all its certifications or determinations under the Randwick City Council Third Party Agreement to both the Randwick City Council and TfNSW;

**A.2.6.3** Clause 11.3(b), (c) and (d) – in relation to disputes:

- (a) initiate such enquiries and investigations as it considers necessary or desirable in order to resolve a dispute;
- (b) determine whether the dispute is of a technical nature which it can determine;
- (c) schedule a time for the parties to present their respective positions on a dispute, and inform the parties of this time. The presentation must be no later than 10 business days after the independent certifier's appointment, and unless otherwise agreed by the parties, the independent certifier may ignore any submission or response made after that time;
- (d) may request further information from either party, in writing and within the time period required for the response; and
- (e) must:
  - (i) send a copy of the response referred to in clause 11.3(c) of the Randwick City Council Third Party Agreement to the other party and give them a reasonable opportunity to comment;
  - (ii) make a determination or finding in respect of the dispute within 20 business days after the presentation referred to in paragraph 11.3(b)(iii) of the Randwick City Council Third Party Agreement and include reasons;
  - (iii) act as an expert and not an arbitrator;
  - (iv) have no interest or duty which conflicts with its role as an independent expert; and
  - (v) keep confidential all materials and information made available to it in respect of the dispute;

**A.2.6.4** Clause 20.2(b) and (c) - following receipt of an inspection point notice:

- (a) notify the Randwick City Council and TfNSW of the date and time on which it will inspect the relevant works;

- (b) inspect the progress of the relevant Works to verify whether they have been undertaken in accordance with the Urban Design Guidelines; and
- (c) provide to the Randwick City Council and TfNSW a written copy of its findings within 5 business days of the inspection;

**A.2.6.5** Clause 20.5(c)(ii) and (iii) – if the Randwick City Council issues an objection to the handover of relevant permanent Randwick City Council assets as per the proposed handover notice:

- (a) determine whether the objections are valid matters which prevent completion of the permanent Randwick City Council assets in accordance with the Randwick City Council Third Party Agreement; and
- (b) once TfNSW has rectified those matters, issue a certification to that effect; and

**A.2.6.6** Clause 20.5(e)(ii) – if the Randwick City Council identifies what it considers to be any defects in the permanent Randwick City Council assets during the defects liability period:

- (a) determine whether the Randwick City Council has identified defects which require rectification by TfNSW in accordance with the Randwick City Council Third Party Agreement; and
- (b) notify the Randwick City Council and TfNSW of the defects that must be rectified by TfNSW.

**A.2.7** ~~University of New South Wales Third Party Agreement~~ Not used

~~As at the date of this deed this Third Party Agreement has not been finalised.~~

Not used.

**A.2.8** **Australian Turf Club Third Party Agreement**

~~As at the date of this deed this~~ The Independent Certifier will perform the obligations relevant to the Australian Turf Club Third Party Agreement has not been finalised and the ATC gap analysis provided to the Independent Certifier on or around 21 December 2016.

**A.2.9** **Airport Motorway Limited Third Party Agreement**

This section A.2.9 refers to clauses under the Airport Motorway Limited Third Party Agreement referred to in Schedule B3 (*Requirements of Third Parties*) to be entered into by TfNSW, Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**AML**), Roads and Maritime Services (**RMS**) and the Minister for Roads and Freight for and on behalf of the State of New South Wales.

**A.2.9.1** Clause 3(d) - act independently of AML, RMS and TfNSW and any of their respective contractors;

**A.2.9.2** Clause 3(e) - receive any information and documents provided by AML, RMS and TfNSW to allow the Independent Certifier:

- (a) to perform the Independent Certifier's services under this deed;
- (b) to attend any meetings in connection with the Project Activities;

- (c) access to any site upon which the Project Activities are carried out; and
- (d) to inspect any records of AML, RMS and TfNSW which the Independent Certifier considers are required for the performance of the Independent Certifier's services under this deed;

**A.2.9.3** Clause 5.2(b)(ii) – receive from TNSW comments on the Construction Plan and/or the Traffic Management and Safety Plan provided by AML;

**A.2.9.4** Clause 5.2(b)(iii) – certify the Construction Plan and/or the Traffic Management and Safety Plan by providing to AML, RMS and OpCo a certificate as set out in the deed poll at Schedule 7;

**A.2.9.5** Clause 5.2(b)(iv) – take into account any comments provided by AML in the certification of the Construction Plan and/or the Traffic Management and Safety Plan;

**A.2.9.6** Clause 5.3(a) – verify the Design Documentation;

**A.2.9.7** Schedule 3, clause 8(b)(i) – receive notices in cases of a detection of any exceedence of the levels specified in the Monitoring Regime;

**A.2.9.8** Schedule 3, clause 8(b)(ii) – receive results of the Monitoring Regime in the case of routine reporting under the Monitoring Regime within the time frames specified in the Monitoring Regimes from time to time;

**A.2.9.9** Schedule 4, clause 4 – receive each pre-construction condition survey report from TfNSW;

**A.2.9.10** Schedule 4, clause 4 – receive each post-construction condition survey report from TfNSW;

**A.2.9.11** Schedule 10, clause (b)(ii) – receive from TfNSW comments on Design Documentation provided by AML;

**A.2.9.12** Schedule 10, clause (b)(iii) – certify the Design Documentation by providing to AML, RMS and OpCo a certificate as set out in the deed poll at Schedule 7, at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;

**A.2.9.13** Schedule 10, clause (b)(iv) – take into account any comments provided by AML in the certification of the Design Documentation;

**A.2.9.14** Schedule 10, clause (e)(ii) – certify the Design Documentation by issuing the certificate as set out in the deed poll at Schedule 7 at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;

**A.2.9.15** Schedule 11, clause (b) – receive notices from TfNSW when TfNSW considers that a discrete part of the Works is complete; and

**A.2.9.16** Schedule 11, clause (c) – determine whether the discrete part of the Works has been completed in accordance with the AML Third Party Agreement and within 5 Business Days of the date of the inspection:

- (a) if the discrete part is complete, execute and provide a certificate to TfNSW, AML and RMS as set out in the deed poll at Schedule 7, stating the date on which TfNSW has completed the discrete part of the Works in accordance with the AML Third Party Agreement; or

- (b) if the discrete part is not complete, notify TfNSW, AML and RMS in writing of the items which remain to be completed (after which the procedure in clauses (b) and (c) of Schedule 11 to the AML third Party Agreement will reapply).

### **Schedule 5 - Requirements for Certification and Monitoring Plan**

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

- (a) the detailed schedule of functions, obligations, duties and services which the Relevant Project Agreements contemplate will be discharged by the Independent Certifier;
- (b) the detailed functions, obligations, duties and services which will be discharged by the Environmental Representative;
- (c) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Construction Site and the roles and tasks of the nominated personnel and subcontractors;
- (d) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (e) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (f) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (g) all compliance records to be maintained;
- (h) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews, audits of Project Plans and other aspects of OpCo's Activities;
- (i) Hold Points and Witness Point requirements, in the form of a schedule, including the identification of all Witness Points and Hold Points required by the Independent Certifier;
- (j) the Independent Certifier's comprehensive plans for:
  - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of OpCo's Activities;
  - (ii) without limiting sub-paragraph (i), observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the SLR Works to determine, verify and ensure OpCo's compliance with the requirements of the Project Deed;
  - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
  - (iv) off-site surveillance of critical activities.
- (k) the Independent Certifier's strategies, processes, methodologies and procedures for:
  - (i) reviewing the Delivery Program and the specified Project Plans;

- (ii) addressing environmental monitoring and protection;
  - (iii) audit, surveillance and monitoring of OpCo's design and construction activities, including the processes used for determining the levels and scope of surveillance of activities;
  - (iv) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
  - (v) ensuring that OpCo has addressed all issues of review, comment and consultation with TfNSW in respect of the Design Documentation, the specified Project Plans and OpCo's Activities; and
  - (vi) risk management of the work covered by sub-paragraphs (ii), (iii) and (iv) above;
- (l) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby each of the following requirements will be achieved and satisfied:
- (i) certification of the Design Documentation;
  - (ii) certification of the specified Project Plans;
  - (iii) certification of the construction of the SLR Works including constructability and durability issues;
  - (iv) certification of the requirements for ~~First Passenger Service~~; FPS Stage 1 Readiness and FPS Stage 2 Readiness;
  - (v) certification of Completion of the CSELR;
  - (vi) certification of the rectification by OpCo of non-conformances and Defects (if required);
  - (vii) certification of Final Completion; and
  - (viii) determination of any matters required by the Relevant Project Agreements;
- (m) the Independent Certifier's proposed standards including:
- (i) committed surveillance activities; and
  - (ii) committed surveillance resources; and
- (n) the basis of the initial Certification and Monitoring Plan in terms of the assumptions relating to OpCo's Activities including:
- (i) number of design lots developed; and
  - (ii) program durations.

**Schedule 6 - Subcontractors**

<b>Name of subcontractor</b>	<b>Part of the Services</b>
Hyder Consulting	Design review and construction support
Interfleet	Design review and construction support



**Schedule 7 - Deed Poll (AML Third Party Agreement)**



Sydney Light Rail  
Interface and Access Deed  
Independent Certifier Deed Poll

APP Corporation Pty Ltd  
ABN 29 003 764 770

[year]

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**THIS DEED** is made on [year]

**BY:**

- (1) **APP Corporation Pty Ltd** ABN 29 003 764 770 of Level 7, 116 Miller Street, North Sydney, NSW, 2060 (**Independent Certifier**).

**FOR THE BENEFIT OF:**

- (2) **Airport Motorway Limited** ABN 26 057 283 093 and **Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust** ABN 55 078 953 607 of Level 3, 505 Little Collins Street, Melbourne Victoria 3000 (**Asset Owner**).
- (3) **Roads and Maritime Services** ABN 76 236 371 088 ~~of~~ of 101 Miller Street, North Sydney, New South Wales, 2060 (**Landowner**).
- (4) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**Interface Party**).
- (5) **The Hon. Duncan Gay MLC, Minister for Roads and Freight for and on behalf of the State of New South Wales (Minister)**.

**RECITALS:**

- (A) The Interface Party, the Asset Owner and the Landowner are parties to the Interface and Access Deed.
- (B) The Interface Party and ALTRAC Light Rail Partnership (**Contractor**) have entered into the Project Deed.
- (C) In accordance with the Project Deed, the Interface Party and the Contractor have appointed the Independent Certifier under the Deed of Appointment of Independent Certifier.
- (D) The Independent Certifier executes this document in accordance with clause 3.1(b) of the Deed of Appointment of Independent Certifier.

**THE INDEPENDENT CERTIFIER DECLARES AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed:

**ALR Trust 1** means the "ALTRAC Light Rail Trust 1" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 1.

**ALR Trust 2** means the "ALTRAC Light Rail Trust 2" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 2.

**ALR Trust 3** means the "ALTRAC Light Rail Trust 3" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 3.

**ALR Trustee 1** means ALTRAC Light Rail 1 Pty Limited ACN 603 192 203.

**ALR Trustee 2** means ALTRAC Light Rail 2 Pty Limited ACN 603 194 476.

**ALR Trustee 3** means ALTRAC Light Rail 3 Pty Limited ACN 603 190 601.

**ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3.

**Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in Sydney, and excludes 27 to 31 December (inclusive).

**Certification and Monitoring Plan** means the plan that the Independent Certifier is required to prepare in accordance with clause 3.7 of the Deed of Appointment of Independent Certifier, and in respect of which TfNSW has not issued a notice to the Independent Certifier under clause 3.7(b)(ii) of the Deed of Appointment of Independent Certifier, as that plan is updated from time to time in accordance with clause 3.8 of the Deed of Appointment of Independent Certifier.

**Deed of Appointment of Independent Certifier** appears as exhibit 1 to the Interface and Access Deed.

**Interface and Access Deed** means the deed entitled Sydney Light Rail Interface and Access Deed – Eastern Distributor dated [*insert*] between the Interface Party, the Asset Owner, the Landowner and the Minister.

**Land** has the meaning given in the Interface and Access Deed.

**Planned Occupancy Period** has the meaning given in the Interface and Access Deed.

**Project Deed** means the deed entitled Sydney Light Rail Project Deed dated [*insert*] between the Interface Party and the Contractor.

**Services** means the services identified in Schedule 1 to the Deed of Appointment of Independent Certifier referable to the Interface and Access Deed, including the services listed in Schedule A to this deed.

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;  
and unless the context indicates a contrary intention:
- (b) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (d) a reference to a document (including this deed) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, annexure or attachment is a reference to party, clause, schedule, exhibit, annexure or attachment to or of this deed, and a reference to this deed includes all schedules, exhibits, annexures and attachments to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation; and
- (j) a reference to **\$** or **dollar** is to Australian currency.

## 1.3 No bias against drafting party

Each provision of this deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

## 1.4 Business Day

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

## 1.5 Inconsistencies

To the extent of any inconsistency between the terms of this deed and the Interface and Access Deed, the Interface and Access Deed will prevail over this deed.

## **2. INDEPENDENT CERTIFIER'S COVENANT**

The Independent Certifier agrees to carry out the Services in accordance with the terms of, and otherwise comply with its obligations under the Deed of Appointment of Independent Certifier.

## **3. INDEPENDENT CERTIFIER'S GENERAL REPRESENTATIONS AND WARRANTIES**

The Independent Certifier represents and warrants that:

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

## **4. FURTHER ACKNOWLEDGEMENTS AND WARRANTIES**

The Independent Certifier:

- (a) acknowledges that each of the Asset Owner and the Landowner:
  - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
  - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Asset Owner and the Landowner that, in performing the Services, it will comply with all law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) warrants to the Asset Owner and the Landowner that, at all times, it will act within the time requirements for the performance of its obligations under the Deed of Appointment of

Independent Certifier and within the times prescribed under the Interface and Access Deed (and, where no time is prescribed, within a reasonable time);

- (d) warrants to the Asset Owner and the Landowner that for the purposes of carrying out the Services it will obtain access to the Land during either Planned Occupancy Periods or other permitted shut downs of the Eastern Distributor Motorway as agreed with the Asset Owner;
- (e) without limiting clauses 4(a) and 3.3(b), acknowledges that the Asset Owner and the Landowner are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or the Interface and Access Deed; and
- (f) warrants that in performing the Services it will act independently of the Interface Party and the Contractor.

## **5. CERTIFICATION AND MONITORING PLAN**

The Independent Certifier must provide to the Asset Owner and the Landowner a copy of the Certification and Monitoring Plan with which it must comply under the Deed of Appointment of Independent Certifier and a copy of any updates to the Certification and Monitoring Plan relevant to the Interface and Access Deed made under clause 3.8 of the Deed of Appointment of Independent Certifier.

The Certification and Monitoring Plan (including updates) must be provided within three days of provision of the plan to TfNSW under the Deed of Appointment of Independent Certifier.

## **6. PROGRESS REPORTS**

Throughout the term of the Deed of Appointment of Independent Certifier, the Independent Certifier must provide a monthly progress report to TfNSW, the Asset Owner and the Landowner by the fourteenth day of the following month and in such format as is required by TfNSW, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a list or schedule of any design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period relevant to the Interface and Access Deed;
- (c) a summary of key risks and issues relating to the Services;
- (d) details of any Contractor non-conformances relevant to the Interface and Access Deed raised by the Independent Certifier or TfNSW and details on the verification of the rectification by Contractor of non-conformances;
- (e) details of any surveillance, monitoring and auditing relevant to the Interface and Access Deed proposed to be undertaken by the Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (f) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan relevant to the Interface and Access Deed during the reporting period; and

- (g) a list of all potential non-compliances with the requirements of the Interface and Access Deed which TfNSW has raised with the Independent Certifier and which the Independent Certifier has determined are not non-compliances, accompanied by a written statement which explains the reason for the Independent Certifier's determination.

## **7. GOVERNING LAW AND JURISDICTION**

### **7.1 Governing law**

This deed is governed by and must be construed according to the laws of New South Wales.

### **7.2 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 proceedings which may be brought at any time relating to this deed; and
- (b) 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 within inconvenient forum, if that venue falls within clause 7.2(a).

## **8. MISCELLANEOUS**

### **8.1 Further acts and documents**

The Independent Certifier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Independent Certifier) required by law or reasonably requested by the Interface Party, the Asset Owner or the Landowner to give effect to this deed.

### **8.2 Amendments**

This deed may only be varied by a document signed by or on behalf of the Independent Certifier.

### **8.3 Expenses**

The Independent Certifier must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

### **8.4 Severance**

If at any time any provision of this deed 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 deed; or
- (b) the legality, validity or unenforceability under the law of any other jurisdiction of that or any other provision of this deed.



**8.5 No representation or reliance**

- (a) The Independent Certifier 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) The Independent Certifier 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 party, except for representations or inducements expressly set out in this deed.

**SCHEDULE A TO DEED POLL (AML THIRD PARTY AGREEMENT)**

The Independent Certifier must discharge the functions, obligations, duties and services which the Interface and Access Deed contemplates will be discharged by the Independent Certifier. The Services include to:

- clause 3(d) - act independently of Asset Owner, Landowner and Interface Party and any of their respective contractors;
- clause 3(e) - receive any information and documents provided by the Asset Owner, Landowner and the Interface Party to allow the Independent Certifier:
  - (a) to perform the Independent Certifier's Services;
  - (b) to attend any meetings in connection with the Project Activities;
  - (c) access to any site upon which the Project Activities are carried out; and
  - (d) to inspect any records of Asset Owner, Landowner and Interface Party which the Independent Certifier considers are required for the performance of the Independent Certifier's Services;
- clause 5.2(b)(ii) – receive from the Interface Party comments on the Construction Plan and/or the Traffic Management and Safety Plan provided by the Asset Owner;
- clause 5.2(b)(iii) – certify the Construction Plan and/or the Traffic Management and Safety Plan by providing to the Asset Owner, Landowner and the Contractor a certificate as set out in Schedule D or Schedule E to this deed (as applicable);
- clause 5.2(b)(iv) – take into account any comments provided by Asset Owner in the certification of the Construction Plan and/or the Traffic Management and Safety Plan
- clause 5.3(a) – verify the Design Documentation;
- Schedule 3, clause 8(b)(i) – receive notices in cases of a detection of any exceedence of the levels specified in the Monitoring Regime;
- Schedule 3, clause 8(b)(ii) – receive results of the Monitoring Regime in the case of routine reporting under the Monitoring Regime within the time frames specified in the Monitoring Regimes from time to time;
- Schedule 4, clause 4 – receive each pre-construction condition survey report from the Interface Party;
- Schedule 4, clause 4 – receive each post-construction condition survey report from the Interface Party;
- Schedule 10, clause (b)(ii) – receive from the Interface Party comments on Design Documentation provided by the Asset Owner;
- Schedule 10, clause (b)(iii) – certify the Design Documentation by providing to the Asset Owner, Landowner and the Contractor a certificate as set out in Schedule C to this deed, at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;

- Schedule 10, clause (b)(iv) - take into account any comments provided by Asset Owner in the certification of the Design Documentation;
- Schedule 10, clause (e)(ii) – certify the Design Documentation by issuing the certificate as set out in Schedule B to this deed at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;
- Schedule 11, clause (b) – receive notices from the Interface Party when the Interface Party considers that a discrete part of the Works is complete; and
- Schedule 11, clause (c) – determine whether the discrete part of the Works has been completed in accordance with the Interface and Access Deed and within 5 Business Days of the date of the inspection:
  - (i) if the discrete part is complete, execute and provide a certificate to Interface Party, Asset Owner and Landowner as set out in Schedule C to this deed, stating the date on which Interface Party has completed the discrete part of the Works in accordance with the Interface and Access Deed; or
  - (ii) if the discrete part is not complete, notify Interface Party, Asset Owner and Landowner in writing of the items which remain to be completed (after which the procedure in clauses (b) and (c) of Schedule 11 will reapply).

**SCHEDULE B TO DEED POLL (AML THIRD PARTY AGREEMENT)**

**INDEPENDENT CERTIFIER DESIGN CERTIFICATE**

To: Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**Asset Owner**), Roads and Maritime Services (**Landowner**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Light Rail Interface and Access Deed – Eastern Distributor" dated *[insert]* between Transport for New South Wales, the Asset Owner, the Landowner and the Minister for Roads and Freight for and on behalf of the State of New South Wales (**Interface and Access Deed**). Words defined in the Interface and Access Deed have the same meaning in this certificate.

In accordance with the terms of clause 3 and schedule 10 of the Interface and Access Deed, the Independent Certifier certifies that the attached Design Documentation:

- (a) complies with all requirements of the Interface and Access Deed, except for the minor errors and omissions identified in the attached list; and
- (b) is appropriate for construction.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Attachment - List of minor errors or omissions**

No.	Minor error or omission	Action to be taken by OpCo to address minor error or omission
1.	<i>[to be inserted]</i>	<i>[to be inserted]</i>

**SCHEDULE C TO DEED POLL (AML THIRD PARTY AGREEMENT)**

**INDEPENDENT CERTIFIER CERTIFICATE OF WORKS COMPLETION**

To: Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**Asset Owner**), Roads and Maritime Services (**Landowner**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Light Rail Interface and Access Deed – Eastern Distributor" dated [*insert*] between Transport for New South Wales, the Asset Owner, the Landowner and the Minister for Roads and Freight for and on behalf of the State of New South Wales (**Interface and Access Deed**). Words defined in the Interface and Access Deed have the same meaning in this certificate.

For the purposes of this certificate, "minor defects" means defects which do not prevent the completed assets and the Asset from being used for their intended purpose or for which the rectification will not affect the safe and convenient use of the completed assets and the Asset.

In accordance with the terms of clause 3 and schedule 11 of the Interface and Access Deed, the Independent Certifier certifies in relation to the Works described below that:

- (a) OpCo has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under the Interface and Access Deed, subject to the minor defects identified in the attached list; and
- (b) the construction of the Works complies with the requirements of the Interface and Access Deed, subject to the minor defects identified in the attached list.

**Works**

[*insert description of relevant Works*]

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Attachment - List of minor defects**

<b>No.</b>	<b>Minor defect</b>	<b>Action to be taken by OpCo to address minor defect</b>
1.	<i>[to be inserted]</i>	<i>[to be inserted]</i>

**SCHEDULE D TO DEED POLL (AML THIRD PARTY AGREEMENT)**

**INDEPENDENT CERTIFIER CONSTRUCTION PLAN CERTIFICATE**

To: Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**Asset Owner**), Roads and Maritime Services (**Landowner**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Light Rail Interface and Access Deed – Eastern Distributor" dated [*insert*] between Transport for New South Wales, the Asset Owner, the Landowner and the Minister for Roads and Freight for and on behalf of the State of New South Wales (**Interface and Access Deed**). Words defined in the Interface and Access Deed have the same meaning in this certificate.

In accordance with the terms of clause 5.2(b)(iii) of the Interface and Access Deed, the Independent Certifier certifies that the attached Construction Plan complies with all requirements of the Interface and Access Deed.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**SCHEDULE E TO DEED POLL (AML THIRD PARTY AGREEMENT)**

**INDEPENDENT CERTIFIER TRAFFIC MANAGEMENT AND SAFETY PLAN CERTIFICATE**

To: Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust (**Asset Owner**), Roads and Maritime Services (**Landowner**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Light Rail Interface and Access Deed – Eastern Distributor" dated *[insert]* between Transport for New South Wales, the Asset Owner, the Landowner and the Minister for Roads and Freight for and on behalf of the State of New South Wales (**Interface and Access Deed**). Words defined in the Interface and Access Deed have the same meaning in this certificate.

In accordance with the terms of clause 5.2(b)(iii) of the Interface and Access Deed, the Independent Certifier certifies that the attached Traffic Management and Safety Plan complies with all requirements of the Interface and Access Deed.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	



**Executed** as a deed poll.

**EXECUTED** by **APP CORPORATION PTY LTD**  
**ABN 29 003 764 770** 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 8 – Deed Poll (Roads Act Approval)**



Sydney Light Rail  
Roads Act Approval  
Independent Certifier Deed Poll

APP Corporation Pty Ltd  
ABN 29 003 764 770

[year]

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**THIS DEED** is made on [year]

**BY:**

- (1) **APP Corporation Pty Ltd** ABN 29 003 764 770 of Level 7, 116 Miller Street, North Sydney, NSW, 2060 (**Independent Certifier**).

**FOR THE BENEFIT OF:**

- (2) **Roads and Maritime Services** ABN 76 236 371 088 of 101 Miller Street, North Sydney, NSW, 2060 (**RMS**).

**RECITALS:**

- (A) RMS has granted the Roads Act Approval in relation to the CBD and South East Light Rail.
- (B) TfNSW and ALTRAC Light Rail Partnership (**Contractor**) have entered into the Project Deed.
- (C) In accordance with the Project Deed, TfNSW and the Contractor have appointed the Independent Certifier under the Deed of Appointment of Independent Certifier.
- (D) The Independent Certifier executes this document in accordance with clause 3.1(b) of the Deed of Appointment of Independent Certifier.

**THE INDEPENDENT CERTIFIER DECLARES AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed:

**ALR Trust 1** means the "ALTRAC Light Rail Trust 1" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 1.

**ALR Trust 2** means the "ALTRAC Light Rail Trust 2" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 2.

**ALR Trust 3** means the "ALTRAC Light Rail Trust 3" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 3.

**ALR Trustee 1** means ALTRAC Light Rail 1 Pty Limited ACN 603 192 203.

**ALR Trustee 2** means ALTRAC Light Rail 2 Pty Limited ACN 603 194 476.

**ALR Trustee 3** means ALTRAC Light Rail 3 Pty Limited ACN 603 190 601.

**ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and

ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3.

**Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in Sydney, and excludes 27 to 31 December (inclusive).

**Certification and Monitoring Plan** means the plan that the Independent Certifier is required to prepare in accordance with clause 3.7 of the Deed of Appointment of Independent Certifier, and in respect of which TfNSW has not issued a notice to the Independent Certifier under clause 3.7(b)(ii) of the Deed of Appointment of Independent Certifier, as that plan is updated from time to time in accordance with clause 3.8 of the Deed of Appointment of Independent Certifier.

**Deed of Appointment of Independent Certifier** appears as Schedule B to this deed.

**Project Deed** means the deed entitled Sydney Light Rail Project Deed dated [*insert*] between the Interface Party and the Contractor.

**Roads Act Approval** means the document titled "Roads Act Approval – CBD and South East Light Rail" to be granted by RMS substantially in the form of the document set out at Schedule 11 (*Roads Act Approval*) to the Project Deed.

**Services** means the services identified in Schedule 1 to the Deed of Appointment of Independent Certifier referable to the Roads Act Approval, including the services listed in Schedule A to this deed.

**TfNSW** means Transport for NSW (ABN 18 804 239 602), a New South Wales Government agency constituted under section 3C of the *Transport Administration Act 1988* (NSW).

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;  
and unless the context indicates a contrary intention:
- (b) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (d) a reference to a document (including this deed) is to that document as updated, varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

- (f) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, annexure or attachment is a reference to party, clause, schedule, exhibit, annexure or attachment to or of this deed, and a reference to this deed includes all schedules, exhibits, annexures and attachments to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation; and
- (j) a reference to **\$** or **dollar** is to Australian currency.

### 1.3 **No bias against drafting party**

Each provision of this deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

### 1.4 **Business Day**

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

### 1.5 **Inconsistencies**

To the extent of any inconsistency between the terms of this deed and the Roads Act Approval, the Roads Act Approval will prevail over this deed.

## 2. **INDEPENDENT CERTIFIER'S COVENANT**

The Independent Certifier agrees to carry out the Services in accordance with the terms of, and otherwise comply with its obligations under the Deed of Appointment of Independent Certifier.

## 3. **INDEPENDENT CERTIFIER'S GENERAL REPRESENTATIONS AND WARRANTIES**

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any law to which it is subject or any deed or arrangement binding on it;

- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

#### **4. FURTHER ACKNOWLEDGEMENTS AND WARRANTIES**

The Independent Certifier:

- (a) acknowledges that RMS:
  - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
  - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to RMS that, in performing the Services, it will comply with all law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) warrants to RMS that, at all times, it will act within the time requirements for the performance of its obligations under the Deed of Appointment of Independent Certifier and within the times prescribed under the Roads Act Approval (and, where no time is prescribed, within a reasonable time);
- (d) without limiting clauses 4(a) and 3.3(b), acknowledges that RMS is entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or the Roads Act Approval; and
- (e) warrants that in performing the Services it will act independently of TfNSW and the Contractor.

#### **5. CERTIFICATION AND MONITORING PLAN**

The Independent Certifier must provide to RMS a copy of the Certification and Monitoring Plan with which it must comply under the Deed of Appointment of Independent Certifier and a copy of any updates to the Certification and Monitoring Plan relevant to the Roads Act Approval made under clause 3.8 of the Deed of Appointment of Independent Certifier.

The Certification and Monitoring Plan (including updates) must be provided within three days of provision of the plan to TfNSW under the Deed of Appointment of Independent Certifier.

#### **6. PROGRESS REPORTS**

Throughout the term of the Deed of Appointment of Independent Certifier, the Independent Certifier must provide a monthly progress report to TfNSW and RMS by the fourteenth day of

the following month and in such format as is required by TfNSW, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a list or schedule of any design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period relevant to the Roads Act Approval;
- (c) a summary of key risks and issues relating to the Services;
- (d) details of any Contractor non-conformances relevant to the Roads Act Approval raised by the Independent Certifier, TfNSW or RMS and details on the verification of the rectification by Contractor of non-conformances;
- (e) details of any surveillance, monitoring and auditing relevant to the Roads Act Approval proposed to be undertaken by the Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (f) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan relevant to the Roads Act Approval during the reporting period; and
- (g) a list of all potential non-compliances with the requirements of the Roads Act Approval which TfNSW or RMS has raised with the Independent Certifier and which the Independent Certifier has determined are not non-compliances, accompanied by a written statement which explains the reason for the Independent Certifier's determination.

## **7. GOVERNING LAW AND JURISDICTION**

### **7.1 Governing law**

This deed is governed by and must be construed according to the laws of New South Wales.

### **7.2 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 proceedings which may be brought at any time relating to this deed; and
- (b) 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 within inconvenient forum, if that venue falls within clause 7.2(a).

## **8. MISCELLANEOUS**

### **8.1 Further acts and documents**

The Independent Certifier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Independent



Certifier) required by law or reasonably requested by TfNSW or RMS to give effect to this deed.

**8.2 Amendments**

This deed may only be varied by a document signed by or on behalf of the Independent Certifier.

**8.3 Expenses**

The Independent Certifier must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

**8.4 Severance**

If at any time any provision of this deed 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 deed; or
- (b) the legality, validity or unenforceability under the law of any other jurisdiction of that or any other provision of this deed.

**8.5 No representation or reliance**

- (a) The Independent Certifier 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) The Independent Certifier 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 party, except for representations or inducements expressly set out in this deed.

**SCHEDULE A TO DEED POLL (ROADS ACT APPROVAL)****SERVICES**

The Independent Certifier must discharge the functions, obligations, duties and services which the Roads Act Approval contemplates will be discharged by the Independent Certifier. The Services include to:

- Schedule 3, clause 7:
- (a) provide independent review and certification of the relevant design documentation, design development and construction of the works under the Roads Act Approval;
- (b) certify the achievement of completion under the Roads Act Approval;
- (c) provide independent review and certification that the requirements of the conditions in Schedule 3 to the Roads Act Approval have been met including that the relevant works comply with all relevant codes and standards and that the quality of work and materials incorporated into the relevant works are in accordance with the design documentation and the project requirements set out in schedule 4 to the Roads Act Approval;
- (d) independently audit that the project plans set out in clause 21 of the Roads Act Approval comply with the requirements of the conditions in Schedule 3 to the Roads Act Approval;
- (e) issue the certificates (in the form agreed between TfNSW and RMS as set out in Schedule C to this deed) at the same time as the relevant Design Stage 3 certificates are issued under the Project Deed;
- (f) make determinations on any matters that the conditions in Schedule 3 to the Roads Act Approval requires be determined by the Independent Certifier;
- (g) perform any other functions identified in the Deed of Appointment of the Independent Certifier;
- Schedule 3, clause 11 – cooperate with and receive from TfNSW all information and documents and access to the site and other premises, necessary or reasonably required by the Independent Certifier, so as to enable the Independent Certifier to exercise its functions appropriately and perform its obligations under the Deed of Appointment of Independent Certifier;
- Schedule 3, clause 12 – endorse the relevant design documentation under the Roads Act Approval with a certificate in the form agreed by RMS and TfNSW as set out in Schedule C to this deed;
- Schedule 3, clause 17(a)(5) – if requested by RMS and facilitated by TfNSW, meet with RMS to discuss the relevant design documentation under the Roads Act Approval;
- Schedule 3, clause 17(e) – receive from TfNSW comments on the relevant design documentation by RMS and take such comments into account in its review of the relevant design documentation;

- Schedule 3, clause 24 – receive comments on the project plans provided by RMS from TfNSW and take such comments into account in its review of the project plans;
- Schedule 3, clause 34(f) – certify the Project Plans under the Roads Act Approval by providing a certificate in the form agreed by RMS and TfNSW as set out in Schedule F to this deed;
- Schedule 3, clause 37(a) and (b) – receive notices from TfNSW of:
  - (a) the anticipated completion of each discrete part of the relevant works under the Roads Act Approval; and
  - (b) the completion of each discrete part of the relevant works under the Roads Act Approval, including details of compliance with the testing and commissioning plan requirements (including all required test certificates and conformance data) under the Roads Act Approval;
- Schedule 3, clause 38 – inspect each discrete part of the relevant works under the Roads Act Approval jointly with RMS, receive any submissions from RMS about whether the discrete part of the relevant works is complete, and determine whether the discrete part is complete in accordance with the conditions in Schedule 3 to the Roads Act Approval requirements;
- Schedule 3, clause 39 – if it determines that the discrete part of the relevant works under the Roads Act Approval is not complete, issue a notice to TfNSW identifying the work to be done to achieve completion;
- Schedule 3, clause 40 – if it determines that the discrete part of the relevant works under the Roads Act Approval is complete, within 5 business days of the date of inspection with RMS under Schedule 3 clause 38 of the Roads Act Approval, execute and provide to RMS a certificate in the form agreed by RMS and TfNSW as set out in Schedule D to this deed;
- Schedule 4, clause 5.4 – provide certification to RMS stating that all findings / non-conformances of the road safety audits referred to in clauses 5.1 and 5.3 of Schedule 4 of the Roads Act Approval have been satisfactorily addressed and closed out (in the form agreed by RMS and TfNSW as set out in Schedule E to this deed).

**SCHEDULE B TO DEED POLL (ROADS ACT APPROVAL)**  
**DEED OF APPOINTMENT OF INDEPENDENT CERTIFIER**

[insert]

**SCHEDULE C TO DEED POLL (ROADS ACT APPROVAL)**  
**INDEPENDENT CERTIFIER DESIGN CERTIFICATE**

To: Roads and Maritime Services (**RMS**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the document titled "Roads Act Approval – CBD and South East Light Rail" dated [*to be inserted*] (**Roads Act Approval**). Words defined in the Roads Act Approval have the same meaning in this certificate.

In accordance with the terms of clauses 7, 12 and 19 of Schedule 3 to the Roads Act Approval, the Independent Certifier certifies that the attached Design Documentation:

- (a) complies with all requirements of the Roads Act Approval, except for the minor errors and omissions identified in the attached list; and
- (b) is appropriate for construction.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Attachment - List of minor errors or omissions**

No.	Minor error or omission	Action to be taken by OpCo to address minor error or omission
1.	[ <i>to be inserted</i> ]	[ <i>to be inserted</i> ]

**SCHEDULE D TO DEED POLL (ROADS ACT APPROVAL)****INDEPENDENT CERTIFIER CERTIFICATE OF RELEVANT WORKS COMPLETION**

To: Roads and Maritime Services (**RMS**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the document titled "Roads Act Approval – CBD and South East Light Rail" dated [*to be inserted*] (**Roads Act Approval**). Words defined in the Roads Act Approval have the same meaning in this certificate.

In accordance with clause 40 of Schedule 3 to the Roads Act Approval the Independent Certifier certifies in relation to the Relevant Works (Completion) described below that:

- (a) OpCo has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under the Roads Act Approval, subject to the minor defects identified in the attached list; and
- (b) the construction complies with the requirements of the Roads Act Approval, subject to the minor defects identified in the attached list.

For the purposes of this certificate, "minor defects" means defects which do not prevent the Relevant Works (Completion) from being used for their intended purpose or for which the rectification will not affect the safe and convenient use of the Relevant Works (Completion).

**Relevant Works (Completion)**

[*insert description of Relevant Works (Completion)*]

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Attachment - List of minor defects**

<b>No.</b>	<b>Minor defect</b>	<b>Action to be taken by OpCo to address minor defect</b>
2.	<i>[to be inserted]</i>	<i>[to be inserted]</i>

**SCHEDULE E TO DEED POLL (ROADS ACT APPROVAL)**  
**INDEPENDENT CERTIFIER CERTIFICATE – ROAD SAFETY AUDIT**

To: Roads and Maritime Services (**RMS**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the document titled "Roads Act Approval – CBD and South East Light Rail" dated [*to be inserted*] (**Roads Act Approval**). Words defined in the Roads Act Approval have the same meaning in this certificate.

In accordance with the terms of clause 5.4 of Schedule 4 to the Roads Act Approval, the Independent Certifier certifies that all findings / non-conformances identified in the attached Road Safety Audit have been satisfactorily addressed and closed out.

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	



**SCHEDULE F TO DEED POLL (ROADS ACT APPROVAL)**  
**INDEPENDENT CERTIFIER CERTIFICATE – PROJECT PLANS**

To: Roads and Maritime Services (**RMS**) and ALTRAC Light Rail Partnership (**OpCo**)

From: APP Corporation Pty Ltd (ABN 29 003 764 770) (**Independent Certifier**)

This certificate is given in accordance with the document titled "Roads Act Approval – CBD and South East Light Rail" dated [*to be inserted*] (**Roads Act Approval**). Words defined in the Roads Act Approval have the same meaning in this certificate.

In accordance with the terms of clause 34(f) of Schedule 3 to the Roads Act Approval, the Independent Certifier certifies that the attached Project Plan/s described below comply with all requirements of the Roads Act Approval.

**Project Plan/s**

[*insert description of relevant Project Plans from clause 21 of Schedule 3 to the Roads Act Approval*]

Signed for and on behalf of the Independent Certifier by:

Signature:	
Name:	
Position: (Independent Certifier's representative)	
Date:	

**Executed** as a deed poll.

**EXECUTED** by **APP CORPORATION PTY LTD**  
**ABN 29 003 764 770** 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

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